

Sounding Board

*A publication of the Audubon Center of the
North Woods Charter School Division*

Promoting Quality Charter School Governance
ISSUE 14



Guidance on Postponing Charter School Board Member Elections

Many charter schools authorized by ACNW have bylaws that specify the dates or the time period (e.g. spring, fall, etc.) during which their annual meetings are to be conducted, and often elections for seats on the board are conducted at that meeting. Some preliminary planning for those meetings and elections has likely already taken place with the actual meetings and elections scheduled within the next month or two. Given that group gatherings are both dangerous and prohibited during the current COVID-19 pandemic, charter schools will be unable to conduct spring 2020 traditional board elections as called for in their bylaws. Since each school's bylaws may differ from others in some ways, this guidance is offered in a general sense and school boards may use it to inform their decisions about whether or not, and how, to conduct board member elections under pandemic conditions, or to postpone upcoming school board elections until pandemic conditions have eased.

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What do MN Statutes say about the topic?

Although Minnesota Statutes do provide specific guidance during pandemic situations with regard to MN §13D, Open Meeting Law, they are mostly silent on the topic of scheduling charter school board member elections under those conditions, although MN §124E.07 Subd. 5 does contain the following: “A charter school must notify eligible voters of the school board election dates at least 30 days before the election.”

Because charter schools are also registered nonprofits, MN §317A.181 pertains and provides some guidance about bylaws as follows and in pertinent part:

§317A.181 BYLAWS.

Subdivision 1. Generally. A corporation may, but need not, have bylaws. Bylaws may contain any provision relating to the management or regulation of the affairs of the corporation consistent with law or the articles, including but not limited to:

1. the number of directors, and the qualifications, manner of election, powers, duties,
2. and compensation, if any, of directors;
3. the qualifications of members;
4. different classes of membership;
5. the manner of admission, withdrawal, suspension, and expulsion of members;
6. property, voting, and other rights and privileges of members;
7. the appointment and authority of committees;
8. the appointment or election, duties, compensation, and tenure of officers;
9. the time, place, and manner of calling, conducting, and giving notice of member, board, and committee meetings, or of conducting mail ballots....”

And

MN §317A.181 Subd. 1a “...The bylaws may be amended in the manner provided in the articles or bylaws.”

In addition to the above, it seems prudent for charter school boards to also consider the spirit of MN §124E and MN §317A when considering postponing charter school board member elections, especially in terms of transparency. Good faith efforts to communicate with stakeholders will go a long way in assuaging any concerns about transparency.



Benefits of Postponing Charter School Board Member Elections

1. With the seriousness and danger of the current pandemic, and the school's need to focus its energies and resources on safely delivering quality education and other services to students and their families, attempting to plan for and conduct school board member elections could be a major distraction and negatively affect the delivery of those services.
2. Identification of teachers, parents, and community members with interest in serving as a charter school board member under the current circumstances will likely be very difficult at best, and impossible at worst. Not because of general lack of interest in serving on the school board; rather, their focus is rightfully on the safety, security, and education of their children, their families, and their continued employment.
3. During times of crisis, such as the current COVID-19 pandemic, organizations are best served by experienced and stable leadership both at the school and the board levels. Current board members have significant knowledge about the school's governance, finance, and operations and they are in the best position to make decisions central to the board's operations at this time. New board members would need a time of learning and adjustment that current members do not need; thus, they are in a position to provide continuity to the school.

n.b. MN §124E.07 Subd. 2 provides that charter school board member elections must be held during the school year and on a day when school is in session. MDE guidance provides that distance learning constitutes a day when school is in session. Thus, the only excluded days to hold school board member elections are weekends, holidays, scheduled days off (e.g. teacher professional development days), and during non-school periods such as summer or winter breaks.

In the current situation, charter schools have the following options available to them for holding school board member elections in spring 2020. The school may choose to:

1. Conduct the elections as scheduled, either in the spring of 2020, or as required by the school's bylaws or policies; or
2. Postpone the elections to a date to be determined in the fall of 2020.

On the following pages are suggestions for boards to consider for both options.

How to Conduct a School Board Member Election Under Pandemic Conditions

The Board should:

1. Consult the school's bylaws and any board approved policies pertinent to the conduct of school board member elections.
2. During a regular board meeting, including those held electronically, set the date for the election and notify all eligible voters of the date and procedures for the election. The notice of the date of the election must be at least 30 days prior to the election (per MN §124E.07 Subd. 5).
3. To the extent possible, follow the procedures for the election as provided in bylaws and / or policies. If safety of participants (e.g. vote counters) is a concern, the board can modify the bylaws/policies to provide for safe participation and conduct of the election. Voting by mail is allowed, and it is not necessary to have in-person voting.

How to Postpone Charter School Board Member Elections

Since the time parameters for charter school board member elections are included in most school's bylaws or policies, the school board may wish to modify its bylaws to provide for the postponement of spring 2020 board member elections and can do so by an affirmative action of the board (by vote taken at a duly scheduled and conducted school board meeting, in accordance with MN §13D—see previous ACNW *Sounding Boards* for more information about complying with this statute).

Charter schools whose bylaws specify other time parameters for when their school board member elections are conducted (e.g. fall or winter) need not take any action at this time and can determine whether or not to postpone their school board member elections at a later date, after additional information about the status of the COVID-19 pandemic is known.

Charter schools whose bylaws are silent about time parameters for when their annual meetings and school board member elections are conducted, but by tradition have held spring board member elections, may want to follow the guidance for schools with bylaws that specify spring board member elections.

n.b. By postponing school board member elections to a date that is past the end of the term for some current school board members, the board could have one or more vacancies. Those vacancies could be filled by the board making appointments to the board (if provisions to do so are in their bylaws). Those appointments could be of current board members or others and could be specified by the board to terminate upon the election of new (or returning) board members that result from the postponed spring 2020 board member election.

Changing Charter School Bylaws

Most ACNW charter school bylaws provide that the bylaws can be changed by a majority vote of board members at a properly noticed and conducted meeting of the school board, including those meetings conducted electronically.



For Charter Schools Whose Bylaws Can be Changed by Board Action

Temporary Modification of Bylaws:

1. "I move that because of the current COVID-19 pandemic, the XYZ Charter School board's bylaws are temporarily amended to read as follows: The spring 2020 school board member elections are hereby postponed. The school board member elections are to be held on a date prior to December 31, 2020 or sooner, as determined by an affirmative vote of the board. For all future years, the board member elections will be held in accordance with the provisions of the current bylaws, unless modified by affirmative board vote."

Permanent Modification of Bylaws:

2. "I move to amend the bylaws of XYZ Charter School as follows: *The annual meeting and school board member elections will be scheduled by an affirmative action of the board each year at its regular meeting in either July or August.*" If seconded and approved, this language would replace current bylaw language regarding the annual meeting and board member election dates.

For Charter Schools Whose Bylaws Can Only be Changed by Its Members

For charter schools whose bylaws specify that the bylaws can only be modified at their annual meetings by a vote of the members in attendance at the meeting and they specify spring 2020 board member elections, ACNW suggests the following:

By resolution adopted in a public meeting of the school board:

Whereas:

The nation, the state of Minnesota, and our community are experiencing the devastating effects of the COVID-19 pandemic in terms of widespread illness and in some tragic instances, death, and

Whereas:

The XYZ Charter School's bylaws specify that they can only be changed by affirmative vote of the members of the organization, and

Whereas:

The XYZ bylaws call for the school board member elections to be held in spring 2020, and

Whereas:

Gatherings of groups of people are inadvisable for health reasons, and

Whereas:

The XYZ Charter School board has determined that an urgent emergency exists that affects our community and our school in profound ways, and

Whereas:

The XYZ Charter School board has determined that a gathering of people for either the purpose of conducting the school's board member election, or to modify the school's bylaws to allow those activities should be moved to another safer and appropriate time, therefore be it resolved that:

"Because of the very unique and compelling circumstances caused by the COVID-19 pandemic, its effect on our school community, and in the best interest of our school, the XYZ Charter School board member election is hereby postponed to a date to be determined by the XYZ Charter School board prior to December 31, 2020."

A vote approving this resolution was taken at the XYZ Charter School board meeting held on xxxx, 2020. The vote was XX yay, XX nay, and XX abstentions.

Signed:

XYZ Charter School Board Chair

Date: