



**Texas Association of School Boards**

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*Serving Texas Schools Since 1949*

## **Open Meetings Act**

### **Remote Participation in Board Meetings**

*Published online in [TASB School Law eSource](#)*

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. Does the OMA allow meeting participation by teleconference?**

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).

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 (Mar. 5, 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 (Mar. 5, 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 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.

**3. Does the OMA allow meeting participation by videoconference?**

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

**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. 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).

**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).

**4. Is videoconference allowed 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).

**5. What does a meeting notice need for 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 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](#).

**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).

The [DIR guidelines](#) address minimum technical and operational standards for videoconferencing on a computer-based application, including:

- Adequate bandwidth by meeting minimum transmission speeds and/or having adequate data compression to enable quality audio and video;
- At least one host computer at the location of the meeting with a public audience, where the computer is connected to a separate video monitor or multiple video monitors, with external speakers;
- Personal devices used to connect to videoconferencing not only have a camera and speaker that enable the speaker to be seen and heard but also meet minimum requirement of computer-based application being used;
- Verify bandwidth of group video-calling with each board member joining from a remote location, at least 24 hours before the meeting; and

- For permanently dedicated video room environments, meet minimum ITU (International Telecommunications Union) standards and provide at least one sufficiently sized monitor that offers audiences a full view.

Additionally, the DIR recommends:

- assigning an employee at the meeting host site to facilitate technical and videoconferencing clarity issues during the meeting;
- ensure all blinds are down behind speakers to reduce image “washout”; and
- muting all non-speaking participants.

For full details, please visit the [Texas Department of Information Resources website](#).

**8. Do videoconferencing software or services like Zoom meet the DIR standards?**

DIR does not directly address whether Zoom complies with the OMA; however, the 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 video quality, bandwidth, pre-meeting testing, and more. 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, these 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.

**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?

**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, 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.

**Public:** Additionally, 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).

**Others:** 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. What TASB policies apply to remote participation to board meetings?**

Review Policy BE for more information.

## **11. 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).

*This document is provided for educational purposes only and contains information to facilitate a general understanding of the law. It is not an exhaustive treatment of the law on this subject nor is it intended to substitute for the advice of an attorney. Consult with your own attorneys to apply these legal principles to specific fact situations.*

*Updated September 2021*