



September 2022

AB 2449: MORE TELECONFERENCING FLEXIBILITY BEGINNING JANUARY 1, 2023

As you know, the Brown Act rules permitting board members to remotely participate in board meetings are somewhat cumbersome and were loosened temporarily under the Governor's executive orders during the COVID-19 pandemic. Some of the flexibility was incorporated into AB 361¹, which comes into play during a proclaimed state of emergency when certain other factors are in place. Beginning January 1, 2023, Assembly Bill 2449 will allow limited teleconferencing outside the context of a state of emergency without the usual posting requirements, and in some cases on short notice, provided a series of other rather complex safeguards are observed. Traditional teleconferencing is still available.

How do board members participate remotely under AB 2449?

Board members must participate through both audio and visual technology.

How many board members can participate remotely?

Less than a quorum (majority) can participate remotely. This means no more than one member for a three-member board, no more than two for a five-member board, and fewer than three for a seven-member board.

Must a majority participate from within district boundaries?

Yes, just as with "traditional" teleconferencing, a quorum must participate from within district boundaries. In fact, under AB 2449 a majority must participate from a single physical location, open to the public, within the district. On a five-member board, where three members participate in the boardroom in a typical meeting, two could participate remotely from any location.

Must the public be given access to the remote participation locations?

No. Unlike traditional teleconferencing where the public must have the ability to observe the meeting and comment from the board members' remote locations, AB 2449 does not require this access. However, electronic remote access must be provided as described below.

When must a request to participate remotely be made?

With traditional teleconferencing, a request to participate remotely must be made before the agenda is posted so the relevant details can be included with the posted agenda. Under AB 2449, the

¹ See the SLS bulletin on AB 361 updated on October 27, 2021, [Beyond the Executive Order](#).

requests can be made “at the earliest opportunity, including at the start of a regular meeting” or “as soon as possible” depending on the circumstances (see the next item).

What justifications are required for a request to participate remotely?

There are two justifications for a request to participate remotely.

- **Just Cause.** A member can request to participate remotely by asserting “just cause” and providing a general description of the circumstances requiring remote participation. Just cause is defined as “a childcare or caregiving need of a child, parent, grandparent, grandchild, sibling, spouse, or domestic partner . . .” requiring remote participation, a contagious illness preventing attendance, a need relating to a physical or mental disability, as defined, or travel on official business for the district or another state or local agency.

The request must be made “at the earliest opportunity possible,” and the justification can be used only twice in a calendar year.

- **Emergency Circumstances.** A member can request participation due to emergency circumstances. An emergency circumstance is defined as a physical or family medical emergency that prevents in-person attendance.

The request must be made “as soon as possible” and must be approved by the board. The board must request a general description of the circumstances, which need not exceed 20 words, and cannot require the member to disclose a medical diagnosis or disability or personal medical information exempt under existing law.

It is recommended that the action to approve the emergency remote appearance be placed on the agenda whenever time permits; when time does not permit, the board can take action on the request at the beginning of the meeting even if not agendized.

With either justification, before any action is taken, the member requesting remote participation must publicly disclose whether anyone 18 years of age or older is present with the member in the room at the remote location, and the nature of the member’s relationship with the person.

Are there limits on the number of times a board member can participate remotely under AB 2449?

Yes. As noted above, a “just cause” request can only be used twice per calendar year. Neither justification can be used to support remote participation for more than three consecutive months or 20 percent of the regular meetings within a calendar year.²

Must the public be permitted to participate remotely when board members are permitted to do so?

Yes. The agenda must identify and include an opportunity for the public to address the board via a call-in option (this must include two-way telephonic service **together with** live webcasting of the meeting³) or internet-based service option (via a two-way audiovisual platform⁴), in addition to the ability

² If the board meets fewer than ten times per year, the justification cannot be used for more than two meetings.

³ “Two-way telephonic service” means a telephone service that does not require internet access, is not provided as part of a two-way audiovisual platform, and allows participants to dial a telephone number to listen and verbally participate. “Webcasting” means a streaming video broadcast online or on television, using streaming media technology to distribute a single content source to many simultaneous listeners and viewers.

⁴ This means an online platform providing the ability to participate in a meeting via both an interactive video conference and a two-way telephonic function.

to participate at the in-person location. Since the request to participate remotely could come after agenda posting, districts may want to consider posting on the district website information on how to remotely access the meeting promptly after the district is notified of a “just cause” participation, or when an emergency remote participation request is approved by the board.

Public participation must be made available in real time; advance submission of comments cannot be required.

As with participation under AB 361, there are requirements to implement a procedure for receiving and swiftly resolving requests for accommodation for individuals with disability, and the duty to conduct meetings consistent with applicable civil rights and nondiscrimination laws.

How is the public made aware of the opportunity to comment remotely?

The board must give notice of the means by which the public can access the meeting and offer public comment on the agenda and “in each instance in which notice of the time of the teleconferenced meeting is otherwise given or the agenda is otherwise posted.” Typically, this will mean providing a link to the two-way audiovisual platform, or the telephone access number, together with a link to the webcast of the meeting.

What if electronic participation is disrupted?

In the event of a disruption that prevents the district from broadcasting the meeting, or a disruption within the district’s control preventing the public from commenting remotely, the board can take no further action on agenda items until public access is restored.

AB 2449 modifies the Brown Act at Government Code sections 54953 and 54954.2. The provisions of AB 2449 described in this bulletin remain in effect until January 1, 2024, at which time AB 2449 is to be replaced by a successor version **which continues these flexibility measures until 2026 but eliminates the AB 361 provisions operative during a proclaimed state of emergency.** A comparison of traditional and AB 2449 teleconferencing is attached.

Please call our office if you have questions or need further information. Happy teleconferencing!

- Grant Herndon

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SCHOOLS LEGAL SERVICE	
Comparison of Traditional and AB 2449 Teleconferencing Requirements	
“Traditional” Teleconferencing	AB 2449 Teleconferencing
Board members can participate via electronic connection (audio or video) from different locations, provided a quorum participates from locations within district boundaries	Less than a quorum of the board can participate remotely when a quorum participates from a <u>single physical location</u> open to the public and within district boundaries.
Agendas must be posted at remote teleconferencing locations for the full posting period.	Not required.
Teleconference locations must be identified in the meeting notice and agenda.	Not required.
Teleconference locations must be accessible to the public.	Not required.
A board member must request the ability to participate remotely, before the agenda is required to be posted, so the relevant information can be included on the posted agenda.	A board member wishing to participate remotely for “ <u>just cause</u> ” must notify the board “ <u>at the earliest opportunity possible</u> , including at the start of a regular meeting.” A request to participate remotely due to <u>emergency</u> circumstances must be made “ <u>as soon as possible</u> ” and requires board approval . See discussion of special disclosure and approval requirements and limitations on the number of times the justifications can be used.
All votes must be taken by roll call	Roll call votes are not specifically required.
The agenda must provide an opportunity for the public to address the board directly (provide public comment) at each teleconference location.	There is no requirement for direct access from the remote teleconference location. However, the agenda must identify and include an opportunity for the public to address the board via a <u>call-in option</u> or <u>internet-based service option</u> , and at the in-person location. Advance submission of comments cannot be required.
There are no specific requirements concerning the audio or visual format for the teleconference, so long as members of the public can address the board directly from the remote physical teleconference locations.	The internet-based service option must be a two-way audiovisual platform. The call-in option must include two-way telephone service together with live webcasting of the meeting. Before any action is taken, the member must publicly disclose whether anyone 18 years of age or older is present with the member in the room at the remote location and the nature of the member’s relationship with the person.
The Brown Act does not address the consequences when the audio or visual connection at a remote participation site is disrupted and members of the public are prevented from offering public comments.	In the event of a <u>disruption</u> that prevents the district from broadcasting the meeting, or a disruption within the district’s control preventing the public from commenting remotely, the board can take no further action on agenda items until public access is restored.