

Bylaws

EDUCATIONAL SERVICES
COMMISSION OF
NEW JERSEY

0164.6 REMOTE PUBLIC BOARD MEETINGS DURING A DECLARED EMERGENCY

A. Purpose – N.J.A.C. 5:39-1.1

1. The purpose of N.J.A.C. 5:39-1.1 et seq. and Bylaw 0164.6 is to ensure a Board of Education or Board of Trustees of a charter school can conduct official public business in an open and transparent manner whenever a declared emergency requires a local public body to conduct a public meeting without physical attendance by members of the public.
2. Nothing in N.J.A.C. 5:39-1.1 et seq. prevents a local public body from holding a remote public meeting under such other circumstances as may be permitted by the Open Public Meetings Act, N.J.S.A. 10:4-1 et seq.

B. Definitions – N.J.A.C. 5:39-1.2

For the purpose of this Bylaw and in accordance with N.J.A.C. 5:39-1.2, the following words and terms have the following meanings, unless the context clearly indicates otherwise:

"Adequate notice" shall have the same definition as at N.J.S.A. 10:4-8; however, for the purpose of N.J.A.C. 5:39-1.1 et seq., and to the extent not otherwise set forth at N.J.S.A. 10:4-8, the notice transmitted to at least two newspapers for publication may occur through electronic mail or other electronic means that is accepted or requested by the newspaper.

"Annual notice" means a schedule of regular meetings of the public body to be held in the succeeding year noticed pursuant to N.J.S.A. 10:4-8 and 10:4-18. For the purpose of N.J.A.C. 5:39-1.1 et seq., the annual notice may be transmitted through electronic mail to newspapers and persons requesting an annual notice pursuant to N.J.S.A. 10:4-18. If the declared emergency prevents the local public body from mailing an annual notice to individuals requesting notice pursuant to N.J.S.A. 10:4-18, it shall be mailed to individuals for whom the local public body does not have an electronic mail account as soon as practicable.

"Board" or "Board of Education" means a Board of Education or a Board of Trustees of a charter school as defined as a "local public body" or "public body" as per N.J.A.C. 5:39-1.2.

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"Declared emergency" means a public health emergency, pursuant to the Emergency Health Powers Act, P.L. 2005, c. 222 (N.J.S.A. 26:13-1 et seq.), or a state of emergency, pursuant to P.L. 1942, c. 251 (N.J.S.A. App.A.9-33 et seq.), or both, or a state of local disaster emergency that has been declared by the Governor and is in effect.

"Electronic notice" means advance notice available to the public via electronic transmission of at least forty eight hours, giving the time, date, location and, to the extent known, the agenda of any regular, special, or rescheduled meeting, which shall accurately state whether formal action may or may not be taken at such meeting.

"Internet" means the international computer network of both Federal and non-Federal interoperable packet switched data networks.

"Live streaming" means the live audio and video transmission of a remote public meeting over the Internet.

"Local public body" means any "public body," as that term is defined in N.J.S.A. 10:4-8, with territorial jurisdiction equal to or less than a county. This term shall include Boards of Education, counties, municipalities, boards and commissions created by one or more counties or municipalities, and any authorities subject to N.J.S.A. 40A:5A-1 et seq., including fire districts and other special districts, along with joint meetings or regional service agencies as defined in N.J.S.A. 40A:65-3.

"Public business" means and includes all matters which relate in any way, directly or indirectly, to the performance of the public body's functions or the conduct of its business.

"Public meeting" means and includes any gathering whether corporeal or by means of communication equipment which is attended by, or open to, all of the members of a public body, held with the intent, on the part of the members of the body present, to discuss or act as a unit upon the specific public business of that body. Meeting does mean or include any such gathering (1) attended by less than an effective majority of the members of a public body, or (2) attended by or open to all the members of three or more similar public bodies at a convention or similar gathering.

"Remote public meeting" means a public meeting that is conducted by any means of electronic communication equipment permitted pursuant to N.J.A.C. 5:39-1.1 et seq.

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- C. Circumstances Under Which a Board of Education May Hold a Remote Public Meeting During a Declared Emergency for Conducting Public Business – N.J.A.C. 5:39-1.3
1. In addition to any circumstances under which public meetings held by means of communication equipment may be authorized pursuant to the Open Public Meetings Act, N.J.S.A. 10:4-1 et seq., the Board may hold a remote public meeting to conduct public business during a declared emergency if the emergency reasonably prevents the Board from safely conducting public business at a physical location with members of the public present.
 2. If, during a declared emergency, the Board holds a physical meeting in a location where, pursuant to State and/or Federal guidelines meant to mitigate the risk of a contagious infection, the declared emergency necessitates capacity restrictions reducing the number of individuals that can be present in the meeting room to an amount below that reasonably expected for the public meeting by the Board, the Board must either hold the public meeting at another location with adequate capacity for the reasonably expected attendance by the public or hold the public meeting as both an in-person meeting and a remote public meeting.
 - a. As set forth at N.J.A.C. 5:39-1.4(c), no in-person meeting shall proceed if the room capacity does not permit any member of the public to attend.
 3. Nothing in N.J.A.C. 5:39-1.3 shall be interpreted to prevent the Board from broadcasting the audio and/or video of, or taking remote public comment during, a public meeting that the public can physically attend without being subject to public health-related capacity restrictions.
- D. Minimum Technological and Procedural Requirements for Remote Public Meetings Necessitated by a Declared Emergency – N.J.A.C. 5:39-1.4
1. If a declared emergency requires the Board to hold a remote public meeting to conduct public business, the Board shall use an electronic communications technology that is routinely used in academic, business, and professional settings, and can be accessed by the public at no cost.
 - a. Participant capacity on the selected platform should be consistent with the reasonable expectation of the public body for public meetings of the type being held and shall not be limited to fewer than fifty public participants (beyond those persons required to conduct business at the meeting).

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2. Remote public meetings may be held by means including, but not limited to, audio-only teleconferencing, electronic communications platforms with video and audio, and Internet-accessible technology, such as live-streaming.
 - a. If an electronic communications platform or Internet-accessible technology is being utilized for a remote public meeting, a telephonic conference line shall also be provided to allow members of the public to dial-in by telephone to listen and provide public comment as otherwise required by law.
 - b. The Board **shall** require members of the public to state, prior to providing public comment, whether they wish to speak and to identify themselves prior to speaking.
3. The Board shall provide the public with similar access to a remote public meeting as members of the Board, staff of the Board, and any individuals seeking one or more approvals from the Board.
 - a. If a remote public meeting is held by audio and video, the public shall also have the opportunity to participate in the meeting in both audio and video capacities.
 - b. The Board meeting held in-person shall not prohibit members of the public from attending in-person.
4. Any remote public meeting where sworn testimony is being taken shall be broadcast by video, as well as by audio.
 - a. All individuals giving sworn testimony at a remote public meeting shall appear by video in addition to audio.
5. Any presentations or documents that would otherwise be viewed or made available to members of the public physically attending the Board meeting shall be made visible on a video broadcast of the remote public meeting or made available on the Internet website or webpage of the entity governed by the Board, or the Internet website or webpage of the entity responsible for appointing the members of the Board.
 - a. If a document would be made available to individual members of the public in hard copy while physically attending the meeting, the document shall be made available in advance of the meeting for download through an internet link appearing either on the meeting

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- notice, or near the posting of the meeting notice, both on the website and at the building where the meeting would otherwise be held.
- b. If the Board does not have its own website, such documents shall be available upon request ahead of the meeting and provided through an official social media account if one exists.
6. The Board holding a remote public meeting shall allow members of the public to make public comment by audio, or by audio and video, if the remote public meeting is held over both audio and video, during the meeting.
- a. In advance of the remote public meeting, the Board shall allow public comments to be submitted to the Business Administrator by electronic mail and in written letter form by a reasonable deadline.
 - b. The Board shall **not accept** text-based public comment received during a remote public meeting held through an electronic communications platform or Internet-accessible technology. Public comments submitted before the remote public meeting through electronic mail or by written letter shall be read aloud and addressed during the remote public meeting in a manner audible to all meeting participants and the public.
 - c. The Board shall impose a reasonable time limit, where permitted by law, of **three** minutes on individual public comments and the same limits shall be placed on the reading of written comments. Each comment shall be read from the beginning, until the time limit is reached. The Board may pass over duplicate written comments; however, each duplicate comment shall be noted for the record with the content summarized. If the Board elects to summarize duplicative comments, the Board must not summarize certain duplicative comments while reading other duplicative comments individually.
7. The electronic communications technology used for a remote public meeting must have a function that allows the Board to mute the audio of all members of the public, as well as allow members of the public to mute themselves.

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- a. Any electronic communications platform or Internet-accessible technology used for a remote public meeting shall also allow the Board to regulate participation by individual members of the public.
 - b. A telephonic audio conference call line must have a queuing or similar function for regulating public comment.
8. Subject to D.5. and D.6. above, the Board shall adopt, by resolution, standard procedures and requirements for public comment made during a remote public meeting, as well as for public comments submitted in writing ahead of the remote public meeting.
- a. Such procedures and requirements shall include standards of conduct to be followed by members of the public when making comment.
 - b. The procedures and requirements for making public comment, along with an explanation of the audio muting function of the electronic communications platform being used, shall be announced at the beginning of the remote public meeting.
 - c. Regulation of conduct by members of the public on a remote public meeting shall be consistent with law and practices followed if a member of the public disrupts an in-person meeting. The following procedures shall be incorporated:
 - (1) The Board shall facilitate a dialogue with the commenter to the extent permitted by the electronic communications technology;
 - (2) If a member of the public becomes disruptive during a remote public meeting, including during any period for public comment, the member of the Board charged with running the remote public meeting shall mute or continue muting, or direct appropriate staff to mute or continue muting, the disruptive member of the public and warn that continued disruption may result in being prevented from speaking during the remote public meeting or removed from the remote public meeting.
 - (a) Disruptive conduct includes sustained inappropriate behaviors, such as, but not necessarily limited to, shouting, interruption, and use of profanity.

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Board; however, electronic notice is not required if the Board does not have an internet presence.

- (2) Unless otherwise prohibited by the declared emergency, the content of the electronic notice shall also be posted on the main access door of the building where the public would routinely attend public meetings of the Board in-person. The notice must be viewable from the outside.
3. If during a declared emergency the Board elects to issue electronic notice of a remote public meeting in lieu of, rather than in addition to, adequate public notice, as permitted pursuant to N.J.S.A. 10:4-9.3, the Board shall limit public business discussed or effectuated at the meeting to matters:
 - a. Necessary for the continuing operation of government and which relate to the emergency declaration connected with the declared emergency; or
 - b. Requiring decision during the remote public meeting due to imminent time constraints.
4. Nothing in N.J.A.C. 5:39-1.5 prohibits the Board from holding a remote public meeting, notwithstanding the failure to provide adequate notice and electronic notice where permitted pursuant to N.J.S.A. 10:4-9.
5. If the Board expects to conduct remote public meetings for a series of regularly scheduled meetings advertised in its annual notice, the annual notice shall be revised at least seven days prior to the next regularly scheduled meeting, indicating which meeting(s) will be held as a remote public meeting and shall contain clear and concise instructions for accessing those remote public meetings, the means for making public comment, and where relevant documents, if any, will be made available.
 - a. In addition to the means of notice transmission required pursuant to N.J.S.A. 10:4-18, the revised annual notice shall be posted on the Internet website or webpage of the Board and/or school district, or the entity responsible for appointing the members of the Board.
 - b. If the Board does not have its own website, the revised notice shall be provided on an official social media platform unless the Board does not have an Internet presence.

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- c. Unless otherwise prohibited by the declared emergency, the content of the electronic notice shall also be posted on the door of the main public entrance to the building where the public would routinely attend public meetings held by the Board.
 - (1) Notice must also be posted on the door for any designated and clearly delineated handicap accessible entrance. These notices must be viewable from the outside.
6. If a previously scheduled Board meeting was to allow public attendance without a public health-related restriction as to capacity, but the Board intends to hold the same meeting as a remote public meeting due to a declared emergency and the change is not reflected in a revised annual notice issued pursuant to E.5. above, the Board shall issue adequate and electronic notice for said meeting pursuant to E.1. and E.2. above as if the meeting were not included in the annual notice.
7. At the commencement of every remote public meeting of the Board, the person presiding shall announce publicly, and shall cause to be entered in the minutes of the meeting, an accurate statement to the effect that:
 - a. Both adequate and electronic notice of the meeting has been provided, specifying the time, place, and manner in which such notice was provided;
 - b. Only electronic notice of the meeting has been provided, specifying the time, place, and manner in which such notice was provided, and that discussion and effectuation of public business shall be limited to only those matters:
 - (1) Necessary for the continuing operation of government and that relate to the applicable emergency declaration; or
 - (2) Requiring decision during the remote public meeting due to imminent time constraints; or
 - c. That adequate notice and electronic notice was not provided, in which case such announcement shall state:
 - (1) The reason(s) why the matter(s) discussed are of such urgency and importance, as contemplated pursuant to N.J.S.A. 10:4-9(b)(1), and the nature of the substantial harm to the public interest likely to result from a delay in the holding of the meeting;

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- (2) That the remote public meeting will be limited to discussion of, and acting with respect to, such matters of urgency and importance;
 - (3) The time, place, and manner in which notice of the meeting was provided; and
 - (4) Either that the need for such meeting could not reasonably have been foreseen at a time when adequate notice and/or electronic notice could have been provided, in which event, such announcement shall specify the reason why such need could not reasonably have been foreseen; or that such need could reasonably have been foreseen at a time when adequate notice and/or electronic notice could have been provided, but such notice was not provided, in which event the announcement shall specify the reason why adequate notice and/or electronic notice was not provided.
 8. Where the Board is required by law to provide a meeting agenda, or otherwise provides a meeting agenda by practice at its regularly scheduled meetings, prior to the commencement of the remote public meeting, the Board shall also make a copy of the agenda available to the public for download through an Internet link appearing either on the meeting notice, or near the posting of the meeting notice on the website.
 - a. The notice shall also be posted at the building where the meeting would otherwise be held prior to the commencement of the remote public meeting.
- F. Executive or Closed Session During Remote Public Meetings
1. A Board entering into an executive or closed session shall ensure that audio or video of the session cannot be accessed, except by those individuals that are participating in the session.
 - a. A separate non-public conference line or e-platform session may be employed for this purpose.
 2. The secretary of the Board should take roll call with each individual affirmatively identifying themselves prior to commencing the closed session.

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3. If a closed session is held through a telephonic conference call a separate call-in line should be made available to ensure confidentiality.
4. For closed sessions during remote public meetings held through video conferencing, audio recording should be muted and video recording blocked by a graphic labeled "Executive Session".
5. As with in-person meetings, the Board shall have read into the record the reason(s) for entering into executive session.

N.J.A.C. 5:39-1.1 et seq.

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