



Remote Budget Hearings: Information to Meet the Challenge

April 15, 2020

According to the state's [current school budget timelines](#), over 90% of New Jersey's districts—that is, those that hold their annual school elections in November—must conduct public hearings on their proposed 2020-2021 budgets between April 24 and May 7. School districts face challenges in carrying out the hearings remotely, as required under the Governor's emergency order and guidance from the Division of Local Government Services, while complying with statutory requirements for public access.

The following information, based on a March 20 NJSBA podcast and updated by our staff attorneys, will help school districts navigate the complexity of virtual meetings, while ensuring access by members of the community. As always, boards of education are encouraged to consult with their board attorneys on this matter.

During the current public health emergency, board members are participating in meetings remotely. However, boards of education still need to adhere to the principles of the Open Public Meetings Act. What are the core principles of the Sunshine Law that they must take into consideration?

During this state of emergency, boards are not only permitted, but in certain cases may be required to convene a meeting to conduct necessary public business. To that end, boards (excluding committees of less than a quorum) must comply with the provisions of the [Open Public Meetings Act](#), including:

- a. Ensuring the right of the public to attend and observe, and publicly comment;
- b. Adequate (48 hour) notice.

On March 23, the Department of Community Affairs Division of Local Government Services issued "*Local Operational Guidance – COVID -19.*" This [guidance states](#) the following:

"[i]n light of the Governor's issuance of Executive Order 107, we have been strongly encouraged to conduct all public meetings subject to the Open Public Meetings Act *exclusively* using communications equipment (e.g., telephonic conference call-in connections, internet streaming, etc.) for the foreseeable future *without providing a physical meeting place.*" (Emphasis added.)

The guidance goes on to note that boards remain obligated to provide adequate (48-hour) public notice. However, during the declared emergency, electronic notice is sufficient to replace written notice to the two official district newspapers. Where the board only publishes notice electronically, discussion must be limited, "to the extent practicable... to matters necessary for the continuing operation of government which relate to the applicable emergency declaration."

In addition, on March 20, Governor Murphy signed legislation, [A-3850](#), which allows public entities, including boards of education that are operating during a declared state of emergency, to perform the following functions by means of electronic communication:

- a. Conduct a meeting and any necessary public business;
- b. Cause a meeting to be open to the public;
- c. Vote; or
- d. Receive public comment.

The legislation also allows a public body to issue notice of meetings electronically via the internet during the declared emergency, in lieu of the standard method of providing adequate notice. Public bodies that exercise this option must limit, to the extent practicable, the business conducted at the meeting to matters that are necessary for the continuing operation of government and which relate to the applicable emergency declaration.

Let's address public participation. If the board members are participating remotely, does the public have the right to "attend" the meeting?

Yes. In convening a remote public meeting, the board must ensure that the chosen technology will allow the public to witness the deliberations and actions of the board.

So, boards are required to give members of the public the opportunity to participate remotely. Must they also provide for public comment?

Yes. In its March 23 guidance, the Division of Local Government Services reminded school boards that they are required to provide a means of public comment even if a meeting is held remotely. In addition, [A3850](#) explicitly gives boards with the authority to allow members of the public to provide comment *remotely* during a declared state of emergency. Further, if a local unit currently records the audio or video of its meetings, that board should continue to record a remote meeting.

What about closed or executive session meetings? What are the issues surrounding executive session meetings?

The guidance from the Division of Local Government Services states the following:

“[L]ocal units holding meetings remotely are advised to avoid entering executive or closed session unless the topic of concern is urgent, directly affects the health, safety, or welfare of residents, and is an allowed exception as listed in *N.J.S.A 10:4-12*, given the difficulty of ensuring only appropriate individuals are on the line during a separate session. If an executive or closed session is necessary, local units must use a mechanism that ensures the confidentiality of a closed session.

“To this end, after announcing the executive or closed session at the public portion of the meeting consistent with the Act, a local unit may consider using a separate, non-public, dial-in mechanism for the executive or closed portion of the meeting.”

When a board advertises for a meeting, does it have to provide the public with instructions on how to participate?

Yes. Local units, including school districts, are required to provide a means of public comment even if a meeting is held remotely. School boards should provide guidance to the public for remotely accessing and providing comment at a meeting.

Where can I obtain more information on remote meetings and district governance during the pandemic?

NJSBA stands ready to assist local school boards on all governance matters during the current public health emergency.

- TECHNOLOGY: NJSBA’s [COVID-19 Resource Center](#) offers information and guidance on conducting virtual meetings. In the Center, select the green “Resources and Information” box, and scroll down to “Technology.” Items include “[Free Technology Resources during COVID-19](#)” and other remote meeting options. The NJSBA Resource Center also offers access to the latest guidance from state agencies, including the Division of Local Government Services document, “[Local Operational Guidance – Covid-19: Guidance for Remote Public Meetings in New Jersey](#),” which addresses “Common Means of Conducting Remote Public Meetings,” including options for accepting public comment.
- REMOTE MEETING BEHAVIOR: Individual board members can access advice on best practices to follow during remote meetings through a fact sheet, “[Tips for School Board Members to Look and Sound their Best Online](#),” offered by NJSBA.
- GOVERNANCE: Your board’s Field Service Representative can provide guidance and the latest information on subjects ranging from remote participation in board meetings to superintendent evaluations. Go to NJSBA’s Field Services Department webpage and use the “[Find Your FSR](#)” tool in the upper right-hand corner.
- POLICY: The NJSBA School Policy Service offers a sample policy on [Public and Executive Sessions – Virtual Board Meetings and COVID-19](#) as well as model documents on student health and wellness, home instruction and preparation for health emergencies. For further information, email policy@njsba.org.
- STATUTE AND REGULATION: NJSBA’s staff attorneys can provide information on state law and regulation, including the Open Public Meetings Act, Open Public Records Act and regulations governing school budget development. To reach the Attorney-of-the-Day, call (609) 278-5254 or email legal@njsba.org.

The New Jersey School Boards Association is a federation of the state’s local boards of education and includes the majority of New Jersey’s charter schools as associate members. NJSBA provides training, advocacy and support to advance public education and promote the achievement of all students through effective governance.