



SPECIAL MEETING OF THE GOVERNING BOARD ADOPTED MINUTES

Date: **Thursday, September 12, 2019**

Meeting Place: Horizon Charter School Board Room
2800 Nicolaus Road, #100
Lincoln, CA 95648

SPECIAL BUSINESS MEETING

5:30 P.M. START – 5:30 p.m.

1. CALL TO ORDER – Horizon Charter Schools
Board Room PLEDGE OF ALLEGIANCE

ROLL CALL

- X Education Representative: Joe Dutra – Arrived at 5:55 p.m.
- X Community Representative: Milly Nuñez
- X Parent Representative: Alexis Spiva
- Parent Representative: Vacant
- Parent Representative: Vacant

2. COMMUNICATION FROM THE PUBLIC

In accordance with Government Code Section 54954.3, because this is a special meeting, public comment is limited to the subject(s) described in this Agenda.

J. Morgan addressed the Governing Board with the following questions:

- The Board has not been responding to emails. How can the Governing Board legally respond to emails without violating the Brown Act?
- Is a stakeholder (or anyone else for that matter) able to email the Board as a whole without copying the Superintendent? Does the Superintendent need to be copied?
- What steps can be taken if one believes that the Brown Act is being violated?
- What items are allowed to be discussed in Closed session?
- Is Closed session only for confidential and personnel matters?
- Is there any instance when a Board Member is not allowed to communicate with stakeholders and staff members?
- Since the Superintendent reports directly to the Governing Board, is there a limit to the amount of personal contact that the Superintendent can have with the individual Governing Board members?
 - Any conversation which takes place during the Closed session dinners should be reported out to the public in Open session.
- What is the role of the Governing Board Secretary, as far as the flow of communication?
- What role does the Superintendent play? Is she part of the Board or an advisor to the Board?

- If an email is sent to the Board, who should respond?
- Should the Governing Board emails be automatically re-routed to Board members?

3. CLOSED SESSION – Superintendent’s Office, 2800 Nicolaus Road, #100, Lincoln, CA

None

4. ADJOURN TO OPEN SESSION

The Governing Board will disclose any action taken in Closed session regarding the following items:

None

5. STUDENT PRESENTATION

None

6. REPORTS AND COMMUNICATION

None

7. CONSENT AGENDA

None

8. INFORMATION/DISCUSSION/ACTION

“ACTION”: Indicates items the Board has seen previously

“Action”: Indicates items the Board is seeing for the first time

8.01 **BOARD GOVERNANCE WORKSHOP – RALPH M. BROWN ACT (“BROWN ACT”)**

The Board will receive a presentation, and engage in discussion regarding the Brown Act and related topics.

A discussion on the Ralph M. Brown Act was led by Paul R. Gant, ESQ, Kingsley Bogard, LLP, who was engaged to speak directly to the Governing Board. This presentation was included in the agenda packet.

- The ultimate boss is the Board, it is who we answer to at the end of the day. All public agencies are governed by a Board.
- Caution to the Board, the impending presentation will be general. This is not to be construed as legal advice. This presentation is for legal guidance only.
- If a violation occurs, an aggrieved member of the public, or the District Attorney, may file a lawsuit to compel compliance.
- The Brown Act is called the “Open Government Law” and is intended to ensure that the public knows what is going on.
- With minimal, limited and specific exceptions everything should take place in a manner which allows the public to know what the Board is planning to do and what they do, and have the ability to communicate about those items.
- This provides for the public to have oversight on the disbursing of the public dollars.
- All open government and transparency laws that apply to school districts, also apply to charter schools.
- The Public Records Act is another avenue for gaining information about your agency.

- Conflict of Interest laws are another related area. Part of the reason for the Brown Act and transparency are to bring any conflicts of interest in to the open, so that no one is operating from a place of divided loyalty.
- No agency, including charter schools, can continue to operate without the public support.
- Without transparency, issues of doubt and trust arise. Without trust, you lose public support. Without public support, financial support is lost.
- Over the years, Brown Act compliance has become something that people pay a lot more attention to. There was previously a lot of informality about the Brown Act. Many agencies did not take the Brown Act seriously.
- Matters which should be heard in open session were being handled in closed session on a regular basis. That is a slippery slope.
- If a member of the public discovers a violation of the Brown Act, it can be cured. It may be brought before the Board where the violation may be corrected.
- In the area of the Brown Act, we want staff and board members to develop a sense of issue spotting or red flags, we want the public to be aware and to bring these issues to the Boards attention.
- A fifteen-minute conversation with an attorney is a great savings as opposed to receiving a violation letter from an attorney.
- Many times, the legal advice will be to address the item in open session.
- The Brown Act is not designed to avoid upsetting or confusing the public. It is designed to inform the public.
- What is a Regular meeting? Regularly calendared, containing a quorum of the Board.
- What is a Special meeting? They are essentially set when needed for a number of topics.
- Establishment of executive compensation must be done in a Regular meeting during Open session.
- Sometimes bylaws or charter documents may specify that particular actions may not take place at a special meeting.
- What is not a meeting? A discussion between less than a quorum of Board members. A member of the community talking to a Board member. The law does not distinguish modes of communication, the same rules apply.
- Merely social events do not constitute a Board meeting. If there is no communication about the specifics or any matter within the jurisdiction of the Board, then it is not considered a meeting.
- Avoid risk. It is encouraged to avoid those situations where a quorum of Board members are together outside of a posted meeting. Inadvertent action may still be in violation of the Brown Act.
- Violations of the Brown Act may invalidate actions that were taken during that meeting.
- A Serial meeting is in violation of the Brown Act and can roll out over time. It begins with one (1) Board member and is communicated to the others at different times. Some part of the decision has been made as a result of those conversations.
- Board members should not be primarily concerned about personal responsibility. The Board operates as a body. No one individual Board member operates alone.
- When a Board member has 'special knowledge' of items that are on the agenda, it would be prudent to, either get that item on a future Agenda, or avoid engaging in conversation outside of the meeting about that item or items altogether.
- If a Board member has a matter that they would like addressed on the Agenda, they are to contact the Superintendent to request that item be added to the Agenda.
- It is not necessary to have an agenda item for Board members to discuss future agenda items. Board members may suggest items for the next agenda at any Regular meeting.
- The public can talk about anything within the Boards jurisdiction, within their public comment time. However, the Board will not be able to address it unless it is on the agenda. In this case, the item could be added to the agenda so that the Board may respond to it at a future meeting.
- Board members may move to 'table' any agenda items that they do not want to address at that time.
- It is very important that it not appear that any one person is running the Board.
- Mr. Gant suggested having an item on the agenda at every Board meeting which allows for the addition of future items.
- A Brown Act violation occurs when an email from one Board member is forwarded to

another Board member.

- Intermediaries- A Superintendent who 'teams up' with a Board member and communicates their views to another Board member to affect the result, is in violation of the Brown Act.
- Staff does the work between Board meetings.
- The Superintendent may communicate matters of importance to individual Board members.
- The Agenda is the notice of the meeting. The Agenda must contain the place, time and a brief description of the items to be discussed in closed and open sessions.
- The purpose is to give the public enough information to know if they want to attend the meeting.
- Closed session has very strict guidelines because the Board is deliberating on items that are out of the public eye. The public must be notified of the Closed session items and those who will be working on the specific issues.
- In the instance of complaints against employees, the employee involved may request that their issue be heard in open session. There must be a good faith belief that there is impending, real, likely litigation, lawsuit or complaint.
- Safe Harbor language states, if you use this language, you are not going to be in violation of the Brown Act.
- Whether the Board secretary attends closed session or not is a decision for the Governing Board.
- When expert, detailed information is required, the Board may invite someone to give advice, and then dismiss them from the closed session.
- The closed session items must be reported out when there has been an accepted settlement on both sides.
- Confidential matters are not subject to disclosure. Only the Board as a whole may disclose out of closed session.
- The length of closed sessions is an issue of public trust. Lengthy closed sessions can cause the public to lose trust.
- It is a good practice to refrain from putting things on the closed session agenda unless there is a clear reason for it. It is unlawful to add things to closed session without a clear purpose. It is acceptable to remove items from the closed session when they are not going to be addressed.
- It is a violation of the Brown Act to use a closed session as a 'catch all' opportunity to discuss items that should be discussed in open session.
- There should never be discussion about open session items in the closed session. While in closed session and before adjourning back to open session, the Board is not to have deliberations outside of the purview of the public.
- Closed session has a specific agenda and open session has a specific agenda, they should never cross over.
- Tele-conference must be agendized in an appropriate way. The Board quorum must be present at the location listed on the agenda. The agenda must then be posted at that same location.
- Meetings must always be accessible to the disabled.
- Public Records Act: The public has a right to request any materials that the Board is given.
- The public may request the Board agendas in advance and they have a right to receive them. There may be a reasonable fee associated with the reproduction of these agendas.
- Regulating the public's participation. The public has a right to be heard and to participate in Government decision making. First Amendment rights must not be impinged upon.
- Discrimination of public speakers with different points of view is unlawful.
- It is not reasonable to hold the public comment opportunity after the closed session or after deliberation and voting has occurred.
- It is good practice to have a public comment section prior to closed session and another comment section should occur when adjourning back to open session.
- The public cannot be refused the right to speak during the identified time for public comment, just because they did not put in a communication card.
- Although charter schools very rarely have disruptive meetings, there are a set of steps to address these. Usually the Board President will address the crowd and make a statement

that they will allow more public comment time. The Board President may also suggest that those who hold the same opinions could choose a representative to speak for them and the Board will allow a longer time for that individual to speak.

- It is unlawful to arbitrarily choose members of the public to be allowed to speak while others are not permitted to speak.
- The presenter shared that he has never heard of a charter school meeting so out of control that a Deputy would be called, it is important that a 'reasonable parameter' be taken on the side of public participation.
- Mr. Gant remarked that the public attendance at this Brown Act training is more than he has seen at these workshops in the past.
- Paul Gant thanked the members of the public and stated that the audience has been very courteous.
- The public has a right to video or audio tape the meetings.
- Cabinet member salaries must be set in open session. Executive salaries must also be done in closed session.
- Contract renewals are to be done in closed session only.
- Grand Jury's enforce the Brown Act. Anyone who sues for violation of the Brown Act, may ask for their attorney fees to be reimbursed if they are proven right.
- M. Nuñez asked if it is appropriate to designate a staff member to respond to public inquiries. How does the Board avoid an intermediary situation?
- A general advisement is to have the communications from the public come to an official school email. Each member should have their own school email address. Using personal email addresses opens members of the Board up to the Public Records act.
- A. Spiva asked if someone is going to respond on behalf of the Board, shouldn't the Board have to deliberate on that first?
- What can the public do if they do not like the way that the CEO is doing their job? The public may weigh in during Open session, they may write to the Board.
- If the public has a complaint about the CEO, they should take it to the Board. The Closed session of the Board would more than likely take place out of the purview of the CEO in this case.
- If there is not confidence in staff, the public must take it to the Board, as a whole.
- Members of the public may speak to a Board member without including the CEO, if the public and/or the Board member choose.
- J. Morgan requested to ask a question. Mr. Gant said it is up to the Board. J. Dutra stated that he believes it should remain for Board members only and J. Morgan's question was denied.
- A. Spiva and M. Nuñez began to discuss opening the questions to the public.
- A. Spiva asked what the posting requirement is on an Emergency meeting. One (1) hour is usually sufficient as these are catastrophic level meetings.
- A. Spiva inquired as to the statute of limitations on reporting violations of the Brown Act. Mr. Gant responded that the date of knowledge and how long in the past the violation occurred are the key factors. He was not clear on the absolute answer.
- Superintendents can become an intermediary when they share one Board member's opinions with others. This is called 'polling' and it is a violation of the Brown Act.
- Governing boards have only one (1) employee, the Superintendent. The Board gives direction to the Superintendent, who carries out their directives.
- J. Dutra asked what the length of the closed sessions should be. Mr. Gant stated that closed session is a matter of public trust. Unless there is a specific item to be discussed in closed session, it should not be on the closed session Agenda. It is not lawful to put a bevy of items on the Closed session Agenda 'just in case' they are to be discussed.
- J. Dutra stated that he sees the value of having that 'block' in there because that gives the Board the opportunity to have a discussion amongst themselves out of the public view. Mr. Gant stated that this violates the Brown Act. Closed session cannot be used as a catch all opportunity to discuss confidential matters.
- A. Spiva asked if, at the end of a closed session, and while still out of the public view, the CEO discusses with the Board, what is going to be happening in the open session, is this a violation? Mr. Gant stated that this would be depriving the public of information and would be a violation of the Brown Act.
- When there are lengthy closed sessions that drag on and on, the members of the public become suspicious. Mr. Gant suggested that the Board inform the public of what they are

going to address before adjourning to closed session and acknowledge the items of interest on that closed session agenda. It will always feel better to be transparent about the items that are being discussed by the Board.

- Tele-conference. The quorum of the Board must be in the main location of the meeting, it must be within the jurisdiction and the locations must also be agendaized.
- Members of the public may request a mailed notice (agenda) of the meetings to be sent to them in advance of the meeting.
- The public has a right to request and receive a copy of any audio or video recording of the meetings.
- Closed session documents that are not confidential, and old agendas may be requested under the Brown Act as well. There may be a small fee for photocopying.
- Regulating the public's participation by discriminating against different points of view is a Brown Act violation.
- The public has a right to participate in public comment regarding any items on the agenda prior to the Board deliberating on the item(s).
- Impermissible Restrictions: Shutting down any point of view, Requiring the public to sign in or fill out a speaker card in order to speak, the public cannot be prohibited from speaking.
- Reasonable is the catch phrase, it is always a good idea to try to reason with the public before taking action to exclude any member of the public from the meeting.
- Special meetings may be called by the "presiding officer" of the legislative body, or by a majority of the members at any time. Notice must be given 24 hours in advance.
- Collective Bargaining may be done in closed session until there is an agreement reached, then it must be reported out in open session.
- Executive salaries should be set and voted on in Open session in a Regular meeting.
- A one-way briefing by the Superintendent to the Board, is acceptable. However, if the Board members reply and the Superintendent becomes an intermediary by sharing one Board member's deliberations with others, it is called "polling". This is a Brown Act violation.
- The Board oversees, as part of its budget, the amount of money that is being spent on attorney fees and what those fees are for. The Board may engage legal services for advice.
- Mr. Gant offered, if the public has any burning questions that they did not get answers to tonight, they could submit to the Superintendent/CEO and the questions would be sifted through and addressed.
- A designated Board President has certain defined duties and one is to assist with the agenda and work with the Secretary of the Board to handle administrative matters.
- J. Dutra asked if there is an expectation for Board members to meet with stakeholders. Mr. Gant replied that the expectation is whatever is in the bylaws or the expectation that a Board member creates for themselves.
- J. Dutra asked if a Board member chooses to meet with a member of the public, and they want to discuss issues that they feel are pertinent to their own livelihood, how should that Board member navigate the situation? Mr. Gant replied that this is an area that is a bit outside of the Brown Act. J. Dutra stated that it would be if he were to share information that is inappropriate, or if they were trying to get a temperature on his particular view of the situation.
- Mr. Gant replied that this is an issue of developing maturity as a Board member and thinking very hard about what kind of expectations and culture you want to create.
- As an individual Board member, you have a first amendment right to speak to other people on matters of public importance. There is no rule that says you can not or should not speak to the public.
- Mr. Gant is not suggesting that Board members should never talk to stakeholders or other Board members. However, it is important to spend the same amount of time with all, and not give favoritism to any one individual or group.
- M. Nuñez reiterated that the public could submit their questions to be addressed by Mr. Gant after the meeting. Mr. Gant said that would be a good idea and he would do his best to answer the questions.

9. INFORMATION/ DISCUSSION

None

10. GOVERNING BOARD

10.01 BOARD MEMBER REPORTS/COMMENT

10.02 FUTURE AGENDA ITEMS

- September 19, 2019- Regular meeting of the Governing Board
- September 26, 2019- Special Meeting of the Governing Board- Organizational Procedures and Processes

11. ADJOURNMENT – 9:12 p.m.

Information for the Public

Members of the public wishing to comment on any items should complete a Speaker's Card. Speaker's Cards are located at the entrance to the Board Room. Speaker's Cards are to be submitted to the Board Secretary prior to the start of the meeting. Backup materials for this agenda are available at the Horizon Charter Schools Administrative Offices located at 2800 Nicolaus Road, Suite 100, Lincoln CA 95648.

Members of the public may submit a written request for the entire agenda packet to:

Horizon Charter Schools Board Secretary

PO Box 489000

Lincoln, CA 95648

The request must be submitted 10 working days prior to the meeting.

Individuals requiring disability-related accommodations or modifications including auxiliary aids and services in order to participate in the Governing Board meeting should contact the Chief Executive Officer or designee in writing, at least two days prior to meeting date. Government Code 54954.1

This agenda is posted at least 72 hours in advance of the meeting at: Horizon Administration Office, 2800 Nicolaus Road Suite 100, Lincoln, California, and on the Horizon Charter Schools Website: horizoncharterschools.org
The Governing Board may be reached via e-mail at: horizonboard@hcs.k12.ca.us Via U.S. Mail at: Horizon Governing Board, P.O. Box 489000, Lincoln, CA 95648 Or by leaving a message with the Board Secretary at: 916-408-5236

*Please note: items on the agenda may not be addressed in the order they are scheduled. Board may alter the order at their discretion.