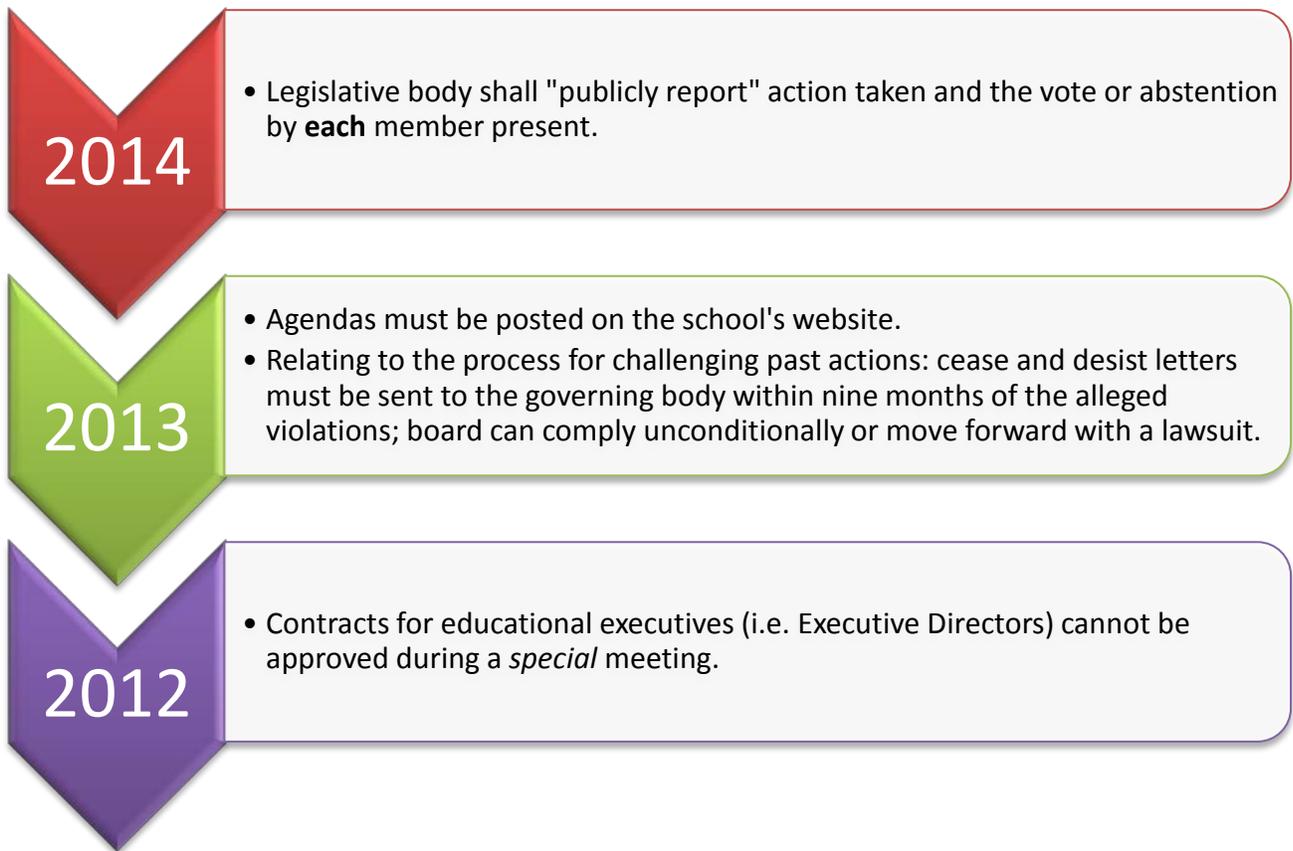


## Governor Brown Beefs Up the Brown Act: How Recent Changes in the Law Facilitate Transparency for Schools and the Public

By Stephenie Tesoro, Operations Manager, EdTec Inc.

With a new school year underway, charter school governing boards across the state are meeting and making important decisions. Many of those decisions are time-sensitive and require urgent attention, which makes following the Brown Act all the more crucial.

Transparency is always prudent when conducting business with taxpayer dollars. California's Open Meeting Law, the Ralph M. Brown Act, ensures this transparency for charter school governing boards, in addition to any governing body that has taxpayer dollars at its disposal. Most recently, Governor Jerry Brown made the Act even more publicly-minded by signing legislation to require the vote reporting of each individual member, rather than reporting a vote consensus.



A quick history lesson on the origins of the law: the legislation was introduced in the early 1950s by then-Assemblyman Ralph M. Brown of Modesto, as a reaction to an expose published by the *San*

*Francisco Chronicle* reporting secret decision-making by a number of local agencies. The legislation was signed into California law in 1953 and has made public agencies' business open to the public ever since.

Since charter school governing boards are subject to the Brown Act, a formal training and regular refreshers on procedures is generally a good idea for most boards. This is especially true as technology continues to improve. The advent of email has made updates to the law necessary; this is also true with the introduction of teleconferencing possibilities and the ability for members to meet virtually.

### **Beware Costly Violations**

Violating the Act can be costly and embarrassing for school boards. While most violations are not intentional or malicious, it's always better to err on the side of caution when following the Act. And if the board is ever unsure about parts of the law, consulting school counsel is wise. There are some limited exceptions to the Brown Act's open meeting requirements, and they are generally related to privacy issues. Most charter school boards have used the closed session exceptions to conduct some business in private, like employee performance evaluations, employee dismissals or discipline, student discipline, handling existing or potential litigation, labor union negotiations, and real estate negotiations. Discussion and decisions relating to the business of these topics is limited in scope as defined by the Brown Act, and any decision made in the closed session must still be reported out to the public, including the votes of each individual board member.

Given that many people who muster the courage to start a charter school are private citizens, conducting business in an open forum under the Brown Act can understandably feel a little foreign. However, given the scrutiny with which some charter schools are viewed, being as open as is reasonable, while still maintaining individual privacy, sets a positive tone for the school and shows the local community the school's commitment to transparency and community collaboration.

Some of the most common violations involve the aforementioned technology. Emails exchanged amongst a quorum of members can be defined as a meeting, even if no decisions are made. These types of exchanges are euphemistically called "daisy chains." Flowery language aside, committing these violations, even unintentionally, can place a governing board in a precarious position. For example, in 2013, it was revealed that the governing board of Northern Humboldt Union High School District repeatedly violated the Brown Act when board members sent a flurry of emails to each other in reaction to a commencement speech plagiarized by one of its members. Strategies relating to damage control and how to react to media coverage were discussed in the emails, as well as potential punitive actions against the board member. Although this seems like an obvious



violation, other violations can be more nuanced and an offender may not even realize they're running afoul of the law. This is why regular trainings and refreshers are so important. If decisions are made and the proper protocol has not been followed, those decisions could be nullified. Even worse,

individual board members can be held criminally responsible. Although alleged violations rarely make their way to juries, the perception of secrecy can be damaging enough to a school's image and reputation, and could hurt its chances of securing a renewal with its authorizer.

### **Open and Honest**

Aside from the negatives of not following the Brown Act, when a board is diligent in its adherence to the law, it makes the board look good. Being open and transparent with school business builds public trust and contributes to the perception that the school is there to serve and be a partner to the community.

EdTec offers governance training tailored to the unique needs of a school and its board members, and school counsel can often serve as a guide as well. For quick answers, the resources below are good go-to's:

The First Amendment Project (<http://www.thefirstamendment.org/resources.html>) has a handy Brown Act pocket guide.

The First Amendment Coalition (<http://firstamendmentcoalition.org/open-meetings-3/>) offers in-depth explanations of the Act. 🌱