



SCHOOL & COLLEGE LEGAL SERVICES OF CALIFORNIA

*A Joint Powers Authority
serving school and college
districts throughout the
state.*

5350 Skylane Boulevard
Santa Rosa, CA 95403

Tel: (707) 524-2690
Fax: (707) 578-0517
santarosa@sclscal.org
www.sclscal.org

General Counsel
Jennifer E. Nix

Attorneys
Jennifer Henry
Damara L. Moore
Jessica E. Ozalp
Steven P. Reiner
Kaitlyn A. Schwendeman
Brian R. Sciacca
Leah M. Smith
Loren W. Soukup
Frank Zotter, Jr.

Of Counsel
Nicollette M. Alvarado
Robert J. Henry

LEGAL UPDATE

February 23, 2023

**To: Superintendents/Presidents/Chancellors, Member Community
College Districts**

From: Jennifer Henry, Senior Associate General Counsel *J.H.*

**Subject: UPDATED FOR 2023 Brown Act Virtual Meeting Requirements
Memo No. 02-2023(CC)**

This Legal Update clarifies how a public agency's can rely on the AB 361 teleconferencing rules for the remainder of 2023. It also fixes two typographical errors from the November 8, 2022 Legal Update. Revisions are shown in yellow highlighting.

When California ends its COVID-19 State of Emergency on February 28, 2023, LEAs that have adopted the AB 361 teleconferencing resolution prior to that date could continue to meet virtually so long as state or local officials continue to recommend measures to promote social distancing and the LEA's governing board continues to make monthly findings as required.¹

Assembly Bill ("AB") 2449, signed into law on September 13, 2022, amended Government Code section 54953 to provide authority and specific requirements for public agencies to allow individual board members to appear at meetings via videoconference for "just cause" and under "emergency circumstances" while remaining in compliance with the Brown Act (Gov. Code §§ 54950 *et seq.*). AB 2449 goes into effect on January 1, 2023, and sunsets on December 31, 2025. AB 2449's primary difference from the pre-pandemic Brown Act rules on teleconferencing² is that the teleconference location does not have to be identified on the agenda or accessible to the public.

On the following pages, we have provided a chart comparing pre-pandemic ("traditional") teleconferencing requirements (which remain in effect and allow Board members to appear virtually for any reason, provided their location meets

¹ See Section 3 of AB 361, Government Code section 54953 (e)(1), (3); https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=202120220AB361 .

² We use "teleconferencing" herein to mean conference via telephone or video, as defined in the Traditional Brown Act statute.



specific requirements) with AB 361 (which, while operative through the end of 2023, allows entire meetings to be held virtually under a statement of emergency), and the new AB 2449 rules for individual board members. Effective January 1, 2023, the Brown Act permits teleconferencing under any of the three options – traditional Brown Act teleconferencing, AB 361 state of emergency rules, and AB 2449 individual board member rules.

A: Rules Regarding a Quorum

Traditional Brown Act Teleconferencing Requirements	AB 361	AB 2449
During teleconference meetings, at least a quorum of the members of the local public agency body must participate from locations within the boundaries of the territory over which the local public agency body exercises jurisdiction.	Quorum not required to be located within the boundaries of the territory.	A quorum must participate in person from a singular physical location identified in the agenda, that is open to the public, and within the boundaries of the LEA.

B: Qualifying Circumstances Permitting Teleconferencing

Traditional Brown Act Teleconferencing Requirements	AB 361	AB 2449
<ul style="list-style-type: none"> • The teleconference location must be noted on the agenda. • The agenda must be posted at the remote location. • Each teleconference location must be accessible to the public so the public may attend the remote location. • Any vote must be done by roll call. • A majority of the Board must be located within the territory of the district. 	<ul style="list-style-type: none"> • Only applies during a proclaimed state of emergency, where state or local officials have imposed or recommended measure to promote social distancing. • The board must hold a meeting during the proclaimed state of emergency to decide by majority vote, whether as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees. • Board must make 	<p>Individual board members may participate in board meetings remotely, if they notify the Board at their earliest opportunity, and have one of the following:</p> <p><u>Just Cause:</u> Individual board members can participate remotely when caregiving of a family member, a contagious illness, a physical or mental disability, or LEA-related travel prevents them from appearing in person;</p> <ul style="list-style-type: none"> - May not be used more than two meetings per calendar year per Board member.



	<p>findings every 30 days that the qualifying circumstances continue.</p>	<p>OR</p> <p><u>Emergency Circumstances:</u> Individual board members can participate remotely when there is a physical or family medical emergency that prevents them from appearing in person.</p> <ul style="list-style-type: none"> - The board member must describe the emergency in approximately 20 words without disclosing any personal medical information. - Board must take action to approve the member's request. - A board member may not claim emergency circumstances more than three consecutive months OR 20 percent of the regular meetings within a calendar year
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C: Agenda Requirements for Teleconferencing

<p>Traditional Brown Act Teleconferencing Requirements</p>	<p>AB 361</p>	<p>AB 2449</p>
<p>Each teleconference location from which a member will be participating must be specifically identified in the meeting notice and agenda, including full address and room number.</p> <p>An agenda must be posted for the required period of time (24 or 72 hours) at each teleconference location from which a member will be participating.</p>	<p>Public agency must only give notice and post agenda in accordance with the Brown Act provisions for in-person meetings.</p> <p>The agenda shall identify and include an opportunity for all persons to attend via a call-in option or an internet-based service option.</p>	<p>The agenda must provide notice of how the public can access the meeting and provide comments. The agenda shall identify and include an opportunity for all persons to attend via a call in option, an internet-based option, <u>and</u> an in-person option. The board may not require a member of the public to submit comments prior to the meeting.</p> <p>There is no requirement to disclose the teleconferencing location.</p>



D: Teleconference Location

Traditional Brown Act Teleconferencing Requirements	AB 361	AB 2449
<p>Each teleconference location must be physically accessible to the public.</p> <p>Members of the public must be able to physically address the body from each teleconference location.</p>	<p>Public agencies do not have to let members of the public attend at each teleconference location, but must allow the public to access the meeting via a call-in or an internet-based service option.</p> <p>The public agency is not required to provide a physical location for the public to attend or provide comments.</p>	<p>Teleconferencing members must participate with both audio and visual, i.e. only via videoconference.</p> <p>Videoconferencing members must disclose whether any individuals 18 years or older are present in the same room and the nature of the relationship.</p>

E: Public Comment

Traditional Brown Act Teleconferencing Requirements	AB 361	AB 2449
<p>Public Comment must be allowed at the in-person meeting and from every teleconference location.</p>	<p>The legislative body shall allow members of the public to access the meeting and the agenda shall provide an opportunity for members of the public to address the legislative body directly pursuant to Section 54954.3. In each instance in which notice of the time of the teleconferenced meeting is otherwise given or the agenda for the meeting is otherwise posted, <i>the legislative body shall also give notice of the means by which members of the public may access the meeting and offer public comment.</i> Gov. Code § 54953(e)(1)(B).</p>	<p>The legislative body must provide to the public a two-way audio-visual platform or a two-way telephonic service with live webcasting.</p> <p>The legislative body must provide a way for the public to remotely hear, visually observe, and remotely address the legislative body in real time.</p>



	<p>The legislative body <i>shall not require public comments to be submitted in advance of the meeting and must provide an opportunity for the public to address the legislative body and offer comment in real time.</i> Gov. Code § 54953(e)(1)(E).</p> <p>An individual desiring to provide public comment through the use of an internet website, or other online platform, not under the control of the local legislative body, that requires registration to log in to a teleconference <i>may be required to register as required by the third-party internet website or online platform to participate.</i> Gov. Code § 54953(e)(1)(F). [Note: <i>The Brown Act does not allow a public agency to require a meeting attendee to provide their name and address as a condition of attendance and public agencies may need to consider whether pseudonyms will be allowed</i>].</p> <p>A legislative body that provides <i>a timed public comment period for each agenda item shall not close the public comment period for the agenda item, or the opportunity to register until that timed public comment period has elapsed.</i></p> <p>A legislative body that <i>does not provide a timed public comment period, but takes</i></p>	
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	<p><i>public comment separately on each agenda item, shall allow a reasonable amount of time per agenda item to allow public members the opportunity to provide public comment, including time for members of the public to register, or otherwise be recognized for the purpose of providing public comment.</i></p> <p>A legislative body that provides <i>a timed general public comment period</i> that does not correspond to a specific agenda item <i>shall not close the public comment period or the opportunity to register until the timed general public comment period has elapsed.</i></p>	
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F: Effective Dates

Brown Act Teleconferencing Requirements	AB 361	AB 2449
Government Code section 54953 was initially added in 1953, and amended in 1988 to allow for teleconferencing, with various amendments throughout the years. There is no intended sunset date.	AB 361 went into effect on October 1, 2021 and will sunset on December 31, 2023.	AB 2449 goes into effect on January 1, 2023 and sunsets on December 31, 2025.

Please contact our office with questions regarding this Legal Update or any other legal matter.

The information in this Legal Update is provided as a summary of law and is not intended as legal advice. Application of the law may vary depending on the particular facts and circumstances at issue. We, therefore, recommend that you consult legal counsel to advise you on how the law applies to your specific situation.

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