

COVID-19 Q&A



Please submit other questions to the SCSBA Policy and Legal Services Department at trichardson@scsba.org.



- **Can a board meeting be pre-recorded and shown at the regularly scheduled meeting time?**

- A pre-recorded meeting would not comply with the requirements of the Freedom of Information Act as it would be considered a closed meeting. Board meetings may be conducted using electronic means such as telephone conferencing, live streaming, or a combination thereof, but it must also be made available to the public to hear in real-time. For example, staff can be in the district office for the meeting and board members participate via teleconference while the meeting is streamed live. This method meets the requirements of the Freedom of Information Act while implementing recommended social distancing measures. If questions arise regarding how the district plans to conduct a meeting, please contact us. SCSBA is here to answer these questions and provide guidance.



- **How should requests for appeals before the board be handled?**

- Districts should consult with legal counsel as appeals may have statutory deadlines. For non-emergency appeals that are established through district policy (i.e. grievances, transfers, etc.), boards can suspend the relevant policy and hold the hearing after the state of emergency has ended. Regarding appeals for termination or non-renewals that have statutory deadlines, districts should proceed with the process as the state of emergency may pass before the hearing must be held. If the state of emergency is still in place at that time, the parties may agree to postpone the hearing, or the parties may agree to use electronic means to conduct the hearing. Again, please consult with district counsel.



- **If the school board adopts a continuing resolution for the budget, is a budget hearing required by June 30?**

- District policy (for most districts, this will be policy DB, Annual Budget) reads “in case the budget does not receive approval by June 30th, the board will adopt a continuing resolution based on last year’s operating budget until the budget can be approved.” Because this is a continuing budget maintaining the status quo, a budget hearing is not required until a proposed budget is presented after June 30th. For districts with outstanding lease purchase or installment purchase obligations, please contact bond counsel about fulfilling the requirements of such obligations before adopting the continuing resolution.

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- **If the board revises the budget after June 30 based on the General Assembly's budget, are districts required to hold another budget hearing?**
 - If the board elects to move forward with the budget process by estimating on the General Assembly's figures and holding a hearing based on those estimations, an additional budget hearing is not necessary. Information is key here, so SCSBA advises publicizing the uncertainty and emphasizing the changes, if possible, that will have to be made based on the actual figures. SCSBA also recommends posting the final budget.

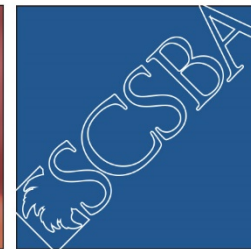
Elections

- **If a board member is up for re-election during this time, and the election has been suspended, does the board member retain his/her seat until the election can be held?**
 - The board member would hold over in that seat until the election can be held. The South Carolina Supreme Court opined that "in the absence of pertinent statutory or constitutional provisions, public [officers] hold over de facto until their successors are appointed or elected and qualify...as may be provided by law...and take the offices; but meanwhile the 'holdovers' are entitled to retain the offices." *Bradford v. Byrnes*, 221 S.C. 255 (1952).

Regularly Scheduled or Special Called Board Meetings

- **Can boards cancel regularly scheduled board meetings?**
 - Boards may cancel regularly scheduled board meetings if they are not necessary. However, if meetings are necessary for the district to conduct business during this time, boards need to determine the best method for holding a board meeting.

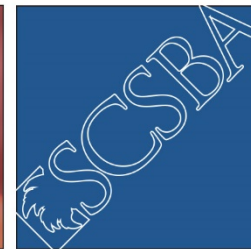
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- **How can a board cancel a meeting?**
 - A meeting may be cancelled by a majority vote of the board at a duly called board meeting; by a declaration of the board chair, or if the chair is unavailable, the vice chair, in consultation with the superintendent, when a significant event beyond the board's control renders attendance at the meeting unsafe or unreasonable in light of the circumstances; or when a quorum cannot be reached.
- **Who ultimately determines whether a board meeting will take place?**
 - The board determines whether it will meet. The board has granted the chair, and in some school districts other board officers, the authority to consult with the superintendent on setting the agenda for regularly scheduled meetings and special called meetings. However, a majority of board members can determine that a meeting needs to be called or cancelled.
- **How do you provide notice to the public that a meeting has been cancelled or rescheduled?**
 - The notice of cancellation or rescheduling should be sent out in the same manner in which the district would publicize notice of a meeting (i.e. send the notice to media outlets and post on the district's website).
- **Can a board schedule a special called meeting?**
 - A board may schedule special called meetings to deal with these unusual circumstances. If possible, notice should be given 24 hours prior to the meeting. The board will need to be able to identify the emergency if 24-hour notice cannot be provided.
- **Can a board hold a meeting that is not public?**
 - All meetings **must** comply with the Freedom of Information Act and **must** be accessible to the public. The Freedom of Information Act specifically prohibits closed meetings unless the board is entering into executive session for reasons specified by the law.

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- **Do boards have to meet in person during this state of emergency?**
 - Boards may opt to meet in person with essential staff, meet electronically using livestream or telephonic capabilities, or a combination thereof with some persons meeting at the physical location and others participating electronically. If telephonic methods are used, the public **must** be provided a call-in number, preferably one with the ability to mute the public participants.
- **Does the public have to be able to view the board meetings?**
 - The Freedom of Information Act only requires the public to be able to hear board members. Viewing the board meeting is not mandatory.
- **Do electronic meetings have to be recorded?**
 - The Freedom of Information Act does not require board meetings, electronic or in-person, to be recorded.
- **Should the public be allowed to attend in-person board meetings?**
 - The recommendations of the Center for Disease Control, the Governor's state of emergency declaration, and any city or county ordinances regarding COVID-19 should be followed. The board is authorized to limit in-person meetings to board members and essential staff, including security. The public will be able to access the meetings electronically via a livestream or telephonic call-in number.
- **Who is considered essential staff that should attend board meetings?**
 - This should be determined by the superintendent, after consulting with the board member(s) (i.e. board chair, board officers, etc.) who develop the meeting's agenda.
- **What liability will the district face for mandating essential staff attend board meetings?**
 - Please consult the district's attorney regarding any potential liability. The board is authorized, per the Governor's state of emergency declaration, to have essential staff report to work.

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- **How does a district with a significant number of board members ensure that only 10 people are meeting?**
 - The district may utilize both in-person and electronic methods to conduct board meetings to ensure that only 10 people are in the meeting at the same time.
- **Does the latest restriction of 3 or more people in the Governor's state of emergency declaration apply to school board meetings?**
 - The latest restriction applies to unauthorized gatherings, not those necessary to conduct business. However, the district may limit the number of individuals meeting in-person.
- **Should board meetings include executive session if the meeting is conducted electronically?**
 - Normally, boards should not utilize electronic means during executive session as there is no way to ensure complete privacy. However, during this state of emergency, boards may have to use electronic means for executive session in order to conduct business. The district will need to ensure that technology is in place to permit the board to "enter" executive session and to return to open session in a manner that provides privacy and allows the public continued access to the open portion of the meeting (i.e. a separate teleconference line for executive session that board members use while the public line is held open by the board's administrative assistant, etc.).

Budget Hearings

- **Will the suspension of public comments also apply to budget hearings?**
 - Without a waiver from the General Assembly or the Governor, budget hearings are required to be held so the public can share comments or concerns about the proposed budget. The suspension of public comments does **not** apply to budget hearings.

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- **How can districts have budget hearings if the public is not attending board meetings in-person during this state of emergency?**
 - The district will have to determine how best to handle budget hearings. SCSBA recommends publishing the budget during one meeting and opening a public comment period where the community can submit comments and questions to an email address, website, link, etc. At the end of the comment period, it may be prudent to post the comments and questions on a website, link, etc. so it is evident that the comments and questions were received and reviewed. At a second meeting to close the budget hearing process, the board may choose to accept additional comments and questions electronically. Providing multiple opportunities for the public to be “heard” is vital to ensure compliance with the budget hearing requirement during this state of emergency.

Minutes

- **Is there a waiver to the requirement to post minutes within 10 days after they have been approved?**
 - The General Assembly has not waived any requirements to the posting of minutes.
- **Who is required to sign board minutes?**
 - The recording secretary (i.e. administrative assistant) that the board has designated to dictate the minutes must sign the minutes acknowledging that the minutes recorded are true and accurate. No one else is required to sign the minutes. Therefore, the administrative assistant should be able to post the minutes remotely.

Policies

- **Has the two-reading requirement for new or revised policies been waived?**
 - The board should continue to follow the two-reading procedure established in board policy for adopting new and revised policies.

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- **Should the board revise policy BE (School Board Meetings) if meetings will be held electronically?**
 - SCSBA does not recommend revising policy BE at this time. Boards will need to establish the format of each meeting in the notice that is distributed and published on the district's website. Boards should also emphasize the method of public access (i.e. call-in information, etc.) in each notice if the meeting will be held telephonically.

- **Should the board suspend policy BEDH (Public Participation at Meetings)?**
 - The board should make a motion and approve temporary suspension of the associated policy (for most districts, this will be policy BEDH, Public Participation at Meetings) until the COVID-19 threat has ended.