



Fagen Friedman & Fulfroft LLP

Brown Act Teleconferencing Rules

Azusa Unified School District

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Traditional

- Traditional Brown Act teleconferencing rules require a quorum of the Board of Education to meet in person within the District's jurisdiction, the posting of the members' remote location on the agenda, and to provide public access to each teleconferencing location (Government Code section 54953(b))



Assembly Bill (AB) 361

- Requires that the Board of Education make factual findings every 30 days to justify remote meetings
- As a threshold matter, a **proclaimed state of emergency must exist*** and the Board of Education must find either:
 - State or local officials have imposed or recommended social distancing measures, or
 - As a result of the proclaimed state of emergency, meeting in person would present imminent risks to the health or safety of the attendees (Government Code section 54953(e))

*Governor Newsom has indicated the current state of emergency will expire on February 28, 2023



AB 2449

- Hybrid model of physical and remote attendance for Board of Education members
- At least a quorum of members must participate in person from a single, physical location clearly identified on the agenda and within the Board of Education's jurisdiction (Government Code section 54953(f)(1))
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AB 2449 Continued

- If the physical attendance quorum is met, a Board of Education member may request virtual attendance at the Board of Education meeting under two circumstances:
 - (1) “just cause” and/or
 - (2) “emergency circumstances”



“Just Cause”

■ Qualifying Reasons:

- (1) Childcare or caregiving need (child, parent, grandparent, grandchild, sibling, spouse, or domestic partner) that requires the member to participate remotely
- (2) Contagious illness prevents the Board of Education member from attending in person
- (3) A need related to a defined physical or mental disability that is not otherwise accommodated for
- (4) Traveling while on official business of the Board of Education or another state or local agency



“Just Cause” Continued

■ Notification and Procedure:

- Must notify the Board of Education at the earliest opportunity, including at the start of a regular meeting, of the need to participate remotely for just cause
- Provide a general description of the circumstances relating to their need to appear remotely at the given meeting
- A Board of Education member may only use “just cause” for two (2) meetings per calendar year



“Emergency Circumstances”

- “Emergency circumstances” means a physical or family medical emergency that prevents a Board of Education member from attending in person
- A Board of Education member must make a request to the Board of Education to allow the Board of Education member to meet remotely due to an emergency circumstance, and provide a general description of the circumstances justifying such attendance (generally not to exceed 20 words and does not need to include any medical diagnosis or disability, or any personal medical information that is already exempt under existing law)
- Must make each request “as soon as possible”
- The Board of Education must take action to approve the remote attendance at the start of the Board of Education meeting; if the request does not allow sufficient time to be placed on the agenda, then the Board of Education may act at the beginning of the Board of Education meeting pursuant to Government Code section 54954.2(b)(4)



Additional Requirements to Participate Remotely under AB 2449

- Before any action is taken during the meeting, the Board of Education member must publicly disclose whether any other individuals 18 or older are present in the room at the remote location with the Board of Education member, and the general nature of the member's relationship with any such individuals
- Must participate through both audio **and** visual technology
- Cannot be for more than three (3) consecutive months or 20 percent of the regular meetings for the Board of Education within a calendar year; if the Board of Education meets fewer than 10 times per calendar year, cannot be for more than two (2) meetings



Technological Requirements for Virtual Board of Education Meetings

- Notice, agenda, and public access:
 - The agenda does not need to be posted at all teleconferencing locations
 - Public access only needs to be assured at the teleconference location identified as the singular physical location at which a quorum of the Board of Education will meet, and the notices and agenda do not need to list the individual remote locations that Board of Education members might attend from
 - The typical notice and agenda required under the Brown Act must indicate how the public may access the Board of Education meeting and offer comment



Technological Requirements Continued

■ Notice, agenda, and public access:

- The Board of Education must provide either a two-way audiovisual platform or a two-way telephonic service and live webcasting of the meeting so the public may remotely hear, observe, and address the Board of Education during the Board of Education meeting
- The agenda must identify and include an opportunity for all persons to attend via a call-in option, an internet-based service option, and at the in-person location of the Board of Education meeting

■ Public Comment:

- An individual may be required to register for public comment before being allowed to provide public comment, where a third-party (e.g., Zoom, Microsoft Teams) is employed
- However, the Board of Education is prohibited from requiring public comments be submitted in advance of the Board of Education meeting and specifies that the Board of Education must provide an opportunity for the public to address the Board of Education and offer comment in real time



Technological Requirements Continued

- Disrupted broadcasting procedures:
 - If the broadcasting of the Board of Education meeting to the public by phone or by Internet is disrupted, the Board of Education is prohibited from taking further action on agenda items until public access is restored.
 - Actions taken on agenda items during a disruption are subject to challenge



Traditional Brown Act Rules and New Rules under AB 2449

- AB 361 sunsets on January 1, 2024 (however, as it only applies during a proclaimed state of emergency, which is expected to end on February 28, 2023, it will no longer be functional after that date unless a new state of emergency is declared)
- From February 28, 2023, until January 1, 2026 (when AB 2449 sunsets), the Board of Education may use traditional Brown Act teleconferencing or AB 2449 rules
- After January 1, 2026, only traditional Brown Act teleconferencing rules will apply—marks a trend toward in-person meetings



Practical Considerations for AB 2449

- Board of Education members will need to coordinate to ensure a physical quorum ahead of each Board of Education meeting
- If the Board of Education votes to not accept remote participation due to an “emergency circumstance,” then that Board of Education member may only participate as a member of the public and cannot vote on any action item
- The Board of Education must balance the need for transparency with the need to participate remotely against the Board of Education member’s privacy interest, which may be up for debate at the start of a Board of Education meeting
- Any justification for virtual attendance must be clearly stated on the record to meet the requirements of AB 2449:
 - Justification either for “just cause” notice or a request for Board of Education action due to an “emergency circumstance”
 - Public affirmation of whether any person 18 or older is present in the room at the remote location, and the nature of the Board of Education member’s relationship with such individual(s)
 - A statement that the Board of Education member will participate with both audio and video capabilities turned on throughout the meeting (video cannot be turned off)



Practical Considerations Continued

- Administrative Support and Record-Keeping:
 - Which Board of Education member has made a request to appear remotely
 - How many times each Board of Education member has appeared remotely
 - The Board of Education member's reason(s) for appearing remotely, and any action taken by the Board of Education
 - Whether staff can confirm ahead of each Board of Education meeting that there will be a physical quorum of Board of Education members for any given meeting, and who will be in physical attendance



Disruptive Meetings (SB 1100)

- Government Code section 54957.95 allows the presiding member of the Board (or designee) to remove or cause the removal of an individual for disrupting a public meeting
- If a governing body chooses to remove an individual, section 54957.95(a)(2) requires the presiding member to:
 - Warn the individual of their disruptive behavior and the consequence of potential removal
 - If the individual does not *promptly* stop, the individual can be removed
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SB 1100 Continued

- “Disrupting” means engaging in behavior during a Board of Education meeting that actually disrupts, disturbs, impedes, or renders infeasible the orderly conduct of the Board of Education meeting and includes, but not limited to, one of the following:
 - Failure to comply with reasonable and lawful Board of Education regulations
 - Engage in behavior that constitutes use of force or a true threat of force



SB 1100 Continued

- Not intended to prevent public criticism or otherwise infringe upon free speech rights
- But, if a member of the public uses force or makes a “true threat of force,” no warning is required to remove the individual:
 - A “true threat of force” means a threat that has sufficient indicia of intent and seriousness, that a reasonable observer would perceive it to be an actual threat to use force by the person making the threat



SB 1100 Practical Considerations

- While SB 1100 provides additional statutory authority for a Board of Education to remove disruptive attendees, it is recommended to begin with the least intrusive means and escalate actions only when a warning does not restore order to a Board of Education meeting
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