



## FAQs: Holding School Board Meetings During COVID-19 Pandemic Updated Aug. 4, 2020

Gov. Gretchen Whitmer has issued Executive Orders to temporarily authorize remote participation in public meetings and hearings “to the extent that the Open Meetings Act...requires a meeting of a public body be held in a physical place available to the general public or requires the physical presence of one or more members of a public body.” These Executive Orders have also suspended the regular monthly meeting requirement for local school boards.

On July 17, 2020, the Governor issued [Executive Order No. 2020-154](#), which supersedes and rescinds Executive Order No. 2020-129 extending the suspension of OMA requirements and the regular monthly meeting requirement for local school boards while any state of emergency or state of disaster arising out of the COVID-19 pandemic is in effect, and for 28 days thereafter to the extent necessary to permit reliable scheduling of school board meetings. The current state of emergency and state of disaster declarations are in effect through Aug. 11, 2020.

The Governor also issued an Amended Safe Start Order on July 29, 2020, [Executive Order No. 2020-160](#). This executive order provides updated rules on social gatherings and organized events, which impact how school boards in all eight regions of the state may conduct their meetings.

The following FAQs have been updated to reflect the rules found in EO 2020-160 and the new timeframe established by EO 2020-154 for temporary authorization of remote participation in public meetings and temporary relief for local school boards from the Revised School Code’s monthly regular meeting requirement.

### **1. Must a school board hold a regular meeting each month?**

The monthly regular meeting requirement found in the Revised School Code is temporarily suspended by EO 2020-154 through Aug. 11, 2020, and for 28 additional days if necessary to permit reliable scheduling of school board meetings. As a result of the Executive Order, school boards are not required to hold a regular meeting during the month of August.

## **2. May a school board hold a virtual meeting under the Open Meetings Act?**

Yes. Under EO 2020-154, a school board may hold a meeting electronically using telephonic conferencing or video conferencing in a manner that permits both the general public and school board members to participate by electronic means. School board members participating electronically in a meeting will be considered present and may participate in the meeting as if they were physically present at the meeting, which means a quorum can be established using remote meeting technology and all board members participating remotely may vote on motions. EO 2020-154 remains in effect until Aug. 11, and for 28 days thereafter to the extent necessary to permit reliable scheduling of school board meetings.

## **3. May a school board still hold a meeting under OMA where members of the board and public gather together in-person?**

MASB interprets EO 2020-160 as prohibiting traditional in-person school board meetings in all eight regions of the state. This executive order includes rules on social gatherings and organized events, which provide that a gathering or event must be designed to ensure proper social distancing and it cannot exceed 10 people if held indoors and must be limited to 100 people if it takes place outdoors.

While the term “organized event” is not defined in EO 2020-160, MASB interprets it to cover public meetings conducted by school boards and other public bodies based on language in previously issued executive orders. EO 2020-160’s 10-person restriction for indoor organized events precludes school boards from conducting a traditional in-person meeting under OMA because it prevents community members from attending the public meeting.

Further, the executive order clarifies that its restrictions do not apply to polling places or incidental gatherings at various locations, including restaurants, shopping malls and workplaces. Because it would have been easy for the Governor to include public meetings under OMA as being exempt from the restrictions, its exclusion must be interpreted to mean that school board meetings are subject to the executive order’s 10-person restriction for indoor organized events. Thus, based on MASB’s analysis of EO 2020-160 and previous executive orders, school boards must continue to have virtual meetings under EO 2020-154.

## **4. May a school board conduct a virtual meeting under EO 2020-154 while school board members meet in-person in the board’s conference room?**

Yes. A school board may have a hybrid virtual/in-person meeting if it wishes to have a meeting where members of the board are meeting in-person. This type of meeting would be permissible as long as a school board complies with EO 2020-154 in holding the meeting. The hybrid meeting would be a meeting conducted virtually under EO 2020-154, but there

would be multiple board members physically convened together in the board’s conference room, practicing social distancing and using face coverings. Even though there would be board members physically present in a conference room, members of the community would not have a right to “address the board” at that location. EO 2020-154 allows a board to direct all public participation and comment through the virtual meeting.

**5. How should the electronic meeting under EO 2020-154 be conducted?**

The remote meeting technology must allow school board members to hear each other and allow community members to hear the board members, who also must be able to hear the community members during the public comment portion of the meeting.

**6. Must all votes be taken by roll call?**

As a best practice, EO 2020-154 *urges* school boards to take all votes by roll call while conducting a virtual meeting to avoid any questions about how each member of the school board votes.

**7. Does EO 2020-154 allow school board members to deliberate as a quorum by texting, email or other electronic communications?**

No. EO 2020-154 emphasizes that school board members must avoid using email, texting, instant messaging and other such electronic forms of communication to make a decision or deliberate toward a decision, which includes “round-the-horn” decisionmaking in a manner not accessible to the public at an open meeting.

**8. May a school board require a member of the public to register or sign-up in advance in order to access a virtual meeting?**

No. A school board may not require a person to register or otherwise provide his or her name or other information as a condition of attending or accessing a virtual meeting. A school board, however, may still request that individuals identify themselves and make it known ahead of time at the beginning of the meeting that they wish to address the school board during public comment.

**9. Does EO 2020-154 provide guidance on administering the public comment period of a virtual meeting?**

EO 2020-154 states that a school board may use technology to facilitate typed public comments that may be read to or shared with members of the school board and other participants to satisfy the requirement that members of the public can be heard by others during the virtual meeting. However, the Executive Order **mandates** that a person must be permitted to address a meeting of a school board held electronically under rules established

and recorded by the school board. MASB interprets EO 2020-154 to allow a school board to encourage community members to submit written comments that are read during the public comment period, but if someone wishes to address the board in real time during the public comment portion of the meeting, that individual has a right to do that under EO 2020-154 and OMA under the board's rules.

School boards may continue to apply and enforce their existing public participation rules while conducting a virtual meeting.

#### **10. What are the public notice requirements for holding a virtual board meeting?**

A school board must post advance notice of a meeting held electronically on the school district's website. The notice must be fully accessible to the public and located on the district's homepage or a separate webpage that is dedicated to public notices for nonregularly scheduled public meetings or electronic meetings and is accessible through a prominent and conspicuous link on the website's homepage that clearly describes its purpose for public notice of nonregularly scheduled or electronic public meetings.

The notice must include all of the following:

- An explanation of the reason why the school board is meeting electronically.
- Detailed procedures by which the public may participate in the meeting electronically, including a telephone number, internet address or both.
- Procedures by which persons may contact school board members to provide input or ask questions on any business that will come before the school board at the meeting.
- Procedures by which persons with disabilities may participate in the meeting.

#### **11. Must a school board post the meeting agenda and board packet on its website prior to holding a virtual meeting?**

No, but EO 2020-154 *encourages* a school board to post an agenda and other materials relating to the meeting on the school district's website homepage if the school board will be holding a virtual meeting.

#### **12. May a school board hold a closed session while having a virtual board meeting?**

Yes, as long as the board is meeting in closed session for a reason specified in Section 8 of the Open Meetings Act. Thus, members of the general public who are attending the virtual meeting may be excluded from participation in the closed meeting.

If you have additional questions, please contact MASB Legal Counsel/Director of Labor Relations & Policy Brad Banasik, J.D., at [bbanasik@masb.org](mailto:bbanasik@masb.org) or 517.327.5929.