

VIRTUAL MEETINGS AND BOARD MEMBER PARTICIPATION IN MEETINGS VIA TECHNOLOGY

REMOTE PARTICIPATION IN BOARD MEETINGS BY SCHOOL BOARD MEMBERS

The School Board strongly encourages all individual Board members to be physically present at all Board meetings in which they intend to participate in any capacity.

Pursuant to state law, no individual Board member may be excluded from any meeting of the Board. The Board implements the right of non-exclusion by directing that, unless a community, state, or national emergency situation requires otherwise, a physical meeting location that is sufficient to accommodate all Board members shall normally be designated for each regular and special meeting of the Board.

As a general rule, and assuming that a physical location sufficient to accommodate all Board members has been designated for a meeting, no individual member of the Board member has an enforceable legal right to insist upon the ability to attend or participate, in any capacity, in any Board meeting from a remote location via telephone conference, video conference, or another communications technology. This policy is not intended to independently create any such rights. However, as to any Board meeting for which a physical meeting location has been designated and which is not subject to the section of this policy, below, regarding virtual meetings during emergencies, the Board authorizes individual Board members to voluntarily elect to participate in certain Board meetings from a remote location under the following conditions and limitations:

1. Unless otherwise required by law or unless otherwise expressly provided under Board policy in specific circumstances, a Board member who chooses to participate (or to attempt to participate) in a meeting remotely via communications technology acknowledges all of the following:
 - a. Such choice is the voluntary exercise of a privilege, and the Board reserves discretion to limit, suspend, or terminate such privilege for any lawful reason.
 - b. The Board member assumes all risks of any unavailability, inadequacy, or failure of any communications technology that is intended to enable remote participation. Such risks include, but are not limited to, the possibility that the Board member's remote access and participation may become unavailable, limited, or disabled and that the meeting may continue without the Board member's participation.
 - c. The inability to participate in a meeting remotely using communications technology does **not** constitute an unlawful exclusion from the meeting.

2. A Board member does not have a right to individually choose or dictate the method(s) of remote access that may be offered for or used at any meeting.
3. The privilege of remote participation by Board members in a Board meeting that is directly and affirmatively authorized by this policy extends only to **open sessions** of regular and special Board meetings. The privilege **includes** being counted in the quorum requirement for such meetings, participating in discussion on items of business, and making and voting upon motions. However, to the extent a Board member is not permitted to vote on a matter before the Board due to the Board member's status as a remote attendee of the meeting, then such Board member shall not be included in the quorum count for such meeting or for the applicable portion of the meeting.
4. Unless the Board takes additional formal action (i.e., via a vote, as further detailed in the Authorizing Additional Remote Participation by Board Members section of this policy) to grant further affirmative authorization for remote participation via communications technology, the privilege of remote participation in Board meetings shall **not** extend to remote participation in any of the following:
 - a. A closed session portion of any meeting.
 - b. Even if occurring in open session, due process hearings or similar evidentiary hearings, including those relating to employment matters, as well as any deliberations or decision-making based upon such hearings.
 - c. The election of Board Officers by secret ballot. However, this limitation may be rendered moot by the Board either (1) choosing, at its discretion, not to use secret ballots for such an election; or (2) authorizing a Board member who is participating remotely to voluntarily cast a non-secret vote for the applicable Board Officer position(s) even though Board members who are physically present at the meeting are using secret ballots.
5. Any remote participation that is authorized at the discretion of the Board, whether by this policy or by additional formal action, is subject to express decisions of the Board that may deny, limit, or revoke the privilege as applied to specific meetings. In addition, upon an order of the presiding officer of the meeting, a Board member's remote participation may be limited (e.g., video feed turned off, microphone muted except when the Board member has obtained the floor, etc.) or terminated during a meeting if any of the following apply:
 - a. The Board member's attempted remote participation in the meeting is unreasonably interfering with conducting an orderly and efficient meeting.
 - b. The communications technology being used is not enabling appropriate participation, including, at a minimum, the sufficient opportunity for reliable, simultaneous aural communication among all participating Board members.

- c. For a reason that is directly related to the remote participation, there is uncertainty regarding the Board's compliance with the Open Meetings Law, including the requirement that the meeting must be sufficiently accessible to public observers.

Any order of the presiding officer under this provision shall be announced and recorded in the minutes of the meeting and is subject to an appeal for a final decision by the Board. The appeal may be made by any Board member who is then participating in the meeting.

6. Unless otherwise required by law or unless otherwise expressly provided under Board policy in specific circumstances, no Board meeting needs to be delayed, cancelled, or rescheduled solely to accommodate a Board member's request or attempt to exercise the privilege of remote participation via communications technology.
7. The authorization for a Board member's voluntary remote participation in Board meetings does not obligate the Board to arrange for the communications technology that is necessary to enable such remote participation for each and every Board meeting.

AUTHORIZING ADDITIONAL REMOTE PARTICIPATION BY BOARD MEMBERS

Notwithstanding any contrary voting standard that may be called for under any parliamentary authority, a motion to authorize any Board member's remote participation, in any capacity, in a closed session or in any other portion of a meeting that is not already affirmatively authorized for remote participation under Board policy shall require a standard majority vote in order to be approved.

1. Any motion and vote to consider granting additional affirmative authorization for a Board member's remote participation shall be taken up only if consideration of the question is sufficiently included in the public notice of the meeting. Accordingly, a Board member may need to provide the chief presiding officer and Superintendent with reasonable advance notice of their desire to request consideration of such exceptional authorization.
2. If the chief presiding officer and Superintendent receive a Board member's request to include consideration of such additional authorization for remote participation on a meeting agenda prior to the posting or publication of the public notice of the meeting, then the item shall be included in the meeting notice in the absence of exceptional circumstances that the presiding officer determines constitute lawful and sufficient reason for denying the request.
3. The Board member(s) seeking such additional, exceptional authorization to participate in a meeting remotely shall be entitled to make or second the relevant motion and may participate in the discussion and the vote on the motion.

4. As to any motion and vote relating to authorizing remote participation in a **closed session**, the motion and vote shall be taken up **prior to** the Board's consideration of the motion to convene in the applicable closed session. Therefore, any decision to authorize a Board member's remote participation in a closed session shall be contingent on a subsequent decision to actually convene in the closed session.
5. Confidentiality concerns and potential legal barriers and legal risks to a Board member's remote participation in such additional situations are relevant to the consideration of granting such authorization.

VIRTUAL MEETINGS AND REMOTE PARTICIPATION IN EMERGENCIES

Subject to any superseding determination by the Board, the Board President (or other acting chief presiding officer) is authorized to make a determination that a community, state, or national emergency exists in connection with any Board meeting and, based on such determination, structure one or more Board meetings as emergency virtual Board meetings under this section.

For purposes of this section of this policy, an emergency means (1) a situation in which an applicable law, order, or formal decree or declaration of a governmental authority disallows the Board members' simultaneous in-person attendance at a designated physical meeting location; or (2) some other community-level emergency situation exists (i.e., not specific to any individual's unique personal circumstances) such that designating a physical meeting location and expecting Board members to attend at that physical location would substantially and unreasonably endanger the health and safety of the Board members or District employees.

The distinguishing characteristics of an emergency virtual Board meeting under this section are the following:

1. Unless the Board itself directed the holding of an emergency virtual Board meeting, the Board President or other chief presiding officer, or their designee, shall notify all Board members that the meeting will be held as an emergency virtual Board meeting.
2. Even if a physical meeting location is designated and offered as an option to some Board members and/or to any members of the public, the Board members' participation in an emergency virtual meeting from a remote location via communications technology **shall not** be considered to be voluntary.
3. The public notice of the emergency virtual meeting shall include applicable information about public access to the meeting.
4. The Board President or other acting chief presiding officer is responsible for determining whether it is necessary or appropriate to include information in the public notice of the meeting that addresses the virtual structure of the meeting and/or the nature of the emergency situation.

5. Notwithstanding any other Board policy that may address the Board's normal approach to public comment periods during Board meetings, and unless otherwise expressly directed by the Board in connection with the specific emergency, the Board President or other acting chief presiding officer is authorized to determine whether an emergency virtual meeting will include a public comment period and, if so, the scope of such public comment period and the method(s) by which the public may address the Board.
6. For an emergency virtual meeting, this policy authorizes the remote participation by Board members while the Board is convened in any **open session or closed session** portion of such a meeting, subject to the limitation that, upon a request by the Board President or any Board member, each Board member who is participating in such a meeting from a remote location must affirm that he/she is taking adequate steps to safeguard the confidentiality of any closed session. A Board member's failure or unwillingness to so affirm is grounds for the Board, by a majority vote, to revoke authorization to participate in the closed session.
7. If a Board member is attempting to participate in an emergency virtual meeting from a remote location and is having difficulty establishing or maintaining a sufficient connection to the communications platform, the Board may need to make a decision whether the meeting will continue without such Board member's participation. Before making a decision that would limit or terminate any Board member's remote access to an emergency virtual meeting or allow the meeting to continue without a Board member's participation:
 - a. The presiding officer of the meeting may call, or any Board member may request, a temporary recess in the meeting to allow the Board member a reasonable opportunity to establish or restore his/her access and participation.
 - b. The presiding officer or a designee may attempt to contact the Board member to determine whether the Board member is willing to consent to voluntary non-participation in the remainder of the meeting.
 - c. The Board must evaluate whether, under the specific circumstances, a decision to continue the meeting without the Board member's participation would constitute an unlawful exclusion of the Board member.

REMOTE PUBLIC ACCESS TO BOARD MEETINGS

For any Board meeting for which sufficient public access to the meeting is provided at a specific physical location that is identified in the public notice of the meeting, this policy:

1. Neither requires the Board to offer nor prohibits the Board from offering the public any additional means of accessing and observing the meeting from remote locations using a communications technology platform. However, to the extent any such additional means of public access to a meeting is offered, it shall normally be

considered optional and supplemental such that any unavailability of such supplemental public access, or any lack of a complete or consistent transmission, shall not affect the Board's authority to proceed with the meeting.

2. Neither requires the Board to conduct nor prohibits the Board from conducting a public comment period or public hearing in a manner that permits members of the public to address the Board from a remote location using communications technology.

To the extent permitted by law, including in certain emergency situations where there is a health and safety danger to the in-person, physical attendance of members of the public at a Board meeting, the Board may arrange for lawful methods of remote public access to Board meetings using communications technology as a primary (i.e., not merely supplemental) means of complying with the public access requirements of the Open Meetings Law or other applicable legal obligations. In any such situation, the public notice of the meeting shall include adequate information regarding the applicable options for the public's remote access.

APPLICATION TO COMMITTEES AND OTHER GOVERNMENTAL BODIES

Subject to any superseding directive established by the Board, a committee created by a policy, resolution, rule, or order of the Board, as well as any other governmental body of the District, may hold virtual meetings and authorize remote access and remote participation in its meetings to the extent authorized for Board meetings under this policy. As applied to such committees and other governmental bodies of the District, references to individual Board members within this policy shall be understood to refer to the individual members of such bodies, and all duties and authority held by the Board and by the Board President under this policy shall be held by the relevant body and by its chief presiding officer. Likewise subject to any superseding directive established by the Board, a District governmental body may also vote to require all members of the body to be physically present at meetings in order to participate in the body's meetings.

Legal References:

Wisconsin Statutes

- Subch. IV of Ch. 19 [open meetings of governmental bodies; including public accessibility requirements, closed session exemptions, and other provisions]
- Section 19.81(2) [public accessibility of board meetings]
- Section 19.89 [no member of a governmental body may be excluded from any meeting of such body]
- Section 120.11(1) [school board meetings and definition of quorum in common and union high school districts] {Editor's Note: Unified school districts should delete this reference.}
- Section 120.43 [school board meetings in unified school districts]

Adoption Date: August 22, 2022