

Virginia Freedom of Information Act (FOIA) and Meeting Minutes

Below are the answers to frequently asked questions about FOIA's requirements regarding minutes of school board meetings:

Q. Are we required to have minutes of our open meetings?

A. Yes. FOIA requires minutes to be recorded at all open meetings.

Q. Are we required to have minutes of closed meetings?

A. No. School boards are not required to have minutes of closed sessions but may if they choose.

Q. Are minutes public records?

A. Minutes of open meetings are public records. If a board chooses to have minutes of closed sessions, those minutes are not public records.

Q. Are draft minutes public records?

A. Yes, FOIA specifically provides that the draft version of minutes are open to the public.

Q. Must minutes be in writing?

A. Yes. School boards may record their meetings, but recordings do not substitute for written minutes.

Q. What must minutes contain?

A. FOIA requires minutes of every meeting to contain

- the date, time, and location of the meeting;
- the members of the school board present and absent;
- a summary of the discussion on matters proposed, deliberated, or decided; and
- a record of any votes taken.

In addition, for any electronic communication meetings conducted as permitted by FOIA, the minutes must include

- the identity of members who participated in the meeting by electronic means;

- the identity of the members who were physically assembled at one location; and,
- the identity of the members (if any) who were not present at one physical location but who monitored the meeting through electronic communication means.

Q. Are there any special requirements for minutes of meetings in which individual members participate electronically from remote locations while a quorum of the board is physically assembled in one location?

A. Yes. If a board member participates in a meeting by electronic communication means when a quorum of the board is physically assembled, the minutes of the meeting must reflect the remote location from which the member participated. In addition, information must be included depending on the reason for the board member's remote participation:

- If the member participates electronically due to a disability or medical condition of the member that prevented the member's physical attendance, or due to the disability or medical condition of a member of the member's family that required the member to provide care for the family member thereby preventing the member's physical attendance, the minutes shall reflect the relevant information.
- If a member participates through electronic communication means because the member's residence is more than 60 miles from the meeting location, the minutes must reflect that information.
- If a member participates through electronic communication means because of a personal reason, the minutes must reflect the specific nature of the personal matter. If a member participates from a remote location because of a personal matter, it is best practice for the minutes to reflect how many times the member has participated from a remote location during the calendar year so that the board has an easy way to ensure that the board member is not exceeding the limitations on the number of meetings in which a board member can participate remotely for personal reasons.

If a member's participation from a remote location is disapproved because it would violate the board's policy, such disapproval must be reflected in the minutes with specificity.

Q. Are there any special requirements for minutes of all-virtual meetings held pursuant to a declaration of emergency?

A. Yes. If the school board meets electronically as permitted by FOIA during a declaration of emergency, the fact that the meeting was held by electronic communication means and the type of electronic communication means must be stated in the minutes of the meeting.

Q. What must minutes include with regard to closed sessions?

A. If there is a closed session at a meeting, the minutes must include, in detail, the motion to go into closed session. That motion must

- identify the subject matter to be discussed,
- state the purpose of the closed session as authorized by law, and
- cite the applicable legal authority for the closed session.

In addition, the minutes must record the members' certification that only matters lawfully excepted from FOIA's open meeting requirements and only the matters identified in the motion to go into closed session were considered during the meeting.

If any member believes that the board departed from those requirements, the member must so state, indicating the substance of the departure that took place. The board member's statement must be recorded in the minutes of the meeting.

Q. If a member of the school board arrives late or leaves a meeting early must that be reflected in the minutes?

A. Yes. If a member is present for some, but not all, of the votes taken at a meeting, particular care should be taken that the minutes clearly reflect which motions the member voted on.

Q. How detailed must minutes be?

A. As long as they contain the legally mandated information mentioned above, it is up to each board to decide how much detail is included in the minutes.

Q. Must we post minutes on our division website?

A. Yes. As of July 1, 2022, FOIA requires minutes to be posted on the school board's website within seven working days of final approval.

Q. Why are minutes important?

A. In addition to being required by FOIA, meeting minutes serve as the official records of the board's decisions and actions. It is best practice for the minutes to

include the exact wording of motions. Including the exact wording of every motion eliminates the need for people to rely on their memories for what the board did. In addition, since minutes are generally approved at the next board meeting, including the exact wording of motions gives board members and school division staff the chance to correct any misunderstandings before new policies or practices become entrenched in the division.

- Q. Which of our school board policies contain information on minutes?
A. The following VSBA sample policies address minutes: BDDG Minutes, BDD Electronic Participation in Meetings from Remote Locations; BDDC Calling and Certification of Closed Meetings; and BDDF Voting Method;
- Q. Who takes minutes if the clerk or deputy clerk is unable to attend a meeting?
A. Anyone can prepare draft minutes. Although it is customary for the clerk or deputy clerk to prepare minutes, there is no legal requirement for that. In some situations, the clerk may need to prepare meetings from a recording of a meeting.
- Q. Who signs minutes?
A. Virginia law requires the chair and the clerk to sign minutes.
- Q. Can a school board member vote on approving the minutes of a meeting the member did not attend?
A. Yes. Before voting to approve draft minutes, school board members can determine whether the draft minutes are accurate by watching a recording of the meeting or talking to others who were present.
- Q. Are we required to have minutes for committee meetings?
A. FOIA requires committees to record minutes only if the membership of the committee includes a majority of the members of the school board. Although it is not required by law, committees may record minutes to ensure that there is a record of the committee's work.
- Q. Are we required to have minutes for work sessions?
A. Yes. Work sessions are meetings, so minutes are required.
- Q. May a school board member or member of the division staff make changes to meeting minutes after they have been approved?

- A. No one may unilaterally make changes to minutes after they have been approved. If the board determines that changes are necessary after minutes have been approved, it can take action to make changes by following the rules of parliamentary procedure regarding how to change actions previously taken. Like all actions of a school board, such actions require votes by the board in open meetings.
- Q. How long must we keep minutes?
- A. Forever. The Library of Virginia determines records retention rules for public bodies, including school boards. Those rules state that the minutes must be retained permanently.