

**HOW DOES A BOARD OF EDUCATION HOLD A PUBLIC MEETING  
DURING A PUBLIC HEALTH CRISIS?**

Many boards of education have asked about options for complying with the Open Public Meetings Act requirements during the COVID-19 public health crisis. Some of the compliance issues that have arisen include, but are not limited to: (1) how to hold “virtual” board meetings through electronic means; (2) how to provide for public participation during “virtual” board meetings; (3) how to conduct executive session meetings during “virtual” board meetings; and (4) how to conduct an emergency board meeting, when adequate notice is not possible.

On March 12, 2020, the Division of Local Government Services (“DLGS”) issued guidance advising boards and other local government units that the Open Public Meetings Act, N.J.S.A. 10:4-6, et seq. (“OPMA”), allows local government entities, including boards, to hold public meetings in person or by means of communication equipment. DLGS advises that, consistent with the OPMA:

- **Meetings must be noticed in a manner that provides adequate notice to the public.**
- **The public should be advised how to access the meeting remotely.**
- **The public should be advised how to provide comments.**

In order to utilize electronic communications, boards should review their current policies to determine the ability for meeting participation by means of electronic communications and to consider either waiving or revising existing policies. However, practically speaking, boards should:

- **Review policies governing board members’ electronic participation in board meetings and discuss and decide how to hold meetings remotely.** To the extent remote participation is not currently permitted, boards may consider waiving or amending the policy to permit remote participation under certain circumstances. It should be noted that any amendments to board policies require two public readings, which, as a result of logistical concerns during this public health crisis, may complicate matters. However, most bylaws permit the board to suspend the operation of an existing policy without a prior reading or notice.

REPLY TO

387 PARK AVENUE S  
5TH FLOOR  
NY, NY 10016  
212 278 0058

450 MAIN STREET  
METUCHEN, NJ 08840  
732 243 9588  
FAX: 732 243 9590

309 FELLOWSHIP RD  
STE 200  
MT LAUREL, NJ 08054  
863 350 1030

- **Review policies governing public participation at board meetings.** Consider consolidating speaking sessions, permitting comments to be submitted remotely (ex: audience participation features on virtual meeting platforms, e-mail, etc.) depending upon the available technology. Also, review the time limitations for public comments and consider a means through which members of the public can submit written comments for inclusion in the record.
- **Review and possibly revise your “Administrative Leeway” Policy,** or adopt one, if necessary, in order to provide as much flexibility to administrators to address the crisis.

Remember, the length of time and the number of opportunities for public participation within any meeting is always within the discretion of the boards.

In the event that it becomes necessary to hold an emergency meeting without adequate public notice, the OPMA permits emergency meetings to be held under the following very limited circumstances:

- Three quarters of the members who are present at the emergency meeting must vote to hold the emergency meeting.
- The board must find that there are matters of such urgency and importance that a delay for the purpose of providing adequate notice would likely result in substantial harm to the public interest.
- Board discussions must be limited to discussions of and acting with respect to such matters of urgency and importance.
- The board could not reasonably have foreseen the need for the meeting at a time when adequate notice could have been provided; or although the public body could reasonably have foreseen the need for such meeting at a time when adequate notice could have been provided, it nevertheless failed to do so.
- The board must subsequently provide notice of such a meeting as soon as possible by (1) posting written notice of the in the public place designated for regular and

special meetings and (2) notifying the two board-designated newspapers by telephone, telegram, or by delivering a written notice.

The attorneys at The Busch Law Group understand the impact that this public health crisis is having on school districts. We are always available to help board members and administrators develop and implement strategies to enable the continued and orderly operation of their respective school districts during these uncertain times. Please rest assured that we are constantly monitoring guidance and directives from federal, State and local officials and will continue to provide updates regarding issues of importance as this situation develops.

This communication does not create an attorney-client relationship. The information contained herein is provided for informational purposes only and should not be construed as legal advice. No recipients of this correspondence should act or refrain from acting on the basis of any content without seeking the appropriate legal or other professional advice on the particular facts and circumstances at issue from a licensed attorney. The Busch Law Group expressly disclaims any and all liability with respect to actions that may or may not be taken based upon any or all of the content of this correspondence.