



## IMPORTANT CHANGES TO PUBLIC MEETINGS AND RECORDS LAWS IN RESPONSE TO COVID-19

### May 5, 2020 Update:

On the evening of May 4, 2020, the leaders of the Washington State Senate and House of Representatives [agreed](#) to extend the changes in Governor Inslee's Proclamation 20-28 regarding the Open Public Meetings Act (as discussed below) through May 31, 2020.

The legislative leaders also [agreed](#) to extend Proclamation 20-28's changes to the Public Records Act (as discussed below) through May 31, 2020, except that the Proclamation's waiver of RCW 42.56.520(1)'s five-day-response requirement was only extended through May 11, 2020.

Governor Inslee issued [Proclamation 20-28](#) waiving certain requirements of Washington's Open Public Meetings Act (OPMA), Chapter 42.30 RCW, and the Public Records Act (PRA), Chapter 42.56 RCW, which normally necessitate in-person meetings or contact. The temporary changes to the OPMA and PRA pursuant to this Proclamation will remain in effect until midnight on April 23, 2020, subject to further changes and/or extensions by the Governor. This email summarizes the key components of Proclamation 20-28 as relevant to Washington school districts.

### Changes to the Open Public Meetings Act

First, school districts are prohibited from conducting a board of directors or other meeting that is subject to the OPMA unless the meeting is (1) not conducted in-person and (2) instead conducted telephonically. Districts are encouraged to provide additional remote-access options (beyond the minimum telephonic access) through other electronic means. In other words, districts may not hold an open public meeting that people physically attend. Contrary to previous guidance from the Attorney General's Office, districts also may not provide a speakerphone or similar access point for people to physically congregate around to access an open public meeting. Any remote access methods used must allow for all persons attending the meeting to hear each other at the same time. (Note that while many districts offer an opportunity for public comment during meetings under board policy and procedure, doing so is not required by law.) In providing for remote access to open public meetings under this Proclamation, the Attorney General's Office recommends posting call-in or login information on meeting agendas, on the district's website, and via other means, such as media releases and social media.

Second, school districts are prohibited from taking "action," as defined in the OPMA, unless such action is "necessary and routine" or is necessary to respond to the COVID-19 outbreak and the current public health emergency. The Proclamation does not define what constitutes "necessary and routine" action. However, the Governor's Deputy General Counsel has informally opined that individual agencies are in the best position to determine which of its actions are "necessary and routine," suggesting that agencies are vested with some level of

discretion in making that determination. At a minimum, permissible action includes approval of payroll and vouchers, as well as agreements with labor partners regarding COVID-19 impacts. Given the lack of clarity regarding the meaning of “necessary and routine” action, a district should consult with legal counsel regarding whether its board of directors may act on particular matters at open public meetings during the period that this Proclamation remains in effect. In addition, the Attorney General’s Office is expected to issue updated guidance on OPMA requirements in the wake of this Proclamation. That guidance may provide further interpretation of the contours of “necessary and routine” action.

Third, special meeting notices no longer need to be physically posted at a school district’s principal location or a special meeting’s location. Similarly, adjournment notices need not be physically posted at the site at which a meeting was held.

### **Changes to the Public Records Act**

First, the Proclamation suspends the normal PRA requirement that school districts respond to public records requests within five business days. However, the general requirement that school districts respond to requests “promptly” remains. As a best practice, school districts should continue to issue so-called “five-day letters” within five business days when feasible. When it is not possible to comply with the typical five-business-day timeline, such letters should be sent within a reasonable time.

Second, school districts are no longer required by the PRA to make their facilities open to requestors for the in-person inspection or copying of public records. Consistent with other proclamations made by Governor Inslee, school districts should not conduct in-person business with requestors, such that any in-person appointments with requestors related to public records requests should be canceled, and any communications should be made using remote means, such as telephone, mail, or email.

If you have any questions about how Proclamation 20-28 affects your school district, we encourage you to contact any attorney on our team.

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