

Avoiding Brown Act Violations

Presented by: James Baca, Partner



**Garvey School District
Board of Education Meeting
Education Center, Rosemead
July 26, 2018**

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The Top 10 Most Common Brown Act Violations and How to Avoid Them

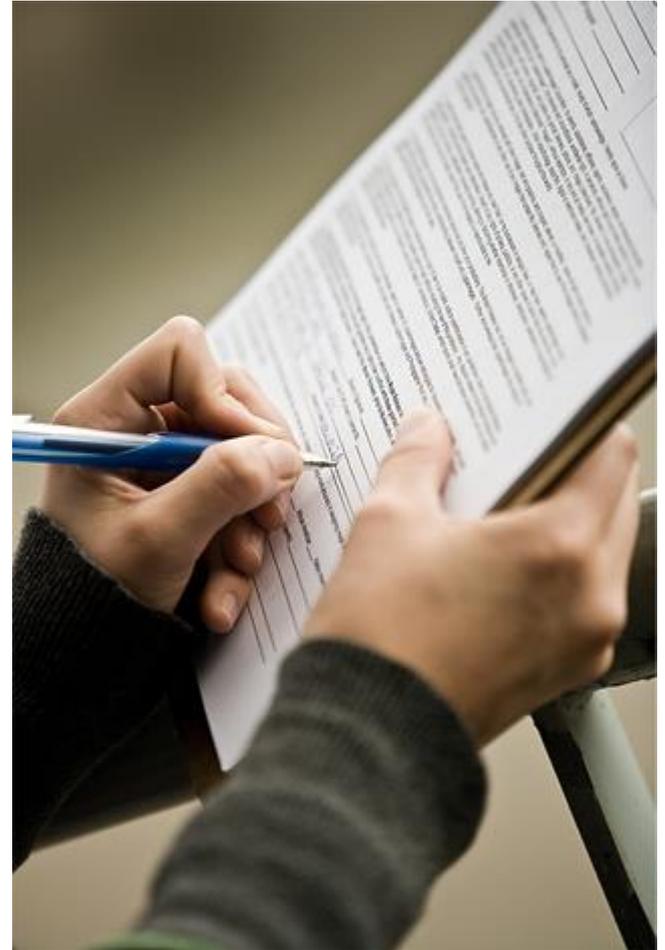
10. Not Making a “Facts and Circumstances Statement” Prior to Going into Closed Session to Meet with Legal Counsel

The Board Has Not Violated The Brown Act in Regard to Closed Session Communications with Its Lawyer in Which of the Following Situations:

- A. The Board packet contains an opinion of counsel on a sexual harassment investigation. No opportunity to discuss the opinion is scheduled on the agenda.
- B. The attorney meets with the Board to discuss changes to its student discipline policies.
- C. The Superintendent briefs the Board on discussions he has had with the attorney on an alleged Brown Act violation.
- D. The Board meets with the attorney under the agenda item description, “Conference With Legal Counsel – Anticipated Litigation – One Case” to consider a complaint against the Vice-Principal of the school. No other description of what will be discussed is provided.

Answer

- A. The Board packet contains an opinion of counsel on a sexual harassment investigation. No opportunity to discuss the opinion is scheduled on the agenda.



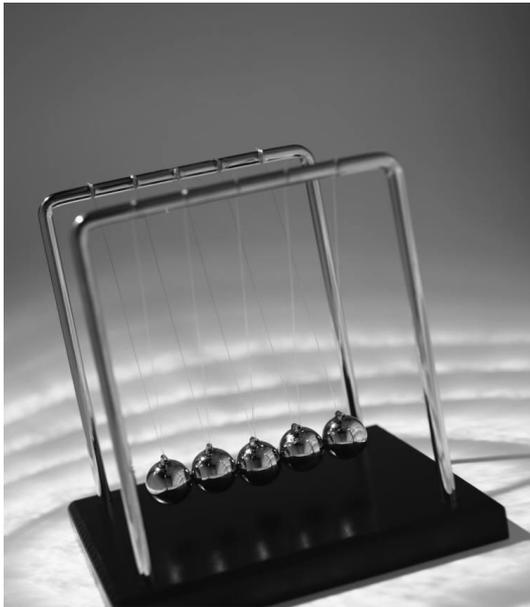
9. Subsidiary Bodies Not Complying with The Brown Act

Legislative Bodies



- The governing board of a school or community college district, ROP or JPA, etc.
 - Gov. Code, § 54952(a)
- Commissions, committees, boards, or other **subsidiary bodies** of a local agency, whether permanent or temporary, decision-making or advisory, ***created by resolution or some other formal action*** of a legislative body.
 - Gov. Code, § 54952(b)

Not Legislative Bodies



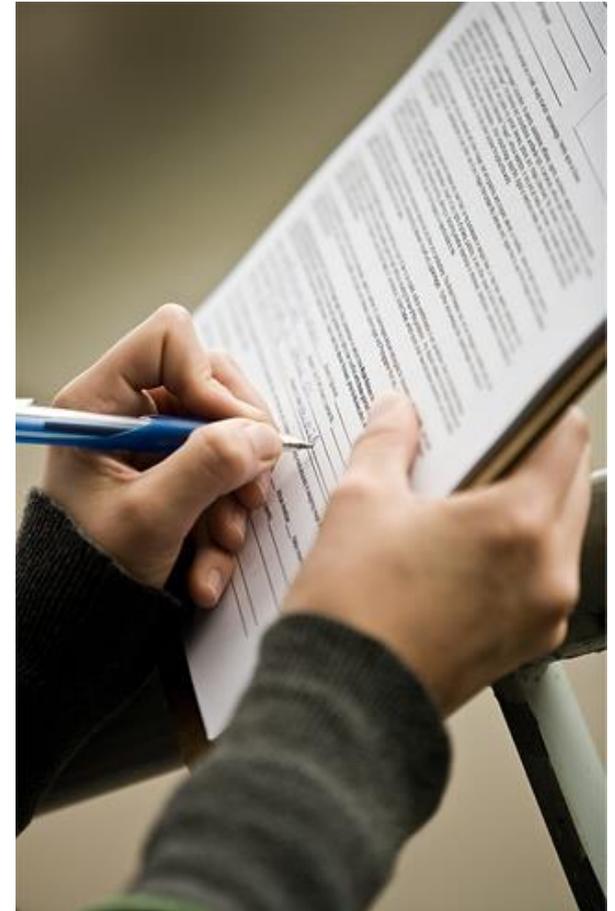
- **Ad Hoc Advisory** committees composed **solely** of the members of the legislative body which are less than a quorum of the legislative body.
 - Gov. Code, § 54952(b)
- Except: **Standing committees** of a legislative body, irrespective of their composition, which have a **continuing subject matter jurisdiction**, or a meeting schedule fixed by resolution or other formal action of a legislative body, **are legislative bodies** for purposes of the Brown Act.

You Must Post an Agenda for Which of the Following Meetings:

- A. The Superintendent appoints a campus community committee to assist him/her in establishing priorities for the next academic year.
- B. The Board appoints an advisory committee consisting of employees, students and community members to interview candidates for the position of Superintendent.
- C. The Board meets for the sole purpose of discussing its position regarding a matter within the scope of representation and instructing its designated representatives.
- D. A Board-approved advisory committee of two Board members visits several built-out architectural designs for a new auditorium.

Answer

- B. The Board appoints an advisory committee consisting of employees, students and community members to interview candidates for the position of Superintendent



8. Failure to Report Out of Closed Session Properly

After Closed Session

- After closed session, the Board must reconvene in open session (prior to adjournment) and report any action taken in closed session, including the vote or abstention of every member present.
 - Gov. Code, § 54957.1
- The reports may be made either orally or in writing.
 - Gov. Code, § 54957.1(b)
- Any documents referred to in a report of final action must be made available on the next business day following the meeting or, in the case of substantial amendments, when any necessary rewriting is complete.
 - Gov. Code, § 54957.1(c)

7. Allowing Discussion on Non-Agenda Items to Occur During Public Comment

Responses to Public

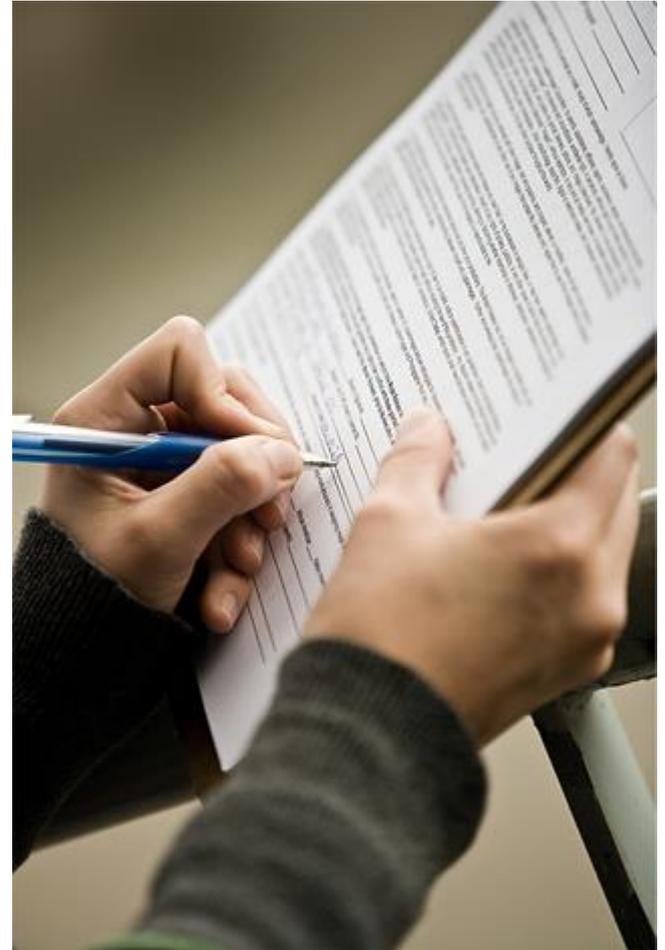
- The Brown Act limits Board members' responses to public comments at any public meeting. Board members and staff may only:
 - Briefly respond to statements made or questions posed by persons making public comments;
 - Ask clarifying questions or make brief announcements;
 - Provide a reference to staff or other resources for factual information; and/or
 - Request staff to report back or place a matter on the agenda for a future meeting.
- Gov. Code, § 54954.2(a)

Has this Board Violated the Brown Act?

- A. At a CSBA training, as part of the official program, a majority of the Board speaks about the District's takeover by a State Trustee.
- B. All five Board members attend a welcome reception for the new Superintendent. Each one tells the Superintendent about his/her biggest pet peeve.
- C. Three of five Board members show up at a City Council meeting. They talk about a pending student matter while waiting for the meeting to start.
- D. Three of five Board members show up at a Planning Commission meeting and each speaks out during public comment about the need for a new school to be located in the community.

Answer

- C. Three of five Board members show up at a city council meeting. They talk about a pending student matter while waiting for the meeting to start.



6. Not Complying with Teleconferencing Rules

Teleconferencing Requirements

- Teleconference meetings must comply with all requirements of the Act.
- All votes taken during a teleconference meeting must be by roll call.
- Agendas must be posted at each teleconference location, identify each teleconference location, and each location must be accessible to the public.
- During the teleconference, at least a quorum of the members of the legislative body must participate from locations within the jurisdiction of the local agency.
- The agenda must provide an opportunity for members of the public to address the legislative body directly from each teleconference location.

5. Adding Items to the Regular Meeting Agenda Less than 72 Hours Without Making the Required Findings

Notice of Meetings and Agendas

- A regular meeting agenda may ***not*** be ***changed*** within the 72-hours preceding the meeting, ***unless***:
 - A majority determines that an emergency exists pursuant to Gov. Code, § 54956.5; or
 - Two-thirds of the board members present determine that there is a need for immediate action and the need to take action came to the district's attention after the posting of the agenda; or
 - The item was previously posted for a meeting occurring not more than five days prior and the item was continued to the next meeting.
 - Gov. Code, § 54954.2(b)
- If no exception applies, the Board must either postpone consideration of the item for at least 72 hours, or call and notice a special meeting.

Notice of Meetings

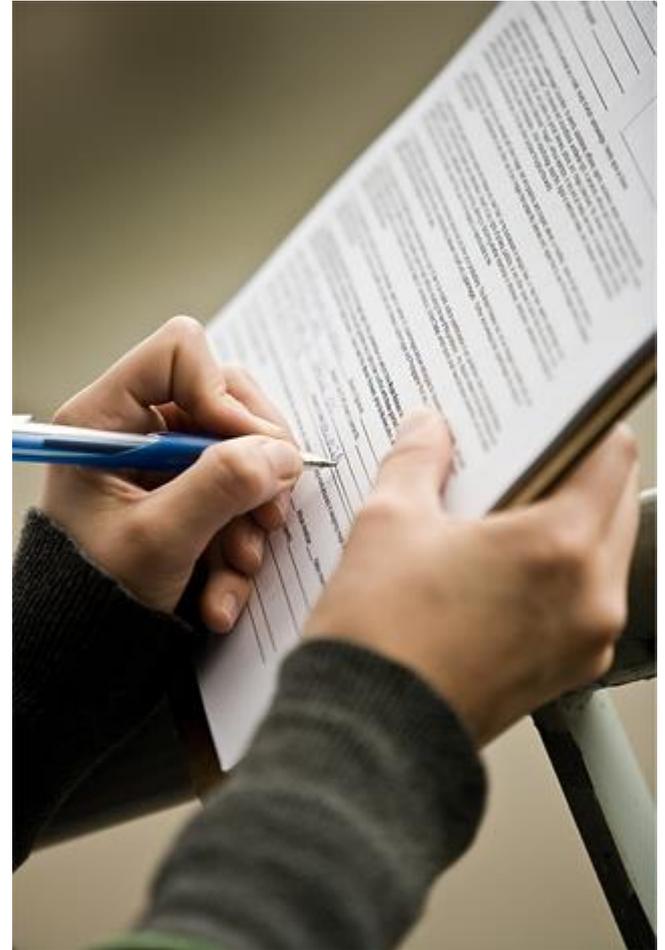
- Special Meetings:
 - A special meeting may be called by either the **President or by a majority** of the Board.
 - Notice of a special meeting must be **mailed or delivered** to the media **and posted** not less than **24 hours** in advance of the meeting.
 - Board may **only** consider **business specified** in the notice.
 - No requirement to schedule “general public comment” not related to agenda items.
 - Board **may meet in closed session** as part of a special meeting.
 - Gov. Code, § 54956
 - A special meeting may not be called regarding the salaries, salary schedules, or compensation paid in the form of fringe benefits, of a local agency executive, as defined in subdivision (d) of Government Code section 3511.1.

The Superintendent's Executive Assistant Has Made a Mistake When She:

- A. Posts the agenda for a regular meeting four days in advance.
- B. Posts a notice of a special meeting two days in advance which starts one hour before the regular meeting.
- C. Posts the agenda on a bulletin board in the inside reception area of the district office.
- D. The Superintendent's Executive Assistant does not make mistakes.

Answer

- C. Posts the agenda on a bulletin board in the inside reception area of the district office.

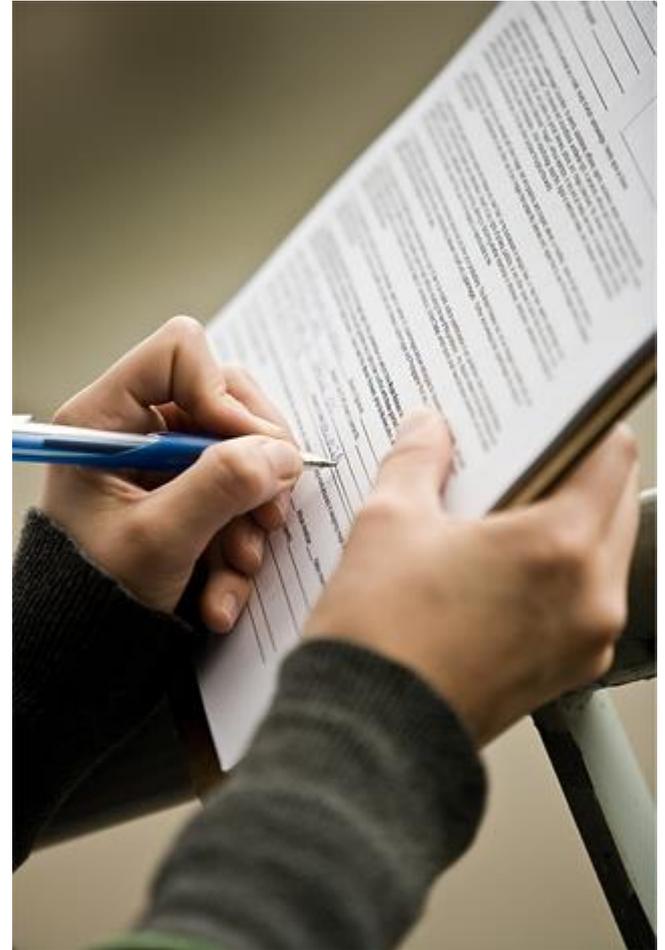


Which of the Following Statements Is Wrong:

- A. A special meeting can be scheduled by posting an agenda 24 hours in advance and emailing the agenda to local media.
- B. The Board President can call a special meeting without consulting the rest of the board.
- C. The Board may consider closed session business during a special meeting.
- D. The Board can decide to reschedule the date of its next regular meeting.

Answer

- D. The Board can decide to reschedule the date of its next regular meeting.



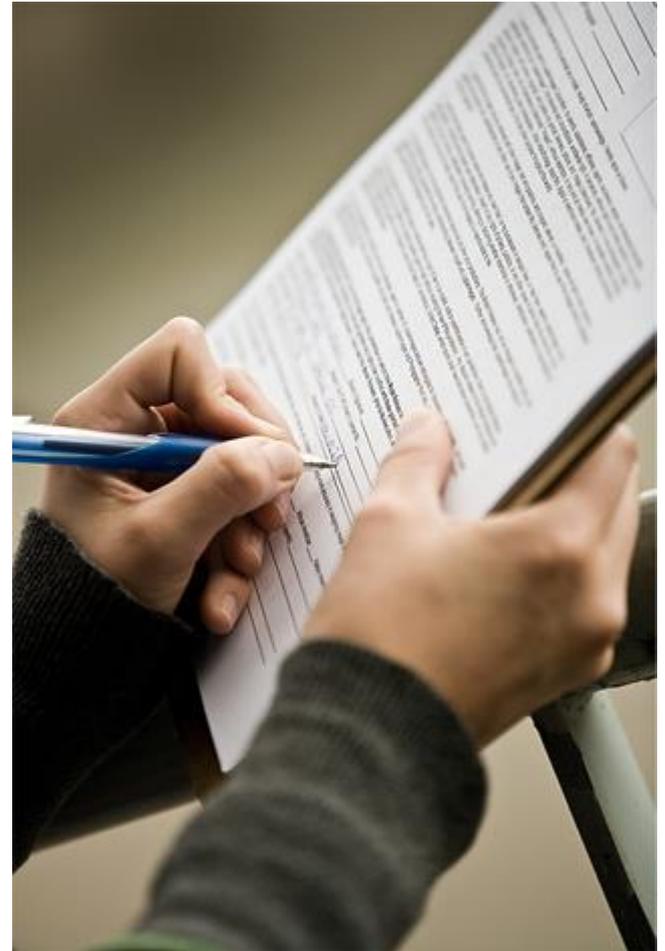
4. Not Announcing Closed Session Agenda Items in Open Session and Taking Public Comment on Them Prior to Going Into Closed Session

Which Rule for the Conduct Of Board Meetings Is Illegal:

- A. Each member of the public who wishes to address the Board must turn in a speaker card indicating the agenda item on which he or she wishes to speak.
- B. Each member of the public is limited to three minutes of speaking time.
- C. Any person who wishes to complain against a public employee by name must follow the District's complaint procedure which requires that such matters be discussed only in closed session.
- D. Any videotape recording of the meeting by the public must be from designated locations only.

Answer

- C. Any person who wishes to complain against a public employee by name must follow the District's complaint procedure which requires that such matters be discussed only in closed session.



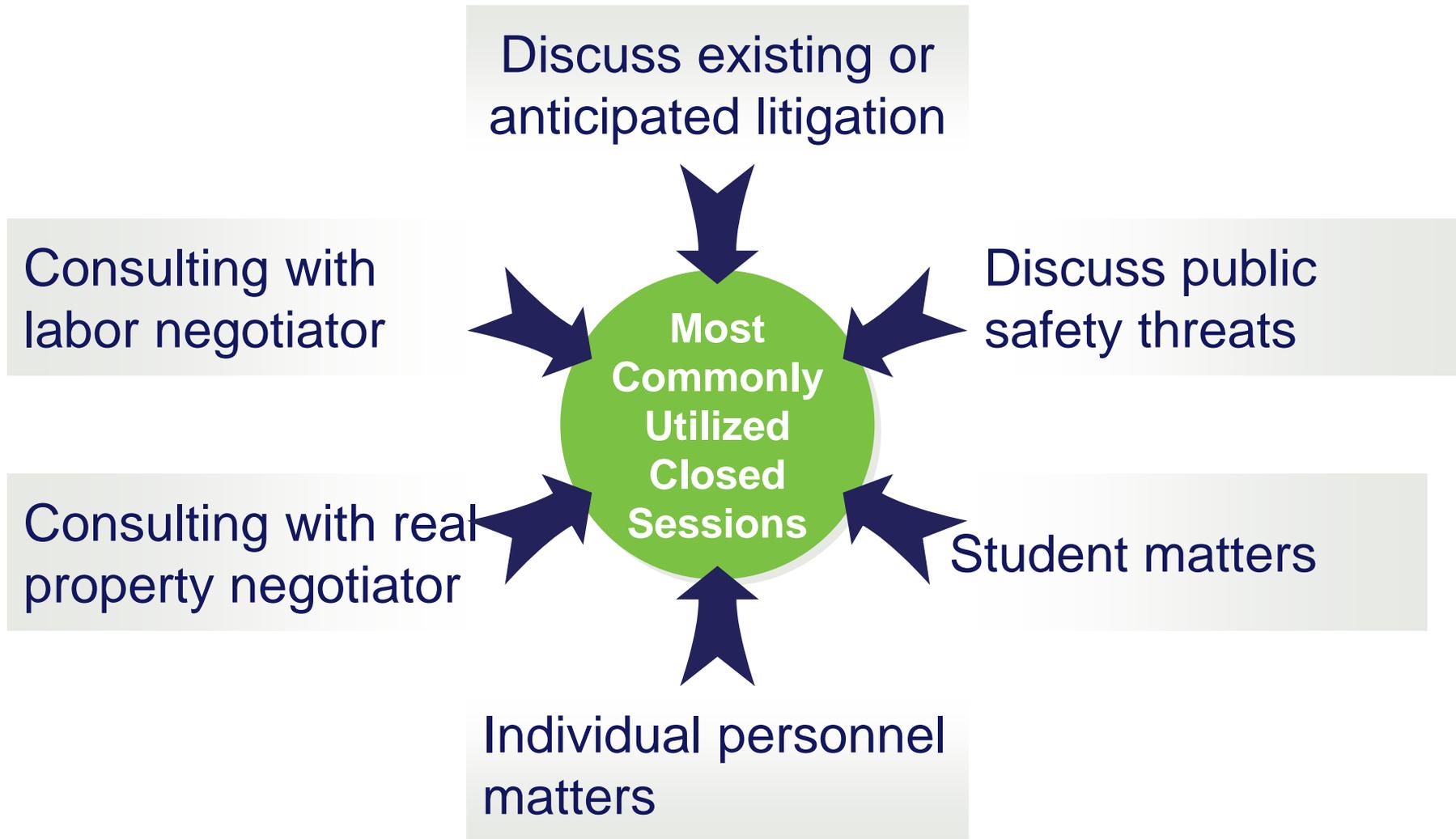
3. Failure to Permit Public Inspection of Board Meeting Materials Provided to Board After Agenda Is Distributed

Meeting Material – Public Records

- If a public record that relates to an agenda item for an open session of a regular meeting of the legislative body of a local agency is distributed less than 72 hours prior to that meeting, the writing shall be made available for public inspection pursuant to Section 54957.5(b)(2) at the time the writing is distributed to all, or a majority of all, of the members of the body.
 - Gov. Code, § 54957.5(b)(1)
- The District must make any writing described above available for public inspection at a public office or location that the agency designates for this purpose.

2. Talking About Performance Problems When Not Considering Specific Discipline and Not Identifying the Title of the Employee Involved

Closed Sessions



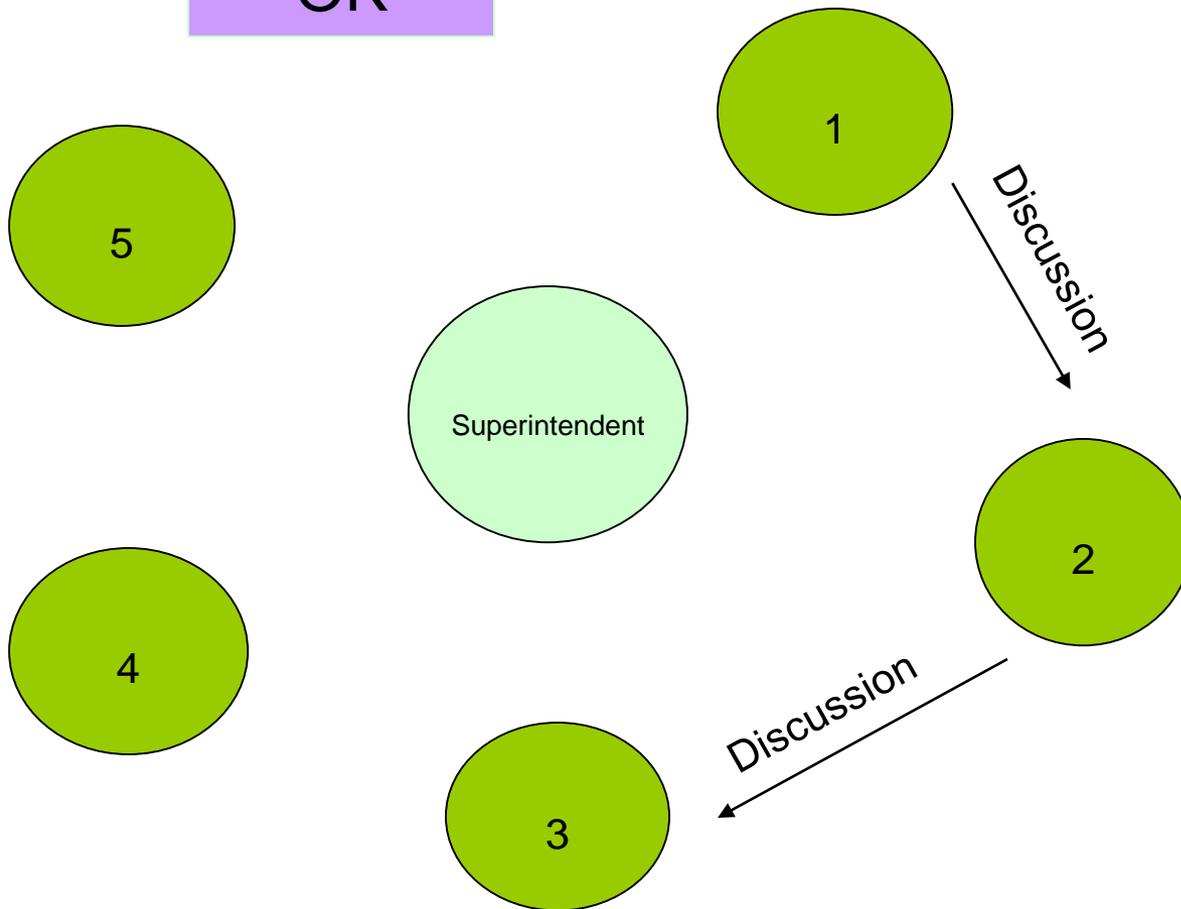
1. Engaging in Unlawful Serial Meetings

What is a “Serial Meeting”?



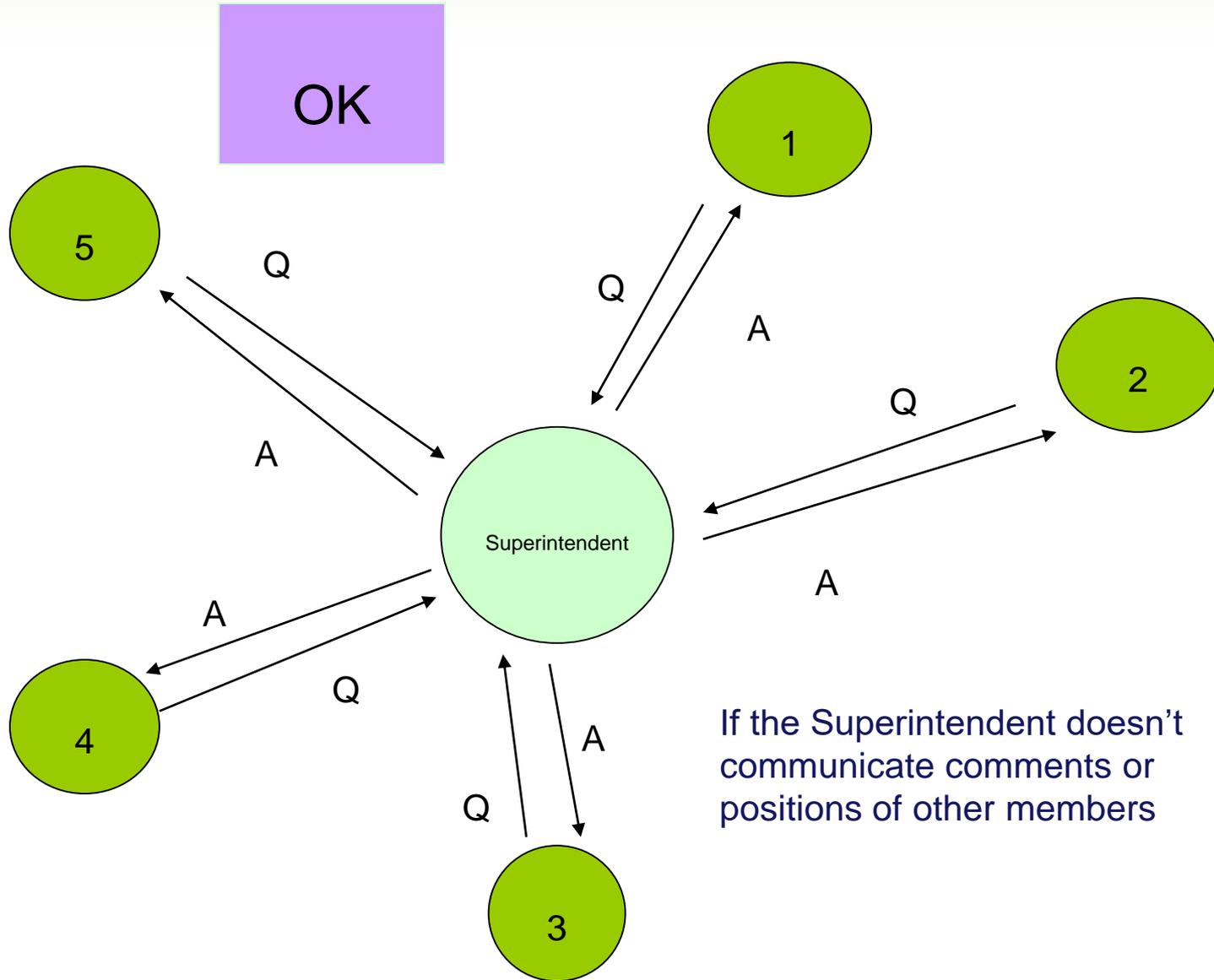
- A ***series of communications***, each of which involves ***less than a quorum*** of the legislative body, but which taken as a whole ***involves a majority*** of the body’s members.
- Any use of direct communication, personal intermediaries, or technological devices that is employed by a majority of the members of the legislative body to develop a collective concurrence as to action to be taken on an item by the members of the legislative body is prohibited.
 - Gov. Code, § 54952.2(b)

NOT
OK



What is a Not a “Serial Meeting”?

- An **employee or official** of a local agency may engage in **separate conversations or communications** outside of a meeting with members of a legislative body in order **to answer questions or provide information** regarding a matter within the jurisdiction of the agency, if that person does **not communicate to the comments or position of any other member** or members of the legislative body.
 - Gov. Code, § 54952.2(b)(2)



If the Superintendent doesn't communicate comments or positions of other members

This Is a “Serial Meeting” of a Governing Board Which Would Violate The Brown Act:

- A. The Superintendent calls each member of the Board to find out what would be a good date for a special meeting.
- B. One Board member talks to another Board member at a football game about whether the coach should be fired.
- C. The Superintendent has her secretary call each member of the Board to determine whether there is support for acquiring a piece of property adjacent to a particular school.
- D. A morning meeting where Cheerios are served.

Answer

C. The Superintendent has her secretary call each member of the Board to determine whether there is support for acquiring a piece of property adjacent to a particular school.



Question & Answer
Session

Disclaimer

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Thank You

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