

Maryland PTA Advisory – PTA Operations during COVID-19 Emergency

The government’s response to the novel coronavirus has included public safety measures, such as school closures and bans on gatherings of ten or more people. Maryland PTA has received many inquiries on how to handle items of business, such as contractual agreements, annual elections, and general membership meetings in light of these public safety measures. This advisory is Maryland PTA’s official position. In all cases, constituent associations¹ must *first and foremost* follow the law, including adherence to public safety measures announced by government officials.

On March 5, 2020, the Governor declared a State of Emergency due to the existence of a catastrophic public health (COVID-19) emergency. On March 30, 2020, the Governor issued an Executive Order, prohibiting large gatherings and events; closing senior centers, all non-essential businesses, and other establishments; and, requiring all persons to stay at home. Additionally, the State Superintendent of Education closed Maryland public schools March 16 through May 15, 2020. These actions by Maryland officials effectively suspended operations for constituent associations.

This purpose of this advisory is to help constituent associations navigate the often conflicting legal requirements necessary to remain compliant during the COVID-19 emergency. It will address several areas that constituent associations must consider during limited or suspended operations, is based on Maryland law and PTA bylaws, and shares resources to help PTA leaders determine the best course of action during these unprecedented times. Because it is unknown when the COVID-19 emergency will end, it is important for PTA leaders to regularly check the status of State and local operations and communicate with relevant stakeholders.

Membership Meetings. Constituent association bylaws designate the number of general membership meetings the association will have per year and the month of the annual meeting. Maryland law declares the purpose of an annual meeting is to elect directors and transact other business within the powers of the association. Constituent associations must hold the annual meeting at the time and in the manner provided in their bylaws.

The Maryland PTA Bylaws, Article XVI permits constituent associations to conduct meetings of the board of directors, executive committee, and other committees electronically. Constituent associations, however, may **NOT** conduct general membership meetings or an annual meeting electronically. Maryland PTA will not provide assistance, advice, troubleshooting, or compliance resolution regarding electronic membership meetings or electronic voting. Constituent associations are advised to keep the following general principles regarding membership meetings in mind:

1. All members on record must be given notice and instructions on how to participate.
2. All members must have an opportunity to participate, regardless of socioeconomic status or access to internet.

¹ The term “constituent association” includes a council PTA, PTA, and PTSA chartered under the laws of the State of Maryland and affiliated with Maryland PTA.

3. The right to a secret ballot must be preserved.
4. Adequate internal controls must be established in order to provide reasonable assurance that an election is conducted fairly, honestly, and properly, and that only eligible members cast votes.
5. An audit trail or record of votes must be maintained for a reasonable time in case of a contest or challenge to the results.

Under Maryland law, the failure to hold an annual meeting does not invalidate a constituent association's existence or affect any otherwise valid corporate act. Accordingly, the failure to hold a general membership or annual meeting because of the COVID-19 emergency will not make a constituent association out of compliance with Maryland PTA standards of affiliation.

Even though general membership and annual meetings are not permitted during the COVID-19 emergency, constituent associations are permitted to host an online or electronic program/event, so long as official votes on items of business are *not* taken. Maryland PTA encourages constituent associations to communicate regularly with members during this time. Share information from federal, state, and local leaders, National PTA, and Maryland PTA that will be helpful to families and children as we cope with the limitations and restrictions imposed because of the pandemic. PTA leaders should maintain open lines of communication with members and notify Maryland PTA of any assistance needed from the state leaders. Maryland PTA remains operational and available to advocate for children and families with elected and emergency management officials.

Elections. Electronic membership meetings and annual elections are not authorized by Maryland PTA. Additionally, the Maryland PTA Bylaws, Article VI, Section 5 states, "The bylaws of each constituent association shall prohibit voting by proxy, mail (including by electronic transmission), or absentee." Accordingly, constituent associations may **NOT** hold electronic elections during the COVID-19 emergency.

Maryland PTA appreciates the wording of the constituent association bylaws establish a definite term for elected officers. The bylaws also permit elected officers to hold over in their positions "until their successors assume their official duties." According to the current edition of *Robert's Rules of Order Newly Revised*, this phrasing is used "to ensure the continued service of officers in the event, for example, of public emergency." This means, as it currently stands, if a constituent association is unable to hold a general membership meeting at which officers are elected, the current officers will remain in office until it is legal to hold an election and the newly elected officers assume their duties.

The current situation is evolving daily. Maryland PTA suggests constituent associations who are scheduled to hold elections this year continue to complete the nominations, election, and transition processes:

- If not yet done, appoint a nominations committee.
- Recruit and qualify candidates to run for elected positions.
- Prepare an election meeting notice and ballot.

- Draft the general or annual meeting agenda in anticipation of announcing a slate of candidates.
- Appoint an elections committee, if necessary.
- Review and approve campaign rules, process, and material.
- Outgoing officers should prepare continuity files, binders, or folders for incoming officers.
- Members interested in running for office should be given information regarding PTA training and resources. Training resources are available at <https://mdpta.org/training/>.
- The board of directors should review constituent association bylaws and understand how to fill a vacancy should one occur before elections can be held.

PTA Membership. The membership year is July 1 through June 30. Local PTA/PTSAs must account for membership cards provided by Maryland PTA, either through payment of membership dues or return of unused cards. To help Maryland PTA provide an accurate accounting of its membership to National PTA and other governmental agencies, it is important that all constituent associations pay the outstanding balance of membership fees due for the current year or return unused membership cards to the Maryland PTA office.

Dues are calculated based on the number of membership cards that were issued to your local PTA/PTSA (\$4.25/per card). All unused cards must be returned to Maryland PTA by June 1, 2020, or the local PTA/PTSA balance will reflect the total number of cards issued. Local PTA/PTSAs must pay membership dues by April 30, 2020, to be considered for 2019-2020 Membership Awards. (Current membership cards expire on September 30, 2020.)

Insurance Renewal. The current insurance year will end at 11:59:59 pm on June 30, 2020. Maryland PTA negotiates insurance coverage and rates for all constituent associations. Maryland PTA is changing insurance broker from Knight Insurance Services to Association Insurance Management, Incorporated (AIM). As of April 6, 2020, AIM handles all policy service needs, e.g., certificates of liability, approved vendors, additional insureds, coverage questions, etc.

All constituent associations must complete an insurance renewal application and pay the premium by July 1, 2020 to AIM. AIM will transmit renewal applications to all constituent associations via electronic mail and first-class, U.S. postal mail on or about May 1, 2020. The premium for basic insurance coverage from July 1, 2020 to June 30, 2021 will be \$226. Basic coverage includes:

- \$2 million general liability limit per constituent association
- \$1 million directors & officers limit per constituent association
- No additional costs for or prohibitions of inflatables, fun runs, and other previously excluded activities

For the first time, each constituent association will have the ability to independently add or upgrade coverage as needed, such as property coverage or social media liability.

Prior to July 1, 2020, you will receive an updated Risk Management Guide. Aside from broker contact information, please continue to follow all requirements of the 2019-2020 guide until July 1, 2020. More information about AIM coverage can be found at <https://mdpta.org/insurance/>.

Tax Returns and Other Filings. Every constituent association is a nonprofit association chartered by the State of Maryland and a public charity under Section 501(c)(3) of the U.S. Internal Revenue Code. Accordingly, constituent associations must file an informational, federal income tax returns (Form 990). Additionally, to remain in Good Standing with the State of Maryland, each constituent association must complete the required annual filings. Failing to file required State reports risks forfeiture of your charter and the ability to conduct business legally in the State. To determine whether your constituent association is in good standing with Maryland, go to <https://egov.maryland.gov/BusinessExpress/EntitySearch>.

Internal Revenue Service (IRS) Notice 2020-23 extended the deadlines to FILE and PAY federal income taxes to July 15, 2020. With respect to the Form 990 (Exempt Organization Business Income Tax Return), if that Form is due to be filed on April 15, then the due date has been postponed to July 15. For constituent associations whose Form 990 is due on or after May 15, that due date has not been postponed. For more information, go to <https://www.irs.gov/coronavirus/coronavirus-tax-relief-for-businesses-and-tax-exempt-entities>.

Likewise, Maryland extended the deadlines to FILE and PAY State income taxes to July 15, 2020. The deadline to submit 2020 Annual Reports and Personal Property Tax Returns for businesses has been extended automatically to July 15, 2020. For more information on filings required by the Maryland State Department of Assessments and Taxation, go to <https://govstatus.egov.com/md-coronavirus-business>.

Constituent association bylaws require copies of financial filings to be submitted to Maryland PTA within 30 days of filing. Accordingly, provide a copy of the 2020 Annual Report and Personal Property Tax Return to the Maryland PTA office no later than August 15, 2020. A copy of your Form 990 should be provided to the Maryland PTA office no later than November 15, 2020 (the extension deadline for constituent associations with a fiscal year ending December 31, 2019). See <https://www.irs.gov/charities-non-profits/return-due-dates-for-exempt-organizations-annual-return> for federal income tax return due dates for exempt organizations.

Under the Maryland Solicitations Act, a charitable organization soliciting in Maryland must file documents with the Office of the Secretary of State before it begins soliciting. The type of registration required depends upon the level of charitable contributions received by a charitable organization. The Maryland Solicitations Act also requires annual updates. The Annual Update of Registration must be filed within six months of the end of your unit's fiscal year. However, extensions for charitable registration have been automatically granted to an organization with a current registration. Constituent associations that solicit contributions from their members only might be exempt from registration and annual updating requirements. See <https://sos.maryland.gov/Charity/Pages/Registering-Charity.aspx> for more information about registering a charity and the automatic extension deadlines.

Financial Audit/Review. Constituent associations must complete an annual financial review or audit. The financial review or audit examines a constituent association's financial records and transactions to ensure that receipts have been properly accounted for and expenditures have been properly authorized and recorded, in conformity with PTA Bylaws, standing rules, and budget limitations. Council PTAs must submit a copy of their annual financial report, reviewed by an auditor or auditing committee, to Maryland PTA within 120 days following the end of their fiscal year. Local PTA/PTSAs must submit a copy of their annual financial review to Maryland PTA before October 31, 2020. See the *Maryland PTA Cash Encounters Financial Management Guide 2019-2020*, for more information about completing a financial audit or review.

Bylaws. At its 104th annual convention, Maryland PTA adopted wholly revised bylaws. Consequently, the Maryland PTA bylaws committee must review and update the template bylaws for constituent associations. Until the new templates are approved by the Maryland PTA board of directors, constituent associations are authorized to continue operating under their most recently approved bylaws, even if it is time to provide an updated version to the Maryland PTA office. Once the COVID-19 emergency ends, additional guidance regarding constituent association bylaws will be provided. If a constituent association has questions about when its bylaws were last approved or needs a copy of its approved bylaws, please contact the Maryland PTA office at office@mdpta.org or (410) 760-6221. (Please ensure you have submitted a current Local Officer Contact form when requesting a copy of the bylaws.)

Contracts. Constituent associations enter into a variety of contracts in the ordinary course of business. When a constituent association enters into a contractual arrangement, it assumes the responsibility to conform to and abide by the terms and conditions of the contract. The COVID-19 emergency might have made it difficult to perform the contractual terms and conditions of a contractual agreement.

Under general contract law, the COVID-19 emergency could be called a force majeure. A force majeure refers to the occurrence of an event which is outside the reasonable control of a party and which prevents that party from performing its obligations under a contract. Arguably, because of the Executive Order closing non-essential businesses, prohibiting gatherings of more than 10 persons, and requiring Marylanders to stay at home, performing contractual obligations has become difficult, if not impossible, for many parties.

Maryland PTA recommends constituent associations consider the following:

1. Review all existing contracts. The force majeure clause may be triggered. Review the dispute resolution clauses, deposits, prevailing attorney fees, and method and timing of notice requirements to understand the details governing each agreement.
2. Calculate your potential liability for each agreement and prepare a summary. Your liability may be a range for each contract, so document what the minimum and maximum obligation might be.
3. Determine whether you may terminate or cancel the contract. Figure out whether the other party to the contract would be entitled to a refund or payment, or how much your constituent association would lose if the contract were canceled.

4. Explore whether you could perform the contract through virtual or electronic means, or reschedule.
5. Determine a “go or no go” date. This will assist you in making a timely decision and developing a communications plan to execute once the decision is made.
6. Develop a message sequencing strategy for your communications plan.
7. If possible, have an attorney review draft notifications before sending them. The Maryland Access to Justice Commission has information to address legal questions arising from the COVID-19 emergency at <https://www.mdaccesstojustice.org/covid-19>.

If a vendor or party alleges a breach of contract against a constituent association, insurance protection against the claim might exist. Contact AIM at (214) 360-8718 or mdpta@aim-companies.com to determine the availability of insurance coverage for an alleged breach of contract based on postponing or cancelling an event due to the COVID-19 emergency.

Constituent associations will need access to official records and other resources to complete compliance obligations during the COVID-19 emergency. If a constituent association stores records, materials, or resources at a school, the president, secretary, or treasurer should arrange with the principal to retrieve them as soon as possible.

Maryland PTA understands the challenges of leading, especially now. We appreciate the dedication, commitment, and fortitude of all PTA leaders and members. To maintain the strength of PTA, we must exercise due diligence and care over our operations and resources, even though we are unable to meet and vote as usual. Please contact the Maryland PTA office if we can provide support during this stressful period or help prevent irreparable harm to your constituent association. Together, we will survive this pandemic!