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VENTURA COUNTY DISTRICT ATTORNEY
NEWS RELEASE



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**District Attorney's Office Demands Ojai Unified School District
Cease and Desist Brown Act Violations**

VENTURA, Calif. - District Attorney Erik Nasarenko announced today that the Ventura County District Attorney's Office has issued a cease and desist demand to the Ojai Unified School District (OUSD).

The cease and desist demand alleges that the OUSD Board of Education violated the Brown Act.

The Brown Act requires that meetings of qualifying legislative bodies be open to the public, with an opportunity for public comment. These requirements are subject to exceptions specified within the Brown Act. The Ventura County District Attorney's Office concluded these exceptions did not apply to the actions of OUSD which formed the basis of the Brown Act allegations.

"California law requires the vast majority of school district decision-making to be conducted in open and public meetings," said District Attorney Erik Nasarenko. "Ojai Unified's recent actions were a significant departure from that requirement and necessitate immediate corrective action."

The allegations were reviewed by Senior Deputy District Attorney Anthony L. Wold, a member of the Ventura County District Attorney's Office Public Integrity Unit.

A copy of the cease and desist demand has been provided below.



OFFICE OF THE DISTRICT ATTORNEY

COUNTY OF VENTURA, STATE OF CALIFORNIA

ERIK NASARENKO
District Attorney

March 13, 2023

Members of the Board
Ojai Unified School District
414 E. Ojai Avenue
Ojai, California 93023

Dear Board Members:

Demand to Cease and Desist Brown Act Violations

Our office has received complaints alleging that the Ojai Unified School District's (OUSD) Board of Education has violated the Brown Act. After careful review of these allegations, the Ventura County District Attorney (VCDA) has confirmed the OUSD Board of Education has violated the Brown Act. The violations are described below.

Please accept this letter as a demand pursuant to Government Code section 54960.2(a)(1) to cease and desist from, and not repeat, the violations described below. Pursuant to Government Code section 54960.2(b), the Board has thirty (30) days to inform our office, in writing, of an unconditional commitment to cease, desist from, and not repeat the Brown Act violations described below. The Board's unconditional commitment to cease, desist from, and not repeat the violations described below shall be substantially in the form mandated by Government Code section 54960.2(c)(1).

Furthermore, pursuant to Government Code section 54960.2(c)(2), this unconditional commitment must be approved in open session, at a regular or special meeting, as a separate item of business, not on the consent agenda.

In the event the Board fails to provide this unconditional commitment, there is a basis for commencement of an action pursuant to Government Code section 54960(a).

Brown Act Violations

A. Discussing Layoffs and Finances in Closed Session on February 21, 2023

During a February 21, 2023, Special Meeting, the Board met in closed session under the following closed session agenda description:

1.1. Adjourn to Closed Session Public Employee

*Discipline/Dismissal/Release/Resignation/Appointment/Reassignment/Employment
[G.C. 54957(b)(1)]*

After meeting in closed session, the board commenced meeting in open session. The Board did not report out any actions from closed session. The Board thereafter received a presentation from Misty Key, Deputy Superintendent of the Ventura County Office of Education, Fiscal and Administrative Services. During her presentation, Ms. Key suggested the Board's actions to address an ongoing OUSD fiscal crisis lacked transparency.

Following Ms. Key's presentation, a trustee made the following statement, at approximately 2 hours, 43 minutes, 50 seconds:

*We met in closed session just prior to this meeting and looked through recommendations from staff and **approved** \$2.4 million in staff cuts . . . is that normally something one does publicly? Or does one report that out? **We didn't put names**, but literally were looking at positions, a position at a school, where some of us knew who that person was. Is that what is discussed publicly at most school boards?*

Following Ms. Key's presentation, Michael Fine, CEO of the State's Fiscal Crisis and Management Assistant Team, addressed the Board. In his opening remarks, Mr. Fine was critical of the Board's response to the ongoing OUSD fiscal crisis. Fine suggested the Board's approach to school closures and consolidation had not identified any specific financial savings.

Responding to Fine's remarks, a trustee said, "In closed session today . . . we gave staff guidance for a whole bunch of stuff that we hope will go a long ways towards the numbers you are talking about." Fine responded, "I am neither your legal counsel nor the county's District Attorney, but I would be very concerned about what you've described in closed session tonight. That is a public discussion, your public, your community, should have been part of that discussion." The trustee responded, "We didn't *take any vote* . . ." Fine interrupted, and said, "A discussion in closed session is a discussion in closed session."

On February 23, 2023, a local media representative asked an OUSD trustee about Ms. Key's and Mr. Fine's statements to the Board. The trustee was quoted as saying:

*I was informed that the discussion we have been having on **finances and personnel** were allowed to be in closed session per the Brown Act. If that is incorrect, that is absolutely unacceptable and needs to be rectified, and the public needs to be provided with such information.*

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Government Code section 54952.2(a) defines “meeting” as any quorum of a body to *hear, discuss, deliberate*, or act upon on any item that is within the subject matter jurisdiction of the body.

Government Code section 54953(a) requires all meetings of a body to be open and public, except as otherwise provided. Meetings may be conducted in closed session, without the attendance of the public, only to the extent authorized by the Brown Act.

Government Code section 54957(b)(1) authorizes as an exception, a meeting in closed session, “to consider the appointment, employment, evaluation of performance, discipline, or dismissal of a public employee or to hear complaints or charges brought against the employee by another person or employee unless the employee requests a public session.” (*Emphasis added.*)

The purpose of the exception is “(1) to protect employees from public embarrassment and (2) to permit free and candid discussions of personnel matters by a local governmental body. This exception should be narrowly construed.” *Fischer v. Los Angeles Unified School Dist.* (1999) 70 Cal.App.4th 87, 96.

By its plain text, this exception is inapplicable to the approval of \$2.4 million in staff cuts, or to a discussion of finances in general. The exception is restricted to discussing individual employees, not general personnel policies, such as mass staff cuts. *See, 63 Ops.Cal.Atty.Gen 153 (1980); Duvall v. Board of Trustees, 93 Cal.App.4th 902.*

A vote is unnecessary to violate the Brown Act. Any meeting of a body to *hear, discuss, or deliberate* upon an item within the body’s subject matter jurisdiction violates the Act, unless an applicable closed-session exception applies.

The trustee statements above collectively establish the Board discussed both finances and generalized staff cuts in closed session. Such discussions exceeded the scope of Section 54957(b)(1) and therefore violated the open meeting requirement of the Brown Act.

Even if the exception allowed such discussions, nothing was reported out from closed session, which itself would form a separate violation.

B. The Creation of Standing Committees Subject to the Brown Act

A “legislative body” subject to the Brown Act includes:

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*A commission, committee, board, or other body of a local agency, whether permanent or temporary, decision making or advisory, created by charter, ordinance, resolution, or formal action of a legislative body. However, 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 charter, ordinance, resolution, or formal action of a legislative body are legislative bodies for purposes of this chapter.** Government Code Section 54952(b).*

Hence, a temporary advisory committee is not subject to the requirements of the Brown Act if it is composed of less than a quorum, serves a limited or single purpose, is not perpetual, and will be dissolved once its specific task is completed.

The Board's February 8, 2023, agenda stated the Board would consider forming Budget, Governance, and City Relations Committees. The Board then voted to create each committee. Each committee contained two Board members. Each committee was created absent any language defining the committees as limited in purpose or duration.

Because the Board created these committees without limitation, and with what appears to be continuous subject matter concerning Budget, Governance, and City Relations, each committee is a standing committee under Section 54952(b), and thus subject to the requirements of the Brown Act. As formed, each committee must meet publicly, with a noticed agenda, and an opportunity for public comment.

During a March 1, 2023, Special Meeting, the Board discussed that the Budget Committee met earlier that day. Because this meeting was not noticed and held publicly with an opportunity for public comment, the meeting was a violation of the Brown Act.

Although the Board may have subjectively intended that each committee act as a temporary advisory committee serving a limited purpose, to be dissolved once its specific task was completed, such qualifying language was not used when each committee was created.

Each committee must therefore comply with the requirements of the Brown Act, or be dissolved with new qualifying temporary committees created in their place.

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Conclusion

It is our position that the Board violated the provisions of the Brown Act as detailed above. Thank you for your attention in this matter. We look forward to your written response within 30 days.

Sincerely,

A handwritten signature in black ink, appearing to read 'AWold', written in a cursive style.

ANTHONY L. WOLD
Senior Deputy District Attorney
Public Integrity Unit

Via Electronic Mail to: Ojai Unified School District