

## **Schools, Communication, and the Brown Act**

### **SUMMARY**

The Humboldt County Grand Jury received three citizen complaints regarding school board violations of Brown Act provisions. In response to those complaints the Humboldt County Grand Jury reviewed Brown Act requirements, considered data provided with the complaints, examined various school board agendas and minutes, and interviewed parents, educators and other school district employees.

The Humboldt County Grand Jury concludes that a community of parents, concerned with the educational transparency of actions taken by both the Fortuna Elementary School District and the Jacoby Creek Charter School, perceive that their respective school boards have violated the Brown Act. The Humboldt County Grand Jury could not confirm whether these potential Brown Act violations were deliberate attempts to mislead the public or oversights caused by insufficient or inadequate Brown Act training. These potential Brown Act violations have created mistrust within their respective educational communities. The Humboldt County Grand Jury does, however, conclude that current Brown Act Training is inadequate to meet the needs of the many small and rural school boards existing within Humboldt County.

The Humboldt County Grand Jury recommends that the Humboldt County Board of Education direct the Humboldt County Office of Education to review their leadership and educational roles in servicing the Brown Act Training needs of the many diverse school boards within Humboldt County. The Humboldt County Grand Jury also charges the Humboldt County Office of Education to find the requisite “encouragement” necessary to make sure that thorough Brown Act training is attended, adhered to, and available.

### **BACKGROUND**

In 2003 the State of California Office of the Attorney General published “The Brown Act: Open Meetings for Local Legislative Bodies.” Then California State Attorney General Bill Lockyer states in that report:

Throughout California’s history, local legislative bodies have played a vital role in bringing participatory democracy to the citizens of the state. Local legislative bodies, such as boards, councils and commissions, are created in recognition of the fact that several minds are better than one, and that through debate and discussion, the best ideas will emerge. The law which guarantees the public’s right to attend and participate in meetings of local legislative bodies is the Ralph M. Brown Act.

In Humboldt County, there are many local, legislative and governmental bodies of elected citizens serving County needs on a mostly volunteer basis. Provisions of the Brown Act cover their public meetings. Included in the Brown Act are provisions for types of meetings, notice

and agenda requirements, rights of the public, permissible closed sessions, and penalties and remedies for violations of the Act. In that same published report, California State Attorney General Bill Lockyer also states: “Although the principle of open meetings initially seems simple, application of the laws to real life situations can prove to be quite complex.”

The Humboldt County Grand Jury received three citizen complaints regarding potential school board violations of Brown Act provisions; two concerning Fortuna Elementary School District, and one for Jacoby Creek Charter School. In each case, community perceptions of Brown Act violations created misunderstandings between school board and community, be those misunderstandings regarding notice requirements, agenda descriptions, elusive minutes, taking action on items not listed, or posting procedures.

## **METHODOLOGY**

The Grand Jury reviewed the provisions of the Brown Act, considered data provided with the complaints, examined various school board agendas and minutes, and interviewed parents, educators and other school district employees.

## **DISCUSSION**

In the past, “participatory democracy” usually meant personal attendance at public meetings in order to remain informed. Technology and the Internet are now redefining the meaning of that phrase. Public expectations of the ability for online involvement are high. The three complaints reviewed by the Humboldt County Grand Jury dealt with, in part, website concerns. According to the Brown Act, public meeting agendas must be posted 72 hours in advance of a regular meeting in a location that is freely accessible to members of the public. Furthermore, the minutes of those public meetings are meant to reflect what happened at the meeting, and allow the public to gather information after the fact. The Brown Act stipulates that agendas be posted on the local agency’s website, if the local agency has one. The Fortuna Elementary School District and the Jacoby Creek Charter School have websites.

The Fortuna Elementary School District trustees decided, during their November 2014 meeting, to take action on an item not listed on the agenda. The Brown Act allows for action on non-agenda items if an emergency situation arises after the required posting period. The minutes of that Fortuna Elementary School District meeting affirm that the action was taken, but made neither mention of the emergency itself nor its resolution. Ensuing school board minutes include no explanation of the action. The perceived action taken at that closed session November 2014 School District meeting was to consider the termination of a local charter school. Parents of students in that charter school were concerned their views were not welcomed.

On at least one occasion, a Jacoby Creek Charter School Board of Trustee meeting was rescheduled. The new meeting time was not posted in a timely manner on their website and other mandated locations. The result of these actions led to the perception of a purposeful lack of transparency on the part of the board.

The Brown Act permits the Jacoby Creek Charter School Board to go into closed session during a public meeting, and the reason for doing so must be noted on the agenda. On several occasions the Jacoby Creek Charter School Board withdrew into closed session to receive legal advice from their Board Chair, communicated to her by their legal advisor in Sacramento. The Humboldt County Grand Jury noted that specific Jacoby Creek Charter School District open session minutes revealed little or nothing about items that were discussed in those closed sessions. It was communicated to the Humboldt County Grand Jury that this was done under the legal advice of their Sacramento based attorney. The additional wording of topic should engender no worries of legal liability, while providing more information to the public in this current era of transparency. According to the provisions of the Brown Act open session minutes are to reflect the topic of the closed session, and the fact that there was action taken, or that no action was taken. Reporting “none”, as did the Jacoby Creek Charter School Board, following a closed session does not seem to meet Brown Act requirements. The California State Attorney General’s idea that such boards “are created in recognition of the fact that several minds are better than one, and that through debate and discussion, the best ideas will emerge.”, is not well served with the appearance of Brown Act violations but instead contributes to creating a community climate of distrust.

The Humboldt County Office of Education does provide some Brown Act training. The Humboldt County Grand Jury was told by the Humboldt County Office of Education that Brown Act training could not be made mandatory for elected school board members. No records are kept by the Humboldt County Office of Education as to which of the many school boards within the county have had Brown Act training. The Humboldt County Office of Education does not monitor the various school boards, under its guidance and leadership, as to their adherence to the Brown Act. At any given moment during the academic year, the Humboldt County Office of Education does not know which school boards, under its supervision, have had adequate Brown Act training.

## **FINDINGS**

- F1. There is community concern as to the Jacoby Creek Charter School Board’s understanding and implementation of Brown Act provisions.
- F2. There is community concern regarding actions taken by the Fortuna Elementary School Board and that those actions might not be in full compliance with the Brown Act.
- F3. The Brown Act training provided by the Humboldt County Office of Education is inadequate to meet the needs of the many small and rural school boards existing within Humboldt County.

## **RECOMMENDATIONS**

- R1. The Humboldt County Grand Jury recommends that the Humboldt County Board of Education direct the Humboldt County Office of Education to review its leadership and

educational roles in servicing the Brown Act Training needs of the many diverse school boards within Humboldt County. (F1, F2, F3)

R2. The Humboldt County Grand Jury recommends that the Humboldt County Board of Education direct the Humboldt County Office of Education to find the requisite “encouragement” necessary to make sure that thorough Brown Act training is attended, adhered to and available. (F1, F2, F3)

## **REQUEST FOR RESPONSES**

Pursuant to Penal Code section 933.05, the grand jury requests responses as follows:

Humboldt County Board of Education (R1, R2)

Reports issued by the Grand Jury do not identify individuals interviewed. Penal Code section 929 requires that reports of the Grand Jury not contain the name of any person or facts leading to the identity of any person who provides information to the Grand Jury.
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## **BIBLIOGRAPHY (IF NEEDED)**

“The Brown Act: Open Meetings for Local Legislative Bodies”, prepared by the Division of Civil Law, State of California Office of the Attorney General, Bill Lockyer, Attorney General. (2003)

## **APPENDIX (IF NEEDED)**

## **DISCLAIMER (IF NEEDED)**