Open Meetings Act
Remote Participation in Board Meetings
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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. However, the Texas Open Meetings Act (OMA), Texas Government Code, Chapter 551, places strict limits on when remote participation is allowed in order to preserve the open nature of public meetings.

1. What are the options allowed by the OMA for board members to attend a meeting remotely?

The OMA provides two options for remote participation by trustees—telephone conference call and videoconference call. Each option applies only in limited circumstances.

The OMA does not define telephone conference call but the law’s use of different terms to describe distinct communication channels indicates that a telephone conference call would not include video. See, e.g., Tex. Gov’t Code § 551.129 (referring to attorney consultations by means of “a telephone conference call, video conference call, or communications over the Internet”).

The law defines a videoconference call as a communication conducted between two or more persons in which one or more of the participants communicate with the other participants through both audio and video signals transmitted over a telephone network, a data network, or the Internet. Tex. Gov’t Code § 551.001(8); 1 Tex. Admin. Code § 209.1(5).

2. When does the OMA allow a meeting to be held by telephone conference call?

A school board meeting may only 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). 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 call. Tex. Gov’t Code § 551.045(a); Tex. Att’y Gen. Op. No. JC-0352 (2001).
Participation by teleconference call is subject to all OMA notice requirements, like any other meeting. 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.

The OMA does not require the board meeting notice to indicate that the meeting will be conducted by teleconference call; 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 call are so limited and the communications requirements are fairly burdensome, such meetings occur infrequently.

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

There is no clear statutory guidance regarding an absent member merely listening via teleconference without participating. To avoid confusing the public audience about the significance of a board member joining a meeting by telephone call, better options may be for the absent board member to listen to an audio recording or watch an Internet broadcast of the meeting, if available, or review the meeting minutes or certified agenda after the meeting has occurred. Please discuss your telephone conference options with the district’s attorney.

4. When does the OMA allow meeting participation by videoconference call?

Texas Government Code section 551.127 governs meetings of governmental bodies conducted via videoconference call.

Emergency Not Required: 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).
Physical Quorum: 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).

Technical Requirements: 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, including minimum technical standards established by the Texas Department of Information Resources. 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), (i).

Records Required: 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).

5. How are the rules for meetings by videoconference call different for a school district that 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).

6. What is required for a meeting notice when meeting participation occurs by videoconference calls?

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 one or more board members will be, or may be, attending by videoconference call in compliance with the OMA. For more discussion on meeting notices, see TASB Legal Services’ Open Meetings Act: Meeting Notice.

7. What happens if there is a poor connection and the videoconference participant cannot be heard or seen?

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).

8. What are the technical guidelines for school boards meeting by videoconference call?

A school board that wishes to hold a meeting by videoconference must comply with the minimum technology standards set by the Texas Department of Information Resources (DIR). 1 Tex. Admin. Code §§ 209.1-.12(a); Tex. Gov’t Code § 551.127(i).
The DIR rules provide minimum technical and operational standards for meetings held by (1) videoconferencing on a computer-based videoconferencing application or (2) between dedicated video room environments (DVREs). 1 Tex. Admin Code § 209.10-.11. A board meeting room that may meet the definition for a DVRE but is using a computer-based videoconferencing application that is not part of a proprietary DVRE setup need only comply with the minimum standards for computer-based application software rather than follow the DVRE-to-DVRE rules. 1 Tex. Admin. Code § 209.11(e). Although it is unlikely for school board meetings to be hosted between two DVREs, districts should work with their school attorney and technology directors to ensure compliance.

To meet the minimum technical standards for hosting a board meeting on a computer-based videoconference application, a district must ensure the following:

- All computer-based videoconference call applications employ minimum bandwidth transmission speed and/or have an adequate data compression algorithm to produce a sufficient quality for the volume and clarity of both audio and video, enabling all speaking participants on the call to be heard and viewed.

- All computer central processing units, memory, and video capability to run the application meet the minimum requirements specified by the computer-based videoconferencing application itself.

- If the district holding a meeting by videoconference call hosts a public audience at a location or locations specified by the official meeting notice, that the board establish a minimum of one host computer at the location(s) that will run the computer-based videoconferencing application. This host computer must then be connected to: either a separate video monitor of size proportional to the room and clearly visible to all in the room, or multiple video monitors so that all attendees may clearly view the video stream; and external speakers of suitable volume and sound quality such that all meeting attendees at the host location may clearly hear the meeting.

Any personal computer used by a board member for the purpose of videoconferencing into the meeting shall contain a camera and speakers of sufficient quality to permit all meeting attendees to see the individual who is using the personal computer and for the individual to hear all speaking attendees. 1 Tex. Admin. Code § 209.10.

9. Do common videoconferencing software or services like Zoom meet the DIR standards?

DIR does not explicitly address whether Zoom complies with the OMA. However, recent guidance is clear that videoconferencing platforms like Cisco WebEx, Zoom, and other online meeting platforms can be used for meetings if they meet minimum standards for audio quality, video quality, bandwidth, device specifications, and equipment set up at the meeting location(s). 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. Ultimately, the DIR’s technical guidelines do not supersede the basic requirements outlined in Texas Government Code section 552.127.

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. TASB Legal Services strongly urges school officials to seek legal advice from a school attorney before proceeding with a meeting in which board members are attending remotely.

10. **May the board allow members of the public or professional service providers to consult with the board by videoconference call during an in-person board meeting?**

The answer to this question depends on who would be addressing the board by videoconference call.

**Public:** The OMA expressly allows the board to permit a member of the public to testify at a meeting from a remote location by videoconference. Tex. Gov’t Code § 551.127(k).

**Attorneys:** 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 call, videoconference call, 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. See Tex. Gov’t Code § 551.071 (permitting boards to consult with attorney in closed session to discuss litigation, settlement offer, or matter within attorney-client privilege).

**Others:** The OMA is silent as to whether other individuals, like consultants or accountants, may participate in board meetings via a remote method. 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 of travel to the district will be significant. May the board consult remotely with the architect? The OMA does not offer a clear answer.

At one 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.

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.