



Can We Ban The Public From Our School Board Meetings And Provide Remote Access Instead?

On March 13, 2020, Governor Doug Burgum declared a state of emergency in the State of North Dakota in response to the public health crisis resulting from the novel coronavirus (COVID-19). In the days that followed, the Governor furthered order the closure of both public and non-public schools to student until further notice. In addition to this, the CDC and the ND Department of Health have issued more restrictive guidance that recommends limiting events and gatherings to no more than 10 people. In their efforts to comply with these recommended restrictions, many boards are choosing to hold board meetings virtually. In addition, many districts are asking whether they can still hold a face-to-face meeting, but prohibit the public from physically coming to the meetings and instead, live-stream the meeting over the internet or provide access via Zoom. But, are these efforts in compliance with North Dakota's Open Meetings Law?

Public's Right of Access

The open meetings law recognizes that the public has a right to attend in person meetings of public entities, including public school boards. The law also requires a speakerphone or monitor be provided at a location specified in the notice for public access when one or more members of the governing body are participating by telephone, video or other electronic means. There is no statutory exception to this requirement for public health emergencies. There has also not been any suspension of this requirement by the Governor.

It is possible to hold a meeting of the board or a board committee via telephone or video conference to allow for a level of social distancing or remote attendance by board members and staff who might be considered more vulnerable to COVID-19 or are under an isolation order. However, the meeting must be properly noticed and accessible by the public in order to comply with the Open Meetings Law.



What Options Do Boards Have?

NDSBA recommends that boards consider the following, in consultation with their school attorney, for conducting board and board committee meetings during the COVID-19 pandemic:

- Consider televising or livestreaming (or using other means of electronic/digital broadcasting) your meetings during the period of emergency in order to allow remote access by the public rather than requiring the public to attend in person in order to have access. To be clear, televising, livestreaming, or other means of public broadcasting do not in and of themselves meet the public access requirement.
- Members of the public must still be allowed to attend public meetings in person at the location specified in the notice, even if no members of the board are physically present and only attending remotely. By providing alternative means of access, this may encourage the public to access the meeting remotely, rather than attend in person. Again, any time one or more board members are attending via telephone or video conference, the board must provide a speakerphone or monitor at the physical meeting location referenced in the notice.
- Boards that elect to utilize alternative remote means of access must still ensure that the means comply with open meetings requirements. For example, if using Zoom, board members should refrain from using the “chat” feature to communicate during the meeting if that feature is not viewable by the public in real-time. Such communication may be considered communications among a quorum or more board members (making it a ‘meeting’ under ND law) that is not accessible by the public.
- Consider offering remote access through multiple alternative means as not all members of the public will have access to the internet or have a comfort level with virtual meetings software/apps.
- Make sure your meeting notice contains the necessary call-in or log-in information to allow for remote access by the public, in addition to the information required by ND law (i.e. date, time, location, and topics to be considered).
- Consider whether the meeting should be canceled or postponed until the public health officials’ recommendations change. The decision whether to hold a meeting generally rests with the board. While some meetings (such as the annual meeting to be held in July or the public hearing on tax levies and budget) may be required by law, other meetings may be canceled or postponed.
- If you anticipate that members of the public will attend your meetings in person, consider the location of the meeting in advance to ensure that you can





provide a means of social distancing (i.e. keeping at least 6 feet away) for board members and the public while in attendance. This may also require the need for audio/visual equipment to ensure that all those in attendance can still observe and understand the discussion. Also consider having hand sanitizer or anti-bacterial wipes available for public use, if available.

The information provided in this guidance is for informational purposes only and does not constitute nor is it intended to be legal advice or opinion on a specific situation or how the information may apply to a given set of circumstances. NDSBA recommends that boards work with their school attorney regarding compliance with open meetings requirements during the current public health crisis.

For additional information regarding schools and the COVID-19 pandemic, please visit our website at www.nsdba.org.

