



THE BROWN ACT



Access to Documents During School Closure



Access to Documents During School Closure

- What's required?
- What would Ralph recommend?



Ralph M. Brown
(Photo Source: *Modesto Bee*)



Access to Justice During

COVID what?
That one never occurred
to me! I'm amazed my name
is even still on this law!

- What's required?
- What would Ralph recommend?



Ralph M. Brown
(Photo Source: *Modesto Bee*)





Access to Documents

- COVID-19 **Executive Orders** permit districts to limit public access to board meetings to remote participation via telephone or electronic means such as Zoom teleconferences.
- The Executive Orders do not address access to **meeting documents** during school closures.
- Access to documents can be a critical component of **participating** in a meeting
- How does the public access documents if they are participating only remotely?





Issue # 1: Agenda Packets

- Agenda **packets** can be posted, physically and electronically, but it's not required by law at this time. Only the **agenda document** must be posted.
- It is typical to provide the packet to **board members** when agenda posted, but not required by law
- Members of the public now participating only telephonically or via Zoom or other electronic means may not have access to meeting documents.
- **Consider** posting open session portion of packets online during school closure or provide a contact number for e-mailed copies.





#2: Agenda Packets as Public Records

- Agendas and any other writings distributed to a board majority in connection with a matter subject to discussion in open session are disclosable public records even if distributed more than 72 hours before the meeting.
- They must be made available “upon request without delay” (unless exempt)



Issue # 3: 72 Hour Rule

- There is a **special rule** for public records distributed to a board **majority within 72 hours prior** to a meeting.
 - The records must be made available inspection at a public location.
- The location (address) where the documents can be inspected must be **posted on all agendas**. A district may post them on the Internet in a way that makes clear they relate to the upcoming meeting.





Issue #4: Agenda Documents Furnished at the Meeting

- Open session documents must be made available for inspection **at the meeting** if prepared by the district
- Must be made available for inspection **after the meeting** if prepared by some other person





Agenda Language

- Here is the typical agenda language to address 72 hour rule:
 - “Any materials required by law to be made available to the public prior to a meeting of the Board of Trustees of the District can be inspected at the following address during normal business hours: [list address].”
- **Consider** adapting this language to address documents that must be provided before the meeting and those provided at the meeting.





Proposed New Agenda Language

- Suggested revision during school closure to address 72 hour rule as well as documents provided at the meeting:
 - “Due to public health directives relating to the COVID-19 pandemic, any materials required by law to be made available to the public prior to or during a meeting of the Board of Trustees of the District can be accessed on the District’s website, www.schooldistrict.k12.ca.us.”
- Another option:
 - “Due to public health directives relating to the COVID-19 pandemic, electronic copies of any materials required by law to be made available to the public prior to or during a meeting of the Board of Trustees of the District can be accessed by [sending a request to the following address prior to the meeting: admin_designee@schooldistrict.k12.ca.us.] or [contacting the District at 661.123.4567]”



Issue # 5: Standing Orders for Mailed Agenda Packets

- Members of the public can request copies of agenda or agenda packet, to be mailed at earlier of posting or distribution to a board majority (open session portion only)
- A standing request is valid for up to a calendar year
- Is District Office able to fulfill these requests?
- If not, **consider** contacting those who have a request on file to arrange for electronic delivery or web access





Take Care With Closed Session Documents



- Closed session documents should be labeled as such: “CONFIDENTIAL CLOSED SESSION MATERIAL”
- The public is not entitled to closed session documents, at least initially
- At some point, closed session documents may become disclosable (e.g., contracts, settlement agreements, and other documents finally approved in the closed session)





**Call us with any
questions**

