

# Changes to the Open Meetings Law



# Open Meetings Law

- Generally, the Open Meetings Law (OML) requires that most things to be discussed and acted upon by a Board must be conducted in a public session.
- Work sessions and committee meetings, in addition to full Board meetings, are also considered public sessions.
  - Advisory Committees are generally not subject to the OML, unless the Advisory Committee is only comprised of board members and/or performs a “governmental function,” while shared decision-making committees are subject to the OML.
- The OML does not apply to board retreats or “chance encounters.” In both these cases, no public business can be conducted during these meetings. Only generalized conversations and trainings can and should occur during these meetings.
- All public meetings must be accompanied by a public notice. Meeting notices should be posted at least one week in advance. The notice must also be posted in one or more public locations at least 72 hours prior to the meeting. All documents that will be acted upon or considered by the Board must be made publicly available “to the extent practicable” 24 hours before the meeting, as well.

# The OML Prior to March 2020

Before the pandemic, virtual participation in board meetings was severely limited because the rules for remote participation were fairly onerous. If members attended virtually, the following must have been followed:

- Only video conferencing was allowed for remote participation (i.e. telephonic participation was not allowed).
- The exact physical location of the board member participating virtually must have been included in the meeting notice.
- The remote location from which the board member was participating must have been accessible to the public.

# Changes for Virtual Participation During the Pandemic State of Emergency

From March 2020 through April of 2022, the Open Meetings Law was adjusted under the Pandemic State of Emergency and later amended in September of 2021 to allow for the following:

- Both videographic and telephonic conferencing was permitted.
- All board members could participate virtually without the need for a physical location to be made available to the public.
- The physical location of board members participating virtually was not needed to be included in the meeting notice.
- Recordings and transcriptions of board meetings would need to be made available and posted to the website following the meeting.

# New Provisions Under the Open Meetings Law Adopted in the FY23 Budget

- Through the end of the pandemic state of emergency:
  - Boards can continue to operate under the pandemic/state of emergency rules detailed on page 3 of this document.
- Starting once the pandemic state of emergency executive order lapses through July 1st, 2024:
  - Boards have two options for virtual member participation in meetings, which includes both full board meetings, as well as committee or subgroup meetings where the business of the board is conducted:
    - Option 1: Return to the pre-pandemic rules for virtual meetings as detailed on page 2 of this document.
    - Option 2: Virtual participation for board members is allowable as long as the conditions detailed on the subsequent pages of this document are met.
  - If a state of emergency is in effect (at the federal, state, or local level), Boards may return to meeting virtually in a way similar to how they had been operating between March 2020 and June 14, 2022.

# Option 2: Virtual Participation in Board Meetings Requirements

1. The meeting must be conducted at a physical location with public access where a quorum of the participating members are present. This physical location must be identified in the public notice. The physical location of any *remotely participating* board members does not have to appear in the notice, though.
2. Virtual participation by board members is only allowed if member cannot be physically present due to extraordinary circumstances (i.e. illness, family emergency, or other circumstances, which must be defined by board policy.)
3. All remote members must participate by video conferencing (no telephonic conferencing allowed) and remain on camera so that any board members participating remotely can be seen, heard, and identified throughout any public portions of the meeting. This does not apply to Executive Sessions.

# Other Provisions to Keep in Mind When Implementing Remote Participation in Board Meetings

- The Board **must hold a public hearing and pass a resolution** to adopt policies to allow for virtual participation of board members in line with the provisions detailed in Option 2. These written procedures must be made available publicly on your website and include a definition of the “extraordinary circumstances” that would allow for virtual participation.
- The public must be allowed to participate via video conference in real time and in the same capacity as in-person attendees. The public notice posted in advance of the meeting must include the link for the public to access the meeting remotely.
- The video conference must be recorded and posted on the school’s website and any accompanying minutes must reflect which board members participated virtually. The video conferencing software used for remote participation must be ADA compliant (i.e. allow for closed captioning to be turned on).
- Minutes and recordings must be posted publicly within two weeks of the meeting. Transcriptions of the meeting must be provided upon request.

# Public Comment

- Public comment is not required during a Board meeting, though it is encouraged that public comment be allowed in order to have open communication with their constituents.
- Boards may adopt policies that set reasonable rules around conduct and language during public comment sessions (including limits both individually and collectively on the amount of time given to public comment). It is advisable that all these rules be written out and promulgated publicly.
- There can be limits placed on the topics discussed during public comment sessions, but all regulations must be content neutral and cannot differentiate between on-topic comments that are positive or disparaging.
- You can also require pre-registration to participate in the public comment period.
- There can be consequences adopted for public commentators who fail to follow published rules.

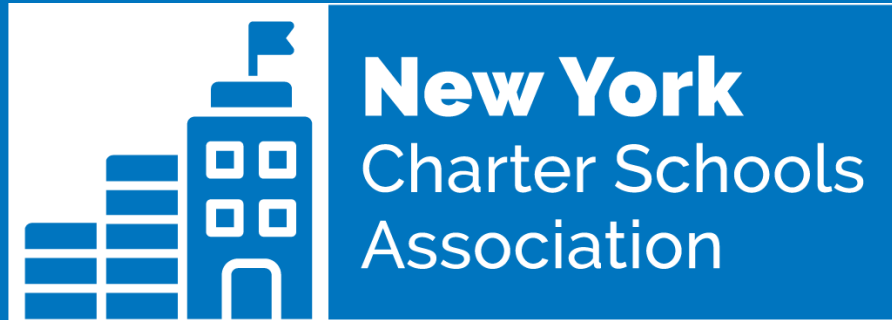


# Executive Session

- Can only take place on a majority vote of the total board members present during the open meeting.
- Executive Sessions can only be used to discuss the following topics and a motion to convene in executive session must reference one of these subject or subjects:
  - matters which will imperil the public safety if disclosed;
  - any matter that may disclose the identity of a law enforcement agent or informer;
  - information relating to current or future investigation or prosecution of a criminal offense that would imperil effective law enforcement if disclosed;
  - discussions involving proposed, pending, or current litigation;
  - collective negotiations pursuant to Article 14 of the New York Civil Service Law;
  - the medical, financial, credit, or employment history of a particular person or corporation, or matters leading to the appointment, employment, promotion, demotion, discipline, suspension, dismissal, or removal of a particular person or corporation;
  - the preparation, grading, or administration of exams; or,
  - the proposed acquisition, sale or lease of real property or the proposed acquisition, sale, or exchange of securities, but only when publicity would substantially affect the value.

# Additional Information on Executive Sessions

- Executive Sessions may be attended by any members of the Board as well as “any other persons authorized by the Board” to attend. In some cases, the Superintendent or Executive Director may be given authorization to attend any Executive Sessions.
- Boards do not have to allow parents and/or their counsel to attend Executive Session where a student’s disciplinary matter is discussed.
- There is a presumption of confidentiality during Executive Session and board members should never divulge any information discussed during an Executive Session.
- Minutes do not need to be taken during Executive Session and no votes should be taken during this session.



Reach out to the Association with your questions about the Open Meetings Law by emailing our Director of School Support, Michael Good at [mgood@nycharters.org](mailto:mgood@nycharters.org).

Our member charter schools make our support programming possible.