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Board Meetings

Conducting the Public's Business During the Pandemic

By Gregory J. Dannis

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Nearly 70 years ago, the Ralph M. Brown Act was enacted to guarantee the public's right to attend and participate in meetings of local legislative bodies. It remained relatively unchanged for about the first half of its existence, but has been revised more frequently over the last three decades, primarily to address real or perceived abuses and to adapt to new technologies.

I have been advising school boards for 40 years, and for the last 13 years have served and continue to serve on my own school board. I can say with certainty that the very nature of board meetings and the rules for conducting them have changed more dramatically in the last 10 months than in all the years preceding the pandemic. Why is this so?

An obvious part of the answer is the subject matter boards have been compelled to address: Should we pursue a waiver to open schools? Which grades should return? Is it safe for students and staff to return to school? Even what (or who?) the heck is MERV 13!

Often we found that the desired rational discussions based on science and data gave way–or seemed to be taken away–to be replaced by words of fear, anxiety and feelings. Board members have even been accused of being unqualified to make life and death decisions for children and adults.

But there is a secondary, more evident impact of the pandemic on our board meetings: Since we cannot gather indoors in large groups, our meetings have gone virtual–our Board rooms are now Zoom rooms. This accommodation has expanded the public's ability to attend and participate in board meetings. It is simply easier to show up in the comfort of your own home.

This has resulted in:

- More people **attending** our meetings;
- More people **observing** our meetings;
- More public **comment** at our meetings; and
- More **scrutiny** of our discussions, deliberations and actions.

One might say, "Great! More public participation is exactly what the Brown Act is intended to promote and protect." This is true. But I have also seen some harmful side effects to this change. As public attendance has increased, it appears adherence to standards of basic civility and courtesy have decreased. Perhaps it is easier to be impolite or rude when you are just a voice–sometimes an anonymous voice–coming from a black box on the screen than when one is standing up in person in front of your community.

There is also a heightened sense of "a right to know" and a right of access to information which often exceeds the legal boundaries of such rights.

I suspect the vast majority of these new participants have **never** attended a board meeting and do not understand the *purpose* of a board meeting or the **protocols** for conducting the district's business in public.

A board meeting is not a town hall, or an open forum for debate, or a meeting of the British House of Commons. But many of the new participants may not know this and they may not be familiar with the Brown Act. It is not surprising to those of us who study and live with it every day that some will get frustrated when they think they have gained an understanding of the Brown Act from a first reading. Like many statutes, the Brown Act does not always mean what it appears to say.

As a result, there has been a little disruption and loss of control. And the core purpose of board meetings has been blurred. Consequently, governance team members must redouble their ongoing professional development efforts to learn about the Brown Act and stay apprised of rapid changes in the contours and application of the law. Continuing education, such as through our Brown Act Survival Training can provide you with tools to regain or preserve that appropriate level of control and sense of purpose in board meetings.

Board meetings are comprised of legislative, judicial and executive actions. The overriding purpose of board meetings, however, is to conduct the business of the district while allowing the public to observe the process and deliberations, comment briefly thereon, and understand the reasons underlying Board decisions. Meeting this definition will almost guarantee Brown Act compliance, no matter the subject.

In order to do this successfully, governance team members must have at least a general awareness of the following:

- New legal requirements regarding agendas, attendance and intra-board communications in a virtual environment.
- How to facilitate but manage public comment when many virtual attendees wish to exercise that right.
- New laws and cases addressing use of social media, agenda descriptions and free speech limits.
- Best practices and permissible subjects for closed sessions.
- Application of the Brown Act and other laws to employer-employee issues, including negotiations.
- Protecting student privacy rights at public meetings.

In order to preemptively alleviate any pressure governance team members might feel to memorize all these laws, orders and cases, let me say this clearly: You are not expected to … but WE are.

What you **should** have is enough information so that in any confusing or contentious situation a ”light bulb” goes on in your head and you think to yourself, “I know there is a law or a case or a rule relevant to this situation that we need to stop and check.”

In these challenging times, it is especially important to keep the original legislative intent of the Brown Act front and center at all times. It states in part that “the public … boards and councils and the other public agencies in this State exist to aid in the **conduct** of the **people’s business**.”

The conduct of business. Board meetings exist to conduct the District’s business in public on behalf of the public. The Brown Act is a tool to accomplish this purpose effectively and efficiently and is not a not a tool to be used to impede the conduct of the public’s business. Staying current on changes to the Brown Act and learning together as a governance team will further the accomplishment of these goals.

Gregory J. Dannis is a Shareholder and President of Dannis Woliver Kelley. This article was presented as the opening remarks for DWK’s statewide “Brown Act Survival Training” on January 26, 2021. If you were unable to attend the training, recordings of the main session, along with copies of the materials and the DWK Brown Act Manual are available for purchase here: http://www.dwkesq.com/dwk-brown-act-training-recording-and-materials/.