



Texas Association of School Boards

Legal Services

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Serving Texas Schools Since 1949

Remote Meetings During COVID-19

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The COVID-19 virus continues to affect school districts around Texas, including disruptions to how school board meetings are normally conducted. While most boards initially returned to in-person board meetings, many boards find themselves scrambling to change meeting plans when one or more board members or essential staff are exposed to the virus.

School boards must consider the notice and other Texas Open Meetings Act (OMA) requirements as they reschedule or shift meetings to a remote format.

1. When does the OMA normally allow a board member to join a meeting by phone or videoconference?

Under the regular (pre-pandemic) OMA, a board meeting may be held by teleconference only 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). Texas Government Code section 551.127 allows meetings of governmental bodies, including school boards, via videoconference, without an emergency, if certain requirements are met. Tex. Gov't Code § 551.127. For example, a quorum of the 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 presiding officer is physically present must be open to the public during open portions of the meeting. Tex. Gov't Code § 551.127(e). And, a meeting by videoconference must comply with numerous technology requirements, including guidelines set by the [Texas Department of Information Resources](#) (DIR). 1 Tex. Admin. Code §§ 209.1-.11. For more information, see TASB Legal Services' FAQ on [Remote Participation in Board Meetings](#).

2. How does the Governor's COVID-19 disaster declaration impact remote participation in board meetings?

On March 16, 2020, Governor Greg Abbott suspended portions of the OMA to allow telephonic or videoconference meetings and to reduce physical congregations during the COVID-19 disaster. The suspension order is effective until terminated by the Governor or until the disaster declaration is lifted or expires. For more information, see TASB Legal Services' article [Texas Governor Suspends Certain Provisions of Open Meetings Act Due to Coronavirus \(COVID-19\)](#).

The most frequent practical use of the suspension order by school boards during the pandemic has been to hold meetings via Zoom or other online platforms. These platforms are relatively easy to access and cost effective, and they do not need to meet the stricter DIR technical standards when used in compliance with the Governor’s suspension order.

Notice of board meetings conducted under the suspension order must be posted in a manner that looks slightly different from your typical OMA meeting notice. Specifically, the meeting notices for telephonic and videoconference meetings may be posted online only. The posting must still be online continuously for 72 hours, unless the emergency notice exception allows one-hour notice. The online notice must include a toll-free dial-in number or a free-of-charge videoconference link, along with an electronic copy of any agenda packet. The notice should also include any special instructions for members of the public who wish to participate in public comment remotely. See TASB Legal Services’ [Sample Notice/Agenda: Board Meeting by Videoconference or Telephone Call During Disaster Due to COVID-19](#) included in our [COVID-19 resources](#).

3. What if we already posted an in-person meeting but suddenly a board member tests positive or is exposed to COVID-19 and needs to join the meeting remotely?

First, the basic screening procedures recommended by the Center for Disease Control and the Texas Education Agency indicate that a board member or employee who is in a period of quarantine or self-isolation due to the virus should not attend an in-person meeting.

If a quorum of the board is still able to physically meet, the absence of a board member or key staff member will not affect the conduct of school board business. That said, board members and key staff often feel well enough to participate remotely. The board has two options for allowing a board member or employee to attend and participate remotely.

- **Videoconference under OMA:** If the district has videoconference capabilities that meet the DIR guidelines, a board member could join by videoconference under Section 551.127. Using this option does not require the board to allow members of the public to access the meeting through the videoconference link. While public notice that individuals will join a meeting by videoconference is encouraged, the (pre-pandemic) OMA does not specifically require advance notice.
- **Teleconference or videoconference under suspension order:** The board may be able to rely on the Governor’s suspension order to allow the board member to join by teleconference or videoconference. For example, the meeting could be held with a quorum in person and a board member or employee joining through an online platform (like Zoom). This format is sometimes referred to as a “hybrid” meeting. The potential legal issue with this option is that the meeting was originally posted as an in-person meeting, not a remote meeting under the suspension order. No court or other legal

authority has offered guidance about changing to a remote format with less than 72 hours' notice. Consequently, boards deciding to use a remote link with less than 72 hours remaining before the meeting should consult their school attorney.

4. Can a board member joining a meeting remotely speak and vote like any other member?

Yes, if a member is joining a lawfully conducted remote meeting either under (pre-pandemic) Section 551.127 for meetings by videoconference or under the Governor's suspension order for teleconference or videoconference, the member is able to participate fully in deliberation and voting like any other member.

5. Can we post meetings with both a physical location and a remote link?

Yes, if your community is experiencing community spread of the virus, both members of the board and members of the public may be hesitant to appear in person, even if the meeting is taking place at a physical location. The board may want to consider adding a toll-free remote call in or online link to your meeting notices until the pandemic subsides to support public participation and allow for remote participation by board members and staff.

6. What if an in-person meeting was posted, but community spread suddenly grows so widespread that a quorum cannot meet safely in person?

If more than 72 hours remain before the meeting, a revised notice can be posted that meets the posting standards for a remote meeting under the Governor's suspension order.

If less than 72 hours remain before the meeting, and the meeting notice did not already include required information to also hold a remote meeting, then the board should cancel and reschedule the meeting. If the meeting notice already included sufficient notice of an additional remote meeting option that met the 72-hour posting requirement, then the board may proceed to convene remotely without also meeting in person. Of course, increasing communication to the community about this last-minute change will help reduce unnecessary confusion or complaints.

7. What if the board wants to add a remote link for one or two members without canceling and reposting for a later meeting?

The Governor's suspension order permits a number of flexibilities to conduct remote meetings to promote public health during the pandemic. The order, however, provides that notice of a meeting under the suspended laws should be posted online continuously for 72 hours and include a toll-free dial-in number or a free-of-charge videoconference link, along with an electronic copy of any agenda packet.

Under ideal circumstances, if a board meeting originally posted for a physical location needs to become hybrid or remote in reliance on the Governor's suspension order, the original meeting would be canceled and a new meeting would be posted online continuously for 72 hours with the necessary details. Technically speaking, the only justification for providing less than 72 hours' notice of the location of a meeting would be an emergency as defined by the OMA.

Needless to say, pandemic circumstances are not always ideal. Your board may encounter a situation in which the board very much wants to keep its original meeting date and time, but for reasons of public health, individuals need to join remotely to prevent the spread of the virus. If you encounter such a circumstance, we encourage you to reach out to your school attorney. The Office of the Attorney General has fielded this question numerous times since the pandemic began, and while the AG attorneys recognize that changing to a remote link with less than 72 hours' notice is not ideal, they emphasize that the purpose of the suspension order is to protect public health without losing public transparency. If, with the blessing of your school attorney, you can move to a hybrid or remote option without sacrificing adequate public notice and public access, the underlying purpose of the suspension order will be fulfilled.

8. May a professional service provider (such as an architect) consult with the board by videoconference when the board is meeting in person?

Yes, at a recent public training session, a representative of the attorney general's office informally opined that a governmental body, including a school district, may allow individuals like consultants or contractors, district employees, or auditors to participate remotely in the same manner that members of the public can. If a meeting is happening pursuant to the Governor's suspension order, the individual can address the board through the toll-free call in or online platform. Once meetings return to the pre-pandemic OMA, the individual may join by videoconference (even if the board is meeting in person) as long as the manner of remote participation and open meeting complies with the OMA. See Tex. Gov't Code § 551.127 (outlining videoconference requirements). Until formal or written guidance is issued by the attorney general's office, a board wishing to allow remote participation by individuals not expressly authorized or prohibited by the OMA should only proceed with legal advice about a particular arrangement, including applicable meeting notice and technical requirements.

This document is continually updated at tasb.org/services/legal-services/tasb-school-law-eSource/governance/documents/remote-meetings-during-covid-19.pdf. For more information on school law topics, visit TASB School Law eSource at schoollawesource.tasb.org.

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