



CLIENT ALERT
March 16, 2020

CORONAVIRUS (COVID-19)
And
Open Meeting Requirements

As you are aware, Beard Legal Group has sent out prior Client Alerts regarding the impact of the Coronavirus. Outlined below is the first of a series of Client Alerts to be issued addressing topics to be aware of as we move forward in the first few days of school closing.

Remote/Virtual Board Meetings

We have already issued a Client Alert relative to the ability to conduct business remotely and/or vis-à-vis a call-in process under the auspices of the Pennsylvania Milk Marketing Board decision. Since that time additional guidance has been updated by the Pennsylvania Office of Open Records (OOR) on agencies' requirements under The Sunshine Act, while PSBA has likewise issued guidance on School Board actions that may be necessary to implement changes in current policies and practices.

As overall matter, the impact of the COVID-19 pandemic and related precautions issued by public health officials, combined with existing law permitting the suspension of certain requirements in extraordinary/emergency circumstances, permits public agencies such as School Districts to take action waive and/or alter requirements for physical, in-person attendance, and to proceed with remote or virtual meetings.

However, some means of two-way communication must be maintained in order to allow for a meaningful opportunity for public comment and access.

The guidance offered by the OOR, updated as of March 16, 2020, is as follows:

- **The Sunshine Act and the Coronavirus (COVID-19)** Following is the advice of the Office of Open Records.

Last updated March 16 at 11:03 a.m.

The Sunshine Act is clear that public meetings should be held at public buildings with open public participation whenever possible. If an official emergency declaration prevents that from happening, a meeting via teleconference, webinar, or other electronic method that allows for two-way communication is permissible in most circumstances. (Some agencies may be governed by laws which add requirements beyond those included in the Sunshine Act.)

However, it is important to note that any agency taking that step must provide a reasonably accessible method for the public to participate and comment pursuant to Section 710.1 of the Sunshine Act. That method should be clearly explained to the public in advance of and during the meeting.

Further, the Office of Open Records strongly recommends that any agency holding such a meeting record the meeting and proactively make the recording available so that a full and complete record of the meeting is available to the public.

35 Pa.C.S. 7501(d) allows agencies under a “declaration of disaster emergency” (here’s the [disaster emergency declaration](#) signed by Governor Wolf and [information about the declaration](#)) to suspend the need to comply with certain laws and requirements. In context, any such suspensions must be related to the emergency.

Many School Districts have public comment both before the agenda is voted on, based on comments on agenda items only, and then other public comment at the end of the meeting. Your District can continue this format or move to public comment only at the beginning of the meeting, however the Sunshine Act will require some means of two-way communication that enables the public to actually make comments to the Board, and vice versa.

Some examples of how to achieve this include the following, all of which will be dependent on the District’s available infrastructure and technology:

1. Allowing the public to call in via a publicly-released conference bridge number or to sign in and/or otherwise participate via applications such as Zoom, Skype, Facebook Live, or any other publicly available application that allows for two-way communication amongst its participants.
2. Maintaining availability and public access within the regular meeting location, in which speakerphone, Zoom, etc. is enabled in a fashion that allows the public to hear and potentially response or relay comments, with the Board Secretary and Superintendent and/or Board President present to convene and lead the meeting. Such efforts would necessarily require compliance with recommended distancing and limits imposed on the number of people permitted to enter (currently no more than 50 individuals present as recommended by the Center for Disease Control)
3. An additional option would be to consider offering those without the ability to call in or access the meeting via the internet to contact the District for further assistance, and to attempt to address any hardships on a case by case basis.

Please keep in mind that not everyone will have the technology required for public comment; however, this is an unusual and extraordinary time and as long as the opportunity is given to best of the District’s ability, in good faith,, the mere fact that a remote meeting may result in decreased access by the public will not in and of itself result in a violation of the Sunshine Act.

How to Implement Changes to Your Meeting Policy

Although Districts may have already received the attached guidance from PSBA addressing virtual meetings, we wish to emphasize the portion of the guidance addressing the temporary suspension of language in Policy 006.1, as promulgated by PSBA and adopted by many of our client Districts.

In conformance with PSBA’s guidance, and in addition to the motion language distributed in our previous Client Alert, we recommend that each School District review its Policy 006 or 006.1 to determine whether it authorizes participation via electronic means and if so, whether any limitations are imposed that may need to be suspended. If a School District does not have a Policy 006.1, a motion can, in fact, be passed that would allow the District to undertake remote meetings.

We anticipate most Districts will have Policy 006.1 but will need to temporarily suspend portions that otherwise require a majority of Board members to be physically present, or to submit the request to participated remotely in advance. An example Motion to include on the next Board meeting Agenda is provided below, and can be adjusted to address any/all language that appears to require temporary suspension.

“Motion to temporarily suspend all language in Board Policy 006.1 requiring or otherwise indicating that a majority of Board members must be physically present at a Board meeting when participation of any Board member occurs via electronic means and further suspending the requirement for 3 days’ advance written notice of electronic participation, due to the extraordinary circumstances and recommended precautions arising as a result of the COVID-19 pandemic, with said action to be made effective immediately, and to remain in effect until further notice.”

In addition to including this Motion on the Agenda please make note of the recommendations for ensuring public access as outlined in the attached guidance, to include attendance at the advertised meeting location by the Board Secretary and/or Board President, and likely also the Superintendent, in order to convene the Meeting. Ultimately we emphasize the importance of making two-way communication available to members of the public to some degree, whether on a projector screen or speakerphone, etc.

Additional Resources

As noted, the PSBA Guidance on Virtual Meetings is attached, and similar guidance published by OOR on Right to Know Law requirements and COVID-19 is provided below.

Please continue to monitor for additional client alerts to be forwarded in the future, and do not hesitate to contact us for previous copies that have been distributed.

- **The RTKL and the Coronavirus (COVID-19).** Following is the advice of the Office of Open Records.

Last updated March 16 at 11:14 a.m.

The Right-to-Know Law includes some very specific deadlines for agencies receiving a RTKL request. In the event that an agency implements a Continuity of Operations Plan (COOP) or takes similar steps in response to an official emergency declaration, the issue of how Right-to-Know Law requests will continue to be handled should be part of that plan. The agency should take steps to notify the public of the agency’s plan with regard to RTKL requests.

Should an appeal be filed with the Office of Open Records involving an agency which experiences a delay in its ability to respond to a RTKL request due to a bona fide emergency, the OOR will give serious consideration to that fact during its review of the appeal.

Should an agency or a requester be unable to meaningfully participate in an appeal due to issues related to the coronavirus (COVID-19), the OOR will give serious consideration to that fact during its review of the appeal. (If this applies to you and if at all possible, please alert the assigned Appeals Officer to this fact as soon as possible.)

As a reminder, if an agency is closed on a given day, that day is not a “business day” and does not count toward the five business days referenced in Section 901 of the RTKL, which governs the time period under which an agency must respond to a request. Likewise, where a final calendar day falls on a day an agency is closed, the deadline moves to the next business (i.e., open) day.

(Note that the deadline for filing an appeal, which is 15 business days after receiving a denial, relates to OOR business days.)

The OOR encourages both requesters and agencies to be considerate and patient while working with each other on RTKL requests during such emergencies.

More information from the PA Office of Open Records can be accessed at openrecords@pa.gov. Information about COVID-19 is available from the [Pennsylvania Department of Health](#) and the [Centers for Disease Control and Prevention](#).

While the Beard Legal Group Client Alert is designed to provide inform on topics of concern to Pennsylvania Public Schools, it is not legal advice and School Districts should contact their Solicitor, Labor of Special Counsel for advice related to their specific circumstances.