



Guidance for Remote and Emergency Board Meetings

March 18, 2020 – V.2

The events of the last three weeks caused by the COVID-19 pandemic are forcing school officials to move at unprecedented speed to adjust school operations, including closing schools. These events have included several Executive Orders by the Governor of California and a National Emergency Declaration related to COVID-19, urgency legislation and CDE guidance. Below are links to the Governor's Executive Orders, the urgency legislation and CDE guidance that directly impact schools and a reference to several key governance provisions in the Brown Act that facilitate Boards and Superintendents convening public meetings in this rapidly evolving environment to make critical decisions about operations in their respective districts.

California Department of Education Guidance (COVID-19)

Late Tuesday afternoon, March 17, 2020, the California Department of Education issued detailed guidance to K-12 local education agencies (LEAs) in the State addressing Distance Learning, School Meals and Child Care and Supervision during school closures due to COVID-19. [<https://www.cde.ca.gov/ls/he/hn/guidance.asp>]

SB 117 (March 17, 2020)

On March 17, 2020, the Governor signed SB 89 and SB 117 that were passed to ensure continuity of funding to LEAs during periods of school closure due to COVID-19. SB 117 closely tracks Executive Order N-26-20 and clarifies certain LEA obligations for the continuity of funding.

[http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200SB117]

Governor's Executive Order N-27-20:

Following the Governor's directive during a press conference on March 15, 2020, that individuals 65 and older stay home "as much as possible," the Governor issued an executive order directing state health and social services agencies to protect licensed facilities, staff and residents most vulnerable to COVID-19, including but not limited to, senior citizens and individuals who require assisted-living services due to chronic health conditions. Many school district and county office employees (as well as elected officials of local districts) fall within this age range. [Full order.](#)

Governor's Executive Order N-26-20:

On March 13, 2020, the Governor issued Executive Order N-26-20 supporting ongoing funding for schools and districts that close in response to COVID-19 and identifying essential activities school districts are to provide during the school closures, among many other things. [Full order.](#)

Governor's Executive Orders N-25-20 and N-29-20 – Brown Act Requirements:

On March 12 2020, the Governor issued Executive Order N-25-20 which suspended various Brown Act requirements regarding teleconferencing for Board meetings, yet required school boards to make a physical location available for the public to observe the meeting and offer public comment. On March 17, 2020,

Governor issued Executive Order N-29-20, which, among other things, specifically withdraws and supersedes Executive Order N-25-20 (March 12, 2020). Under the new order, the requirement to make a physical location available for the public has been eliminated. A District can now comply with public attendance and comment requirements holding a meeting via “teleconferencing” and allowing members of the public to observe and comment either telephonically, or otherwise electronically.

If a teleconference meeting is held, the District must:

1. Implement a procedure for receiving and “swiftly” resolving accommodation requests under the ADA;
2. Resolve any doubt whatsoever in favor of accessibility; and
3. Advertise the ADA resolution procedure in its meeting notice.

Districts must still notice these meetings on normal Brown Act timelines but must now also give notice of the means by which members may observe and offer public comment. If a District is required to change the means by which public observation and comment can be made, the District can satisfy this requirement by using the “most rapid means of communication available at the time,” which includes posting on the District’s website. These changes to Brown Act compliance apply only during the time during which state or local public health officials recommend social distancing. Finally, the order still encourage Districts to use “sound discretion” and “reasonable efforts” to adhere as closely as possible to the Brown Act.

If the Board plans on meeting in closed session during a remote meeting, Board members should ensure that they protect the confidentiality of the closed session discussions. For example, Board members should consider calling from a private indoor space, refrain from using speaker phone, avoid speaking within earshot of others, etc.

Practical Tips and Considerations:

- The Board meeting agenda and notice must identify the means (i.e. website link, teleconference dial-in number, etc.) by which members of the public may observe the meeting and address the Board at appropriate times.
- If, after posting, changes occur to the means by which the public can observe and participate (i.e. new web address or dial-in number), advertise such changes as soon as possible, including on the website.
- Board members need not publicly post/reveal their physical location for the meeting and can participate privately from their homes if necessary or prudent.
- Must still post meeting notice and agenda at the other normal locations.
- Not all Board members have the same level of technical expertise. Work with Board members and staff to determine what type of electronic (e.g. skype) meeting is feasible, since quorum and related requirements still exist.
- Ensure the technology used permits public participation.
- Preserve the sound quality and integrity of the meeting to ensure minutes are possible (e.g. manage background noise, use platforms (skype, etc.) that allow mute, etc....)
- Consider a “practice” meeting (less than a quorum) to test the technology before real meeting.
- Plan how required documents materials distributed to the board as required by GC § 54957.5 are made “available” to the public.

Emergency Board Meetings (relating to school closures)

The Brown Act allows governing boards to hold an emergency meeting without complying with the 24-hour notice / posting requirements in the case of an emergency where prompt action is necessary due to the disruption or threatened disruption of public facilities.

- Two types of emergency situations justify an emergency meeting:
 - Emergency: a work stoppage, crippling activity, or other activity that severely impairs public health, safety, or both; or
 - Dire emergency: a crippling disaster, mass destruction, terrorist act, or threatened terrorist activity that poses peril so immediate and significant that requiring a legislative body to provide one-hour notice before holding an emergency meeting under this section may endanger the public health, safety, or both, as determined by a majority of the members of the legislative body.
- If there are grounds to hold an emergency meeting, all other requirements of a special meeting apply, unless they are suspended per Executive Order N-25-20.
- If news media have requested written notice of special meetings, they must be notified by telephone at least one hour before an emergency meeting (unless there is a dire emergency).
 - All telephone numbers provided in that written request must be tried.
 - If telephone services are not functioning, the notice requirements are waived. However, as soon as possible after the meeting, the District must notify the news media of the fact of holding of the emergency meeting, the purpose of the meeting, and any action taken at the meeting.
 - In the case of a dire emergency, notice need only be provided at or near the time that notice is provided to the members of the body.
- During an emergency meeting, the Board may meet in closed session to discuss matters posing a threat to public services or facilities (Government Code section 54957) if agreed to by a two-thirds vote of the Board members present, or, if less than two-thirds of the members are present, by a unanimous vote of the members present.
 - Closed session meetings for these purposes must be held with a designated security or law enforcement official including the Governor, Attorney General, district attorney, agency attorney, sheriff or chief of police, or their deputies or agency security consultant or security operations manager.
- For your reference, here is a sample agenda language for an emergency meeting and closed session under Government Code section 54957:
 - EMERGENCY MEETING (Education Code section 54956.5 – One Hour Notice – Action Item)
Consideration of adoption of [*i.e. Resolution of Emergency Declaration for the immediate closure, or possible closure, of some or all District schools, and delegation of authority to Superintendent*]
 - THREAT TO PUBLIC SERVICES OR FACILITIES

Consultation with: (Specify name of law enforcement agency and title of officer, legal counsel and/or name of applicable agency representative and title)

If you need our assistance in preparing an emergency resolution, please let us know. Also, given that we are getting updates in real time, we anticipate providing additional guidance on these issues over the coming days.

Practical Tips and Considerations:

- Before an emergency meeting staff should determine the nature of the recommended closure – closure of some or all schools, dismissal of students from attendance, whether to maintain staff and the type of work to be performed by any retained staff.
- Consider the duration of the closure or dismissal, and calendar impacts including advancing and/or extending spring break periods, which may require cooperation with labor partners.
- Coordinate with COE and, if possible, County Health Department regarding possibility or expected closure.
- At an emergency meeting considering voluntary closure of schools, Boards should consider at least the following actions:
 - (1) Passing an emergency resolution regarding school closure based upon district specific facts that prevent maintaining schools open as in line with Education Code 41422 provisions when possible;
 - (2) Either
 - (i) Creating and submitting the affidavits from the Board and County Superintendent required under 41422(a) that articulate the district specific facts supporting closure; or
 - (ii) Submitting the appropriate certification to the State Superintendent of Public Instruction that the closure occurred to address COVID-19 as authorized by Executive Order N-26-20.

(3) Delegate to the District Superintendent authority to take all actions necessary to effectuate school closure, provide for necessary continuity of services, minimize impact of closure to students, staff and the district; and

(4) Communicate to parents, students and staff duration of closure, key health and safety information, and how/where to obtain updates on reopening school.

This guidance may be updated periodically as events surrounding COVID-19 unfold in the coming days and weeks.

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