



Texas Association of School Boards

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Virtual Training and the Open Meetings Act

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The OMA excludes regional training from the definition of *meeting*.

The OMA's definition of *meeting* specifically excludes the attendance by a quorum of a governmental body at a regional, state, or national convention or workshop, if formal action is not taken and any discussion of public business is incidental to the convention or workshop. Tex. Gov't Code § 551.001(4).

For example, a quorum of board members may attend the annual statewide convention without implicating the OMA as long as any discussion of school business is incidental to the convention activities. Specifically, a quorum may be in the same in-person training session and ask questions, or a board may go to dinner after the convention and discuss the material they learned during the day. The board should avoid, however, discussing how the material might affect specific items of local district business.

On the other hand, local board training is a *meeting*.

The OMA was first applied to school board member training sessions in 1989. To address its concern that school board members were receiving training credit merely for attending their regular board meetings, the State Board of Education adopted a rule prohibiting board members from receiving training hours for attending board meetings unless the training sessions were held separately from a regular meeting. 19 Tex. Admin. Code § 61.61(b)(3) ("No training shall take place during a school board meeting unless that meeting is called for the delivery of school board training." (repealed 1996)).

The State Board eventually changed its rules to permit continuing education sessions to be conducted prior to or after a legally called board meeting. Under the current rules, training may take place during a board meeting only if the meeting is called expressly for the delivery of board member training, in accordance with OMA requirements. 19 Tex. Admin. Code § 61.1(e).

Therefore, boards should comply with the OMA in conducting local training sessions, even if no board deliberation is involved. Continuing education may include annual team building and training about the Texas Education Code, education to meet the assessed needs of each board, evaluating and improving student outcomes, and identifying and reporting potential victims of sexual abuse, human trafficking, and other maltreatment of children.

What does this mean for board members attending virtual training? What is virtual training?

Virtual training includes a variety of online options. Examples may include live or recorded webinars, online courses, virtual events like a broadcast with live chat or message boards, or videoconferencing. Online options are expanding quickly to provide remote training options during the COVID-19 pandemic.

State Board of Education rules address online training. Online training must be designed and offered by a registered or authorized provider, incorporate interactive activities that assess learning and provide feedback to the learner, and offer an opportunity for interaction with the instructor. The provider must determine the training credit to be awarded and provide verification of completion. 19 Tex. Admin. Code § 61.1 (b)(2)(G)-(H), (3)(D)-(E), (5)(H)-(I), (7)(G)-(H).

Training for the orientation to the Texas Education Code, the update to the Texas Education Code, additional continuing education, and the reporting of abuse and trafficking may be completed through an online course.

Normally, training for local district orientation, team building, and evaluating student academic performance and setting goals may not be completed through an online course. However, Commissioner of Education Mike Morath has [suspended](#) application of the law and rule affecting board training requirements in Texas Education Code section 11.159 and 19 Texas Administrative Code section 61.1 until January 31, 2021. For now, using this waiver, boards may rely on virtual options to participate in these types of training.

Does virtual training have to comply with the OMA?

As discussed above, virtual training that falls within the OMA exception for regional, state, or national conferences and workshops does not have to comply with the requirements of the OMA. On the other hand, board training offered at a local school board meeting should comply with the OMA. A board may comply either by following the OMA as it normally applies to in-person meetings or in accordance with the [Governor's order suspending](#) portions of the OMA to allow remote meetings in light of the health risks presented by the COVID-19 pandemic.

Can we conduct our annual teambuilding by videoconference meeting?

Yes, in accordance with the [Governor's order suspending](#) portions of the OMA to allow remote meetings, a board can give notice of a meeting by videoconference and use an online platform (like Zoom) to conduct the board's annual teambuilding or other local training.

Can a quorum of the board attend a virtual conference together?

Yes, a quorum of the school board may attend a virtual event in real time together. A regional, state, or national board training conference will not be subject to the OMA. Board members may discuss the training, virtually, as long as any discussion is incidental to the training. For example, board members may “chat” or “raise their hands” during the conference and ask questions or make comments incidental to the training. Participating board members may also post to message boards with comments or questions incidental to the training. Be mindful, however, that records created in connection with school business, such as training or board meetings, may be subject to retention rules. Members should avoid saying or writing something confidential or personally embarrassing that will be retained or subject to public access.

Can a quorum of the board gather to watch all or part of a recorded virtual training?

Yes, but comply with the OMA. If a board meets (whether live or via videoconference) to participate in training, and the training does not include other school boards, the training should be considered local, not regional, and the board should comply with the OMA. In accordance with the [Governor’s order suspending](#) portions of the OMA to allow remote meetings, the board can give notice of a meeting by videoconference and use an online platform (like Zoom) to host the training.

Can a board member do online training on his or her own? If so, can the member engage with other trustees by videoconference or on the event’s message board?

Yes, a board member may participate as an individual in a virtual training event. If the board member is participating live in a webinar or other online training, the board member may post comments or ask questions incidental to the training. The OMA will not apply to a regional, state, or national board training event hosted online.

If, however, board members watch recorded training on their own after the fact, the OMA exception for regional training does not clearly apply. To be safe, board members who watch recorded online training in numbers less than a quorum should be cautious about discussing the training or making online posts about the training in ways that could involve a quorum of the member’s own board outside of a proper meeting.

Board members should be cautious about using message boards outside of live training, because the OMA prohibits deliberation among a quorum outside of a properly conducted meeting through electronic communications.

Email and other written communications, including text messages, are generally not excepted from the OMA. An illegal meeting can occur if a quorum deliberates school business outside of a posted meeting, even if the quorum does not meet at one time or place. *Hitt v. Mabry*, 687 S.W.2d 791 (Tex. App.—San Antonio 1985, no writ); Tex. Att’y Gen. LO-95-055 (1995). *See also*

Harper v. Best, 493 S.W.3d 105 (Tex. App.—Waco 2016, pet. granted) (involving series of text messages among board members). As a result, a board member should avoid involving a quorum of the board in an e-mail or other electronic conversation outside of a public meeting. This can occur when a board member sends e-mails or text messages to the entire board, copies the rest of the board on correspondence, or engages in a chain of electronic communications that add up to a quorum deliberating school business. See Tex. Gov't Code § 551.143 (defining Prohibited Series of Communications offense). See also Tex. Att'y Gen. Op. No. GA-0896 (2011) (considering several electronic *walking quorum* scenarios, including emails among a quorum of the board and posts by a board member to an online group whose membership was unknown).

How can board members be sure to comply with the OMA when accessing online training?

Online training is an ideal way to keep getting continuing education even during the pandemic. Several options for online training will comply with the OMA, including:

- Joining regional, state, and national virtual training events live as they happen. The whole board can join the training online together. Discussions should be limited to matters incidental to the training.
- Conducting a remote board meeting to receive local training or to watch live or recorded virtual training.
- Attending live virtual training alone or in numbers less than a quorum.
- Watching recorded virtual training alone or in numbers less than a quorum. Ideally, be aware if others on the board are also accessing the training. If it is likely that a quorum will be accessing recorded training after the event and comments on message boards will be visible to a quorum of the board, be cautious about deliberating matters of board business in a way that might constitute a walking quorum.

This document is continually updated, and references to online resources are hyperlinked, at tasb.org/services/legal-services/tasb-school-law-esource/governance/documents/virtual-training-and-the-oma.pdf. For more information on this and other school law topics, visit TASB School Law eSource at schoollawesource.tasb.org.

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