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**CONFIDENTIAL ATTORNEY/CLIENT
PRIVILEGED COMMUNICATION**

To: Schools Legal Service Clients
From: Grant Herndon
Re: New Brown Act Legislation Takes Effect January 1, 2009

For those who weren't able to attend our August Workshop this year, the following is a link to an article concerning recent changes to the Brown Act which take effect January 1, 2009: www.schoolslegalservice.org. From the members only page, click on the Brown Act link to access the article.

The article is rather lengthy, so here is the Reader's Digest version:

1. DISCUSSIONS BETWEEN BOARD MEMBERS.

Senate Bill 1732 (Romero) addresses so-called "serial meetings," a term which refers to a series of separate communications among board members outside a meeting which cumulatively involve a board majority.

The extent of permissible activity in this area under existing law was hazy at best. When a court case interpreted the law so broadly as to permit serial communications among board members so long as the board did not actually come to agreement on action to be taken, media groups sponsored this legislation which tightens up the law as it applies to board member communications.

Effective January 1, 2009, board members are prohibited from using a series of communications of any kind outside a board meeting, whether directly or through intermediaries, to "discuss, deliberate or take action on" district business. (Government Code section 54952.2).

As a result of this legislation, three-member boards are effectively prohibited from discussing district business outside a meeting, whether in person, by telephone or e-mail. On five-member boards, a single board member may discuss district business with another, but if either confides in a third board member, a Brown Act violation occurs. On seven-member boards, up to three board members can discuss board business, but once any of them brings a

fourth into their confidence, the Brown Act is violated. Board members can always look to their superintendent for updates on critical issues between board meetings.

2. DISCUSSIONS BETWEEN SUPERINTENDENT/ADMINISTRATORS AND BOARD MEMBERS.

While SB 1732 tightened up the law relating to board member communications, it brought some needed certainty to communications between superintendents/administrators and board members. The law in this regard had also been quite hazy. Under the new language, the Brown Act now specifically allows superintendents/administrators to meet with board members one-on-one (or in groups of less than a quorum) to answer questions or provide them with information, so long as no information concerning a board member's comments or position is provided to other board members.

A Serial Meeting Checklist is also posted for distribution to administration and board members.

3. OTHER CHANGES IN THE NEW LEGISLATION — BOARD ACCESS TO DOCUMENTS.

The Brown Act also provides that agendas and other materials distributed to a board majority relating to an agenda item are public records, subject to disclosure under the California Public Records Act, unless an exemption applies. The Brown Act requires such documents to be made available for public inspection at the board meeting if prepared by district staff or a board member, or after the meeting if prepared by someone else. (As you may recall, as of July 1, any documents provided to a board majority within 72 hours of a board meeting relating to an open session item must be made available for inspection at a location specified in the agenda.)

SB 1732 adds Government Code section 6252.7 to the Public Records Act. The new statute requires that whenever a board member is entitled to access a "writing" (document, e-mail, etc.), the district may not discriminate among board members as to which writing or portion of a writing is made available, or when it is made available.

According to the Senate Floor Analysis, this provision of the bill was in response to complaints from local agency board members, including school board members in other counties, that local agencies are distributing writings only to some members of the legislative body and not to others, or that members are being asked to pay for copies of writings that are being provided free to others.

If you need further information concerning these issues, please do not hesitate to contact me.

GH/cp