



**San Diego and  
Imperial Counties**

*Via email*

November 10, 2020

Re: Brown Act Violations at School Board Meetings in San Diego and Imperial Counties

Dear San Diego & Imperial County school leaders:

The ACLU Foundation of San Diego & Imperial Counties is concerned that many districts are unlawfully restricting public comment at board meetings during the COVID-19 pandemic. As districts have moved to virtual board meetings, many districts appear to be prohibiting live, real-time public comment during meetings and are accepting comment in writing only during a limited timeframe prior to board meetings.<sup>1</sup> We believe such restrictive policies and practices are unlawful.

Based on our discussions with partners and community members, we understand that the opportunity to directly address school leadership is an important priority that is critical to building and maintaining trust with school leaders during this challenging time. Given the need for clarity and transparency during unprecedented school closures and the potential legal violation of banning live public comment, we request that districts promptly enact and enforce board policies and procedures that allow the public to make live oral comments by telephone or teleconference at all meetings going forward.

The unlawful restrictions on public comment that have been reported at districts throughout San Diego and Imperial counties violate both the Brown Act (the “Act”) and Executive Order N-29-20 (“EO N-29-20”). As you likely know, the Act requires all districts in California to allow members of the public to comment on items on a school board’s agenda and on any subject within the board’s jurisdiction. *See* Government Code § 54954.3. It is clear from the language and structure of the Act and the uniform practice of local government bodies throughout the state that government bodies must allow members of the public to address them orally during board meetings, not limited to submitting comments in writing or having someone else read their comments out loud on their behalf. Government Code section 54954.3 specifically requires government bodies to allow “the public to **directly address** the legislative body” and authorizes regulations limiting the time for public comment. *Id.* (emphasis added). For example, the Act requires government bodies to double the time allotted for speakers who utilize a translator. *See id.* These provisions would have no force if a government body may limit public comment solely to written submissions and afford no time for the public to address the board directly. Moreover, the California Court of Appeal has held that a local agency violates the Act by prohibiting a person from speaking at the public comment period. *Galbiso v. Orosi Pub. Util. Dist.*, 167 Cal. App. 4<sup>th</sup> 1063, 1079-80 (2008).

Further, under EO N-29-20, a government body that holds meetings by teleconference satisfies the Brown Act’s public comment requirements only if it allows members of the public to “observe and to

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<sup>1</sup> The restrictions to public comment vary across school districts. Some districts are limiting the hours in which they will accept written comment submissions. Others reportedly refuse to read written comment out loud during board meetings or otherwise make the written comment available for the public to review.

address the meeting telephonically or otherwise electronically...” EO N-29-20, ¶ 3. We believe the only way to read this language consistently with the Brown Act is if government bodies allow members of the public to address school boards directly through telephone or other electronic means *during* a board meeting. This is consistent with the instruction in EO N-29-20 that “[a]ll state and local officials are urged to use sound discretion and make reasonable efforts to adhere as closely as reasonably possible to the provisions of the...Brown Act...in order to maximize transparency and provide the public access to their meetings.” *Id.*

To allow telephonic or teleconference comments during public school board meetings would be consistent with the current practices of other government agencies in the counties and throughout the state. Indeed, allowing live telephonic or Zoom comment has been common practice for many government entities throughout the state during the COVID-19 pandemic. Moreover, given that districts have transitioned to digital learning and are utilizing Zoom or similar digital platforms to teach students, it stands to reason that allowing for live public comment during meetings would not be hard.

Finally, even as schools reopen and resume in-person meetings, while COVID-19 remains a risk, districts should continue to allow for live virtual public comment during all meetings. As of the date of this letter, schools in Imperial County must remain closed due to the widespread COVID-19 risk level and San Diego County is currently at risk of slipping back into the most restrictive tier.<sup>2</sup> Members of the public should not be forced to compromise their safety in order to exercise their legal right to provide public comment and participate in public meetings.

Accordingly, if you have not done so already, we ask that you immediately take the following actions:

- 1) Comply with the Brown Act and EO-N-29-20 by allowing the public the option of providing live, real-time comment by telephone and/or teleconference at all school meetings going forward;
- 2) Allow ample time for written public comment to be submitted up to the start time of all board meetings and eliminate any policies that restrict the hours in which written comment submissions will be accepted;<sup>3</sup>
- 3) Read any written comment submissions out loud during board meetings to enter into the record; include written comment in meeting minutes; and post promptly to district websites following all board meetings;
- 4) Continue to allow for public comment by telephone or teleconference even as in-person board meetings resume, for as long as any level of COVID-19 risk remains as determined by the California Department of Health.

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<sup>2</sup> See Katie Cadio. *County Reports 530 New Cases, Region on Brink of Purple Tier*. County News Center, (Nov. 5, 2020, 4:04 p.m.), <https://www.countynewscenter.com/county-reports-530-new-cases-region-on-brink-of-purple-tier/>.

<sup>3</sup> Because some districts only accept written comment if submitted during limited hours prior to a board meeting, members of the public who are unable to access electronic devices during regular business hours are precluded from submitting public comment to the board.

We hope that all school leaders will take swift action to preserve the rights of students, stakeholders, and the public at-large to participate in meetings and have their voices heard. We look forward to reviewing your board meeting policies once again when they are updated. Please contact me at (619)398-4489 or [mdeleon@aclusandiego.org](mailto:mdeleon@aclusandiego.org) if you have any questions or would like to discuss.

Sincerely,



Melissa J. Deleon  
Equity Staff Attorney