

Bagley-Keene Open Meeting Act



California Department of Education

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(8/19/20 for ACSE)

Purpose of the Act -

- Transparency in decision-making reigns supreme
- Public participation in government outweighs efficiency
- Communications or discussions by a majority of members, without public participation, violates the Act

Background -

- Enacted in 1967, the Bagley-Keene Open Meeting Act (“Act”) is found at Gov. Code §§ 11120-11132 and sets forth the open meeting requirements for state bodies.
- Modeled after the Ralph M. Brown Act (1953)
- Legislative intent of Act: “...that actions of state agencies be taken openly and that their deliberation be conducted openly.” (Gov. Code § 11120.)
- In response to COVID-19, the Governor has signed executive orders, which, among other things, make it easier to hold meetings by teleconference. (See Executive Order N-29-20.)

The Act and the Commission -

- The Act applies to the Advisory Commission on Special Education (“ACSE”) as ACSE was created pursuant to statute.
- In the area of special education, ACSE has broad authority to advise and has many specific duties. (See Educ. Code § 33595 and 20 U.S.C. § 1412(a)(21)(D).)
- Combining the purposes of the Act with the purposes of ACSE, it is clear that the Legislature has opted for a decision-making process where a diverse membership is being brought together to openly discuss and consider ways to improve special education in California.

Definition: Meeting -

When the majority of members:

(1) Meet or otherwise communicate, (2) to hear, discuss, or deliberate upon any item, (3) that is within the subject matter jurisdiction of the state body.

(Gov. Code, § 11122.5.)

Caution: a subcommittee of **three** or more ACSE members may constitute a “state body,” making the Act fully applicable to that subcommittee. A “majority” of a subcommittee is a much smaller number!

(Gov. Code, § 11121.)

Not limited to “action” or voting -

“Hear, discuss, or deliberate....”

Examples...

- Study sessions or even pre-meeting briefing sessions. (Rutter, Adm. Law, citing AG Office’s “Handy Guide.”)
- Conversations on a special education issue within ACSE’s jurisdiction.
- Any aspect of the deliberative process.

“Serial Meetings” Prohibited -

“Serial meeting” refers to a series of communications, each of which involves less than a majority of members, but which taken as a whole involves a majority of the body’s members. The main idea is that state body’s members cannot get around what must be done through a public meeting by having a series of “off-the-record” communications. Remember that emails, phone calls, and text messages are communications. Examples:

- A series of communications with one person and members of the state body may result in a serial meeting.
- Also, a chain of communications may result in a serial meeting.

(See p.5 of the Attorney General Office’s “Handy Guide.”)

Practical Advice to Avoid a “Serial Meeting”-

- When you receive informational memos/agenda items, do not communicate among yourselves about the information or item outside of a properly noticed public meeting.
- On email, do **not** hit “reply to all”!

Special Rules for Telephonic Meetings of an Advisory Commission -

- The ordinary rules for telephonic meetings of advisory bodies such as ACSE differ from other state bodies. (See Gov. Code § 11123.5, as compared to Gov. Code § 11123.)
- In response to COVID-19, the Governor signed Executive Order N-29-20, which has special rules applicable to all “state bodies” including advisory commissions. For now, for example,
 - There is no requirement that each teleconference location be accessible to the public.
 - There is no requirement that at least one member of the state body be physically present at the location specified in the meeting notice.
 - The public must be given notice of how it may observe the meeting and offer public comment.

Notice of Meeting -

- Notice of the meeting at least 10 days before.
- The Notice must include the date, time, and location of the meeting.
- The Notice must include the name and contact information of any person who can provide further information before the meeting.
- The Notice shall include a specific agenda containing a brief description of the items of business, which generally need not exceed 20 words.

(Gov. Code § 11125.)

Agenda Items -

- Cannot deliberate on an item not on the agenda.
 - Must allow for public comment on each agenda item.
 - Can limit the amount of time for each speaker.
 - Can ask, but not require, members of the public to sign in.
- (Gov. Code, §§ 11125 and 11125.7.)

Closed Sessions -

- Closed sessions are only permitted in limited situations. (E.g., pending litigation, personnel matters.)
- Consider consulting counsel if you think a closed session is necessary.
(Gov. Code, § 11126.)

The Public Has Important Rights -

- The right to attend
- The right to notice
- Accessibility
- Can't be required to sign in
- The right to record the meeting
- The right to address the body
- The right to criticize
- The right to agendas and other relevant writings prepared by or presented to the state body

A Violation Can Have Serious Consequences-

- A violation of Bagley-Keene may result in misdemeanor criminal prosecution (Gov. Code § 11130.7)
- Actions taken in violation of the law may be void (Gov. Code § 11130.3)
- Attorneys fees (Gov. Code § 11130.5)
- Harm to the agency's reputation

Communications Among Board Members -

You can have purely social conversations.

A majority may attend a training or other event if others are in attendance and you do not discuss issues within your jurisdiction.

Communicating with the Public Outside of the Meeting -

- Share the work of ACSE.
- Indicate whether the views expressed are those of ACSE or your own.
- Listen.
- Do not indicate how you intend to vote on a pending matter.

...Thanks for listening!