

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

SUBJECT: ADOPTION OF EMERGENCY POLICY 0165e2, USE OF COMMUNICATIONS MEDIA TECHNOLOGY FOR PARTICIPATION BY SCHOOL BOARD MEMBERS DURING DECLARED COVID-19 EMERGENCY

COMMITTEE: FISCAL ACCOUNTABILITY & GOVERNMENT RELATIONS

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. Most recently, on November 3, 2020, the Governor extended the state of emergency through Executive Order-20-276.

At the Board's Fiscal Accountability and Government Relations Committee Meeting of December 2, 2020, the Board considered Agenda Item H-9 (Good Cause), sponsored by Ms. Mari Tere Rojas, Board Member, and approved for inclusion in the Agenda by the Board Chair, Ms. Perla Tabares Hantman. Item H-9 seeks approval of the Board to direct the School Board Attorney to present, for the Board's consideration, an agenda item that would seek the adoption of an emergency policy authorizing Board member participation and voting in public Board meetings through the use of communications media technology under extraordinary circumstances related to COVID-19, as long as a physical quorum of Board members is otherwise present, to be effective upon adoption and to remain in effect for 90 days, unless extended, superseded, or modified by the Board. In addition, at the same Committee Meeting, the Board members present requested that the Board Attorney draft and present a Good Cause Item for the December 9, 2020 Board Meeting, recommending adoption of the emergency policy for immediate use if adopted.

This item is presented for the Board's consideration to adopt an emergency policy that would provide for the following:

- Permitting School Board Members to participate and vote in public Board meetings through communications media technology under extraordinary circumstances related to COVID-19 as long as a physical quorum of Board members is otherwise present;

GOOD CAUSE

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- Requiring that adequate notice for the meeting be provided, including notice that one or more Board members may appear at the meeting through communications media technology due to extraordinary circumstances related to the COVID-19 pandemic;
- Requiring that the Board member who desires to attend a public Board meeting utilizing communications media technology due to extraordinary circumstances related to the COVID-19 pandemic transmit the request to the Board in advance of the public meeting and provide a description of the extraordinary circumstances requiring the Board member's participation and voting through communications media technology;
- Requiring the Board to vote at the beginning of the meeting whether to allow the Board member's participation and voting through communications media technology at that meeting.

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 the COVID-19 pandemic. 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 0165e2, *Use of Communications Media Technology for Participation by School Board Members at Public Meetings During Declared COVID-19 Emergency*.

This item does not appear in the published Agenda. There exists good cause to vary from the published agenda as item H-9 was issued after the publication of the Agenda and the Board's consideration of the emergency policy is necessary in order to protect the public health, safety, and welfare.

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 0165e2, *Use of Communications Media Technology for Participation by School Board Members at 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 0165e2, *Use of Communications Media Technology for Participation by School Board Members at Public Meetings During Declared COVID-19 Emergency*, at its meeting of December 9, 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 the COVID-19 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 Board member participation and voting in public Board meetings through the use of communications media technology under extraordinary circumstances related to COVID-19 as long as a physical quorum is otherwise present. This emergency policy is necessitated by the immediate danger caused by the COVID-19 pandemic.

PURPOSE AND EFFECT OF EMERGENCY POLICY: 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 School Board Members to participate and vote in public Board meetings via communications media technology under extraordinary circumstances related to COVID-19 as long as a physical quorum is otherwise present; requiring that adequate notice for the meeting be provided, including notice that one or more Board members may appear at the meeting through communications media technology due to extraordinary circumstances related to the COVID-19 pandemic; requiring that the Board member who desires to attend a public Board meeting utilizing communications media technology due to extraordinary circumstances related to the COVID-19 pandemic transmit the request to the Board in advance of the public meeting and provide a description of the extraordinary circumstances requiring the Board member's participation and voting through communications media technology; requiring the Board to vote at the beginning of the meeting whether to allow the Board member's participation and voting through communications media technology at that meeting. This emergency policy will be in effect for ninety (90) days.

SUMMARY: Policy 0165e2 *Use of Communications Media Technology for Participation by School Board Members at Public Meetings During Declared COVID-19 Emergency*, permits School Board Members to participate and vote in public Board meetings through communications media technology; requires that adequate notice for the meeting be provided, including notice that one or more Board members may appear at the meeting through communications media technology due to extraordinary circumstances related to the COVID-19 pandemic; requires the Board member who desires to attend a public Board meeting utilizing communications media technology due to extraordinary circumstances related to the COVID-19 pandemic to transmit the request the Board in advance of the public meeting and provide a description of the extraordinary circumstances requiring the Board member's participation and voting through communications media technology; requires the Board to vote at the beginning of the meeting whether to allow the Board member's participation and voting through communications media technology at that meeting.

SPECIFIC LEGAL AUTHORITY UNDER WHICH RULEMAKING IS AUTHORIZED: 120.54(4); 120.81(1); 286.011; 286.0114; 1001.41; 1001.43(10), F.S.

LAWS IMPLEMENTED INTERPRETED OR MADE SPECIFIC: 1001.41(1), (2), (5); 1001.43(10), F.S.; Governor Executive Orders Number 20-52 (March 9, 2020), 20-276 (Nov. 3, 2020); Fla. Atty. Gen. Op. 98-28 (1998); Fla. Atty. Gen. Op. 03-41 (2003).

DATE AND TIME OF EFFECTIVENESS: Upon adoption on December 9, 2020.

IF REQUESTED, A HEARING WILL BE HELD DURING SCHOOL BOARD MEETING OF December 9, 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 158, 1450 N.E. Second Avenue, Miami, Florida 33132.



Book	Policy Manual
Section	Emergency Policy – Good Cause – December 9, 2020
Title	USE OF COMMUNICATIONS MEDIA TECHNOLOGY FOR PARTICIPATION BY SCHOOL BOARD MEMBERS DURING DECLARED COVID-19 EMERGENCY
Code	0165.2e
Status	Under Review

0165e2 – USE OF COMMUNICATIONS MEDIA TECHNOLOGY FOR PARTICIPATION AND VOTING BY SCHOOL BOARD MEMBERS AT PUBLIC MEETINGS DURING DECLARED COVID-19 EMERGENCY

On March 9, 2020, the Governor of the State of Florida issued Executive Order (EO) 20-52 declaring a state of emergency for the entire state as a result of the COVID-19 pandemic. The EO was extended by EO 20-276, on November 3, 2020.

The Florida Attorney General has opined in AGO 98-28 that a School Board may use virtual or teleconferencing technology in order to allow a physically absent Board member to attend and participate in a public Board meeting if a quorum of the Board members is physically present and the Board adopts a policy governing the use of such technology to allow a member to participate in a public Board meeting.

In order to address the continuing threat of COVID-19, it is desirable during this state of emergency to allow a Board member to participate and vote in public Board meetings virtually or through teleconferencing means as long as there is a quorum of Board members physically present at the meeting. Participation and voting by a physically absent member shall be allowed only in extraordinary circumstances that are related to the COVID-19 pandemic as determined by a majority of members physically present.

A. Participation and Voting by Board Member at Public Board Meetings Through Communications Media Technology

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 the COVID-19 pandemic, a Board member may participate and vote in public Board meetings through teleconferencing, video conferencing or other communications media technology means as long as a quorum of Board members is physically present at the meeting. Board members shall not attend closed door meetings or Attorney-Client sessions through the use of communications media technology.

The Board member who desires to attend a public Board meeting utilizing communications media technology due to extraordinary circumstances related to the COVID-19 pandemic shall transmit the request to the Board in advance of the public meeting and provide a description of the extraordinary circumstances requiring the Board member's participation and voting through communications media technology. The Board will then vote at the beginning of the meeting

whether to allow the Board member's participation and voting through communications media technology at that meeting.

B. Notice

Notice for any Board meeting held during the COVID-19 emergency period shall be in accordance with Board Policy 0164, Notice of Meetings. The Notice must state that one or more Board members may participate and vote through communications media technology at the meeting due to extraordinary circumstances related to the COVID-19 pandemic.

C. Access and Participation by Board Member

The Superintendent shall make all necessary arrangements to allow for a Board member to access, participate, and vote in a public Board meeting utilizing communications media technology to the extent required by applicable law and this policy. A Board member appearing at a meeting via telephone pursuant to this section shall be sure to announce each of their votes verbally.

D. Quorum

A physical quorum must be present for all public Board meetings and must be maintained throughout the meeting. Once a physical quorum of Board members is established, a Board member may participate and vote through communications media technology if approved by the Board at the meeting and based only on extraordinary circumstances related to COVID-19 that prevent the Board member from being physically present at the meeting.

E. Relationship to Other Policies

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

F. Duration of Policy

This policy becomes effective upon its emergency adoption and shall end ninety (90) days thereafter.

Legal	F.S. 120.54(4)
	F.S. 120.81(1)
	F.S. 286.011
	F.S. 286.0114
	F.S. 1001.41
	F.S. 1001.43(10)
	Fla. Atty. Gen. Op. 98-28 (1998)
	Fla. Atty. Gen. Op. 03-41 (2003)