



OPEN MEETINGS LAW

QUICK REFERENCE GUIDE

New York State of Emergency Due to COVID-19

Charter School Governance & the N.Y. Open Meetings Law

With schools closed across the state, governing bodies must continue to govern their charter schools to ensure students have access to education and can continue in due course when civil authorities determine to reopen school buildings.

Executive Order 202.1

Governor Cuomo’s Executive Order 202.1 (“EO 202.1”) provides for the suspension of Article 7 of the Public Officers Law:

- to the extent necessary to permit any public body to meet and take such actions authorized by the law without permitting in public in-person access to meetings and authorizing such meetings to be held remotely by conference call or similar service, provided that the public has the ability to view or listen to such proceeding and that such meetings are recorded and later transcribed.

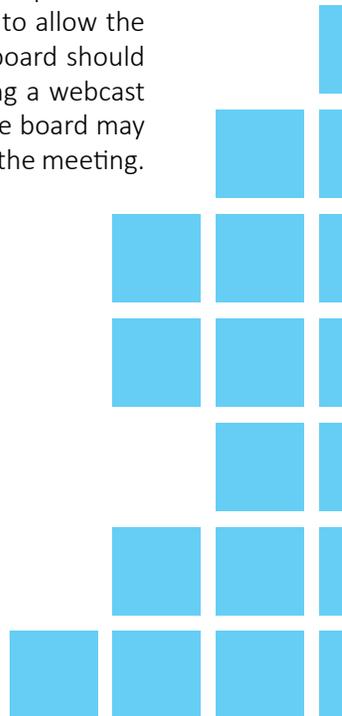
EO 202.1 is effective through April 11, 2020. The Institute will update this guidance if the order is extended. (The full text of EO 202.1 and similar authority is available at: <https://www.governor.ny.gov/executiveorders>).

Trustee Participation

EO 202.1 suspends the N.Y. Open Meetings Law requirements that boards meet in person or by videoconference only, and that each location of a trustee participating by video be included in the notice. Therefore, boards may choose a platform that allows members to participate from their homes. Board members may also participate by telephone without video, for the period of the order, and be counted toward quorum and vote on any and all matters.

Public Access

Under EO 202.1, the provisions for in-person public access were suspended. That said, meetings must be held in a manner which allows the public to listen or view. This can be done by different platforms that allow webcast or conferencing, or telephone conference call. The platform only has to allow the public to view or listen. EO 202.1 does not require access for public participation. The board should consider how it will receive feedback, and how it would allow for orderly comment during a webcast meeting or call. A board may consider questions being emailed prior to the meeting so the board may consider and/or respond, or a board may allow real time comments to be submitted during the meeting. A board may decide with what works best for it.





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Meeting

EO 202.1 does not revise the definition of a meeting. A “meeting” is still the convening of a public body for the purpose of conducting school-related business no matter the mean of participation, i.e. telephone, video, online platform, etc. Trainings and briefings are not considered meetings for these purposes as long as no more than passing reference to business occurs. For instance, if a quorum of the board attends a webcast provided by the Institute or the New York State Education Department to be informed of current guidance, it is not a “meeting” of the board as its purpose is to become informed and not to conduct school business.

Notice

EO 202.1 does not revise the notice requirements for a meeting.

- For meetings scheduled more than a week in advance, notice must be given no fewer than 72 hours prior to the meeting.
- For meetings scheduled less than a week in advance, notice must be given to the extent practicable at a reasonable time prior to the meeting.

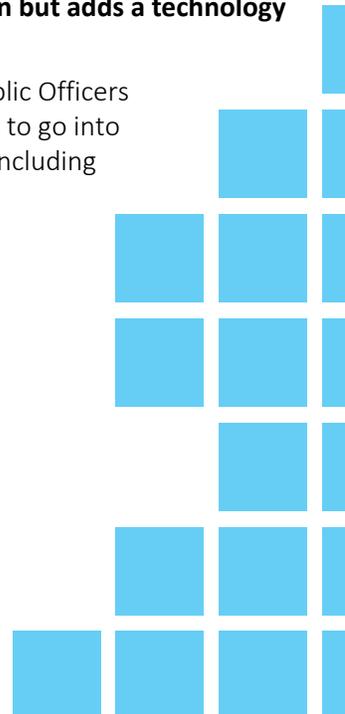
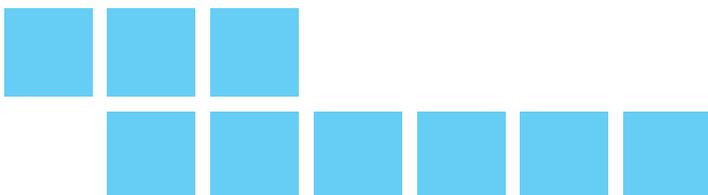
The notice should still be provided to the customarily used news media outlet and posted on the schools/ education corporation's website. The notice must include the date, time and location of the meeting. For a virtual meeting the notice should specify the platform being used and how the public may observe. The agenda for the meeting should be posted and it is best practice to allow the public to email questions prior to the meeting. A sample notice is provided.

The law requires the notice be posted in one or more designated public locations (usually the school(s)). The current executive order does not speak to this requirement, but we find a fair interpretation to be a notice on the website and a notice wherever parents may be gathering homework or other information (physical or virtual) should be sufficient.

Executive Session

The executive order does not impact the board’s ability to hold an executive session but adds a technology burden.

If the board goes into executive session for one of the reasons enumerated in the Public Officers Law, the motion to go into executive session must state the specific reason. Motions to go into executive session must be approved by a majority of the entire number of the board including vacancies. Also, no public money may be appropriated in executive session.





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QUICK REFERENCE CARD

The challenge with a virtual or telephonic meeting is how to exclude the public from the executive session and simultaneously have a way for the trustees to communicate during executive session. With a telephonic meeting, it may be possible to have a separate conference call set up in advance for the executive session, and then have trustees rejoin the main line call after executive session. As in the case of a normal meeting the minutes of the meeting must reflect the vote to go into executive session, and a summary of, and the vote for any actions formally voted on in executive session, as well as the vote to go back into public session.

Minutes

Minutes must still be taken. It is best practice for the minutes to reflect:

- the date, time, and platform used to conduct the meeting including the call number or web location;
- which trustees were present and not present, and the total number of seats on the board including vacancies;
- a brief summary of items/detailed agenda; and,
- all motions, resolutions, and proposals formally voted on as well as the votes for each trustee.

After a board meeting, minutes must be made available to the public within two weeks for regular board meetings, and one week for executive session. All minutes are due to the Institute within 30 days of a board meeting, even if they have not been approved by the board. The secretary should keep all materials presented to the board together with the minutes in the corporate records.

Recording and Transcription: EO 202.1 requires the board to record and later transcribe the meeting's proceedings. While EO 202.1 specifies no particular time frame for making the transcript available, the Institute interprets the language to mean a reasonable period of time after the meeting given the facts and circumstances of producing such a transcript. Both the recording and the transcript will be available to the public under FOIL.

Membership and Information Consideration

The board should spend time discussing future governance in light of the current situation. The board should consider how business will be conducted in case not enough members of the board or certain officers are able to participate due to health reasons. Please refer to the by-laws when considering any procedures or delegations. This also includes how the board will be kept informed through this time if leadership are unable to continue due to health reasons.

For more information regarding Open Meetings Law provisions not impacted by current Executive Orders please see the Institute's Guide to Open Meetings Law available at: <https://www.newyorkcharters.org/wp-content/uploads/Guide-to-Open-Meetings-Law.pdf>.

