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Be in the Know: Changes to Open Meetings Law

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Presentation Disclaimer

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Videoconferencing Rules Pre-Pandemic

- Public Officers Law 103(c): “A public body that uses videoconferencing to conduct its meetings shall provide an opportunity for the public to attend, listen and observe at any site at which a member participates.”
- Notice provides date, time and location(s) of meeting, this includes address of each location.
- Example: Charter School holds monthly meeting at school. A few board members want to take the meeting from their personal residence. In order for those board members to count as **part of quorum and vote** they must put their personal residence on the Notice and, if anyone were to request access, allow them to attend.
- NEW Public Officers Law 103(c): *A public body shall provide an opportunity for the public to attend, listen and observe meetings in at least one physical location at which a member participates.*

Videoconferencing Rules New 103-a

- Public Officers Law 103-a(2): “A public body **may**, in its discretion, use videoconferencing to conduct its meetings pursuant to the requirements of this article **provided 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...**”
- Members can participate by videoconference (will not count for quorum, but can vote) must meet “**extraordinary circumstances**,” that is defined in the resolution and written procedures.
 - Examples include disability, illness, caregiving responsibilities, or any other significant or unexpected factor or event which precludes the member’s physical attendance.
- The requirements “in person” participation requirements “shall not apply during a state disaster emergency declared by the governor pursuant to section twenty-eight of the executive law, or a local state of emergency proclaimed by the chief executive of a county, city, village or town pursuant to section twenty-four of the executive law, if the public body determines that the circumstances necessitating the emergency declaration would affect or impair the ability of the public body to hold an in person meeting.”

Videoconferencing Rules New 103-a

- This law goes into effect on June 9, 2022 (expires July 1, 2024), schools must do following to utilize this provision:
 - Adopt a resolution following public hearing outlining process/procedures for videoconferencing
 - Members that are remote must be identified in the meeting minutes and be heard/seen/identified.
 - Meeting notice include that videoconferencing will be available, where the public can view/and or participate, where required documents and records will be posted/available.
 - Make a recording of meeting and recording must be posted within five business days on website (must have website) and make it available for a minimum of five years. Transcribed upon request.
 - Members of the public must also be able to participate via video conference and participate the same as if they were in person.
 - Use videoconferencing technology that will allow access by members of the public with disabilities consistent with the 1990 Americans with Disabilities Act and corresponding guidelines.
- Prior to June 9, 2022, schools may meet remotely as long as public has the ability to view or listen to such proceeding and that such meetings are recorded and later transcribed.

NY Committee on Open Government

- State government office that oversees the Open Meetings Law
- Committee on Open Government offers advisory opinions on how OML applies to situations – you can rely on what they say
- Committee on Open Government issued a Questions and Answers memo about how to properly interpret the 2022 amendments to OML

Committee on Open Government Q&A

- “As a threshold matter, it is our understanding that the new law does not change or curtail what has always been required of public bodies complying with the Open Meetings Law. Public bodies should continue to operate now as they did before the onset of the pandemic in early 2020 when the “in person” aspects of the Open Meetings Law were first suspended. In other words, we believe that if a public body was permitted to do it before the pandemic, this law does not change that. As noted above, we understand that this law expands, in extraordinary circumstances only, the ability of public bodies to meet using remote access technology.”
- Q. Are public bodies permitted to conduct its meetings at multiple physical locations from which members of the body may participate if those locations are open to in-person public attendance, regardless of extraordinary circumstances?
 - A. Yes. We understand that the amendments to the OML expand the authority of a public body to allow its members to participate in a meeting using videoconferencing under limited circumstances when the member’s location is not open to in-person public attendance. Before the onset of the pandemic in 2020, public bodies routinely held proper open meetings by videoconference from multiple physical locations identified in the meeting notice that were open to the public, connected virtually together by videoconference. This remains proper. It is our opinion that the new § 103-a does not limit the existing authority to virtually connect multiple public locations from which members and the public may attend through the use of videoconferencing technology.

Hypothetical

- Paul, a board member at Stupendous Charter School in Brooklyn hates having to share his home location in the public notice of school board meetings. He heard that a new law now takes that rule away and just lets him participate remotely with no restrictions, so long as a couple of other trustees attend in-person at the school.
- Corey, another trustee, finds Paul annoying, and would rather not see him in person at meetings, but is pretty sure the new rule restricts, rather than expands, the ability to participate remotely.

Options For Charter School Board Meetings

- All members meet in-person, no videoconferencing available
- There are multiple meeting locations open to the public and all locations are connected via videoconferencing (pre-pandemic rules that are explicitly endorsed by Committee on Open Government) *No new limits on remote part; must notice remote locations*
- Adopt a resolution to utilize the new 103-a videoconferencing flexibilities and make sure school has complied with all requirements. Schools can choose to use this flexibility at anytime. *Limits on remote part, but may not need to share location of remote members*

Key Links

Text of Revised Law Section 103-a

<https://opengovernment.ny.gov/system/files/documents/2022/04/oml-text-041222.pdf>

Committee on Open Government Q&A

<https://opengovernment.ny.gov/system/files/documents/2022/04/chapter-56-of-the-laws-of-2022-guidance-document-4-15-22.pdf>

Thursday May 19 at 10am – Committee on Open Government webinar on new statute, register here:

https://opengovernment.ny.gov/system/files/documents/2022/05/coog-virtual-oml-information-session_051922.pdf

Thank You

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