



BOARD MEETINGS AND THE COVID-19 PANDEMIC

On Thursday, March 12, Governor Mark Gordon declared a state of emergency in Wyoming and President Donald Trump made a federal emergency declaration in response to the nationwide coronavirus (COVID-19) pandemic. On Sunday, March 15, Governor Mark Gordon and Superintendent of Public Instruction Jillian Balow issued a recommendation that all Wyoming schools close and remain closed to students through at least April 3, 2020. By Monday, March 16, most Wyoming school districts had made decisions to close schools. On Thursday, March 19, Governor Gordon and the State Health Officer issued a public health order closing all public spaces in Wyoming, including all K-12 schools, through April 3, 2020. School officials should use this time to plan for education in the event of an extended COVID-19 pandemic.

Local school districts have been making determinations of how these recommendations and orders apply to their students and staff. Some have sought to maintain non-educational operations at schools and/or at administrative offices. Some districts have sent staff or some staff home during the closures. Districts have been making extraordinary efforts to feed students during these times of need. The situation remains fluid and new direction from local, state, and federal authorities has resulted in changes in operational practices.

For the needed planning and routine operations that will be taking place, school boards should be reminded of the legal requirements relating to meetings of the board, particularly in public health emergency situations. WSBA has gathered the following information for school boards to keep in mind as they move through the planning process:

What gatherings are covered by the open meetings law?

The Wyoming Public Meetings Act can be found at W.S. § 16-4-401, *et seq.* Meeting means an assembly of at least a quorum of the school board which has been called by proper authority of the board for the expressed purpose of discussion, deliberation, presentation of information, or taking action regarding public business. This includes work sessions or other gatherings of the board of trustees. **A meeting does include discussions where a quorum of members of the board are participating by phone or any other electronic communication** (either at the same time or in a series of individual contacts).

All meetings of the local school board are public meetings, open to the public at all times, except as otherwise provided in the Public Meetings Act. No action of the board shall be taken except during a public meeting following notice of the meeting in accordance with the Act. Action taken at a meeting not in conformity with the Act is null and void and not merely voidable. No meeting shall be conducted by electronic means or any other form of communication that does not permit the public to hear, read or otherwise discern meeting discussion contemporaneously. Communications outside a meeting, including, but not limited to, sequential communications among members of the board, shall not be used to circumvent the purpose of the Act.



All meetings must be noticed as provided by the Act and minutes must be taken. The meeting or assembly of the board means any communication, whether in person or by means of telephone or any other electronic or other communication, such that all participating members are able to communicate with each other contemporaneously. Emails or text messages between members of the board regarding public business may constitute a meeting and violate open meeting laws. Any doubt whether a gathering is a meeting should be resolved by complying with the open meetings law.

In light of the above, it is possible to hold a meeting of the board via telephone or video/web conference to allow for a level of social distancing or attendance by board members. However, the meeting must be properly noticed and accessible by the public. Any decision to hold the board meeting in public must comply with the Statewide Public Health Order Closing Public Spaces. When board members are attending via telephone or video conference, care should be taken to ensure public access to the meeting. WSBA also encourages boards to consider providing some option (*e.g.*, televising or livestreaming) to allow access by the public without necessarily requiring members of the public to attend in person. If the meeting is to be held in the public, members of the public should still be allowed to attend the meetings in person at the location specified in the notice. If the meeting is to be held over teleconference or video/web-conferencing, the public must be able to access the electronic conference.

Basic best practices for participating in a meeting by telephone including muting your microphone unless you are speaking and stating your name before prior to talking so that others on the call know who is speaking.

What is a special or emergency meeting?

A special or emergency meeting is called to address a specific issue(s). Action by the board is limited to the issue(s) for which the meeting was called, and the items set forth in the meeting notice. **Special meetings** may be called by the clerk upon the request of the board chair or upon the request of any two members of the board by giving verbal, electronic or written notice of the meeting to each member of the board and to each newspaper of general circulation, radio or television station requesting the notice. The notice shall specify the time and place of the special meeting and the business to be transacted and shall be issued at least eight (8) hours prior to the commencement of the meeting. No other business shall be considered at a special meeting. Proof of delivery of verbal notice to the newspaper of general circulation, radio or television station may be made by affidavit of the clerk or other employee or officer of the school district charged or responsible for distribution of the notice of the meeting. The school board may hold an **emergency meeting** on matters of serious immediate concern to take temporary action without notice. Reasonable effort shall be made to offer public notice. All action taken at an emergency meeting is of a temporary nature and in order to become permanent shall be reconsidered and



acted upon at an open public meeting within forty-eight (48) hours, excluding weekends and holidays, unless the event constituting the emergency continues to exist after forty-eight (48) hours. In such case the board may reconsider and act upon the temporary action at the next regularly scheduled meeting of the school board, but in no event later than thirty (30) days from the date of the emergency action.

How must notice of a meeting provided?

Wyoming law requires that notice of regular meetings of the board of trustees must be published in a newspaper of general circulation in the school district at least two times each year. Notice must be provided to anyone who has requested it. Members of the public may make an annual request to receive notice throughout the year. Newspapers, television station, and radio stations requesting notice shall be provided notice of all meetings. Unless otherwise noted below, notice must contain the **date, time, and location** of the meeting and the **business to be transacted**. It is not required by law but is good practice to make the following effort regarding notice:

- Notice may be published on the district's website.
- Notice may be posted at the district's main office AND posted at the location of the meeting, if held somewhere other than the district's main office.

Can the board hold executive session via teleconference or via video/web conferencing?

Yes. A board may hold an executive session via teleconference or video/web conferencing that is not open to the public provided it is for a reason provided by W.S. § 164-405(a). Minutes of the executive session must be maintained. The board should move to go into executive session. The motion must be seconded. The board may only go into executive session upon the vote of the majority of the members of the board. Care should be taken to provide for a separation of the public meeting and the executive session if held via teleconference or video/web conference. Only the business authorized for an executive session should be discussed in an executive session. No vote should be taken in an executive session. If the board will take action after the executive session, they must return to the public meeting. This can be tricky if done via teleconference or video/web conference.

May a board discuss emergency preparedness in executive session?

Likely not. Meetings of an entity subject to the open meetings law are presumptively open to the public. It is unlikely that the current situation relating to COVID-19 as it relates to school closures in Wyoming falls under any of the exemptions for executive session provided by law. It is possible that a particular topic to be discussed may require or permit a discussion in executive session. WSBA recommends that school boards consult with their district's legal counsel before closing any portion of a public meeting to ensure compliance with Wyoming law.



Ongoing Questions

WSBA, WASA, and other partners are currently researching a number of topics based on questions from superintendents and school board members, including potential waiver of minimum seat time requirements and remote-learning plans. Thank you for your patience as we work through these complex issues.

WSBA will continue to provide updated resources as they become available.