



## Introduction

This FAQ provides guidance regarding the possible resumption of in-person school board director meetings and the intersection of the Healthy Washington – Roadmap to Recovery plan, applicable state guidance, and the Open Public Meetings Act (OPMA).

## Background

On January 11, 2021, the Healthy Washington — Roadmap to Recovery plan became the governing structure for Washington state's reopening efforts. This new plan divides the state into eight regions and uses a two-phase approach to reopening. As of February 15, 2021, all eight regions of the state are in Phase 2. However, it is important to remember that the phase designation is fluid and subject to change.

Regions in Phase 2 can resume in-person public meetings, subject to certain requirements and restrictions found in Proclamation 20-28.14, Open Public Meetings Act and Public Records Act Proclamations (December 8, 2020) and the state's Miscellaneous Venues – COVID-19 Requirements, which was revised on February 1, 2021.

For Phase 2 regions in general, public agencies such as school boards can now add an in-person component to their public meetings if they:

- Limit occupancy in each room to either 25 percent of capacity, or 200 people (excluding staff), whichever is fewer;
- Require that all attendees wear proper face coverings;
- Require that all attendees maintain six feet of physical distance from each other; and
- Sanitize the meeting rooms.

The Miscellaneous Venues guidance identifies 16 requirements, which the guidance calls General Requirements that a venue must satisfy before it can operate, including the four listed above. Some of these requirements may not apply to your board's public meeting or the venue in which it will be held. For example, if the board will not be serving food or beverages during its meeting, then it need not comply with the requirements applicable to food service.

Before holding an in-person meeting, please review all 16 General Requirements and evaluate the availability of meeting venues that allow for implementation of the applicable safety requirements. Work with your legal counsel, health and safety advisors, facility staff, and others to determine:

- Which of the 16 requirements are applicable to your board's meeting and venue;

- Whether there's a meeting venue where the board can implement the applicable safety requirements and;
- How your board will ensure that it is complying with those requirements.

And if your board cannot meet the applicable requirements, then the public meeting must be recessed until compliance is restored, or, if compliance can't be restored, then the public meeting must be adjourned to be continued another time.

## General Considerations

If your board decides that it will continue to hold its public meetings entirely remotely, you do not need to make any changes. However, if your board opts to resume in-person meetings, keep in mind that it must continue offering a virtual or remote participation option. Additionally, please consider the following:

- Can you arrange seating areas to maintain a six-foot physical distance?
- Does the venue offer multiple entrance and exit points that are accessible under the Americans with Disabilities Act (ADA) to avoid groups gathering?
- Does your district have a plan for registering attendees safely? Don't forget to retain registration information, such as sign-in sheets, for up to 28 days following the meeting.
- Do you have hand sanitizer and face coverings for attendees who may need them?
- Have you considered how staff will participate in the meeting? Can they do so safely?
- Does your venue have overflow areas with physically distanced seating, hand sanitizer, and real-time audio and video connections so attendees seated in an overflow area can still observe and participate in the meeting?
- Do you have a plan for sanitizing and disinfecting shared spaces and equipment, such as tables, podiums, and microphones, between users?

## Frequently Asked Questions

**Q:** Must school boards in Phase 2 implement an in-person option?

**A:** No. Offering an in-person option is subject to stringent requirements that many school districts might not be able to fulfill.

**Q:** Can school boards in Phase 2 hold meetings subject to the OPMA exclusively in-person?

**A:** No. The provisions for an in-person option in Proclamation 20-28.14 describe it as "an addition to hosting the remote meeting."

**Q:** Can members of the school board meet in-person while the public participates exclusively via remote methods?

**A:** No. A public body that has chosen to hold an in-person meeting must accommodate, to the extent practicable, those wishing to attend in-person. And any person who wants to attend a public meeting with an in-person component "must be able to do

so at a physical location meeting the [applicable requirements], either in a primary meeting location or an overflow physical location...” Proclamation 20-28.14.

**Q:** If offering an in-person option, can the school board restrict public comment period to either the in-person venue or the remote method exclusively?

**A:** No. Public comment periods have First Amendment protections. To the extent feasible, your interactions with the public should be equivalent, regardless of whether they are participating remotely or in-person.

**Q:** What is the standard for “feasible” when ensuring all attendees are pre-registered and retaining contact information for all attendees for 28 days?

**A:** The state doesn’t explain what it means by “feasible,” but it probably meant something that could be done without an unreasonable amount of time, effort, or money. Look for technological options your board may already have available to it, or that’s readily available, to pre-register attendees. Consider adding a registration widget or tool to the board’s website, using an easily available online form builder, such as Google form, having interested persons email a staff member, and other low-cost, easy-to-implement options.

**Q:** Does the contact information of members of the public who pre-register to attend a meeting become a public record, subject to disclosure?

**A:** Contact information provided as part of the pre-registration process is intended to assist public health authorities with contact tracing – the process of identifying and reaching out to people who may have been exposed to a person with COVID-19. Because that contact information is being provided for a public health purpose, it is not subject to disclosure under [the Public Records Act \(PRA\)](#). [Proclamation 20-64, et seq.](#) Governor Inslee extended [Proclamation 20-64, et seq.](#), until the COVID-19 state of emergency is either terminated or rescinded, whichever occurs first. [Proclamation 20-64.5 \(January 19, 2021\)](#).

To encourage individuals to share their contact information and assist public health authorities’ contact tracing efforts, [Proclamation 20-64, et seq.](#), exempts the following information from disclosure when collected for a public health purpose. A person’s:

- Name;
- Date of birth;
- Photograph;
- Telephone numbers;
- Email addresses;
- Mailing or residential addresses; and
- Other contact information, including but not limited to any information found in a customer, visitor, or employee log.

If it is feasible to do so, school districts should collect the information listed above to assist public health authorities. School districts should consider including in their pre-registration process several notices informing attendees that their contact information is not subject to disclosure, will only be used for contact tracing, and will

be destroyed after it is no longer needed. Doing so may encourage attendees to share their contact information, which will help public health authorities.

Attendees' contact information is only exempt from disclosure when collected for public health purposes related to the COVID-19 emergency. If a school district wants to use attendees' contact information for some other purpose – for example, to add attendees' email addresses to the news and announcements listserv – then it should request that information separately. For example, the district could provide a check box that says, “may we add you to our email list – Yes/No.”

Contact information collected to assist public health authorities' contact tracing efforts may not be disclosed “for any discretionary purposes not related to public health.” Proclamation 20-64. For that reason, school districts should consider treating attendees' contact information collected for public health purposes similar to confidential information. This would include implementing physical, electronic, and managerial safeguards to prevent unauthorized access to or use of attendees' contact information.

**Q:** Would contact information be subject to archiving requirements (lasting much longer than 28 days)?

**A:** In August of 2020, the Washington State Archives updated its [records management advice](#) addressing how long public agencies must keep logs, such as visitor logs, containing contact information when collected for the purpose of assisting public health authorities with contact tracing. Public agencies must keep contact information collected solely for contact-tracing purposes until no longer needed for that purpose and then destroy it.

Under the most recent [Miscellaneous Venues](#) guidance, public agencies hosting in-person meetings “should...retain contact information for all attendees for 28 days.” School districts should revise or update their records retention policies accordingly.

The State Archives has other resources to assist public agencies manage records concerning the COVID19 pandemic.

**Q:** Does “staff” include any district employee? Including those who participate in board meetings as cabinet members?

**A:** As used in [the Miscellaneous Venues guidance](#), “staff” are responsible for monitoring seating areas to ensure physical distancing is maintained between attendees, cleaning high-touch surfaces, and ensuring that cloth face covering and social distancing practices are enforced and practiced by all attendees. Members of a school district's cabinet participating in a board of directors meeting would generally not be expected to perform such tasks. Nor are they generally responsible for the tasks more commonly performed by employees who staff meetings of the district's board of directors, such as taking minutes, managing any audio-visual equipment, and supporting the directors and district administrators participating in the board meeting.

Another reason for concluding that cabinet members should not be included among the district employees staffing a board meeting is that, under the Miscellaneous Venues guidance, staff are not included in any occupancy calculations. To ensure that:

1. The number of people in the same room does not exceed either 25 percent of the room's capacity, or 200, whichever is fewer; and
2. That there is adequate physical distance among those participating in the meeting and those attending it

Therefore, the number of district personnel attending a board meeting who are considered to be "staff" who are excluded from the occupancy calculation should be kept to a minimum.

*As always, you might need to consult with your district's legal counsel to resolve specific questions or concerns.*

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WSSDA