

Dear School Board Members, Superintendents, and School Board Clerks,

VSBA has received several calls asking for information on holding electronic meetings in light of the spread of COVID-19. The Virginia Freedom of Information Act (FOIA) generally requires that all meetings of public bodies, including school boards, be held when the members are physically assembled (face-to-face). However, FOIA also permits exceptions to this general rule in two situations.

In the first situation, individual school board members may participate in a meeting electronically if a quorum of the board is physically assembled. In such a situation, the board may conduct any public business. The members who participate electronically must notify the chair that they are unable to attend the meeting due to a temporary or permanent disability or other medical condition that prevents their physical attendance at the meeting or that they are unable to attend because of a personal matter (which must be identified with specificity). The board must approve the electronic participation by a majority vote of the members who are physically assembled. Individual school board members who participate remotely because of a personal matter may only participate in such a way in two meetings in each calendar year. The school board must make arrangements for the voice of the remote participants to be heard by everyone at the primary meeting location.

FOIA requires public bodies to adopt a policy regarding the participation of its members by electronic communication means in this situation in order for such participation to occur. For school boards which use VSBA Policy Services, VSBA Policy BDD is the relevant policy. A copy of that policy is attached.

Many school boards have had members participate remotely because of a health condition or personal matter in the past and are familiar with this process.

In the second situation, a school board may meet by electronic communication means without a quorum physically assembled when the Governor has declared a state of emergency, as Governor Northam did last week. In that situation, the entire board may meet electronically if the nature of the declared emergency makes it impracticable or unsafe to assemble a quorum in a single location and the purpose of the meeting is to address the emergency. The school board must give public notice of the meeting using the best available method and make arrangements for public access to the meeting. 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 must be stated in the minutes of the meeting.

In summary, Virginia law permits school boards to hold meetings with electronic participation in two situations. In the first situation, a quorum of the board must be physically assembled. In that situation, the board may conduct any business that it would normally conduct. In the second situation, all board members may participate electronically, but the purpose of the meeting must be to address the emergency.

VSBA appreciates all the hard work that you are doing during this difficult time and stands ready to help in any way we can. Please do not hesitate to reach out if you have any questions.

Best wishes,

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Virginia School Boards Association. a voluntary, nonpartisan organization of Virginia school boards, promotes excellence in public education through advocacy, training and services.

ELECTRONIC PARTICIPATION IN MEETINGS FROM REMOTE LOCATIONS

Except as provided hereafter, the School Board does not conduct any meeting wherein the public business is discussed or transacted through telephonic, video, electronic or other electronic communication means where the members are not physically assembled.¹ This policy is applied strictly and uniformly, without exception, to the entire membership of the School Board 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.

For purposes of this policy, “electronic communication” means the use of technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities to transmit or receive information.

I. Quorum Physically Assembled

A. The School Board may conduct any meeting wherein the public business is discussed or transacted through electronic communication means if 1) on or before the day of a meeting, a member of the School Board notifies the chair that such member is unable to attend the meeting due to a temporary or permanent disability or other medical condition that prevents the member's physical attendance or that such member is unable to attend the meeting due to a personal matter and identifies with specificity the nature of the personal matter; and 2) the School Board approves the member's participation by a majority vote of the members present at the primary or central meeting location.

Participation by a School Board member by electronic communication means due to a personal matter is limited each calendar year to two meetings.

B. If participation by a School Board member through electronic communication means is approved pursuant to subsection A above, the School Board records in its minutes the remote location from which the member participated; however, the remote location need not be open to the public. If participation is approved due to a temporary or permanent disability or other medical condition, the School Board also includes in its minutes the fact that the member participated through electronic communication means due to a temporary or permanent disability or other medical condition that prevented the member's physical attendance. If participation is approved due to a personal matter, the School Board also includes in its minutes the specific nature of the personal matter cited by the member.

FOOTNOTE IS FOR REFERENCE ONLY AND SHOULD BE REMOVED FROM FINAL POLICY.

¹ The Virginia Freedom of Information Act requires school boards to adopt a policy allowing for and governing the participation of its members by electronic communication means in order for such participation to occur. This policy satisfies that requirement.

If a School Board member's participation from a remote location due to a personal matter is disapproved, such disapproval is recorded in the minutes with specificity.

- C. A School Board member may participate in a meeting by electronic means pursuant to subsections A and B above only when:
- a quorum of the School Board is physically assembled at one primary or central meeting location; and
 - the School Board makes arrangements for the voice of the remote participant to be heard by all persons at the primary or central meeting location.

II. Quorum Not Physically Assembled

The School Board may meet by electronic communication means without a quorum physically assembled at one location when the Governor has declared a state of emergency in accordance with Va. Code § 44-146.17, provided

- the catastrophic nature of the declared emergency makes it impracticable or unsafe to assemble a quorum in a single location, and
- the purpose of the meeting is to address the emergency.

If it holds a meeting pursuant to this section, the School Board

- gives public notice using the best available method given the nature of the emergency contemporaneously with the notice provided members of the School Board; and
- makes arrangements for public access to the meeting.

For any meeting conducted pursuant to this section, 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 are stated in the minutes of the meeting.

Adopted:

Legal Ref.: Code of Virginia, 1950, as amended, §§ 2.2-3701, 2.2-3707, 2.2-3708.2, 2.2-3710.

Cross Ref.: BDDG Minutes