

<u> X </u>	Monitored
<u> </u>	Mandated
<u> X </u>	Other Reasons

Bylaw – Modified*

**Note: CPRM model policy with discretionary content added (highlighted in gray). Sample discretionary policies and language compiled and distributed by NJSBA are not required for compliance with state and federal law. Discretionary policies should not be adopted without careful consideration and consultation with your board attorney.*

PUBLIC AND EXECUTIVE SESSIONS

The board of education shall officially transact all business at a legal meeting of the board in accordance with New Jersey law.

All meetings of the board of education shall be open to the public with the exception of meetings to discuss:

- A. Any matter which by express provision of state or federal law or rule of court shall be rendered confidential;
- B. Any matter in which the release of information would impair a right to receive federal funds;
- C. Any material the disclosure of which constitutes an unwarranted invasion of individual privacy, unless the individual (or all the individuals) concerned shall request in writing that the same be disclosed publicly. This includes information contained in pupil records, and any reports or recommendations concerning a specific individual (see policy 1120 Board of Education Meeting);
- D. Any collective bargaining agreement or the terms and conditions which are proposed for inclusion in any collective bargaining agreement, including the actual negotiating sessions with representatives of employee groups;
- E. Any matter involving the purchase, lease or acquisition of real property (land or buildings) with public funds, where it could adversely affect the public interest if discussion of such matters were disclosed;
- F. The tactics and techniques used in protecting the safety and property of the public, provided that their disclosure could impair such protection;
- G. Any investigations of violations or possible violations of law;
- H. Any pending or anticipated litigation or contract negotiations other than collective bargaining, and any matters falling within the attorney-client privilege, to the extent that confidentiality is required in order for the attorney to exercise his/her ethical duties as a lawyer;
- I. Any matter involving employment, appointment, termination, terms and conditions of employment, evaluation, promotion or disciplining of any prospective or current public employee or officer unless all the individual employees whose rights could be adversely affected request in writing that the matter be discussed at a public meeting; and
- J. Any deliberations occurring after a public hearing that may result in the imposition of a specified civil penalty or loss of license to an individual.

Such sessions shall be closed to the public and press, and shall be declared so by a formal motion at a public meeting. Minutes taken at such meetings shall remain confidential only so long as their publication would defeat the purpose of the executive session. That such a meeting will be or was held shall be recorded in the minutes of the preceding or subsequent regular meeting. Board members and other persons attending the session shall not disclose the topic or details of discussion at executive session.

PUBLIC AND EXECUTIVE SESSIONS (continued)

The board may invite staff members or others to attend executive sessions at its discretion.

When public employees make statements pursuant to their official duties: in the classroom, at board meetings, and at other meetings related to educational issues affecting the district, the employees are not speaking as citizens for First Amendment purposes, and the Constitution does not insulate their communications from employer discipline (Garcetti v. Ceballos).

No official action shall be taken at executive sessions, except such as may be sanctioned by law. To take final action on any other matter discussed, the board shall convene or reconvene in open session.

Electronic Participation in Meetings

The board authorizes that a board member may participate in a board meeting from a remote location through the use of an electronic device according to the following guidelines:

- A. There is a good reason why the board member cannot attend the meeting in person;
- B. A request for remote participation is made in advance to, and approved by the board president; and
- C. An electronic connection is available and is sufficient to be heard by the public.

Board members approved to participate in a board meeting from a remote location through an electronic device may be counted in the quorum. The electronic connection must be audible to the public and in the same location as the meeting.

Remote participation by electronic device in closed executive session is prohibited.

Virtual Board Meetings – Coronavirus (COVID-19)

The board of education shall make every effort to ensure the board meets regularly during the COVID-19 health crisis to oversee operation of the school district and the educational program and to provide necessary updates to the school community.

In accordance with the Open Public Meetings Act (N.J.S.A. 10:4-6 et seq.), public meetings may be held in-person or by means of communication equipment (N.J.S.A. 10:4-8(b)), to include streaming services and other online meeting platforms.

In an effort to comply with State directives to prevent the spread of this contagious disease and/or as otherwise directed by the State when weather events and other circumstances render in-person meetings less than optimal, the board may hold virtual meetings according to the following provisions:

- A. All meetings, including those held using communications equipment, must be noticed in a manner consistent with the requirements of the Open Public Meetings Act and board policy 9321 Time, Place, Notification of Meetings;
- B. Meetings for emergent circumstances may be held without providing adequate notice in a manner consistent with the requirements set forth at N.J.S.A. 10:4-9(b):
 - 1. Three-quarters of the members present vote to do so; and
 - 2. The meeting is required to deal with matters of such urgency and importance that delay would be likely to result in substantial harm to the public interest; and
 - 3. The meeting will be limited to discussion of and action on these matters; and

PUBLIC AND EXECUTIVE SESSIONS (continued)

4. Adequate notice of such meeting is provided as soon as possible following the calling of such meeting; and
5. One of the following:
 - a. Either the board could not reasonably have foreseen the need for such meeting at a time when adequate notice could have been provided; or
 - b. The need could have been foreseen in time but the board failed to give adequate notice;
- C. The board shall provide a means of public comment even if a meeting is held remotely;
- D. Guidance shall be provided to the public for remotely accessing and providing comment at a meeting;
- E. The business administrator/board secretary shall ensure that the advertised meeting place is connected to the meeting through communications equipment, unless otherwise directed by state or local emergency management or health officials, consistent with Executive Order 103 (Murphy 3/9/2020);
- F. Remote meeting shall be audio recorded in the same manner as in-person public meetings;
- G. The board shall avoid executive or closed session unless the topic of concern is urgent, directly affects the health, safety, or welfare of residents, and is an allowed exception as listed above in the first section of this policy "A" through "J" (N.J.S.A 10:4-12) because of the difficulty of ensuring only appropriate individuals are on the line during a separate session;
- H. If an executive or closed session is necessary, the board shall use a mechanism that ensures the confidentiality of closed session;
- I. After announcing the executive or closed session at the public portion of the meeting consistent with the Open Public Meetings Act, the board shall use a separate, non-public, dial-in mechanism for the executive or closed portion of the meeting.

In preparation for upcoming community events and meetings The board shall coordinate with legal counsel and local offices of emergency management to ensure continued compliance with N.J.S.A. 10:4-6 and other statutory obligations.

Public Participation

Meetings of the board are open to the public and all members of the community should feel free to attend. A time for public discussion of agenda items shall be included in the order of business at an appropriate time.

Brief comments on any matter of interest to the district should be reserved for the time provided in the order of business.

Provision may be made for the introduction by a member of the public of business not on the agenda when the matter is of such urgency or wide interest that delaying consideration of it to the next meeting would not be in the public interest.

Grievances or complaints that have not previously been considered through administrative channels shall not be acted upon by the board.

NOTE: IF THE BOARD WISHES TO INCLUDE A SECTION IN THIS BYLAW ON EMAIL COMMUNICATION AMONG ITS MEMBERS, IT MAY DO SO HERE.

PUBLIC AND EXECUTIVE SESSIONS (continued)Electronic Communication among Board Members

The board of education believes that electronic communication among its members and the administration is an efficient and convenient way to exchange information, but must not be misused to deliberate issues that are appropriately discussed only in a public meeting. Therefore, board members and administrators shall exercise caution when communicating between and among themselves via electronic messaging services including but not limited to email, internet web forums and internet chat rooms. They should understand at all times that these communications represent permanent school district records that can be subject to public disclosure. Electronic messaging communication shall conform to the same standards of judgment, propriety and ethics as other forms of board-related communication (committee meetings, telephone calls, etc.). Board members shall adhere to the following guidelines when communicating electronically:

- A. Board members shall not use email or any other electronic messaging service as a substitute for deliberations at board meetings. The Open Public Meetings Act defines a "meeting" as any gathering attended by, or open to, all of the members of a public body, held with the intent to discuss or act as a unit upon the specific public business of that body;
- B. Board members shall be aware that email and email attachments received or prepared for use in board business are likely to be regarded as public records that may be inspected by any person upon request, unless otherwise made confidential by law;
- C. Board members shall avoid reference to confidential information about employees, students or others in email communications because of the risk of improper disclosure;
- D. Board members shall adhere to the district "acceptable use" policy in all email communications and shall refrain from sending inappropriate, profane, harassing or abusive emails. (See file code 6142.10 Technology);

NOTE: IF BOARD MEMBERS ARE NETWORKED TO THE DISTRICT SYSTEM, THE FOLLOWING MAY BE APPROPRIATE:

- E. Board members shall not reveal their passwords to others in the network or to anyone outside of it, except to the system administrator. If any board member has reason to believe a password has been lost or stolen, or that email is being accessed by someone without authorization, he/she shall notify the chief school administrator immediately.

NOTE: IF THE BOARD SURVEYS ITS MEMBERS THROUGH ELECTRONIC MEANS, THE FOLLOWING LANGUAGE IS RECOMMENDED:

Electronic "Surveying" Communications

The board of education believes that "paperless board meetings" are a type of electronic communication among its members and the administration that is an efficient and convenient way to exchange information, but must not be misused to deliberate issues that are appropriately discussed only in a public meeting. Therefore, board members and administrators shall exercise caution when communicating between and among themselves via electronic messaging services including but not limited to surveying, email, internet web forums and internet chat rooms.

The surveying features of paperless board meetings shall be used consistent with the New Jersey Open Public Meetings Act by restricting its use in the following ways:

- A. The board shall maintain and provide access to all electronic communications pursuant to the New Jersey Open Public Records Act;

PUBLIC AND EXECUTIVE SESSIONS (continued)

- B. Surveying is a type of electronic messaging communication, and shall conform to the same standards of judgment, propriety and ethics as other forms of board-related communications (committee meetings, telephone calls, etc.);
- C. Board members shall not use surveys, email or any other electronic messaging service as a substitute for deliberations at board meetings. The Open Public Meetings Act defines a “meeting” as any gathering, whether corporeal or by means of communication equipment, attended by or open to all of the members of a public body, held with the intent to discuss or act as a unit upon the specific public business of that body;
- D. Surveying will not be used for topics referring to confidential information about employees, students or others in email communications because of the risk or improper disclosure; and
- E. The district will avoid the appearance of conducting board discussion or actions, in which opinions are exchanged among a quorum of board members through repeated survey questions and answers, outside an open public meeting.

The board shall annually review its electronic communication policy and practices with the board attorney.

Adopted:
 NJSBA Review/Update:
 Readopted:

Key Words

Board of Education Meetings, Public and Executive Sessions, Executive Sessions

- Legal References:**
- N.J.S.A. 2C:33-8 Disrupting meetings and processions
 - N.J.S.A. 10:4-6 et seq. Open Public Meetings Act
 - N.J.S.A. 18A:10-6 Board meetings public; frequency; hours of commencement; adjournment, etc., for lack of quorum
 - N.J.S.A. 18A:11-1 General mandatory powers and duties
 - N.J.S.A. 18A:12-21 et seq. School Ethics Act
 - N.J.S.A. 18A:54-20 Powers of board (county vocational schools)
 - N.J.S.A. 47:1A-1 et seq. Public Records; Examination and Copies (Open Public Records Act)
 - N.J.A.C. 6A:30-1.1 et seq. Evaluation of the performance of school districts
- Rice v. Union City Board of Education, 143 N.J. Super 64 (1978)
- 5 U.S.C. Section 552as amended by Public Law No. 104-231,110 Stat. 3048 Freedom of Information Act
- Garcetti v. Ceballos 2006 U.S. LEXIS 4341(May 2006)

Executive Order 104, March 2020

Possible

- Cross References:**
- *1120 Board of education meetings
 - *3570 District records and reports
 - *6142.10 Technology
 - *9121 Election and duties of president

PUBLIC AND EXECUTIVE SESSIONS (continued)

- *9271 Code of ethics
- *9323/9324 Agenda preparation/advance delivery of meeting material
- *9326 Minutes

*Indicates policy is included in the Critical Policy Reference Manual.