



## Elite Academic Academy - Mountain Empire

Please join my meeting from your computer, tablet or smartphone.  
Join Zoom Meeting ID: 91518028092 Passcode: aXlliU4F6y (US)  
+1 253- 215-8782 Passcode: 9169620713

October 28, 2021 at 10:00 am

43414 Business Park Drive, Temecula, CA 92590

1102 South Juniper Street, Escondido, CA 92025

3291 Buckman Springs Rd., Pine Valley, CA 91962

3407 Winona Ave, Burbank, CA 91504



## Elite Academic Academy - Mountain Empire Special Meeting- October 28, 2021

Time:

### 1.0 Call To Order

Roll Call:

Morgen Oelckers, Patrick Keeley, Ronnie Jackson

### 2.0 Approve/Adopt the Agenda

It is recommended the Board of Directors adopt as presented the agenda for the Board Meeting of October 28, 2021.

Motion: Second:

Vote:

### 3.0 Public Comment -Closed Session

The public has a right to comment on any items of the closed session agenda. Members of the public will be permitted to comment on any other item within the Board's jurisdiction under section 8.0 Public Comments at Board Meetings.

### 4.0 Adjourn to Closed Session

The board will consider and may act on any of the Closed Session matters listed in Agenda Item 14.0.

### 5.0 Closed Session

The Board will consider and may act on any of the following items in closed session; any action taken in closed session will be reported in open session as required by law.

**5.1 Personnel Matters ((With respect to every item of business to be discussed in closed session pursuant to Government Code Section 54957.6)**

**5.2 Employer/Employee Relations (With respect to every item of business to be discussed in closed session pursuant to Government Code Section 54957.6)**

Time:

### 6.0 Pledge Of Allegiance

Led By:

### 7.0 Open Session

### 8.0 Public Comment

Please submit a Request to Speak to the Board of Trustees, cards can be asked for by emailing [mfreeman@eliteacademic.com](mailto:mfreeman@eliteacademic.com) completing and returning it, For non-agendized items to the CEO, prior to the meeting. Not more than three (3) minutes are to be allotted to any one (1) speaker, and no more than twenty (20) minutes on the same subject. This portion of the agenda is for comments, recognitions and reports to the Board and is not intended to be a question and answer period. If you have questions for the Board, please provide the Board President with a written copy and an administrator will provide answers at a later date.

### 9.0 General Functions

#### 9.1 Informational Items

##### **Brown Act Training**

Our legal counsel will be holding a Ralph M. Brown Act Training for all board members. Members of the public are welcome to attend and view the training.

Motion: Second:

Vote:

[Brown Act Training 2021-2022.pdf](#)

### 10.0 Personnel Services

### 11.0 Public Hearing

Please submit a Request to Speak to the Board of Directors cards can be

asked for by emailing mfreeman@eliteacademic.com completing and returning it, For non-agendized items to the CEO, prior to the meeting. Not more than three (3) minutes are to be allotted to any one (1) speaker, and no more than twenty (20) minutes on the same subject. This portion of the agenda is for comments, recognitions and reports to the Board and is not intended to be a question and answer period. If you have questions for the Board, please provide the Board President with a written copy and an administrator will provide answers at a later date.

**Time:** 12.0 Business Services

13.0 Educational Services/Policy Development

14.0 Report of Action Taken in Closed Session

The Board will report any action taken in closed session as required by law.

15.0 Calendar

The next regularly scheduled meeting is November 4, 2021 at 10:00 am.

16.0 Board Comments and Future Planning

**Time:** 17.0 Adjournment

In compliance with Government Code section 54957.5, open session materials distributed to Board Members for review prior to a meeting may be viewed at the eliteacademic.com or at the scheduled meeting. Board agenda back-up materials may also be requested by calling the School at 1(866)354-8302. In addition, if you would like a copy of any record related to an item on the agenda, please contact administration.

In compliance with the American with Disabilities Act, if you need special assistance, disability-related modifications or accommodations, including auxiliary aids or services, in order to participate in the public meetings of the District's governing board, please contact the School at 1(866) 354-8302. Notification 72 hours prior to the meeting will enable the School to make reasonable arrangements to ensure accommodation and accessibility to this meeting. Upon request, the School shall also make available this agenda and all other public records associated with this meeting in appropriate alternative formats for persons with a disability.

**Motion: Second:  
Vote:**

# The Brown Act



*Presented for the Elite Academic Academy-*

*Board Of Directors*

By Greg Bordo

BLANK ROME LLP

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# Disclaimer



- The following information is designed to be a general guide to the Brown Act and should NOT be considered legal advice. For questions about specific situations concerning the Brown Act please consult an attorney.

# Purpose of the Seminar



- Overview of Brown Act Requirements for Charter Schools
- What is and is not a “Meeting”?
- Notice and Agenda Requirements
- Closed Sessions
- Role of Board Members
- Rights of the Members of the Public

# The Brown Act



I.

## Introduction

# The Purpose of the Brown Act



- “[P]ublic agencies in this State exist to aid in the conduct of the people's business...”
- “The people of this State do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created.”

*(Govt. Code § 54950)*



# The Purpose of the Brown Act



- The Brown Act guarantees the public's right to attend and participate in meetings of local legislative bodies
- Public notice of all regular and special meetings
- All meetings open to the public
- Private deliberations are limited
  - Private topics must be announced ahead of time
  - Actions taken in private must be reported out

# Brown Act and Charter Schools



- The Brown Act applies to all “local agencies”:
  - A county, city, whether general law or chartered, city and county, town, school district, municipal corporation, district, political subdivision, or any board, commission or agency thereof, or other local public agency
- The Brown Act applies to all “legislative bodies” of the “local agency”
  - Any commission, committee, board, or other body of a local agency, whether permanent or temporary, decision-making or advisory, created by charter, ordinance, resolution, or formal action of a legislative body

# Brown Act and Charter Schools



- Despite recent legislative efforts, there is no express provision of law requiring charter schools to abide by the Brown Act
- However, compliance with the Brown Act is a condition of many charter petitions
- Elite Academic Academy and Bylaws require it to follow the Brown Act

# The Brown Act



II.

## Open Meetings

# What is a Meeting?



- Meeting – “any congregation of a majority of the members of a legislative body at the same time and location, including teleconference location... to hear, discuss, deliberate, or take action on any item that is within the subject matter jurisdiction of the legislative body”
  - Majority of members
  - Hear, discuss, deliberate, or take action
  - On any item within the subject matter jurisdiction of the Charter School

*(Govt. Code 54952.2.)*

# What is a Meeting?



## Exceptions

- Individual (one on one) contacts
- Public conference or gathering, provided no Charter business is discussed
- Another legislative body's public meeting, provided no Charter business is discussed
- Social or ceremonial gatherings, provided no Charter business is discussed

*(Govt. Code § 54952.2.)*

# Serial Meetings



- Board Members may not “use a series of communications of any kind, directly or through intermediaries, to discuss, deliberate, or take action on any item of business that is within the subject matter jurisdiction of the legislative body”
    - A series of communications
    - Directly, through intermediates, or through any kind of communication technology
    - Outside of regular or special meetings
    - To discuss, deliberate, or take action business
- (Govt. Code § 54952.2(b).)*

# Serial Meetings



- The prohibition limits communications outside of Board meetings
- Communications of any kind
  - In Person
  - Telephone
  - E-mail
  - Text Message
  - Online forum
- Board Members may not use an employee as an intermediary communicate to members of the Board the comments or position of another member



# Serial Meetings



## □ Examples:

- When Member Mike calls Member George to talk about a resolution then George calls Member Jose to talk about it and so on until a majority of Board has been contacted
- President Tammy calls Member Stacy and discusses an issue to get her opinion, then Tammy calls Member Gina and then calls Member Lisa telling each what the other has said, eventually a majority of the Board may have indirectly discussed the topic

# Polling Board Members



- The prohibition of Serial Meetings does not include a Board Member:
  - Meeting with constituents to address their concerns
  - Conferring with a colleague or appropriate staff
- Further, an employee, such as the CEO, may engage in separate conversations or communications “with members of a legislative body in order to answer questions or provide information... if that person does not communicate to members of the legislative body the comments or position of any other member or members of the legislative body.”

*(Govt. Code 54953.2(b)(2))*

# Polling Board Members



- ex. A Board Member may request individual briefings from the CEO to be prepared to discuss complicated or controversial topics at an open meeting
- ex. The CEO may gauge the opinion of multiple Board Members on a controversial issue prior to an open meeting
  - A Board Member may not ask for the opinion of other Board Members
  - The CEO may not rely the comments or opinions of one Board Member to another

# Teleconference



## Additional Requirements for Teleconference

- All votes must be taken by roll call
- Agenda must be posted at all teleconference locations
- Each teleconference location must be identified in the notice and agenda of the meeting
- Each teleconference location must be accessible to the public and ADA accessible
- Public must be able to address the Board directly from each teleconference location
- A quorum must participate from the Charter's jurisdiction

# Meetings



- Meetings must be ADA accessible
- No member of the public attending the meeting may be required to register his/her name, fill out a questionnaire, or provide other information
  - Any such registration must be labeled as voluntary
- Any person attending may audio or video record or may broadcast the meeting unless the recording or broadcast disrupts the meeting
- Any recording made by the Charter is a public record, but may be destroyed within 30 days  
*(Govt. Code § 54953(b).)*

# Special Meetings



- Written notice must be delivered to each member of the legislative body and to each local newspaper of general circulation, and radio or television station which has requested such notice in writing
- The written notice must be delivered and posted at least 24 hours prior to the special meeting
- No business that is not mentioned in the notice
  - No discussion of salaries, benefits, or executive compensation

*(Govt. Code § 54956.)*

# Emergency Meetings



- Emergency: a crippling activity, work stoppage or other activity which severely impairs public health, safety or both
- Extremely rare
- Emergency meetings can not include closed sessions except to meet with law enforcement
- One hour notice to anyone who has requested it
- The minutes, a list of people who received notice, roll call votes, and any actions taken must be posted in a freely accessible public location for at least 10 days

*(Govt. Code § 54956.5.)*

# The Brown Act



## III.

# Notice and Agenda



# Notice



- Regular meetings – 72 hours notice
- Special meetings – 24 hours notice
- Emergency meetings – one hour notice

# Agendas



- General rule: Regular meeting agenda must be posted at least 72 hours in advance of the meeting and business not appearing on the agenda may not generally be discussed.
- An agenda must include:
  - Time and place of the meeting
  - Brief general description of each item, need not exceed 20 words
  - Posted at a location accessible to the public
  - Posted on the Charter's website, if it has one
  - Posted at all teleconference locations

*(Govt. Code § 54954.2)*

# Agendas



- Exceptions: Additional items may be discussed if:
    - With 2/3's majority vote, there is a need to take immediate action and that need was discovered after the agenda was posted
    - Item continued from prior meeting (5 days earlier)
    - Direction to staff
    - Response to public comment
- (Govt. Code § 54954.2)*

# Agendas



- Special Meeting Agendas
  - There is no express agenda requirement for special meetings
  - The notice of the special meeting effectively serves as the agenda
  - Business is strictly limited to what is on the notice
  - No discussion of salaries, benefits, or executive compensation

*(Govt. Code § 54956.)*

# 2016 Amendment (Effective 2019)



- If the school maintains a website, must post a prominent, direct link of its current agenda
- “Current BOARD AGENDA” link
- Not in a drop-down menu
- Retrievable, downloadable, indexable, platform independent & machine reachable

# Public Comments



- Every agenda must provide time for public comment
- Public may comment on any item of interest to the public within the subject matter jurisdiction of the Charter
  - The Board may not take action on any item not appearing on the agenda
- Members of the public attending the meeting are entitled to copies of agendas and Board materials

*(Govt. Code § 54954.3.)*

# Public Comments



- The Charter Board may adopt reasonable regulations for public comment limiting:
  - Amount of time for public comment on a particular issue
  - Amount of time for an individual speaker
- E.g. 3 minutes per speaker or 20 minutes per topic
- However, the Charter Board may not “prohibit public criticism of the policies, procedures, programs, or services of the agency, or of the acts or omissions of the legislative body.”

*(Govt. Code § 54954.3.)*

# Public Comments



## Be Prepared

- Extra copies of documents
- Be careful what is distributed during open session, as it becomes a public record
- Set time limits for discussion
- Keep discussion within the topic on the agenda



# The Brown Act



IV.

**Closed Session**

# Closed Session



## Closed Session Subjects

- Personnel Matters
- Pending / Existing / Anticipated Litigation
- Student Discipline
- Labor Negotiations
- Real Property Negotiations
- Application of Person with Criminal Record
- Certain Pension / Health Care / Insurance Issues
- Security of Facilities

# Closed Session



- General Rule – All meetings are open and public unless falling within closed session exceptions
- Must fall under an exception to meet in closed session.

# Closed Session



## Basic Requirements

- ❑ Closed Session topic must appear on the agenda
- ❑ Board must make public announcement of reasons for closed session and allow public comment
- ❑ Board must report out action taken in closed session (where required) and the vote or abstention of each member
- ❑ No Board member, staff person, or invitee may disclose information from closed session without authorization of the Board.

# Closed Session



## Basic Requirements

- If a specific authorization for closed session cannot be found, the matter must be conducted in public regardless of its sensitivity (*Govt. Code § 54962; Rowen v. Santa Clara Unified School District (1981) 121 Cal.App.3d 231*)
- Meetings are either open or closed
  - Cannot include some members of the public
  - May include staff, legal counsel, etc.

# Closed Session - Personnel



- Regular or special meeting
- Consider the appointment, employment, evaluation of performance, discipline, or dismissal of a public employee
- To hear complaints or charges brought against the employee by another person or employee
  - unless the employee requests a public session

*(Govt. Code § 54957.)*

# Closed Session - Personnel



## Agenda

- PUBLIC EMPLOYEE APPOINTMENT
  - Identify position
- PUBLIC EMPLOYEE EVALUATION
  - Identify position
- PUBLIC EMPLOYEE DISCIPLINE / DISMISSAL /  
RELEASE
  - No need to identify the employee's name or position
  - Tip: keep this item on every agenda

# Closed Session - Personnel



## Reporting out:

- Action taken to appoint, employ, dismiss, accept the resignation of, or otherwise affect the employment status of a public employee
- Vote of each member
- At that meeting, unless the employee has administrative remedies or appeal rights
- Identify title of position only



# Closed Session - Personnel



## Complaints or charges

- When the Board hears complaints or charges in closed session, it must provide employee 24 hours notice of right to have the complaints or charges heard in open session
- Only for formal hearing
- Not for a discussion of general concerns or discussions of considering whether conduct is sufficient to warrant disciplinary charges

*(Kolter v. Commission on Professional Competence of the L.A. Unified School Dist. (2009) 170 Cal App 4th 1346.)*

# Closed Session – Legal Counsel



- Board may hold closed session to confer with legal counsel regarding pending litigation when discussion in open session concerning those matters would prejudice the position of the Charter
- Litigation:
  - Any adjudicatory proceeding, including eminent domain
  - Before a court, administrative body exercising its adjudicatory authority, hearing officer, or arbitrator

*(Govt. Code § 54956.9.)*

# Closed Session – Legal Counsel



- “Pending” Litigation:
    - Litigation that has been formally initiated
    - When, based on “existing facts and circumstances” there is significant exposure to litigation
    - Decisions on whether to initiate litigation
  - Facts and Circumstances:
    - Accident, disaster, incident, transactional occurrence, etc. that might result in litigation
    - Receipt of a Tort Claim
    - Oral or written threat of litigation
- (Govt. Code § 54956.9.)*

# Closed Session – Legal Counsel



- Closed session must be to “confer with, or receive advice from” legal counsel
- Requires interaction with legal counsel
- Legal counsel should be present, available by phone, or have provided written legal advice protected by the attorney-client privilege

*(Govt. Code § 54956.9.)*

# Closed Session – Legal Counsel



## Agenda

- Existing Litigation
  - “CONFERENCE WITH LEGAL COUNSEL -- EXISTING LITIGATION”
  - “(Paragraph (1) of subdivision (d) of Section 54956.9)”
  - “Name of Case (Party names or case number)”
  - “Case name unspecified (specific whether disclosure would jeopardize service of process or existing settlement negotiations

# Closed Session – Legal Counsel



## Agenda

- Anticipated Litigation
  - “CONFERENCE WITH LEGAL COUNSEL--  
ANTICIPATED LITIGATION”
  - “Significant exposure to litigation pursuant to  
paragraph (2) or (3) of subdivision (d) of Section  
54956.9”
  - Specify number of cases
- Same requirements for initiating litigation

# Closed Session – Legal Counsel



## Reporting Out

- Legal Defense or Appellate Review
  - Identify action taken and vote of each member
  - Identify the other party and substance of litigation
- Initiate or Intervene
  - Specify that the direction to initiate or intervene in an action has been given
  - That the action, the defendants, and the other particulars shall, once formally commenced, be disclosed to any person upon inquiry, unless to do so would jeopardize service of process or settlement negotiations

# Closed Session – Legal Counsel



## Reporting Out - Settlements

- Reported out after the settlement is final
- If the Board approves a settlement signed by another party, report its acceptance and identify the substance of the agreement
- If final approval rests with the other party, only report acceptance and identify the substance of the agreement upon inquiry by any person



# Enforcement



## □ Civil Remedies

- Board action may be declared null and void

- Injunctive relief may be obtained

- Prevailing plaintiff awarded attorneys' fees

- Board may be required to record all closed sessions

- Criminal penalties (misdemeanor) if Board member intends to deprive the public of information to which the member knows or has reason to know the public is entitled

*(Govt. Code § § 54959; 54960.)*

# Enforcement



- Prior to filing an action the DA or private party must send cease and desist letter within 9 months of the alleged violations
- Board has 30 days to cure or respond
- Seek advice from legal counsel

*(Govt. Code § § 54959;  
54960.)*

# Rights of the Public



- Attend meetings without registration
- Give oral comment at meeting
  - Subject to reasonable regulation
- Record and broadcast meetings
- Copies of agendas and public documents
  - Agendas prior to meetings by request
- ADA compliant facilities

**Any questions?**



**Thank You**