



Texas Association of School Boards

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Texas Governor Suspends Certain Provisions of Open Meetings Act Due to Coronavirus (COVID-19)

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On March 16, 2020, Governor Greg Abbott granted a request from Attorney General Ken Paxton to temporarily suspend a limited number of open meeting laws to the extent necessary to allow telephonic or videoconference meetings and to avoid congregate settings in physical locations in response to the Coronavirus (COVID-19) disaster. Several of the suspended laws may offer flexibility for telephone or videoconference meetings conducted by Texas school boards. The order is effective immediately and will remain in effect until terminated by the Governor or until the March 13, 2020, disaster declaration is lifted or expires.

School boards were already permitted to conduct remote meetings by teleconference and videoconference, in accordance with applicable law. See TASB Legal Services' guidance on [Open Meetings Act: Remote Participation in Board Meetings](#).

Now, however, statutory requirements to permit the public to attend and offer public testimony from a physical location, even during remote meetings, have been suspended, if the school district offers alternatives. In addition, several laws requiring the physical presence of a quorum have also been suspended.

According to the statement on the [Governor's Website](#), if public officials are not holding a telephonic or videoconference meeting, all open meeting requirements apply.

The following suspended provisions of the Texas Open Meetings Act (OMA) are of greatest interest to Texas school boards. A full list of the [suspended laws](#) and the [original letter](#) from the Governor's office is available from the [Office of the Attorney General's Website](#).

Notice of Meetings

- **Normally districts post at central office and online.** Normally a school district must post notice of board meetings on a bulletin board at a place convenient to the public in the central administrative office of the district. Tex. Gov't Code § 551.051. In addition, the district must concurrently post notice of board meetings on the district's Internet website. Tex. Gov't Code § 551.056(b)(3). If notice of a board meeting is posted online continuously at least 72 hours before the meeting, the physical posting at central office need only be accessible during business hours. Tex. Gov't Code § 551.043.

- **Now physical posting is not required for remote meetings.** During the period of suspension, Section 551.051 regarding posting at central office and the portion of Section 551.043 requiring a district to post in a physical location in addition to posting online have been suspended. According to the suspension order, 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.
- **Online posting requires a conference number or link for use by the public.** The suspension order specifically requires that an 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.

Public Comment

- **Requirement for public comment suspended for remote meetings.** Normally, Texas Government Code section 551.007(b) requires a school board to allow each member of the public who desires to address the board regarding an item on an agenda for an open meeting to address the board regarding the item at the meeting before or during the board's consideration of the item. The Governor's order suspends this provision.
- **Reasonable rules are allowed.** The Governor's order does not impact the other provisions of public comment under Section 551.007, which allow reasonable rules by the board regarding public comment. To manage efficient and orderly meetings, districts may continue to require timely sign-up by members of the public who wish to provide comment.
- **"Alternate methods" for comment are required.** The order requires, however, that school districts offer alternative methods of communicating with district officials. For example, we might suggest a dedicated voicemail or email inbox. Consider having an administrator play or read the comments aloud to the board during the meeting. Some videoconference call software may also offer a "moderator" function that allows the district to unmute a registered speaker to receive live comments.

Meetings by Teleconference

- **A board may meet by teleconference even absent an emergency.** Normally, Texas Government Code section 551.125(b)(1) limits the use of meetings by teleconference to an emergency or public necessity as defined by the OMA. For now, that provision is suspended; however, meeting by teleconference remains appropriate only if it would be difficult or impossible for a quorum of the board to gather in one location.
- **Notice, quorum, and audio recording still required.** A quorum is still required to conduct a meeting, even by teleconference. A meeting by teleconference still must be posted in accordance with the OMA. A meeting by teleconference must be audio recorded, and the recording must be available to the public.

- **The public must have access through a conference call or link.** The district does not have to open a physical location for the public, but the public must have dial-in or conference capability allowing for two-way communication. According to the suspension order, the dial-in number or videoconference link provided in the notice must make the meeting audible to members of the public and allow for their two-way communication. Other specifications about the quality of the audio have been suspended.

Meetings by Videoconference

- **A quorum does not have to gather in a single physical location.** Normally to conduct a meeting by videoconference pursuant to Texas Government Code section 551.127, a quorum of the school board must be in a single physical location. That requirement, as well as the requirement to post the physical location of the quorum, has been suspended. Consequently, during the period of suspension, a school board may meet by videoconference with all members in separate locations. All members participating by videoconference are considered present.
- **Notice, quorum, and audio recording still required.** A quorum is still required to conduct a meeting, even by videoconference. Notice of a meeting by videoconference still must be posted in accordance with the unsuspended OMA provisions. A meeting by videoconference must be at least audio recorded, and the recording must still be available to the public.
- **The technical requirements have been alleviated.** All requirements regarding the quality of the video and audio, including the requirement that the videoconference comply with technological standards set by the Department of Information Resources (DIR), have been suspended.
- **The public must have access through a conference call or link.** The district does not have to open a physical location for the public, but the public must have dial-in or conference capability allowing for two-way communication. According to the suspension order, the dial-in number or videoconference link provided in the notice must make the meeting audible to members of the public and allow for their two-way communication. According to the statement on the [Governor's Website](#), officials who hold videoconference meetings are encouraged to provide for participation via telephone for members of the public without videoconferencing capability.

If you have questions about the suspension order, you may contact the Office of the Attorney General at 888.672.6787 or via email at TOMA@oag.texas.gov. If you have questions about teleconference and videoconference capabilities offered by the Texas Department of Information Resources, you may visit dir.texas.gov or call 512.475.4700.

As always, we encourage you to consider your options in consultation with your school attorney.

For frequently asked questions about remote participation in board meetings during the COVID-19 disaster, you may review the FAQs below.

Frequently Asked Questions about Remote Participation in Board Meetings During the COVID-19 Disaster

1. If a board has never conducted a meeting by teleconference or videoconference call, where should it begin in preparing for a meeting?

A board considering conducting a meeting by telephone or videoconference call for the first time should learn about the legal requirements and check in with the district's technology director. The board should assess the technology resources of board members, staff members, and the general public. Based on this information, the district will need to select a platform—either a teleconferencing option or a videoconference software—that will meet the district's needs.

To help governmental bodies understand basic conferencing options, the Texas Department of Information Resources (DIR) offers a [How-To Guide](#) for conducting board meetings using webinar and teleconference tools.

2. Under the Governor's OMA suspension order, must a board meet by telephone or videoconference call?

Not necessarily. According to the Governor's order, certain provisions of the OMA are only temporarily suspended to the extent necessary to allow telephonic or videoconference meetings and to avoid congregate settings in physical locations. According to the Governor's website, if officials are not holding telephonic or videoconference meetings, then all regular open meetings requirements apply. Therefore, a board may continue to meet in person by complying with the OMA without applying the suspension order. Of course, the schoolboard is subject to any local orders regarding a shelter-in-place, and any public gathering during the pandemic should be managed with extreme caution in consultation with local public health officials and guidance from state and federal authorities, including the Center for Disease Control.

3. If a quorum of the board can physically convene at one location for a meeting, may a board member participate remotely by telephone or videoconference call?

Videoconference call: Even without the OMA suspension order, the OMA already authorizes a board member to participate remotely by videoconference call. Tex. Gov't Code § 551.127(a-1). Now, the member is counted as present at the meeting for all purposes so long as video and audio feed of the board member's remote videoconference call is broadcast live at the meeting. Tex. Gov't Code § 551.127(a-2).

Telephone conference call: For a meeting by telephone conference call, the OMA suspension order does not suspend the statutory requirement that a telephone conference be used only if it would be difficult or impossible to convene a quorum of the board at one physical location. Tex. Gov't Code § 551.125(b)(2). Certainly, a board could determine that it would be difficult to meet as a quorum and still comply with public health guidance about avoiding public gatherings.

If a quorum of the board is meeting at a physical location, however, then their presence together demonstrates that was possible to convene at a physical location. A close technical reading of the suspension order might appear to prohibit allowing one or two board members to call in, while the rest of the board meets in person.

That said, if your board wishes to convene a quorum together at a physical location but also wishes to accommodate a member's remote participation by telephone due to that member's illness or need to avoid risk exposure, TASB Legal Services encourages you to proceed in consultation with your school attorney. If the board can arrange a videoconference, that option will comply with the OMA, as described above. In fact, many "telephone calls" in the context of today's smart technology, may actually meet the definition of a videoconference call under the OMA. See Tex. Gov't Code § 551.127 (defining a *videoconference call* as a communication 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).

On the other hand, if joining by teleconference is the member's only option, we believe that erring on the side of public safety, as long as the member's participation is audible to the public, will meet the spirit and purpose of the Governor's suspension order to decrease exposure and transmission of COVID-19.

4. If the board meets at a physical location, may the board allow members of the public to participate in the meeting by videoconference call to discourage large physical gatherings?

Yes. A board may allow a member of the public to testify at a meeting from a remote location by videoconference call. Tex. Gov't Code § 551.127(k). A board may not, however, prohibit members of the public from attending an open meeting that is not being conducted by telephone or videoconference call, unless otherwise provided by the OMA. Tex. Gov't Code § 551.002. Consult with your local health officials and school attorney about attempting to restrict public access to the physical location where the board is meeting.

5. Does the suspension of the emergency requirement to conduct telephone meetings mean that emergency items may now be addressed by telephone?

No. The order does not suspend any part of Texas Government Code section 551.045, which requires that when a board calls a meeting or adds a supplemental item due to an emergency or an urgent public necessity to deliberate or take action on the identified emergency or urgent public necessity, the board must provide notice of the meeting or supplemental item at least 1 hour prior to the meeting.

For more information about board meeting notices, including emergency meeting notices, see TASB Legal Service's [Open Meetings Act: Meeting Notice](#).

6. Isn't every board action that relates to the current pandemic considered an emergency since there is a public health crisis?

Not necessarily. Under the OMA, emergencies may result from disasters or catastrophes, but not every state of disaster or catastrophe automatically requires immediate board action with less than 72 hours' notice. Courts have considered foreseeable or recurring matters, such as general personnel matters, to be routine and not an emergency for the purpose of the OMA—even though the matter may have seemed urgent to the board. *See Piazza v. City of Granger* (finding that termination of a police chief was not unforeseeable or requiring immediate action); *but see Markowski v. City of Marlin* (finding that legal advice was immediately necessary to respond to an unforeseeable legal action filed the day before a hearing). The safest practice is to post meeting notice for at least 72 hours regarding any board action, including routine purchases, personnel matters, or policy decisions, that could be addressed after providing 72-hour notice. To avoid later legal challenges, consult your school attorney about calling an emergency meeting or posting an additional agenda item with less than 72 hours' notice.

7. Must a recording of a virtual meeting under the suspension order be posted online?

Not for all districts. Under the current OMA suspension order, a board must make at least an audio recording of the virtual meeting and the recording must be made available to the public. Tex. Gov't Code §§ 551.022, .127(g). A district may choose to make recorded virtual meetings available to the public through means other than posting online. However, a district that is required to post recordings of meetings on the Internet due to its student enrollment of 10,000 or more must continue to post recordings online, as that particular provision of the OMA was not suspended. Tex. Gov't Code § 551.128.

For more information about school board meeting records, see TASB Legal Services' [Open Meetings Act: Open Meeting Records](#).

This document is continually updated, and references to online resources are hyperlinked, at tasb.org/services/legal-services/tasb-school-law-essource/governance/documents/texas-governor-suspends-certain-provisions-of-oma.pdf. For more information on this and other school law topics, visit TASB School Law eSource at schoolawesource.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.

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