

Office of School Board Attorney  
Walter J. Harvey, School Board Attorney

**SUBJECT: ADOPTION OF EMERGENCY POLICY 0165e1, *PUBLIC MEETINGS DURING DECLARED COVID-19 EMERGENCY***

**COMMITTEE: PERSONNEL, STUDENT, SCHOOL & COMMUNITY SUPPORT**

**LINK TO STRATEGIC BLUEPRINT: INFORMED, EMPOWERED & ENGAGED STAKEHOLDERS**

On March 9, 2020, the Governor of the State of Florida declared a state of emergency for the state as a result of COVID-19 Disease (novel Coronavirus) pandemic. Subsequently, on March 16, 2020, the United States President and the Centers for Disease Control and Prevention (“CDC”) issued guidance advising individuals to adopt social distancing measures, including avoiding gatherings of more than ten (10) people. On May 8, 2020, the Governor extended the state of emergency.

After numerous local governmental entities inquired as to how to legally conduct their official meetings while the state is under a state emergency because of the ongoing pandemic, on March 19, 2020, the Florida Attorney General opined that local government bodies may conduct meetings through the use of “communications media technology,” by teleconferencing or other technological means if either a statute permits a quorum to be present by means other than in person, or that the in-person requirement for establishing a quorum is lawfully suspended during the state of emergency.

Accordingly, on March 20, 2020, the Governor issued Executive Order 20-69, which suspended any Florida Statute that requires a quorum to be present in person or requires a local government body to meet in at a specific public place and provided that: “local government bodies may utilize communications media technology such as telephonic and video conferencing” for their meetings. On April 29, 2020, The Governor issued Executive Order 20-123, effective May 18, 2020, extending the suspension of these statutes for another sixty (60) days. On June 23, 2020, the Governor again extended the suspension of these statutes until August 1, 2020.

On March 31, 2020, at a Special Board Meeting, the Board adopted Agenda Item SP-1, Policy 0165e, *Public Meetings During Declared COVID-19 Emergency*, which waived Board policy requirements that a physical quorum be present for meetings and that Board meetings take place in specific locations. In accordance with Section 120.54(4), F.S., that Policy will terminate ninety (90) days from adoption. However, in light of the continued COVID-19 emergency, the Governor’s Executive Orders, and the CDC guidance requiring continued social distancing, it is

recommended that the Board adopt a new emergency policy to continue to allow virtual meetings unless and until the Governor rescinds the statutory waivers. This policy does not preclude the Board from meeting in person during this time if and when it chooses while observing CDC guidelines.

This item is presented for the Board's consideration to adopt a new emergency policy that would waive or suspend Board policies that conflict with the authorization afforded by the Governor's Executive Order 20-69, as extended by 20-112. The proposed Emergency Policy 0165e1 would provide for the following:

- Permit School Board meetings to be held virtually;
- Waive the Board Policy requirement that the meeting be held at a specific time and at a specific location;
- Require that adequate notice for the meeting be provided, including a means for the public to access the meeting;
- Eliminate the Board Policy requirement for the Board to be physically present at the meeting in order to establish a quorum for the meeting;
- Eliminate the general public hearing that regularly takes place at 6:30 pm and other portions of the meeting that may endanger the public.
- Authorize Board Advisory Committees to meet virtually.

Attached are the Notice of Intended Action and the proposed emergency policy.

It is recommended that The School Board of Miami-Dade County, Florida, adopt the proposed emergency policy in order to protect the health, safety, and welfare of students, the general public, school district staff, and School Board members while efficiently conducting the business of the Board during its required monthly public meeting during the state of emergency. This policy is being submitted as an emergency adoption pursuant to the Florida Administrative Procedure Act, § 120.54(4), F.S. This emergency action is necessary in order to protect health, safety, or welfare during the ongoing Covid-19 pandemic.

Authorization of the Board is requested for the Superintendent to undertake emergency rulemaking proceedings in accordance with the Administrative Procedure Act to adopt emergency School Board Policy 0165e1, *Public Meetings During Declared COVID-19 Emergency*.

**RECOMMENDED:**

That The School Board of Miami-Dade County, Florida:

- 1) find that the emergency policy is necessary because of the immediate danger caused by the COVID-19 pandemic; and
- 2) adopt Emergency School Board Policy 0165e1, *Public Meetings During Declared COVID-19 Emergency*, to be effective upon adoption.

## **NOTICE OF INTENDED ACTION TO ADOPT EMERGENCY POLICY**

THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA, announces the adoption of Board Policy 0165e1, *Public Meetings During Declared COVID-19 Emergency*, at its meeting of July 15, 2020.

**SPECIFIC REASONS FOR FINDING AN IMMEDIATE DANGER TO THE PUBLIC HEALTH AND WELFARE:** In order to protect public health and safety during the Covid-19 Disease (Coronavirus) pandemic affecting the state and nation and pursuant to the Governor's Declaration of State of Emergency and subsequent related Executive Orders and in accordance with local governments' limits on social gatherings and the social distancing guidelines issued by the Centers for Disease Control and Prevention.

**REASONS PROCEDURE IS FAIR UNDER THE CIRCUMSTANCES:** Due to the immediate danger to public health, safety, or welfare requiring emergency action, the proposed emergency policy is presented for the Board's adoption to allow the Board to meet through the use of communications media technology, including teleconferencing and video-teleconferencing. This emergency policy is necessitated by the immediate danger caused by the Covid-19 pandemic.

**PURPOSE AND EFFECT OF EMERGENCY POLICY:** In order to promote and protect the health safety and welfare of students, the general public, school district staff, and School Board members. The proposed emergency policy includes the following provisions: permitting the School Board meeting to be held through communications media technology; requiring that adequate notice for the meeting, including that a means for the public to access and participate in the meeting be provided; a waiver of the Board policies requiring that the Board meet at a specific location and at a specific time and that School Board members be physically present to establish a quorum for the meeting; and the suspension of the public hearing portion of the meeting. This emergency policy will be in effect for ninety (90) days.

**SUMMARY:** Policy 0165e1 *Public Meetings During Declared COVID-19 Emergency*, permits the School Board meeting to be held through communications media technology; requires that adequate notice for the meeting, including that a means for the public to access the meeting be provided; waives the requirement that the Board meeting be held at a specific location and at a specific time and that School Board members be physically present to establish a quorum for the meeting during the period of the emergency; and suspends the 6:30 p.m. public hearing portion of the meeting.

**SPECIFIC LEGAL AUTHORITY UNDER WHICH RULEMAKING IS AUTHORIZED:** §§ 120.54(4); 120.81; 286.011; 286.0114; 1001.41; 1001.42; F.S.

**LAWS IMPLEMENTED INTERPRETED OR MADE SPECIFIC:** §§ 1001.33; 1001.43, F.S.; Governor Executive Orders Number 20-69 (March 20, 2020), 20-123 (May 15, 20); 20; 20-150 (June 23, 2020, Attorney General Opinion 2020-03 (March 19, 2020).

**DATE AND TIME OF EFFECTIVENESS:** Upon adoption on July 15, 2020.

**IF REQUESTED, A HEARING WILL BE HELD DURING SCHOOL BOARD MEETING OF July 15, 2020**, which begins at 1:00 p.m., in the School Board Auditorium, 1450 N.E. Second Avenue, Miami, Florida 33132. ANY PERSON WHO DECIDES TO APPEAL THE DECISION made by The School Board of Miami-Dade County, Florida, with respect to this action will need to ensure the preparation of a verbatim record of the proceedings, including the testimony and evidence upon which the appeal is to be based. Section 286.0105, F. S.

**COPIES OF THE EMERGENCY POLICY** are available at cost to the public for inspection and copying in the Citizen Information Center, Room 102, 1450 N.E. Second Avenue, Miami, Florida 33132.



Book	Policy Manual
Section	July 15, 2020 - Emergency Policy
Title	PUBLIC MEETINGS DURING DECLARED COVID-19 EMERGENCY
Code	po0165e1
Status	

### 0165e1 - **Public Meetings During Declared COVID-19 Emergency**

On March 9, 2020, the Governor of the State of Florida declared a state of emergency for the entire State as a result of COVID-19 pandemic, and on May 8, 2020, the Governor extended the state of emergency. In addition, on March 16, 2020, the United States President and the Centers for Disease Control and Prevention (CDC) issued guidance advising individuals to adopt far-reaching social distancing measures, including avoiding gatherings of more than ten (10) people. Since then, the CDC continues to recommend social distancing.

On March 19, 2020, the Florida Attorney General opined that local government bodies may conduct meetings by teleconferencing or other technological means if either a statute permits a quorum to be present by means other than in person, or that the in-person requirement for constituting a quorum is lawfully suspended during the state of emergency.

On March 20, 2020, the Governor issued Executive Order Number 20-69, which suspended any Florida statute that requires a quorum to be present in person or requires a local government body to meet in at a specific public place and provided that: "local government bodies may utilize communications media technology such as telephonic and video conferencing" for their meetings. On May 15, the Governor issued Executive Order 20-123, which extended the suspension of these Florida statutes governing public meetings, effective May 18, 2020. On June 23, 2020, the Governor issued Executive Order 20-150 again extended the suspension of these statutes until August 1, 2020.

#### A. Virtual Meetings

In order to protect the health, safety, and welfare of our students, members of the public, staff and the Board, from the danger posed by COVID-19 pandemic, all meetings of the Board during the state of emergency may be conducted by teleconferencing, video conferencing or other technological means. The provisions of Policy 8420, *Emergency Closing of Schools*, requiring any Board meeting scheduled to take place during the state of emergency to be canceled and rescheduled is waived during the COVID-19 Emergency, as such meetings will be held by communications media technology.

#### B. Board Meeting Format

With the exception of Board member items that have a call for action, Board meeting and Agenda Items associated with any meeting during this COVID-19 emergency period may be substantially curtailed or reduced in scope to facilitate the completion of the Board's business during these meetings. The requirement in Board Policy for the Board to conduct a Public Hearing at the conclusion of the regular agenda as provided in subsection I. of Policy 0169.1, is

waived during the COVID-19 emergency period.

C. Notice

Notice for any Board meeting held during the COVID-19 emergency period shall be in accordance with the provisions for regular, special and emergency meetings as required by Board Policy 0164. The notice shall include the means or method in which the public will access the virtual meeting.

D. Public Access and Participation

The Superintendent shall make all necessary arrangements to allow for public access and participation in these meetings to the extent required by applicable law and policy. Such means will be specified in the Notice for said meetings.

E. Quorum

The provisions in Board Policy 0162 requiring a quorum to be present in person is waived.

F. Meeting Location and Time

The provision in Board Policy under 0165(A) requiring that the meeting be held in a specific public place and at a specific time is waived.

G. Relationship to Other Policies

Any Board Policy provisions relating to meetings that otherwise do not conflict with the provisions of this policy remain in full force and effect.

H. Board Advisory Committees

Under this policy, Board Advisory Committees are authorized to meet virtually and must meet all other requirements of the Sunshine Law.

I. Duration of Policy

This emergency policy becomes effective upon its adoption and shall be in effect no longer than ninety (90) days. At the end of ninety (90) days, the policy may be further extended by vote of the Board due to continued emergency conditions through the appropriate rulemaking process based on additional executive orders of the Governor. If the Governor does not extend the suspension of the public meeting statutes during the ninety days this policy is in effect, this policy will be automatically repealed with no further action required by the Board.

Legal

Executive Order 20-69, Emergency Management- COVID-19 - Local Government Public Meetings

Executive 20-112, Phase 1: Safe. Smart. Step-by-Step. Plan for Florida's Recovery

Executive Order 20-123, Full Phase 1: Safe. Smart. Step-by-Step. Plan for Florida's Recovery.

Executive Order 20-150, Emergency Management — COVID-19 — Local Government Public Meetings

F.S. 120.54(4)

F.S. 120.81

F.S. 286.011

F.S. 286.0114

F.S. 1001.41

F.S. 1001.42