

Sounding Board

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Promoting Quality Charter School Governance

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Holding Board Elections Virtually or by Mail

Introduction

As Minnesota charter schools and boards continue to evolve their processes and practices in response to the ongoing Covid-19 pandemic for the third school year, many boards who suspended or postponed elections in the past 18 months are looking for ways to safely elect and seat new members to the board. In the past, elections were often held at annual meetings and, as communities move away from large in-person gatherings and toward virtual convening, this has posed an ongoing challenge. However, there are options available to schools to hold mail-in or virtual board elections—providing the school follows the requirements of its bylaws and applicable statutes.

What do Minnesota statutes say about mail-in or virtual balloting for charter school board elections?

- Per MN §124E.06 subd. 2, all charter schools in Minnesota are organized as nonprofit corporations and are subject to MN §317A, Nonprofit Law.
- Per MN §124E.07, subds. 1 & 4, board elections for charter schools are also governed by the school's bylaws. (A school should also check its articles of incorporation to ensure that there are no requirements related to board elections in that document.)
- MN §317A also includes special requirements related to board elections for charter schools that have members, such as having members vote by ballot.
- Nonprofit law (MN §317A.447) allows elections to occur by ballot without a meeting, as long as a ballot is delivered to everyone entitled to vote. Accordingly, the board can mail or otherwise deliver ballots to change the bylaws which could be emailed if specific requirements are met.
- MN §13D.021, Open Meeting Law, allows for meetings (including a board's annual meeting) to be held via "interactive technology" if the board determines that, "...an in-person meeting...is not practical or prudent because of a health pandemic...

What is the process to hold a board election virtually or by mail?

The options available for a particular school will depend on whether its bylaws require the board election to be held at an annual meeting or another time.

If a school's bylaws require the election to be held at an annual meeting, there are three feasible options.

1. Mail or otherwise deliver ballots and count them at the annual meeting.
 - The board could mail / deliver ballots and require return by mail or email by the date of the annual

meeting. The board could then count the ballots at its annual meeting and take the position that the election occurred at the annual meeting. The annual meeting could be held by “interactive technology” (i.e. Zoom, Google Meet, Webex, Skype, Teams, etc.) in accordance with the requirements of MN §13D, Open Meeting Law (assuming that an in-person meeting or a meeting conducted by interactive television is not practical or prudent because of the pandemic per MN §13D.021).

- One potential limitation is that the school’s bylaws or policy / procedure governing board elections may require a nomination / election process with specific timelines. If the deadlines are too close, the board may take one of two approaches. First, it may change these election procedures in an amendment to the bylaws. The only thing that cannot be modified is the minimum statutory requirement that board election dates be provided to the voters 30 days before the election (as required by MN §124E.07, subd. 2). Second, the board could postpone the meeting to comply with its internal timelines.
2. Amend the bylaws.
 - If the board wishes to conduct the board election in a manner different than at an annual meeting, the board could amend the bylaws to state that the election for directors of the board will be conducted by written ballot (in times of health pandemics or always). Charter school bylaws typically provide a procedure for the board to amend the bylaws and that process would need to be followed to amend the bylaws.
 3. Postpone the election.
 - The board could postpone the election.

If the school’s bylaws do not require that the election be held at an annual meeting, the process again depends upon the school’s bylaws.

First, the school must determine if it is a member organization.

Some charter school bylaws state that certain individuals are members, whereas other charter school bylaws provide that the school has no members. Whether a charter school is subject to the notice and ballot requirements in MN §317A.447 depends on whether a charter school has members.

n.b. In the absence of a provision in the articles of incorporation or bylaws providing for members, a charter school has no members (MN §317A.401, subd. 1(a)).

If a charter school has members, there are four required parts:

1. Delivery of the ballot
2. Notice explaining the ballot/voting process to the voters
3. The ballot itself
4. Ballot authentication

1. Delivery of the ballot

MN §317A.447(a) authorizes charter schools to mail or otherwise deliver ballots for an election if a ballot is delivered to “every *member* entitled to vote on the matter” (emphasis added). The reference to “otherwise delivers” would include personal delivery, such as delivering ballots to parents at the same time that a packet of educational materials is delivered to the family as part of distance learning. In accordance with MN §317A.447, a school may deliver a ballot by electronic communication only if certain requirements are met, which are discussed below.

2. Notice explaining the ballot/voting process to the voters

Nonprofit law (MN §317A.447) says that the notice must:

- a. Indicate the number of responses needed to meet the quorum requirements. Specifically, MN §317A.447(c) states that approval by written ballot without a meeting of the members is valid only if the number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting authorizing the action.

The language that must be included to meet this requirement will depend on the language in the school's bylaws. For example, if a school's bylaws define a quorum for any regularly scheduled meeting or annual meeting as ten percent (10%) of the members, the request for a written ballot must indicate the actual number which constitutes 10% of all those eligible to vote. So, in short and for example, if there are 150 eligible voters, the school must get at least 15 voters to participate.

b. Specify the time by which a ballot must be received by the school in order to be counted.

3. The ballot itself

Again per MN §317A.447, a ballot must:

- a. Set forth each proposed action (in this case, electing new members).
- b. Provide an opportunity to vote for or against each proposed action. In the case of a board election, a vote "for" a candidate means marking the ballot; a vote "against" a candidate means leaving it empty.

4. Ballot authentication

Nonprofit law (MN §317A.447(f)) requires that a ballot submitted electronically be authenticated in order for the ballot to be valid ("authenticated" means that you can be reasonably sure it came from the purported sender). Voters could return ballots by email, if the school would like to offer that option. The instructions to the voters can explain to whom the ballot can be returned electronically, and the school should be able to reasonably conclude that the communication was sent by the purported sender if it has email addresses for staff and parents.

A note about consent:

Nonprofit law (MN §317A.350) allows the school to provide the ballot electronically if the voter (in this case parents / legal guardians, board members, and all staff) have consented to receive notices by email or an electronic parent portal. For the purposes of this law, "electronic communication" includes any option that allows the ballot to be retained, retrieved, and reviewed by the school and directly reproduced in paper form by the school.

In summary, if the school's bylaws **do not** require that the election be held at an annual meeting **and** the school is a member organization:

1. Get consent ahead of time IF you are going to notify the eligible voters by electronic communication.
2. Notify the eligible voters of how many votes are needed and by when they need to vote.
3. Send out a ballot that includes each proposed action and an opportunity to vote for or against it.
4. For ballots returned via email or other electronic means, ensure that you're able to authenticate that the returned ballot actually came from the purported voter.

If the school is not a member organization, the process is simpler.

Other than the statutory requirement that board election dates be provided to eligible voters 30 days before the election, neither the laws governing charter schools nor the laws governing nonprofit corporations include notice or ballot requirements for charter schools that do not have members. (Schools without members also have no annual meeting requirement.) A school may consider incorporating some or all the items discussed in the section regarding elections for schools with members, but those steps are not required. Otherwise, the charter school is free to conduct its election as it sees fit.



What if we need to amend our bylaws by a vote at the annual meeting? Can we do that by mail-in or virtual ballot?

In short, the answer is yes. The process follows essentially the same four steps whether the school is electing new board members, amending the bylaws, or both:

1. Get consent ahead of time IF you are going to notify the eligible voters by electronic communication.
2. Notify the eligible voters of how many responses are needed to meet quorum requirements and by when they need to vote.
3. Send out a ballot that includes each proposed action (i.e. the proposed revision to the bylaws) and an opportunity to vote for or against it.
4. For ballots returned via email or other electronic means, ensure that you're able to authenticate that the returned ballot actually came from the purported voter.

It seems much easier to hold a board election virtually or by mail-in balloting if the school is not a member organization. Can we revise our bylaws to remove all references to having a voting class of members of the corporation?

In short, the answer is yes. Neither MN §124E, Charter School Law, or MN §317A, Nonprofit Law, require members. However, you will have to follow the requirements outlined *in* the bylaws to *amend* the bylaws—which may include a final vote of the members (however defined). Among other benefits, if there is no class of members there is no requirement for an annual meeting and the school can conduct its annual election via mail-in paper balloting or some virtual method.

Special thanks to Beth Topoluk, Executive Director, Friends of Education, for providing guidance and most of the information on this topic.

More resources can be found on our [website](#)