

## Open Meetings Law Reminder January 8, 2025

Under what circumstances may board members appear by videoconferencing at a board of trustees meeting?

### I. Option 1: Pre-Pandemic Rules for Virtual Participation

Board members may participate remotely by videoconferencing provided the public notice for the meeting informs the public that video conferencing will be used, identifies the locations for the meeting and states that the public has the right to attend the meeting at any of the locations. Under this option, a board member may choose to participate by videoconferencing for any reason. However, the board member must disclose the location from which or she will be participating remotely and must permit the public to attend at that location. Under this option board members participating remotely may be counted for quorum and may vote.

### II. Option 2: New NY Public Officers Law §103-a (Expires and deemed repealed on July 1, 2026)

Under Section 103-a of the NY Pub Off Law, a board member may participate remotely *without* having to disclose his or her location to the public. However, this option is limited to instances of extraordinary circumstances and requires that several conditions be met. Under this option, members participating remotely may not be counted towards quorum but may be allowed to vote.

Under this option board members may participate by videoconferencing if the following conditions have been met:

- The board has conducted a public hearing and adopted a resolution authorizing the use of videoconferencing and has established written procedures governing member and public attendance, and such written procedures are conspicuously posted on the public website;
- A minimum number of board members are present to fulfill the quorum requirement in the same physical location or locations where the public can attend;
- The public notice for the meeting shall 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;
- A board member shall only be permitted to appear by videoconferencing **due to extraordinary circumstances**, as set forth in the resolution and written procedures adopted including disability, illness, caregiving responsibilities, or any

other significant or unexpected factor or event which precludes the member's physical attendance at such meeting. If a board member is permitted to appear by videoconferencing due to extraordinary circumstances his or her physical location is not required to be included in the public notice for the meeting;

- Except in the case of executive sessions, the board shall ensure that all members can be heard, seen, and identified, while the meeting is being conducted;
- The minutes of the meetings involving videoconferencing shall include which, if any, members participated remotely and shall be available to the public;
- The board shall provide that each meeting conducted using videoconferencing shall be recorded and such recordings posted or linked on the public website of the public body 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. All software used for videoconferencing must be ADA compliant;
- If videoconferencing is used to conduct a meeting, the board shall 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; and
- A board electing to utilize videoconferencing to conduct its meetings must maintain an official website.