





THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK / ALBANY, NY 12234

TO: The Honorable Members of the Board of Regents
FROM: Daniel Morton-Bentley 
SUBJECT: Public Hearing on a Proposed Resolution Authorizing the Attendance of Meetings by Board Members Via Videoconferencing Under Extraordinary Circumstances
DATE: December 13, 2022
AUTHORIZATION(S): 

SUMMARY

Issue for Decision

Should the Board of Regents approve the holding of a public hearing on a proposed resolution authorizing the attendance at meetings by board members via videoconferencing under extraordinary circumstances?

Reason(s) for Consideration

Review of Policy.

Proposed Handling

This question will come before the Full Board at its December 2022 meeting where it will be voted on and action taken.

Procedural History

The Department proposes that the Board of Regents hold a public hearing on a proposed resolution authorizing the attendance at meetings by board members via videoconferencing under extraordinary circumstances.

Background Information

On April 9, 2022, Governor Hochul signed Chapter 56 of the Laws of 2022 (Chapter 56). Section 1 of Part WW of Chapter 56 added a new section 103-a to the Open Meetings Law (OML) to permit the expanded use of videoconferencing by public bodies to conduct open meetings under extraordinary circumstances.

Each public body that wishes to allow for remote attendance via videoconferencing by its members at locations that do not allow for in-person physical attendance by the public is required to adopt a resolution, after a public hearing, authorizing such remote attendance, and must establish written procedures that set forth what they determine to be “extraordinary circumstances.” OML §103-a provides a non-exhaustive list of examples of extraordinary circumstances, “including disability, illness, caregiving responsibilities, or any other significant or unexpected factor or event which precludes the member’s physical attendance at such meeting.” OML §103-a has the following additional requirements:

- a minimum number of members must be present to fulfill the public body’s quorum requirement in the same physical location or locations where the public can attend;
- any members attending by videoconference must, except during executive session, be “heard, seen and identified, while the meeting is being conducted, including but not limited to any motions, proposals, resolutions, and any other matter formally discussed or voted upon”;
- the minutes of the meetings involving videoconferencing must include which, if any, members participated remotely, and shall be available to the public pursuant to OML §106;
- the public notice for the meeting must inform the public that videoconferencing will be used, where the public can view and/or participate in such meeting, where required documents and records will be posted or available, and identify the physical location for the meeting where the public can attend;
- any meeting where a member attends by videoconference must be recorded, posted to the public body’s webpage within five business days, and transcribed upon request; and
- the public body must provide the opportunity for members of the public to view such meeting via video, and to participate in proceedings via videoconference in real time where public comment or participation is authorized, and shall ensure that videoconferencing authorizes the same public participation or testimony as in person participation or testimony.

The Department proposes that the Board of Regents hold a public hearing on a proposed resolution to authorize members of the Board of Regents, its subcommittees, and members of all State Education Department boards and their subcommittees that are subject to the OML, to attend meetings via videoconferencing under extraordinary circumstances in accordance with OML §103-a. A copy of the proposed resolution is included (Attachment A). A notice of public hearing with additional information on the time and location of such hearing and how to participate will be posted.

Related Regents Items

Not applicable.

Recommendation

It is recommended that the Board of Regents take the following action:

VOTED: That pursuant to Chapter 56 of the Laws of 2022, the Board of Regents hereby authorizes a public hearing to be held on February 14, 2023, to consider a proposed resolution authorizing the attendance at meetings by board members via videoconferencing under extraordinary circumstances.

Timetable for Implementation

If approved, the Department will post a notice of the public hearing.

**Resolution
New York State Board of Regents**

WHEREAS, by passing Chapter 56 of the Laws of 2022 (“Chapter 56”), the New York State Legislature amended Section 103 of the Open Meetings Law; and

WHEREAS, Chapter 56 adds Section 103-a of the Open Meetings Law, permitting the Board of Regents to authorize its members, members of its subcommittees, and members of all State Education Department boards and their subcommittees that are subject to the Open Meetings Law, to attend meetings by videoconferencing under extraordinary circumstances; and

WHEREAS, Section 103-a(2)(a) requires the Board of Regents to adopt a resolution following a public hearing authorizing the limited use of videoconferencing under such circumstances; and

WHEREAS, Section 103-a(2) allows for hybrid meetings by requiring “that a minimum number of members are present to fulfill the public body’s quorum requirement in the same physical location or locations where the public can attend”; and

WHEREAS, Section 103-a(2)(c) requires that members be physically present at any such meeting “unless such member is unable to be physically present at any such meeting location due to extraordinary circumstances, including disability, illness, caregiving responsibilities, or any other significant or unexpected factor or event which precludes the member’s physical attendance at such meeting”; and

WHEREAS, in accordance with Section 103-a(2)(d), any members attending by videoconference must, except during executive session, be “heard, seen and identified, while the meeting is being conducted, including but not limited to any motions, proposals, resolutions, and any other matter formally discussed or voted upon”; and

WHEREAS, Section 103-a(2)(g) requires that any meeting where a member attends by videoconference be recorded, posted to the State Education Department’s webpage within five business days, and transcribed upon request; and

WHEREAS, Section 103-a(2)(h) requires that members of the public be permitted to observe and participate, if authorized, in any meeting by videoconference when a member attends by videoconference.

BE IT RESOLVED, that the Board of Regents authorizes its members, members of its subcommittees, and members of all State Education Department boards and their subcommittees that are subject to the Open Meetings Law, who experience an extraordinary circumstance, as described above and further defined through rules and procedures adopted below, to attend meetings by videoconference: (i) as long as a quorum of the members attend in-person at one or more locations open to the public; (ii) as long as the member can be seen, heard, and identified while the open portion of the meeting is being conducted; and (iii) as otherwise permitted under Chapter 56 of the Laws of 2022; and be it further

RESOLVED, that the Board of Regents adopts the following written procedures pursuant to POL § 103-a(2)(b) further governing its use of videoconferencing by its members and the boards of the State Education Department which are subject to the Open Meetings Law, in compliance with Chapter 56.

In compliance with Public Officers Law (POL) § 103-a(2)(a), the Board of Regents, following a public hearing, authorized by resolution on December 13, 2022, approves the use of videoconferencing as described in POL § 103-a subject to the following written procedures governing member and public attendance.

1. Board of Regents members, members of its subcommittee, and members of all State Education Department boards and their subcommittees which are subject to the Open Meetings Law, shall be physically present at any meeting unless such member is unable to be physically present at one of the designated public meeting locations due to extraordinary circumstances.
2. For purposes of these procedures, the term “extraordinary circumstances” includes disability, illness, caregiving responsibilities or any other significant or unexpected factor or event which precludes the member’s physical attendance at such meeting.
3. If a member is unable to be physically present at one of the designated public meeting locations and wishes to participate by videoconferencing from a private location due to extraordinary circumstances, as defined, the member must notify and receive approval from the presiding officer and, for any State Education Department boards or subcommittee the Deputy Commissioner of that program area except in the case of the State Boards for the Professions for which notice shall be given to and approval obtained from the Executive Secretary, no later than four business days prior to the

scheduled meeting in order for proper notice to the public to be given. If extraordinary circumstances present themselves on an emergency basis within four days of a meeting, the board shall update its notice as soon as practicable to include that information.

4. The presiding officer, or Deputy Commissioner in the case of any State Education department board, including the State Boards for the Professions, may in their discretion determine that any certain meeting is ineligible for remote participation under extraordinary circumstances due to particular administrative needs, technological limitations, or other consideration.
5. If there is a quorum of members participating at a physical location(s) open to the public, the board may properly convene a meeting. A member who is participating from a remote location that is not open to in-person physical attendance by the public shall not count toward a quorum of the board, but may participate and vote if there is a quorum of members at a physical location(s) open to the public.
6. Except in the case of executive sessions conducted pursuant to POL § 105, the board shall ensure that its members can be heard, seen, and identified while the meeting is being conducted, including but not limited to any motions, proposals, resolutions, and any other matter formally discussed or voted upon. This shall include the use of name placards physically placed in front of the members or, for members participating by videoconferencing from private locations due to extraordinary circumstances, such members must ensure that their first and last name appears on their videoconferencing screen.
7. The minutes of the meetings involving videoconferencing based on extraordinary circumstances pursuant to POL § 103-a shall include which, if any, members participated by videoconferencing from a private location due to such extraordinary circumstances.
8. Each meeting conducted using extraordinary circumstances videoconferencing shall be recorded and such recordings posted or linked on the public website within five business days following the meeting and shall remain so available for a minimum of five years thereafter. Such recordings shall be transcribed upon request to the extent not done so already in the ordinary course of business.