



Northern
California

March 12, 2021

VIA ELECTRONIC MAIL

Los Banos Unified School District
1717 S. 11th Street
Los Banos, CA 93635

Via Electronic Mail

Re: Expanding Access to Public Meetings by Allowing Real-time Public Comment

Dear Honorable Board Members:

The ACLU Foundation of Northern California is concerned that the Los Banos Unified School Board (“Board”) is improperly limiting the ability of members of the public to make public comments at the public Board meetings in the wake of COVID-19. It is our understanding that any member of the public interested in providing public comment can only do so by submitting the comment in writing, which is not read into the record during the Board meeting and must be submitted a few hours in advance of the meeting.¹ The public is not permitted to provide live, virtual public comment via Zoom. We believe these limitations are inconsistent with the Ralph M. Brown Act (“Brown Act”) and the Governor’s Executive Order N-29-20, which permitted government bodies certain flexibility in holding their meetings in response to COVID-19. We urge the Board to immediately amend its current practice and allow members of the public to provide public comment in real-time, via teleconference or telephone.

¹ See e.g., Los Banos Unified School District Governing Board of Education, March 11, 2021 Agenda, <https://www.losbanosusd.org/files/user/944/file/03-11-21.pdf> (stating that “[t]he District has established a temporary email address citizens can use to email comments on any agenda item or Public Hearing item. All public comments received... [by a certain time] will be disseminated to all Trustees prior to the meeting..., [c]omments will not be read during the meeting.”)

American Civil Liberties Union of Northern California

EXECUTIVE DIRECTOR Abdi Soltani • BOARD CHAIR Farah Brelvi

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Governor Newsom Executive Order N-29-20 and Meetings via Teleconference

On March 17, 2020, in response to the COVID-19 pandemic, Governor Newsom issued an executive order suspending certain Brown Act requirements.² Under EO N-29-20, a government body that holds meetings by teleconference satisfies the Act’s public comment requirements only if it allows members of the public “to observe and to 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 the Board allows members of the public to address the Board directly through telephone or other electronic means during a board meeting. Reading the EO that way is also consistent with the instruction in the EO 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.* However, we are concerned that the Board believes – wrongly – that allowing e-mail *only* public comments satisfies the requirement that members of the public be allowed to “address the meeting telephonically or otherwise electronically.”³

Allowing the public to provide live public comment by teleconference, Zoom, or other means during the meeting is not hard. Similar jurisdictions like Merced City School District permit public comment by audio or teleconference during the meeting.⁴ We urge the Board to adopt similar practices and provide the public with an opportunity to address the Board in real-time during the public comment period of their meetings. The Board should also read into the record any comments submitted via email to ensure that other members of the public get an opportunity to hear the comments.

* * *

The Board should immediately amend its current practice and allow members of the public to provide public comment in real-time, via teleconference or telephone. Please respond to us by March 19, 2021 and let us know whether the Board will make these changes. If you have any

² See Governor Gavin Newsom, Executive Order N-29-20 (Mar. 17, 2020), available at <https://www.gov.ca.gov/wpcontent/uploads/2020/03/3.17.20-N-29-20-EO.pdf>.

³ When there is ambiguity, courts must construe the Brown Act, and the relevant executive order, broadly in favor of open meetings and public participation. See *Galbiso v. Orosi Pub. Util. Dist.*, 167 Cal. App. 4th 1063, 1080 (“we must construe the exceptions to the open meeting provisions of the Brown Act narrowly and the provisions calling for open meetings and public participation broadly to effectuate the important purposes of the Brown Act.”).

⁴ Merced City School District, March 9, 2021 Agenda, available at <https://go.boarddocs.com/ca/merced/Board.nsf/public> (“Public comment is available to comment on an agenda item by calling 1-669-900-6833...[y]ou will be placed in a virtual waiting room until the moderator of the meeting proves access to the live meeting.”).

Letter to Los Banos Unified School District
Page 3 of 3

questions, please do not hesitate to reach out to me at Angélica Salceda at asalceda@aclunc.org
or Chessie Thacher cthacher@aclunc.org.

Sincerely,

A handwritten signature in blue ink that reads "Angélica Salceda". The signature is written in a cursive, flowing style.

Angélica Salceda
Democracy & Civic Engagement Program Director
ACLU of Northern California

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