



Community Education Council District 8

New York City Department of Education

PS 182, 601 Stickball Boulevard Rm112, Bronx, NY 10473 Telephone: (718) 239-5895 Fax: (718) 409-6967 Email: cec8@schools.nyc.gov

Farah Despeignes, President

Lourdes Jibodh, VP1/ BPA

Latoya Coleman, VP2/ IEP

Sandra DeJesus, Treasurer

Gina Staton, Recording Secretary

Members

Crystal Brockington

Sabrina Rocchio

Aurora Ronda, BPA

Jennifer Joynt, District Superintendent

Resolution #3: December 15th, 2021

CEC8 Resolution: Resolution in Favor of the Use of Videoconferencing to Conduct Meetings of the New York City Community Education Councils, Citywide Education Councils, District Leadership Teams, and School Leadership Teams

Community Education Council District 8 would like to conduct its public meetings in a way which would allow any member(s) to attend from a remote location via videoconference and be counted for purposes of quorum, voting, and general attendance.

WHEREAS, Community Education Council District 8 is a New York City Education Council; and

WHEREAS, New York City Education Councils, as per the New York Department of Education website, are subject to the following New York State laws and their relevant sections and subsections¹:

- a) NYS Education Law Art. 52, §2590-b, c, e, h, l²
- b) Public Officers Law, Art. 6, § 84-90 (FOIL)³
- c) Public Officers Law, Art. 7 § 100-111 (Open Meetings Law, see also the Committee on Open Government website)⁴
- d) Law of General Construction, § 41 (Quorum and Majority)⁵; and

WHEREAS, Public Officers Law, Art. 7 §102.1 defines a "Meeting" as:

"the official convening of a public body for the purpose of conducting public business, ***including the use of videoconferencing for attendance and participation by the members of the public body.***"; and

WHEREAS, Public Officers Law, Art. 7 §102.2 defines a "Public Body" as:

"any entity, for which a quorum is required in order to conduct public business and which consists of two or more members, performing a governmental function for the state or for an agency or department thereof, or for a public corporation as defined in section sixty-six of the general construction law, or committee or subcommittee or other similar body of such public body."; and

WHEREAS, Public Officers Law, Art. 7 §102.3 defines an "Executive Session" as:

"that portion of a meeting not open to the general public"; and

WHEREAS, Public Officers Law, Art. 7 §103(c) states:

¹ <https://www.schools.nyc.gov/get-involved/families/current-education-councils-cecs>

² <https://www.nysenate.gov/legislation/laws/EDN/2590-B>

³ <https://dos.ny.gov/coog/foil2.html>

⁴ <https://opengovernment.ny.gov/system/files/documents/2020/09/open-meeting-law.pdf>

⁵ <https://www.nysenate.gov/legislation/laws/GCN/41>



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"A public body that uses videoconferencing to conduct its meetings shall provide an opportunity to attend, listen and observe at any site at which a member participates." ; and

WHEREAS, Public Officers Law, Art. 7 §104.4 states:

"If videoconferencing is used to conduct a meeting, the public notice for the meeting shall inform the public that videoconferencing will be used, identify the locations for the meeting, and state that the public has the right to attend the meeting at any of the locations." ; and

WHEREAS, Public Officers Law, Art. 7 §109 states:

"The committee on open government, created by paragraph (a) of subdivision one of section eighty-nine of this chapter, shall issue advisory opinions from time to time as, in its discretion, may be required to inform public bodies and persons of the interpretations of the provisions of the open meetings law." ; and

WHEREAS, The New York State Committee on Open Government issued Advisory Opinion 5169 on September 12, 2011⁶, in which Executive Director Robert J. Freeman stated:

"...it is our view that if all of the conditions described in the Open Meetings Law are met, Skype serves as a method of videoconferencing that would be valid to comply with the Open Meetings Law." ; and

WHEREAS, The New York State Committee on Open Government issued Advisory Opinion 05347 on June 3, 2013⁷, in which Assistant Director Camille S. Jobin-Davis stated:

"should a member videoconference into a meeting from a remote location, the remote location must be open and accessible to the public." ; and

WHEREAS, The New York State Committee on Open Government issued Advisory Opinion 05347 on January 31, 2017⁸, in which Executive Director Robert J. Freeman gave a lengthy and detailed opinion regarding remote attendance via videoconference by members that were located in another town or state while most members were located at the meeting's usual location; and

WHEREAS, The New York State Committee on Open Government issued Advisory Opinion 5575 on March 6, 2018⁹, in which Assistant Director Kristen O'Neill stated:

"Any restrictions on the right to attend and participate via videoconferencing must be reasonable." ; and

⁶ <https://docs.dos.ny.gov/coog/otext/o5169.html>

⁷ <https://docs.dos.ny.gov/coog/otext/o5347.html>

⁸ <https://docs.dos.ny.gov/coog/otext/o5535.html>

⁹ <https://docs.opengovernment.dos.ny.gov/coog/otext/o5575.html>



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WHEREAS, The New York State Committee on Open Government issued Advisory Opinion 5639 on July 15, 2021¹⁰, in which Shoshanah Bewlay stated:

"In summary, now that Executive Order 202.1 is no longer in effect, the notice of any meeting held pursuant to the requirements of the OML must again include the following when the public body is using videoconferencing : • A statement that videoconferencing will be used; • The exact location from which every member of the public body is participating; and • A statement that the public has the right to attend the meeting at any location from which a member of the public body is participating. Members of the public body who are participating by videoconferencing also have the right to attend, participate, and vote in executive session."; and

WHEREAS, The New York State Committee on Open Government issued an Advisory Opinion on July 29, 2021¹¹, in which Shoshanah Bewlay stated:

"In summary, now that Executive Order 202.1 is no longer in effect, the meeting notice must again include the following when the public body is using videoconferencing: • A statement that videoconferencing will be used; • The exact location from which every member of the public body is participating; and • Statement that the public has the right to attend the meeting at any location from which a member of the public body is participating. Members of the public body who are participating by videoconferencing also have the right to attend, participate, and vote in executive session."; and

WHEREAS, the New York State Law of General Construction, § 41 states:

"Whenever three or more public officers are given any power or authority, or three or more persons are charged with any public duty to be performed or exercised by them jointly or as a board or similar body, a majority of the whole number of such persons or officers, gathered together **in the presence of each other or through the use of videoconferencing**, at a meeting duly held at a time fixed by law, or by any by-law duly adopted by such board or body, or at any duly adjourned meeting of such meeting, or at any meeting duly held upon reasonable notice to all of them, **shall constitute a quorum and not less than a majority of the whole number may perform and exercise such power, authority or duty**. For the purpose of this provision the words "whole number" shall be construed to mean the total number which the board, commission, body or other group of persons or officers would have were there no vacancies and were none of the persons or officers disqualified from acting."; and

WHEREAS, on August 4, 2021, Community Education Council District 8 has received the following guidance from the Office of Family and Community Empowerment (FACE) via email from Mr. Richard Guevara:

"A council must have at least 6 members participate in person, but a member can participate virtually and have their attendance count as well as vote as long as the location that they are attending from is accessible to the public and noticed on the agenda."; and

WHEREAS, on August 9, 2021, Gina Staton, Recording Secretary of Community Education Council 8, submitted an inquiry to the Committee on Open Government and received a reply via email reiterating the Advisory Opinion of the Committee issued July 29, 2021, and further specifying the following:

¹⁰ <https://docs.opengovernment.dos.ny.gov/coog/otext/O5639.pdf>

¹¹ <https://opengovernment.ny.gov/system/files/documents/2021/08/kaehny-reinvent-albany-oml-ao.pdf>



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"If all statutory requirements relating to videoconferencing have been met, all members of the public body, regardless of location, count toward a quorum and may fully participate (which includes voting) in the meeting. The Open Meetings Law pertains to all public bodies and there are no specific requirements relating to education councils."; and

WHEREAS, the guidance received by FACE is contradictory to the relevant aforementioned sections of the NYS Open Meetings Law and the NYS Law of General Construction, as well as the numerous opinions of the Committee on Open Government; and

WHEREAS, the Office of Family and Community Empowerment does not have the authority to apply restrictions upon an Education Council based on its own independent and incorrect interpretation of a NYS law; and

WHEREAS, The New York City Health Commissioner issued an Order¹² requiring COVID-19 vaccination for all visitors to any Department of Education Site; and

WHEREAS, many parents remain unvaccinated and the Order of the Health Commissioner prohibits these parents from participating in any in-person event held on Department of Education property, including but not limited to public meetings of the Community Education Council; and

WHEREAS, Community Education Council District 8 is currently holding remote meetings in accordance with temporary legislation signed by Governor Hochul in September 2021 allowing remote meetings for public bodies until January 15, 2021¹³; and

WHEREAS, this resolution applies to the Open Meetings Law as it exists in the absence of any temporary legislation and/or Executive Order; and now be it therefore

RESOLVED, that Community Education Council District 8 will conduct all future meetings with the option for any of its members to participate via videoconference in accordance with the guidelines set forth by the NYS Open Meetings Law; and be it further

RESOLVED, that any member participating in a public meeting of Community Education Council District 8 via videoconference shall be counted for the purposes of quorum, voting, and attendance; and be it further

RESOLVED, that the Office of Family and Community Empowerment or any other person or group working on behalf of Department of Education shall not restrict any Community or Citywide Education Council, or any District or School Leadership Team from allowing its members to participate in public meetings via videoconference in accordance with the New York State Open Meetings Law.

¹² <https://www1.nyc.gov/assets/doh/downloads/pdf/covid/covid-19-vaccination-requirement-doe-2.pdf>

¹³ <https://www.governor.ny.gov/news/governor-hochul-signs-legislation-extending-virtual-public-meetings>



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Jennifer Joynt, District Superintendent

WHEREAS, the members of Community Education Council 8 present at this meeting were as follows:

Farah Despeignes

Lourdes Jibodh

Latoya Coleman

Sandra DeJesus

Gina Staton

Crystal Brockington

Sabrina Rocchio

Aurora Ronda

CC: Office of Family and Community Empowerment, Attn: Richard Guevara
52 Chambers Street, New York, NY 10007

New York City Department of Education

Chancellor Meisha Porter

Incoming Chancellor David Banks

Mayor Bill DeBlasio

Mayor Elect Eric Adams

City Council

Governor Kathy Hochul

Motioned by Aurora Ronda, 2nd by Sandra DeJesus

Passed by 7 members