

BROWN ACT SERIAL MEETING CHECKLIST

Incorporating Changes Enacted By Senate Bill 1732

Effective January 1, 2009

COMMUNICATION AMONG BOARD / COMMITTEE MEMBERS

Outside a Public Meeting, A Board Member May **Not**:

- ▣ Engage in any individual or group conversation, e-mail or other communication concerning an agenda item or other district business with other board members who ultimately make up a board majority.

FOR THREE-MEMBER BOARDS, THIS RULE EFFECTIVELY ELIMINATES ANY SUBSTANTIVE DISCUSSIONS AMONG BOARD MEMBERS OUTSIDE A MEETING.

Outside a Public Meeting, A Board Member May:

- ▣ Except for three-member boards, discuss an upcoming agenda item or other district business with only one other board member. (Discussion with only two additional board members would be permissible for seven-member boards).
- ▣ Request and receive information from staff members about district business.
- ▣ Receive written communications from staff concerning district business (for open session matters, such documents will normally be public records).

Caution: For five- and seven-member boards, a conversation with just one other board member concerning a possible agenda item (or two others in the case of a seven member board) is permissible if it is not being used as a means to discuss or deliberate among a majority. The risk: if your confidant(s) then discusses the matter with yet another board member, a violation will have occurred. Since it is rarely possible to be certain that a fellow board member will not engage in discussion with other board members, given the strict language in the Brown Act as amended, this practice should be undertaken with caution. **The safest practice for board members desiring the latest information on an agenda item between meetings is to consult the superintendent.**

COMMUNICATIONS BETWEEN STAFF AND BOARD MEMBERS

- ▣ Effective January 1, 2009, the Brown Act specifically permits separate meetings between a superintendent/administrative staff and individual board members outside a meeting "to answer questions or provide information" regarding matters within the District's jurisdiction. Staff can meet with more than one board member but less than a majority for this purpose.
- ▣ Caution: If more than one board member is present in such a meeting, recall the risks referred to above that can turn the communication into a serial meeting.
- ▣ Staff members may not communicate a board member's comments or position to other board members.

WHAT'S AT STAKE IF A SERIAL MEETING OCCURS?

- ▣ District can be sued to invalidate action taken on the item discussed.
- ▣ District can be sued to prevent future violations.
- ▣ District may be liable for attorneys fees and costs if the challenger prevails.
- ▣ Intentional violations are a misdemeanor.
- ▣ District will be subjected to negative press - the media widely publicizes Brown Act violations and typically paints the public entity as trying to hide something and engaging in poor stewardship of the public trust. In turn, this can affect public support for bonds, donations to District programs, etc.