



March 23, 2020

## **CORONAVIRUS ~ BROWN ACT UPDATE NO. 3**

### **EXECUTIVE ORDER N-35-20: BOARD UPDATES ON EMERGENCY RESPONSE**

This follows recent guidance from our office on Brown Act issues relating to the Coronavirus public health concerns.<sup>1</sup> In his latest Order (Executive Order N-35-20, copy included), the Governor has yet again addressed the need for flexibility under the Brown Act, this time relating to the ability to update the Board of Trustees between meetings as to the emergency response so that Board Members can stay apprised of emergency operations and the impact of the declared emergency on their constituents.

As you know, the Brown Act already permits a Superintendent (or designated staff) to engage in “separate conversations or communications outside of a meeting” with Board Members to “answer questions or provide information regarding a matter that is within the subject matter jurisdiction” of the District, provided the staff member does not communicate to Board Members the comments or position of any other Board Member.

This latest Executive Order clarifies that boards can receive updates or briefings from federal, state, or local government officials relating to impacts of COVID-19, the government’s response, and other aspects relevant to the declared emergency. Board Members can ask questions of the local officials so long as they do not take action or discuss among themselves any item of business within the Board’s subject matter jurisdiction without complying with the usual Brown Act requirements. This direction may sound a bit vague, in that Board Members’ questions to local officials will surely relate to possible agenda items or matters within the Board’s jurisdiction, but directing a clarifying question to an official is different from discussing or taking action with fellow Board Members.

If follow-up discussion or action is necessary, a board meeting should be scheduled using, if needed, the flexibility around telephone/videoconference meetings outlined in prior updates.

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<sup>1</sup> See prior guidance from Schools Legal Service regarding general requirements for Board Members to participate in meetings via teleconference or video conference (March 11, 2020), initial guidance on telephonic/videoconference flexibility under the Governor’s Executive Order N-25-20 (March 13), and further guidance regarding telephonic/videoconference flexibility under Executive Order N-29-20 with sample emergency meeting agenda (March 19).

Do not hesitate to contact our office regarding this or other COVID-19-related matters.

~ Grant Herndon

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