July 22, 2013

Rick Riegel  
Coordinator, Student Services  
Orange County Department of Education  
200 Kalmus Drive, Esplanade 4-102  
Costa Mesa, California 92626  

Re: School Attendance Review Boards and the Brown Act  

Dear Mr. Riegel:  

You have asked whether School Attendance Review Boards ("SARB") meetings must comply with the requirements of the Brown Act. As discussed below, in our opinion, the SARB meetings are not subject to the requirements of the Brown Act.

THE BROWN ACT

The Brown Act states that it is the intent of the law that the actions of public legislative bodies be taken openly and that their deliberations be conducted openly.1 The Brown Act is intended to give the citizens of California access to government agencies and prohibit governmental decisions from being made in secret.2 As a result, the Brown Act requires that all meetings and deliberations, including discussion, debate, and the acquisition of information be conducted in public and subject to public scrutiny, except when the closed meeting exception applies.3 The Brown Act does not apply to employees of public agencies and therefore, employees may conduct private staff meetings.4

The Brown Act defines a "legislative body" as the governing body of a local agency or a commission, committee, board or other body of a local agency, whether permanent or temporary,

1 Government Code section 54950.
2 It should be noted that School Attendance Review Boards ("SARB") do not make government decisions or advise legislative bodies that make government decisions. SARBs work with parents and students to resolve school attendance problems.
4 Government Code section 54952.
decision making or advisory, created by resolution or formal action of the legislative body. Advisory committees, composed solely of the members of the legislative body that are less than a quorum of the legislative body, are not legislative bodies, except that 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 formal action of a legislative body, are legislative bodies for the purposes of the Brown Act.\(^5\)

In essence, all committees created by formal action of a legislative body, whether permanent or temporary, decision-making or advisory, are subject to the Brown Act, except for advisory committees composed solely of board members that are less than a quorum. If that advisory committee is composed solely of two board members of a five member board (or three board members of a seven member board) and is not a standing committee (i.e., an ad hoc committee), then the Brown Act would not apply.\(^6\) If the ad hoc committee includes non-board members, then the committee must comply with the Brown Act. In order to be an ad hoc committee exempt from the Brown Act, in our opinion, the committee would have to be convened for a single task, be given a brief time to complete its task, and dissolve immediately upon completion of the task.

In *Joiner v. City of Sebastopol*,\(^7\) the Court of Appeal held that a proposed meeting of two members of a city council and two members of a city planning commission to interview candidates for a vacancy on the planning commission was subject to the Brown Act. The court concluded that the city council took formal action to form the committee, even though a formal resolution was not adopted, and since the committee was to report back its recommendation to the full city council, the committee acted as an advisory body to the city council and was subject to the Brown Act. The court rejected the city’s argument that the Brown Act did not apply because the committee was made up of less than a quorum of the city council and planning commission.

In *Frazer v. Dixon Unified School District*,\(^8\) the Court of Appeal held that the adoption of a policy by the board to establish a committee appointed by the superintendent was subject to the Brown Act because it was created by formal action of the board (i.e., the board voted to adopt the policy which created the committee). The court stated:

“We think the focus of our inquiry should be first on the authority under which the advisory committee was created. In this case, we believe the authority originates with the board and not...with the superintendent. The next question is

\(^5\) Government Code section 54952. It should be noted that SARBs are created by statute not by formal action of a legislative body.
\(^6\) Government Code section 54952.
whether the creation of the committee pursuant to a standing policy is sufficient to constitute ‘formal action.’ We believe that it is.9

The court further stated:

“We believe the adoption of a formal, written policy calling for appointment of a committee to advise the superintendent, and, in turn, the board (with whom rests the final decision), whenever there is a request for reconsideration of ‘controversial reading matter’ is sufficiently similar to the types of ‘formal action’ listed in the [the Brown Act]. Accordingly, allegations that the review and hearing committee were created pursuant to Board Policy 7138 were sufficient to bring those advisory bodies within the coverage of the Brown Act. . . .”10

In a 1996 opinion,11 the Attorney General stated that under the Brown Act, a committee made up solely of less than a quorum of the members of a public water district was subject to the Brown Act since it was a standing committee with continuing subject matter jurisdiction over providing advice concerning budgets, audits, contracts and personnel matters to the entire board. The Attorney General defined a “standing committee” as a committee that is permanent, that endures or remains.12

In a 1997 opinion,13 the Attorney General stated that when the governing board of a school district forms a committee consisting of seven employees and one student, to interview candidates for the office of district superintendent and make a recommendation to the board, the meetings are subject to the Brown Act, but may be held in closed session. In summary, only an ad hoc committee made up of two board members is not subject to the Brown Act. An ad hoc committee that includes non-board members would be subject to the Brown Act.14

In Californians Aware v. Joint Labor/Management Benefits Committee,15 the Court of Appeal held that a committee created for the purpose of furthering the collective bargaining process between the Los Angeles Community College District and its unions is exempt from the open meeting requirements of the Ralph M. Brown Act. The Court of Appeal held that the committee was formed for the purpose of furthering the collective bargaining process and was thus exempt from the Brown Act under Government Code section 3549.1(a).

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9 Id. at 792.
10 Id. at 793.
12 Id. at 71.
14 Government Code section 54952.
SCHOOL ATTENDANCE REVIEW BOARDS

School Attendance Review Boards ("SARB") were created by statute in 1974 and became operative in 1975. In establishing SARBs, the Legislature intended to develop new ways of coordinating school, community, and home efforts to deal with school attendance and behavior problems. SARBs maximize the use of available resources, avoid unnecessary duplication of resources to resolve attendance and behavioral problems, and to divert from the juvenile justice system students with school-related problems.6

The Education Code states that a county school attendance review board shall include, but need not be limited to, all of the following:

1. A parent.
2. A representative of the school district.
3. A representative of the county probation department.
4. A representative of the county welfare department.
5. A representative of the county superintendent of schools.
6. A representative of law enforcement agencies.
8. A representative of school guidance personnel.
10. A representative of school, county or community mental health personnel.7

The school representatives shall be nominated by the governing board of the school district and shall be appointed by the county superintendent of schools. All other persons and group representatives shall be appointed by the county board of education.8

Local school attendance review boards may include, but need not be limited to, all of the following:

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7 Education Code section 48321(a)(2).
8 Education Code section 48321(a)(3).
1. A parent.

2. A representative of the school district.

3. A representative of the county probation department.

4. A representative of the county welfare department.

5. A representative of the county superintendent of schools.

6. A representative of law enforcement agencies.


8. A representative of school guidance personnel.


10. A representative of school, county or community mental health personnel.\(^{19}\)

Each of the departments or agencies authorized to participate in school attendance review boards may assign personnel to represent the department or agency on a continuing basis. The duties, obligations or responsibilities which may be imposed on local governmental agencies are such that the related costs are incurred as a part of their normal operating procedures.\(^{20}\)

Students are referred to SARB if they have a persistent attendance and behavior problem in school, and when the normal avenues of classroom, school, and district counseling do not resolve the situation. When SARB members meet with referred students and their parents or guardians, the members’ goal is to identify a solution and appropriate resources for resolving the student’s problems.\(^{21}\)

If parents refuse to respond to SARB directives, the school district must gather documentation that the pupil, or the parent or the guardians of the pupil, or both, have failed to respond to directives of the SARB or to services provided.\(^{22}\) SARB must make this finding before a minor may come within the jurisdiction of the juvenile court.\(^{23}\)

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\(^{19}\) Education Code section 48321(b)(1).

\(^{20}\) Education Code section 48323.


\(^{22}\) Education Code section 48263.

The California Department of Education makes the following suggestions for effective SARB operations:

1. Hold SARB meetings in community settings.

2. Hold SARB meetings on non-juvenile court days to avoid conflicts with court schedules.

3. Prescreen cases to determine who will be needed on the SARB committee in order to meet the special needs of the student and family. Be especially sensitive to ethnic and cultural needs.

4. Ask SARB members to dress in an official or professional manner, including uniforms for law enforcement personnel, in order to emphasize the seriousness of the proceedings.

5. Use the primary language of the family, if possible, or have interpreters available.

6. Select bilingual SARB members with cultural backgrounds that will meet the language and cultural needs of referred youths and their families.

7. Explain the SARB meeting process to parents before the meeting begins.

8. Rotate chair persons who facilitate and lead the meetings if the change is determined to be potentially more effective for particular cases.

9. Avoid counseling and focus on problem solving.24

**APPLICABILITY OF THE BROWN ACT**

While the California Department of Education in the School Attendance Review Boards Handbook25 states that the Brown Act applies to meetings of a SARB, in our opinion, the Brown Act’s definition of “a legislative body” as a commission, committee, board or other body of a local agency created by resolution or formal action of the legislative board does not apply. SARBs are created by statute and do not make governmental decisions or provide advice to the governing board of the school district, but are established to work with parents and students regarding their behavior and school attendance. Issues related to school attendance falls within

the definition of “confidential student information or student records” under federal and state law. In addition, meetings of employees of public agencies are not subject to the Brown Act.

Therefore, in our opinion, the Brown Act does not apply to county SARBs or local SARBs.

If you have any further questions regarding this matter, please do not hesitate to contact our office.

Very truly yours,

Ronald D. Wenkart
General Counsel

RDW:vld

cc: Claire Y. Morey
    Lysa M. Saltzman
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26 See, 20 U.S.C. Section 1232g, Education Code section 49061 et seq.
27 Government Code section 54952.