

NYSSBA Sample Policy 2325

() Required

(X) Local

(X) Notice

VIDEOCONFERENCING OF BOARD MEETINGS

NOTE: Chapter 56 of the Laws of 2022 amended the Open Meetings Law, revising the requirements for meeting via videoconference by adding new section 103-a. This section is effective July 1, 2024 (unless it is extended or made permanent in the future). Until August 14, 2022 (when the current pandemic-related virtual meeting authority expires), boards can continue to meet remotely without permitting in-person public access, but must permit the public to view or listen to the meeting, and must record and later transcribe the meeting. The amended law also provides that during a declared emergency, boards may meet virtually without the need for in-person access.

To allow Board members to participate via videoconferencing under extraordinary circumstances pursuant to §103-a, Boards must adopt a resolution after holding a public hearing and must maintain an official website. Note that the Board's resolution can be applicable to the Board and its committees or subcommittees, or may specify that each committee or subcommittee may make its own determination. The law also requires the establishment and posting of written procedures governing participation by videoconferencing. Such procedures, which could take the form of this policy, or a separate document attached to it, should be tailored to your district's process.

The NYS Committee on Open Government has issued guidance on this topic: <https://opengovernment.ny.gov/system/files/documents/2022/05/chapter-56-of-the-laws-of-2022-guidance-document-05-20-22.pdf>. Based on this guidance, it is our understanding that, whether or not the Board adopts a resolution to allow videoconferencing under extraordinary circumstances, Board members can participate via videoconferencing as was permitted by the Open Meetings Law prior to the enactment of §103-a, i.e., where all locations, including those where Board members participate by videoconference, must be open to members of the public.

I. Videoconferencing – Locations Open to the Public

NOTE: This section addresses the type of remote participation which was in place prior to the enactment of §103-a, and which is still in effect. This type of remote participation does not depend on a Board resolution. The first paragraph reflects the Committee on Open Government's Advisory Opinion #5575 addressing the confidentiality of information discussed during executive session. In that opinion, the COOG also advised that if a district has the technological capability for a member to participate by videoconferencing, then the Board may not put in place a blanket prohibition on it, and that multiple requests should be accommodated if feasible. Any restrictions a Board sets on the number of times a Board member participates by videoconferencing in a given time period must be reasonable.

NYSSBA Sample Policy 2325

Members of the Board of Education may attend Board meetings by videoconference, if their location is open to the public, and appropriate public notice has been given as outlined in policy 2340, Notice of Meetings. Such members may participate in all aspects of the meeting, including establishing a quorum, discussions, and voting. Board members participating via videoconference must disclose the total number of people in attendance at that location. To promote the highest degree of confidentiality during executive session, such Board members must sign an affidavit that the only people, if any, present in the room during the executive session were authorized to be there.

NOTE: The Open Meetings Law requires boards to make all reasonable efforts to ensure that meetings are held in facilities that permit barrier-free access to the physically handicapped, and are held in an appropriate facility that can adequately accommodate members of the public who wish to attend the meeting. The COOG Opinion #5575 advises that, for local municipalities, this applies to “primary” meeting locations, not remote locations.

The district will make all reasonable efforts to ensure that the facility of the primary meeting site provides barrier-free access to the physically handicapped, and accommodates all members of the public who wish to attend. Sites where a member participates via videoconference which are open to the public are not required to comply with these conditions.

II. Videoconferencing Under Extraordinary Circumstances (Public Officers Law Section 103-a) – Locations Not Open to the Public

NOTE: This section is only applicable if the Board has adopted a resolution permitting videoconferencing under extraordinary circumstances. Unless otherwise noted, all provisions of this section of the policy reflect requirements of Public Officers Law §103-a or the COOG 5/20/22 Guidance.

The Board’s resolution, as well as its written procedures (which could take the form of this policy), must include the “extraordinary circumstances” necessitating participation by videoconference of Board members. The law includes some examples (shown below: disability, illness, caregiving), but is not an exhaustive list (it also includes “or other significant or unexpected factor or event”). Before adding examples of other significant or unexpected factors or events that would preclude physical attendance to this policy, the authorizing resolution, or any separate written procedures, please review with your attorney.

Pursuant to Board resolution # _____, dated _____, Board members are permitted to participate in meetings via videoconferencing under extraordinary circumstances, in accordance with state law and this policy. [**Optional language:** That resolution is attached to this policy as an exhibit.] Extraordinary circumstances include: disability, illness, caregiving responsibilities, or any other significant or unexpected factor or event which precludes the members’ physical attendance at the meeting.

NOTE: The first sentence of the paragraph below reflects a requirement of the law. The second sentence reflects clarifying guidance from the Committee on Open Government.

NYSSBA Sample Policy 2325

To utilize videoconferencing under extraordinary circumstances, a quorum of Board members must be present in the same physical location(s) where the public can attend the meeting. Board members videoconferencing under extraordinary circumstances can participate in meeting discussions and voting, and their locations are not required to be open to the public, but they do not count towards a quorum unless their locations are open to the public.

The in-person quorum requirement will not apply in the event of a declared state disaster emergency or local state of emergency, if the district determines that such emergency would affect or impair the district's ability to hold an in-person meeting.

NOTE: The following paragraph does not reflect a requirement of §103-a, but is suggested to effectuate the law as part of the Board's written procedures, consistent with COOG guidance and model procedures. The law does not include a deadline for requests, but videoconferencing must be included in the notice of meetings. Your Board may wish to include other elements it finds necessary.

To participate via videoconference under extraordinary circumstances, Board members must notify the Superintendent, District Clerk, or designee, as soon as the need arises, stating the extraordinary circumstance, no later than four business days prior to the meeting, in order to give proper notice to the public. The district will also notify the Board officers. If extraordinary circumstances arise within four business days prior to the meeting, the district will update its public notice as soon as practicable. If the district cannot update its public notice, the district may reschedule its meeting. Such notification may be made by any means (e.g., phone, electronically, in writing or in person), but the Board member should receive confirmation, so they know the request was received and approved.

NOTE: The following paragraph does not reflect a requirement of §103-a, but is suggested to effectuate the law.

If more than one Board member wishes to participate in the same meeting by videoconferencing under extraordinary circumstances, the district will consider the need for a quorum at locations where the public may attend. The district may reschedule meetings if appropriate.

The district will give public notice of meetings using videoconferencing under extraordinary circumstances pursuant to policy 2340).

NOTE: The district's written procedures governing videoconferencing under extraordinary circumstances must be posted on the district's website.

This policy, or the district's written procedures for videoconferencing under extraordinary circumstances if a separate document, will be posted on the district website.

NYSSBA Sample Policy 2325

Except for properly convened executive sessions, all Board members (i.e., those attending both in person and via videoconferencing) must be able to be heard, seen and identified (e.g., their first and last name shown) during the meeting, including all motions, proposals, resolutions or any other matter formally discussed or voted upon.

NOTE: Opinion #5575 of the Committee on Open Government (issued prior to the enactment of §103-a) advised that Board members participating via videoconference, as their locations were required to be open to the public, could be required to sign an affidavit regarding those present during executive sessions. Under §103-a, remote locations are not required to be open to the public. The Board may still wish to address confidentiality of information discussed during executive session. If the Board wishes to require Board members to sign an affidavit as described in the first paragraph of this policy, we urge you to consult with your attorney.

All meetings that are broadcast or utilize videoconference technology will utilize technology that permits access by members of the public with disabilities, consistent with the Americans with Disabilities Act, as amended.

For all meetings involving videoconferencing under extraordinary circumstances, the district will provide members of the public the opportunity to view the meeting via video, and participate in public comment via videoconference in real time where public comment is authorized, to the same extent as in-person comment.

Minutes of meetings involving videoconferencing under extraordinary circumstances will include which members participated remotely.

All meetings where videoconferencing under extraordinary circumstances is used will be recorded, except those portions held in executive session. Recordings will be posted or linked on the district website within five business days of the meeting, and remain posted or linked for at least five years after the meeting. Recordings will be transcribed upon request.

Cross-ref: 1230, Public Comment at Board Meetings
2310, Regular Board Meetings
2320, Special Board Meetings
2340, Notice of Meetings
2360, Minutes

Ref: Public Officer's Law §§102; 103; 103-a; 104
NYS Department of State, Committee on Open Government, Advisory Opinion OML-AO-#5575 (3/6/2018)
"Questions and Answers, Chapter 56 of the Laws of 2022," NYS Committee on Open Government, <https://opengovernment.ny.gov/system/files/documents/2022/05/chapter-56-of-the-laws-of-2022-guidance-document-05-20-22.pdf>

Adoption date: