



**Texas Association of School Boards**

Legal Services

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## **Open Meetings Act** **Remote Participation in Board Meetings**

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**Note:** The guidance in this document may be affected by executive order of the Governor. Please visit the [TASB School Law eSource Board Meetings webpage](#) for resources summarizing the suspension of certain open meeting statutes related to the Coronavirus (COVID-19) disaster.

Have you ever wondered whether you could attend a board meeting while on a business trip or while vacationing with your family? Remote participation by board members in public meetings could be wonderful if it would help busy people serve the school district while away for travel. Texas law, however, places strict limits on when remote participation is allowed in order to preserve the open nature of public meetings.

The Texas Open Meetings Act (OMA), or Texas Government Code sections 551.001-.146, provides two options for remote participation by individual board members—teleconferencing and videoconferencing—but each applies only in limited circumstances.

### **1. What does the OMA say about meeting participation by teleconference?**

A school board meeting may be held by a teleconference call if: (1) there is an emergency or public necessity as defined by the OMA, *and* (2) it is difficult or impossible to convene a quorum of the board at one location. Tex. Gov't Code § 551.125(b).

A meeting may be held with one hour's notice only when an "emergency or . . . urgent public necessity" exists. The public notice must clearly state the nature of the emergency that warrants such a brief notice period. This provision is reserved for extraordinary circumstances, not merely when attending a meeting would inconvenience board members. If a quorum of the board has physically convened at a meeting location, absent members cannot participate through teleconference.

Tex. Gov't Code § 551.045(a); Tex. Att'y Gen. Op. No. JC-0352 (2001).

Participation by teleconference is subject to all OMA notice requirements, like any other meeting. The OMA does not require the board meeting notice to indicate that the meeting will be conducted by teleconference; however, the notice must specify the location where board meetings are usually held as the location of the meeting. In addition, each part of the meeting that is required to be open to the public shall be audible to the public at the location specified in the notice and shall be tape recorded. The tape recording must be

made available to the public upon request. Finally, the location designated in the notice as the location of the meeting must provide two-way communication during the entire meeting, and the identification of each party to the teleconference must be clearly stated before speaking. Tex. Gov't Code § 551.125(c)-(f); Tex. Att'y Gen. Op. No. JC-0352 (2001).

Because the circumstances under which a meeting may be held by teleconference are so limited and because the communications requirements are fairly burdensome, such meetings occur infrequently.

**2. Is it permissible for an absent board member to merely listen to, but not participate, in a meeting by telephone conference?**

There is no clear statutory guidance regarding an absent member merely listening via teleconference without participating. Better options may be for the absent board member to listen to an audio recording or Web broadcast of the meeting, or review the meeting minutes or certified agenda. Please discuss your telephone conference options with the district's attorney.

**3. What does the OMA say about meeting participation by videoconference?**

A videoconference call is defined as a communication conducted between two or more persons in which one or more of the participants communicate with the other participants through duplex audio and video signals transmitted over a telephone network, a data network, or the Internet. Tex. Gov't Code § 551.001(8). Texas Government Code section 551.127 governs meetings of governmental bodies conducted via videoconference call.

The law does not require an emergency for the board to conduct an open or closed meeting via videoconference call; however, a meeting conducted by videoconference call must meet other requirements. Tex. Gov't Code § 551.127(a).

To hold a meeting via videoconference call, a quorum of the school board must be physically present at one location, unless the school district extends into three or more counties. Tex. Gov't Code § 551.127(b). The location where the board member presiding over the meeting is physically present must be open to the public during the open portions of the meeting. Tex. Gov't Code § 551.127(e).

Either a board member or a district employee may participate remotely in a board meeting by means of a videoconference call if the video and audio feed of the board member's or employee's participation is broadcast live at the meeting and the video and audio feed complies with other requirements under Section 551.127. A board member participating by videoconference call is counted as present at the meeting for all purposes but is considered absent from any portion of the meeting during which audio or video communication with

the member is lost or disconnected. If the audio or video communication of a member is lost or disconnected, a school district that does not extend into three or more counties may not continue the meeting unless a quorum remains physically present at the meeting location. Tex. Gov't Code § 551.127(a-1)-(a-3), (d).

If a meeting is held by videoconference call, the school district must make at least an audio recording of the meeting and make it available to the public. Tex. Gov't Code § 551.127(g).

#### **4 What if our school district extends into three or more counties?**

For school districts that extend into three or more counties, a meeting held by videoconference call where a quorum of the school board is not physically present may still be held as long as the board member presiding over the meeting is physically present at the location of the meeting that is open to the public during the open portions of the meeting. Tex. Gov't Code § 551.127(c).

If the audio or video communication of a member is lost or disconnected, a school district extending into three or more counties may continue the meeting only if a quorum of the board remains and the board member presiding over the meeting is still physically present at the location of the meeting that is open to the public during the open portions of the meeting. Tex. Gov't Code § 551.127(a-3).

#### **5. Does the meeting notice need to be different if it will be held by videoconference call?**

The notice of a meeting to be held by videoconference call must specify as the meeting location the location where a quorum of the school board will be physically present and specify the intent to have a quorum present at that location. If the school district extends into three or more counties, the notice must specify as the meeting location the location where the board member presiding over the meeting will be physically present, and the notice must specify the intent to have the presiding member present at that location. Tex. Gov't Code § 551.127(e).

Although the statute is silent on whether the meeting notice must indicate that the meeting will be held by videoconference, best practice is for a meeting notice to state that the meeting will be conducted by videoconference call.

#### **6. What happens if there is a poor connection and we cannot see or hear the videoconference participant?**

Each portion of a meeting held by videoconference call that is required to be open to the public must be visible and audible. Tex. Gov't Code § 551.127(f).

During the entire meeting, there must be two-way audio and video communication between the remote location from which any board member is participating by videoconference call and either (1) the location at which a quorum is physically located or (2) for school districts extending into three or more counties, the location at which the board member presiding over the meeting is physically located. The face of each participant on the videoconference call must be clearly visible while speaking, and the voice must be audible to each other, to other participants, and, during the open portion of the meeting, to the members of the public in attendance at the quorum or presiding member's location as well as at any other location of the meeting that is open to the public. Tex. Gov't Code § 551.127(h).

The audio and video signals perceptible by members of the public at each location of the meeting must be of sufficient quality so that members of the public at each location can observe the demeanor and hear the voice of each participant in the open portion of the meeting. Tex. Gov't Code § 551.127(j).

If the audio or visual connection is poor and the participant on the videoconference call cannot be clearly seen or heard, then the call should not be continued. If such a problem occurs that causes a meeting to no longer be visible and audible to the public at the location specified in the notice, the meeting must be recessed until the problem is resolved and that if the problem is not resolved in six hours or less, the meeting must be adjourned. Tex. Gov't Code § 551.127(f).

## **7. What are the technology requirements for videoconferencing?**

A school board that wishes to hold a meeting by videoconference must comply with the technology requirements set by the Texas Department of Information Resources (DIR). 1 Tex. Admin. Code §§ 209.1-.11.

The quality of the audio and video signals at each location must meet or exceed certain minimum standards specified by the DIR, including but not limited to international standards set by the International Telecommunications Union. Tex. Gov't Code § 551.127(i).

Some DIR recommendations for minimum technical and operational standards include:

- providing the audience and board members with full view of at least one monitor at each meeting location;
- having at least one monitor at the primary meeting site for the audience to view remote meeting participants;
- ensuring audio signals perceptible from the remote videoconferencing sites are of similar quality and volume as the local audio at the primary meeting site; and
- presenting all videoconference transmissions in color video.

Additionally, the DIR suggests best practices for conducting videoconferences to include:

- prior to each actual meeting, testing videoconference connections that are between sites on different networks or sites not controlled by the governmental body;
- prior to each actual meeting, checking camera focus, audio, and camera range;
- throughout the meeting, ensuring that all speaking participants are within camera range;
- at the start of the meeting, introducing all board members at the primary and remote sites; and
- making available at all sites any material to be presented.

For more detailed information about required and recommended videoconferencing standards, please visit the [Texas Department of Information Resources website](#).

Ultimately, the rules regarding the technology required to conduct a meeting via videoconference call remain stringent. Consequently, TASB strongly recommends consulting with your attorney and/or technology director before attempting to conduct a meeting via videoconference call to ensure that your videoconferencing equipment and meeting procedures meet or exceed all minimum standards.

#### **8. Do videoconferencing software or services like Skype or Google Hangout meet the DIR standards?**

The guidelines issued by DIR do not clearly specify whether software applications or videoconferencing tools like Skype or Google Hangout meet the requirements of the OMA; however, the guidance is clear that videoconferencing equipment, connections, and software protocols must meet required minimum standards. Whether a particular videoconferencing application, service, or system setup complies with the standards established by DIR is a situation-specific inquiry that should be reviewed by your technology director in consultation with your school attorney, with proposed arrangements thoroughly tested prior to any meeting.

As the landscape of technological developments is ever-changing, statutory provisions may lag behind in offering direct guidance on the use of various means to conduct school business. Should your district want to use videoconferencing or other methods of conducting a meeting where board members are not attending and participating in person, TASB Legal Services strongly urges you to consult your school attorney prior to proceeding.

**9. May the board allow a professional service provider (such as a consultant or an architect) to consult with the board by videoconference during an in-person board meeting?**

For example, imagine that a district has hired an architect to help design a new athletic facility. The architect is located hundreds of miles away and the cost to bring her to the district several times will be significant. May the board consult remotely with the architect or other professional?

The OMA specifies that a board may consult remotely with an attorney who is not an *in-house* attorney employed by the school district. Tex. Gov't Code § 551.129(a), (d). Attorneys may participate via teleconference, videoconference, or communications over the internet, either publicly in an open meeting or privately in a closed meeting. Tex. Gov't Code § 551.129(a). If the consultation with an attorney takes place during an open meeting, each part of the consultation must be audible to the public at the location specified in the posted notice. If the consultation takes place during a closed meeting, an exception to the OMA (such as the attorney-consultation exception) must apply. Tex. Gov't Code § 551.071.

Additionally, the OMA expressly provides for a member of the public to testify at a meeting from a remote location by videoconference. Tex. Gov't Code § 551.127(k).

However, the OMA is silent as to whether other individuals, like consultants or accountants, may participate in board meetings via a remote method. At a recent public training session, a representative of the attorney general's office informally opined that a governmental body, such as a school district, may allow a non-governing body member, including consultants or contractors, district employees, or auditors, to participate remotely in the same manner that members of the public can, as long as the manner of remote participation and open meeting complies with requirements under the OMA. See Tex. Gov't Code § 551.127 (outlining videoconference requirements).

In other words, even when the board itself is meeting in person, a professional service provider may join the meeting by videoconference if the videoconference complies with the statutory requirements of Section 551.127.

Until formal or written guidance has been issued by the attorney general's office, a school board wishing to allow remote participation by individuals not expressly authorized or prohibited by the OMA should proceed cautiously after consulting with the district's attorney about a particular arrangement, including applicable meeting notice and technical requirements.

## 10. Can boards of open-enrollment charter schools meet via videoconference call?

The attorney general has concluded that even though the Texas Education Code does not specifically require the board of an open-enrollment charter school (OECS) to hold each public meeting of the board within the boundaries of the school, the law requires an OECS to comply with the OMA; therefore, for the purposes of complying with the OMA, an OECS is considered to be a governmental body subject to the Act. As such, the board of an OECS may conduct meetings via videoconference call only in compliance with the OMA. Furthermore, the Act does not expressly authorize a governmental body to conduct an in-person meeting outside of the governmental body's territory. Tex. Att'y Gen. Op. No. GA-1079 (2014); Tex. Gov't Code §§ 551.001-.146.

Section 551.127 of the OMA states that a quorum of the governmental body must be physically present at one location of the meeting in order to hold a meeting by videoconference call, and that the only exception to the physical quorum requirement exists for state governmental bodies and for governmental bodies extending into three or more counties. In the case of a school district that extends into three or more counties, the board member presiding over the meeting must be physically present at the location open to the public. Therefore, unless an OECS extends into three or more counties, it may not conduct a meeting by videoconference call without having a quorum of the board physically present at the same meeting location that is open to the public, which should be within the governmental body's territory. Once a physical quorum is established at the open meeting location, other board members may participate by videoconference call without geographic restriction so long as other provisions of Government Code section 551.127 are met. Tex. Gov't Code § 551.127(b), (c).

If an OECS does extend into three or more counties, then it may conduct a meeting by videoconference call when the member presiding over the meeting is physically present at one location of the meeting that is open to the public during the open portions of the meeting, which should be within the governmental body's territory. Other board members may then participate by videoconference call without geographic restriction so long as other provisions of Government Code section 551.127 are met. Tex. Gov't Code § 551.127(b), (c).

Whether a location is open, or publicly accessible, is a case-by-case analysis where determination of accessibility will depend on the facts; however, the attorney general suggested that a meeting held within a governmental body's territorial boundaries or geographic service area would likely comply with the Act's accessibility requirement. Tex. Att'y Gen. Op. Nos. JC-0487 (2002), JC-0053 (1999).

As interpretations of compliance with the OMA rely heavily on specific facts surrounding a particular situation, TASB Legal Services encourages school districts to consult with their school attorneys when circumstances prevent board members from attending in person or require board meetings to occur in manners different from what can be reasonably expected by the district's public.

#### **11. What TASB policies apply to remote participation to board meetings?**

Review Policy BE for more information.

#### **12. Where can I get more information about the OMA?**

The [office of the attorney general](#) is the primary source of information related to the OMA. Supplemental resources from TASB related to school board meetings are available on the [TASB Store](#) or [TASB School Law eSource](#). School district trustees and administrators may contact TASB Legal Services at 800.580.5345.

This document is continually updated at [tasb.org/Services/Legal-Services/TASB-School-Law-eSource/Governance/documents/oma-remote-participation-in-bd-mtgs.pdf](https://tasb.org/Services/Legal-Services/TASB-School-Law-eSource/Governance/documents/oma-remote-participation-in-bd-mtgs.pdf). For more information on school law topics, visit TASB School Law eSource at [schoollawesource.tasb.org](https://schoollawesource.tasb.org).

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