

## STATE BOARD OF EDUCATION

### POLICY REGARDING ELECTRONIC PARTICIPATION, ALL-VIRTUAL PUBLIC MEETINGS, AND MEETINGS HELD DURING DECLARED STATES OF EMERGENCY

#### PURPOSE

The purpose of this policy is to establish a written policy, in accordance with §§ 2.2-3708.2 and 3708.3 of the Code of Virginia to allow for and govern participation in meetings by electronic communication means, including all-virtual public meetings, and to specify the requirements for remote participation.

#### I. AUTHORITY

The membership of the State Board of Education (“Board”) interprets this policy, and this policy applies to the full Board and all standing committees, special committees, advisory committees, and other entities of the Board however designated, unless otherwise stated. When applied to any such committee, “Chair” and “Vice Chair” should replace “President” and “Vice President” respectively.

This policy must be applied strictly and uniformly, without exception, to the entire membership and without regard to the identity of the member requesting remote participation or the matters that will be considered or voted on at the meeting.

#### II. POLICY

##### A. Member Electronic Participation

Pursuant to applicable law and guidance, the Board adopts the following practice and procedures for the participation of members who cannot physically attend meetings for which public business will be conducted.

1. A quorum of the members of the public body must be physically assembled at the primary or central meeting location for the remote participation of a member. A member who is unable to attend in person, because either the member is a “person with a disability” or is caregiver for a “person with a disability” as defined in § 51.5-40.1, counts toward the quorum as if physically present.
2. Prior to a scheduled meeting of a public body, a member must notify the President and the liaison appointed to the public body by the Virginia Department of Education that the member is unable to attend the meeting due to
  - a. a temporary or permanent disability or other medical condition that prevents physical attendance, and whether the member is a person with a disability as defined in § 51.5-40.1;

- b. a medical condition of a member of the member's family requires the member to provide care that prevents the member's physical attendance or the member is a caregiver who must provide care for a person with a disability at the time the public meeting is being held thereby preventing the member's physical attendance;
    - c. the member's principal residence is more than sixty (60) miles from the meeting location identified in the required notice for such meeting, or
    - d. a personal matter that prevents physical attendance. In the case of a personal matter, the member must identify with specificity the nature of the personal matter. However, the member may not use remote participation due to personal matters more than two meetings per calendar year or 25 percent of the meetings held per calendar year rounded up to the next whole number, whichever is greater.
3. The President, or in the President's absence, the Vice President, is authorized to approve an individual member's remote participation. Any request for remote participation that the President believes does not meet the criteria for remote participation shall be put before the public body for a vote.
4. If an individual member's remote participation is approved the minutes shall reflect
  - a. the fact of the remote participation;
  - b. the location of the remote participation (however, the remote location need not be open to the public and may be identified in the minutes by a general description);
  - c. whether the remote participation is because of
    - (i) a temporary or permanent disability or other medical condition,
    - (ii) the medical condition of a member of the member's family;
    - (iii) the fact that the member participated through electronic communication means due to the distance between the member's principal residence and the meeting location; or
    - (iv) a personal matter, the nature of which shall be identified with specificity.
5. This policy must be applied strictly and uniformly, without exception, to the entire membership and without regard to the identity of the member requesting remote participation or the matters that will be considered or voted on at the meeting.

6. The public body may deny participation only if participation would violate this policy. If a member's participation is disapproved, the disapproval shall be recorded in the minutes with specificity.
7. The public body must plan for the voice of the remote participant to be heard by all persons at the primary or central meeting location.
8. Should the requirements of this policy not be met, the Board member will be allowed to listen into the proceedings through an electronic means, if available.
9. The public body will provide the public access to observe any meeting at which a member is permitted to participate by remote means. The Board will state in the notice for the meeting whether public comment will be taken at the meeting and will provide a means for submitting written comments.

If multiple members opt to participate electronically and the ability to obtain a physical quorum is compromised, the members should consider compliance with the all-virtual meeting requirements pursuant to the Board's policy as subscribed in Section III.B.

#### **B. All-Virtual Public Meetings**

The Virginia Freedom of Information Act ("FOIA"), §§ 2.2-3700 et seq. of the Code of Virginia, authorizes "public bodies" to hold all-virtual public meetings, under certain circumstances and with certain conditions. See Code § 2.2-3708.3. (FOIA's definition of "public body" embraces the Board of Education ("Board"), as well as "any committee, subcommittee, or other entity however designated of the [Board of Education] created to perform delegated functions of the [Board of Education] or to advise the [Board of Education]." Code § 2.2-3701.) FOIA contains an exception to this general rule: local governing boards, local school boards, planning commissions, architectural review boards, zoning appeals board, and *boards with the authority to deny, revoke, or suspend a professional or occupational license* may not hold all-virtual public meetings. Code § 2.2-3708.3(C) (emphasis added). Because the Board has the authority to deny, revoke, or suspend teacher licenses, the Board is not permitted to hold an all-virtual public meeting.

The General Assembly has directed the establishment of several advisory committees to the Board. These committees, whose authority is established by law, do not have any authority to deny, revoke, or suspend a license, and so are not prohibited from holding all-virtual public meetings. The Code of Virginia requires public bodies holding all-virtual public meetings to adopt a policy for such meetings. The Board has previously prescribed the practices for other forms of electronic meetings (e.g., remote participation by individual members) and directed that these practices apply to the Board's advisory committees. For this reason, the Board adopts the following policy governing all-virtual public meetings of such advisory committees to the Board whose existence is required by law ("Required Advisory Committees" or "RAC").

The following practice and procedures apply when a meeting of a Required Advisory Committee is held in which all members participate electronically:

1. Upon the decision by the Chair of the Required Advisory Committee that a RAC meeting will be held in an all-virtual format, the Chair will cause the required meeting notice to include a statement notifying the public that the all-virtual meeting format will be used. This notice should include a statement that should the meeting format change, that subsequent notice will be issued and in accordance with FOIA.
2. The notice for the meeting shall also state whether public comment will be taken at the meeting and, if so, the approximate point of the meeting when public comment will occur. If public comment is to be received, the public must be given the opportunity to comment through electronic means, including by written comment.
3. The RAC will provide for public access to the all-virtual meeting by electronic communication means that allows the public to hear the RAC's deliberations (other than for any portion of the meeting that is closed pursuant to FOIA). If audio-visual technology is available, the electronic communication means should allow the public to also see the committee. If the RAC holds a closed meeting as authorized by FOIA, it must resume public access to the meeting prior to the committee members' vote to certify the closed meeting as required by FOIA.
4. The RAC will provide a monitored phone number or other live contact information to permit members of the public to alert the RAC that the audio or visual transmission of the meeting has failed. This phone number or other live contact information will be provided to the public in the required meeting notice. If the RAC is so alerted or is otherwise made aware that such transmission has failed, the committee must recess until public access is restored.
5. A copy of the proposed agenda and all agenda packets and, unless exempt, all materials furnished to the members of the RAC for a meeting shall be made available to the public in electronic format at the same time that the materials are provided to the members of the committee.
6. No more than two members of the RAC may be together or present in any one remote location, unless that remote location is open to the public and physically accessible to the public.
7. An RAC may not convene all-virtual public meetings (1) more than two meetings per calendar year or (2) 50 percent of the meetings held per calendar year rounded up to the next whole number, whichever is greater. A RAC is not permitted to hold an all-virtual public meeting consecutively with another all-virtual public meeting.

8. Minutes of all-virtual public meetings held by electronic communication means shall be taken as required by § 2.2-3707 of the Code of Virginia and include the fact that the meeting was held by electronic communication means and the type of electronic communication means by which the meeting was held. If a member's participation would violate this policy, such disapproval shall be recorded in the minutes with specificity.

### **C. Meetings Held During Declared States of Emergency**

The policies outlined in subsections A and B shall be effective during ordinary times.

Under § 2.2-3708.2 of the Code of Virginia a public body, or any joint meetings thereof, may meet by electronic communication means without a quorum of the public body physically assembled at one location when the Governor has declared as a state of emergency in accordance with § 44-146.17 of the Code of Virginia, or where the locality in which the public body is located has declared a local state of emergency pursuant to § 44-146.21 of the Code of Virginia, provided that (i) the catastrophic nature of the declared emergency makes it impracticable or unsafe to assemble a quorum in a single location and (ii) the purpose of the meeting is to provide for the continuity of operations of the public body or the discharge of its lawful purposes, duties, and responsibilities.

In cases of emergency, the public body convening the meeting shall:

1. Give public notice using the best available method given the nature of the emergency, which notice shall be given contemporaneously with the notice provided to members of the public body conducting the meeting;
2. Make arrangements for public access to such meeting through electronic communication means, including videoconferencing if already used by the public body;
3. Provide the public with the opportunity to comment at those meetings of the public body when public comment is customarily received;
4. Otherwise comply with the provisions of this policy and law; and
5. State the nature of the emergency, the fact that the meeting was held by electronic communication means, and the type of electronic communication means by which the meeting was held in the minutes.

### **III. EDUCATION AND COMPLIANCE**

Members of the Board shall be made aware of this and any other Board policies as part of the new Board member orientation process. Any changes to this policy shall be communicated to the Board by the President and Director of Board Relations no later than the Board's next scheduled meeting. The Board President shall be responsible for ensuring annual compliance with the provisions of this policy.

Members of all standing committees, special committees, advisory committees, and other entities of the Board however designated shall be made aware of this policy, as well as any changes thereto.

#### **IV. REFERENCES**

1. § 2.2-3708.2. Meetings held through electronic communication means during declared states of emergency.
2. § 2.2-3708.3. Meetings held through electronic communication means; situations other than declared emergency.
3. § 44-146.17. Powers and duties of Governor.
4. § 44-146.21. Declaration of local emergency.
5. FOIA Electronic Meetings Guide (2023)