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LEGAL UPDATE

March 20, 2020

To: Superintendents, Member School Districts (K-12)
From: Jennifer Henry, Assistant General Counsel *J.H.*
Subject: Governor’s March 17, 2020 Executive Order N-29-20 Further Revising Teleconferencing of Board Meetings Memo No. 18-2020

On March 17, 2020, Governor Newsom issued Executive Order N-29-20, which further relaxed Brown Act rules regarding local legislative bodies, such as school boards, holding meetings via teleconference. (Posted online at: <https://www.gov.ca.gov/wp-content/uploads/2020/03/3.17.20-N-29-20-EO.pdf>). It specifically revised and superseded paragraph 11 of his prior Executive Order N-25-20 of March 12, 2020, which allowed governing board members to attend board meetings by teleconference, provided that a physical location was available for public to attend.

As of March 17, 2020, the new teleconferencing rules set forth in the Executive Order N-29-20 allow all board members and staff to attend a district board meeting by telephone or teleconferencing, without requiring that the board make space available for the public to appear at **any** physical location, and without posting an agenda at each location from which a board member calls in, provided that:

- The public may observe and address the meeting by telephone or other electronic means (e.g. Zoom, “telephonic call-in”, etc.);
- The district includes in the meeting’s properly posted notice and agenda the procedure by which the public may observe the meeting and offer public comment; and
- The district uses a procedure for receiving and swiftly resolving requests for disability accommodations or modifications.

Each state or local body must still give advance notice of each public meeting, according to the timeframe otherwise prescribed by the Brown Act, and using the means otherwise prescribed by the Brown Act, as applicable. Pre-existing Brown Act notice and agenda requirements, which still remain in effect, require 72 hours for a regular board meeting, 24 hours for a special board meeting, or



less than 24 hours for an emergency board meeting. (For a summary of the special and emergency board meeting notice and agenda requirements, see our Legal Update 13-2020, sent on March 13, 2020).

The Executive Order urged all state and local governing bodies to “use sound discretion and to make reasonable efforts to adhere as closely as reasonably possible to the provisions of ... the Brown Act ... in order to maximize transparency and provide the public access to their meetings.”

The Executive Order responds to an ever-changing landscape in which first counties, and now the state, have instituted a “shelter in place” order, yet public agencies must still hold meetings to perform their essential functions. We are aware of school districts that are planning to use internet streaming platform Zoom to allow its governing board members and staff to attend virtual board meetings. Please check with any teleconferencing or streaming platform you use to ensure that the public has call-in/log-in information that is separate from the board members’ and staff’s log in, which enables the public to observe the meeting and participate in public comment, without being allowed to interrupt board member presentation and discussion.

Please contact our office with questions regarding this Legal Update, or any other legal matter.

The information in this Legal Update is provided as a summary of law and is not intended as legal advice. Application of the law may vary depending on the particular facts and circumstances at issue. We, therefore, recommend that you consult legal counsel to advise you on how the law applies to your specific situation.

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