

**AMENDED RESOLUTION TO IMPLEMENT EMERGENCY PRACTICES &
PROCEDURES FOR THE CONTINUITY OF THE ARLINGTON SCHOOL BOARD'S
OPERATIONS FOR THE DURATION OF THE COVID-19 PANDEMIC**

WHEREAS, on January 31, 2020, the United States Health and Human Services Secretary declared a public emergency for the entire United States to aid the healthcare community in responding to the novel coronavirus (COVID-19); and

WHEREAS, on March 11, 2020, the World Health Organization declared the COVID-19 outbreak a pandemic; and

WHEREAS, on March 12, 2020, the Governor of the Commonwealth of Virginia, in Executive Order Number 51, declared a state of emergency and disaster within the Commonwealth of Virginia, pursuant to Va. Code § 44-146.16, arising from the public health threat presented by a communicable disease anticipated to spread, and directed localities to "limit large public events, effective immediately"; and

WHEREAS, on March 13, 2020, the President of the United States found and declared the outbreak of COVID-19 to constitute a national emergency, retroactively beginning on March 1, 2020; and

WHEREAS, on March 13, 2020, Cintia Johnson, Interim Superintendent of Arlington Public Schools (APS), in response to the COVID-19 pandemic, announced the closure of the school division at least through April 14, 2020; and

WHEREAS, on March 13, 2020, in accordance with Virginia Code § 44-146.21, the Arlington County Manager signed a declaration of local emergency (Emergency), which was ratified and consented to by the Arlington County Board on March 14, 2020; and

WHEREAS, effective March 23, 2020, the Governor of Virginia, by Executive Order No. 53, in furtherance of Executive Order No. 51, and to mitigate the impacts of COVID-19 and its spread, ordered the closure of all K-12 public and private schools in Virginia for the balance of the school year; and

WHEREAS, on March 30, 2020, the Governor of Virginia, by Executive Order No. 55, issued a Temporary Stay-At-Home Order Due to Novel Coronavirus (COVID-19), ordering all individuals in Virginia to remain at their place of residence except as provided in that Order, and Executive Order No. 53, through June 10, 2020; and

WHEREAS, there have been multiple confirmed cases of COVID-19 among Arlington County residents; and

WHEREAS, the Arlington County Board found that COVID-19 constitutes a real and substantial threat to public health and safety and constitutes a “disaster” as defined by Virginia Code § 44-146.16, being a “communicable disease of public health threat”; and

WHEREAS, Virginia Code § 15.2-1413 provides that, notwithstanding any contrary provision of law, a locality may, by ordinance, provide a method to assure continuity of government in the event of a disaster for a period not to exceed six months; and

WHEREAS, government operations include the work of the Arlington County Board and other local public bodies, and the personnel who work for or on behalf of local public bodies; and

WHEREAS, the Arlington County Board on March 24, 2020, and adopted its EMERGENCY ORDINANCE TO MODIFY PUBLIC MEETING AND PUBLIC HEARING PRACTICES AND PROCEDURES TO ADDRESS CONTINUITY OF OPERATIONS ASSOCIATED WITH PANDEMIC DISASTER, authorizing it and public bodies that perform governmental functions in the County to use electronic means for its meetings so that they may meet virtually as permitted by the Virginia Freedom of Information Act (VFOIA), Va. Code § 2.2-3708(A)(3), to consider matters and take actions essential to ensure the continued operations of the government in the County, provided a quorum is in attendance virtually, and provided such meetings shall be duly noticed in compliance with VFOIA, and provided the public will be offered the opportunity to attend the meetings virtually; and

WHEREAS, nothing in the Arlington County Board’s March 24, 2020 Ordinance prohibits it or other public bodies from convening in-public meetings provided that public health and safety measures, including appropriate physical distancing, are utilized; and

WHEREAS the Virginia General Assembly on April 22, 2020 adopted further legislation, which the Governor approved on April 24, 2020 as 2020 Acts of Assembly Chapter 1283, authorizing certain public bodies, including local school boards, to meet by strictly electronic means in specified situations in which the Governor has declared a state of emergency; and

WHEREAS, the Arlington School Board (School Board) values transparency in its operations and public engagement, it also finds that emergency measures are necessary to mitigate the spread of COVID-19 and to protect the health, safety, and welfare of students and employees, while still providing for its operations to continue during this state of emergency; and

WHEREAS, the Arlington School Board affirms the foregoing determinations of the existence of a disaster and the declaration of a state of emergency throughout the entire

County affecting the students, staff, facilities, and members of the school community of APS, and the School Board being a public body included within the scope of the County's Emergency Ordinance, and the other legislation referenced above, the School Board adopts the following amended procedures for the conduct of public meetings as set forth in the Emergency Ordinance and as further set forth herein; and

WHEREAS, Article VIII, Section 7 of the Constitution of Virginia and Va. Code § 22.1-28 vests the supervision of the public schools of the school division in the School Board, as the Attorney General of Virginia opined on March 4, 2015, confers expansive power on school boards, finding that the Supreme Court of Virginia has made clear that the Constitution's grant of express supervisory power necessarily includes a broad range of implied powers; and

WHEREAS, given the severe limitations on the physical gathering of people during the COVID- 19 pandemic, which gathering is ordinarily required for many tasks of the School Board's operations, as well as to fulfill the necessary obligations of the School Board to its constituents, to include students and their families, the School Board finds it appropriate to provide, by resolution, a method of transacting necessary public business during the disaster without the physical attendance or gathering of people during the duration of the COVID-19 disaster; to provide for its ongoing and continuing operation; and to address the emergency and its essential and legally-prescribed functions and responsibilities, which, if not timely addressed, would result in substantial harm to the students, staff, operations, facilities, and community members of APS; and

WHEREAS, those critical and essential functions and legally-required procedures which must be addressed by the School Board to ensure continuity in government include, but are not limited to: the procurement of goods and services necessary to continued functioning; adoption or amendment of policies and regulations to address changes in instruction, staffing, facility usage, transportation, provision of meals, calendar modifications; delivery of distance learning/instruction and modifications to existing technology; personnel searches, discussions or determinations, to include the search process for APS' superintendent; compliance with due process protections and procedures for students and other disciplinary matters for students and staff; provision and staffing of health services; adoption of the budget and any necessary amendments; payment of warrants; acquisition of public and real property; construction of facilities and related contract obligations; investigation and resolution of discrimination and other complaints involving employees and students; compliance with obligations arising under federal statutes; other legal compliance and litigation; adoption or amendment of policies and regulations that are due or overdue for review; or that are necessary to ensure alignment with the Virginia Code; and other essential matters critical to the operations of the school division which are anticipated in the immediate future and thereafter during the pendency of the COVID-19 pandemic.

THEREFORE, it is hereby **RESOLVED** that the following emergency measures are **ADOPTED** by the Arlington School Board:

Sec. 1. Purpose; Effective Date; Expiration

The Arlington School Board, in compliance with all federal and state directives, may participate in meetings statutorily required or necessary for the continuity of its operations and the discharge of its lawful purposes, duties, and responsibilities solely by electronic communication means without a physically assembled quorum in one location, while otherwise remaining in compliance with the public notice, public access, and other requirements of VFOIA, to the extent practicable.

This emergency Amended Resolution is effective immediately upon its adoption by the Arlington School Board and shall remain in effect through the longer of the Emergency Resolution of the Arlington County, or June 10, 2020. The School Board reserves the right to subsequently adopt a resolution or motion to rescind, amend, or extend this action.

Sec. 2. Public Meetings and Public Comment

A. Public Meetings: Any regularly scheduled or regular meeting of the School Board may be held by solely electronic or telephonic means without a quorum of members physically present and without members of the public physically present, provided the following occurs:

- 1) The item or items discussed are necessary to address the disaster or to assure continuity of the School Board's operations (including without limitation the time-sensitive matters set forth in the recital above), and other items in the discharge of its lawful purposes, duties, and responsibilities as to which, as referenced in the recitals above, the usual procedures cannot be implemented safely or practically.
- 2) The meeting is accessible to the public through live audio or video on the School Board's website, a dial-in telephone number, and/or a social media platform.
- 3) The public notice for the meeting must:
 - a. include a statement that the meeting is being held using electronic means;
 - b. contain specific information about how members of the public can access the meeting; and
 - c. if there are any public hearing or public comment items, specifically identify how members of the public can provide comment, including one or more of the following: by e-mail, in writing, by telephone, through a social media platform, or via other electronic means.

- 4) The agenda and other materials associated with the meeting will be posted in compliance with VFOIA.
- 5) Any votes taken during the meeting must be taken by roll call, individually recording each member's name and vote.
- 6) The minutes of any meeting under this Resolution must conform to the requirements of law, including identifying the forms of electronic communication used, the members participating and the means by which they participated, the opportunities for public access or participation, a summary of the public comments, if any, and the actions taken at the meeting.

B. Public Comment

- 1) The Board may, for any or all meetings, and/or agenda items to be considered at those meetings, elect to dispense with the requirement for live public comment, where such comment is not legally required, and where the means of electronic communication does not practicably allow.

The Board will, however, provide alternative means of providing public comment, including on agenda items, as follows:

- a. Normal rules of order apply with respect to requiring the name and home address of the commenter, that comments relate to the hearing or comment topic, that appropriate limits on the number of comments per person per item apply, and that comments be of reasonable length;
- b. The submission of public comments via phone call, e-mail, recorded video, or in writing, up until a reasonable time before the start of the meeting so long as those comments are provided to the School Board members prior to any decision on an item;
- c. If available, members of the public may provide comments through leaving a voicemail on a dedicated phone number up until a reasonable time before the start of the meeting so long as those comments are then provided to School Board members prior to any decision on an item;
- d. If available, members of the public may provide comments through telephonic or interactive electronic means (call-in meeting access, social media platform) during the meeting so long as those comments are received by or provided to the School Board members prior to any decision on an item;
- e. The School Board may choose to receive additional comments through any means for a period of time after the public hearing or

public meeting, so long as it announces and publicizes that opportunity and those comments are provided to the School Board members prior to any decision on an item;

- f. All public comments must be made a part of the record of the School Board either by being summarized in or included with the meeting minutes.

C. Public Hearings

For matters as to which a public hearing is legally required, members of the public will be offered the opportunity to attend the meeting virtually, and to participate in the meeting virtually including the opportunity for offering public comment, without physically attending the meeting. The Board may also make arrangements for members of the public to participate at a physical location, with some or all members of the Board participating electronically.

Sec. 3. Closed Proceedings

The School Board may hold closed meetings or sessions electronically, provided the meeting topic falls under the Closed Meeting requirements, and provided other applicable FOIA requirements are met. The closed portion of such meetings will be held separately from the portions of the meeting publicly-available via electronic means referenced above.

Sec. 4. Advisory Committees

Necessary meetings of School Board advisory committees shall be conducted consistent with the above provisions for meetings of the School Board insofar as applicable.

Sec. 5. Temporary Suspension/Waiver of Inconsistent School Board Policies and PIPs

Any policies or Policy Implementation Procedures of the Arlington School Board or Arlington Public Schools are suspended/waived to the extent they are inconsistent with this Resolution.

This Resolution shall take effect immediately upon its adoption by the Arlington School Board.

Adopted: MAY 7, 2020


Tannia Talento, School Board Chair

Attest: 
Melanie Elliott, School Board Clerk