



Remote Participation in School Board Meetings

On March 16, 2020, the Wisconsin Department of Justice, Office of Open Government prepared an Advisory entitled [“Coronavirus Disease 2019 \(COVID-19\) and Open Meetings.”](#) That Advisory addressed several issues under the Wisconsin Open Meetings Law, focusing heavily on public notice, public access, and the public’s ability to monitor such meetings. While many of the issues outlined in the Advisory are good advice, the Advisory did not address all issues that may be relevant to school boards when contemplating allowing remote participation in school board meetings. This Advisory did not address statutes governing the holding of meetings by school districts. Attached to this article is a [Legal Comment](#) written by our firm and published in the WASB’s Wisconsin School News in October 2018 addressing some considerations for school boards regarding conducting meetings remotely.

As noted in the Legal Comment, the law in this area is not clear. However, our firm’s interpretation of the applicable statutes is that in order for a school board meeting to properly begin, a quorum of school board members must be physically present at the site of the convened meeting. We understand many issues concerning the Coronavirus, including Governor Evers’s recent prohibition on having mass gatherings consisting of 10 or more people, may lead some individuals to suggest that these requirements do not make sense or should not apply because this is an emergency. That may turn out to be true. However, in the absence of authority from the legislature or courts to the contrary, we think this more cautious approach is still prudent. In particular, if a board meeting is not properly conducted, all actions taken at such meetings can be voided. This can lead to many other problems depending on what actions were taken by the board.

Specifically, with respect to remote participation in a school board meeting, a school board must first have a policy allowing such remote participation. Some school boards already have such policies. Other school boards may have policies which specifically prohibit remote participation. For those boards who have policies prohibiting remote participation, before allowing remote participation at a school board meeting, the board should suspend that policy for the current meeting and then rescind/repeal or amend a policy for future meetings permitting remote participation.

For districts who have no remote participation policy at present, they should consult any potential board policy on “emergency policies” and take whatever action is necessary under that policy in order to adopt a policy which would allow for remote participation. Once that policy on remote participation is adopted, then additional board members could participate remotely starting with that same meeting.

For example, a district with a 7 member board which presently has no policy allowing for remote participation could convene with 4 members physically present, adopt a remote participation policy effective immediately, and then allow participation by the other 3 members via phone, video, or other means for the remainder of the meeting.

Districts should take steps to observe “social distancing” at board meetings. Board members and attendees should strive to stay 6 feet apart and avoid physical contact such as handshaking. Special accommodations might need to be made for public attendance at meetings prior to the adoption of a remote participation policy. For example, chairs for members of the public should be spread 6 feet apart, or as far apart as practical. Once a remote participation policy is created, the Board could then limit public access to the meeting to remote access. This may require modification of your existing policies on public participation at meetings.

However, as noted in the Attorney General’s Advisory, there may be circumstances where remote participation would not be allowable for certain actions (hearings, or where certain documents may need to be reviewed and cannot take place remotely), but in many instances board business can be handled remotely. As noted in the Legal Comment and reiterated by the Advisory, closed session items may be particularly tricky and those may be best considered on a case-by-case basis with the assistance of legal counsel.

For advice on specific matters or on how to adopt a policy allowing remote participation, please consult one of our School Group Practice attorneys.

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