



Voting makes a difference

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This fact sheet is designed to address the most frequently asked questions about voting during school board meetings. The information is of a general nature. Readers should seek the advice of legal counsel with specific legal problems or questions.

It is important for board of education members to become familiar with the legal rules relating to voting. In many situations – but not all – a simple majority can pass a motion before the board. There are circumstances when a minority of board members can approve a resolution. Also, there have been instances when members of a board of education were surprised to learn that an action they thought had been passed by the board actually had not.

This fact sheet is designed to eliminate any such element of surprise by providing board members, school administrators and others with the legal basics regarding board voting.

However, this fact sheet is designed as a summary and guide only, and you are advised to consult legal counsel if complex issues arise.

How many board members are necessary to constitute a quorum for purposes of conducting board business?

A majority of all members of the board constitutes a quorum for such purposes (Ohio Revised Code Section (RC) 3313.18).

How many votes are required to pass a motion or resolution?

The general rule is that a majority of those present and voting is sufficient to pass a motion or resolution. Exceptions to this general rule have, however, been created by statute.

For instance, RC 3313.18 specifies the following motions, which require an affirmative vote of a majority of all board members for passage:

- to adopt a resolution authorizing the purchase or sale of real or personal property;
- to employ a superintendent, teacher or other employee;
- to elect or appoint an officer;
- to pay any debt or claim;
- to adopt any textbook.

There are other statutory exceptions to the general rule that a majority of those present and voting is sufficient to pass a motion. The chart included with this fact sheet lists a number of matters which, by statute, require more than a simple majority vote for passage.

What are the legal effects of an abstention upon a given motion or resolution?

When a person abstains, that means that he or she has not voted. Thus, an abstention constitutes neither a vote in favor of nor a vote against the motion. However, there are some situations when an abstention may make the difference in whether a resolution receives the required number of votes to pass. For this reason, board members need to be aware of the number of votes necessary to pass a given resolution and, correspondingly, the effect of abstaining in such context.

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For more information on this subject, please contact OSBA's Division of Legal Services

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When is abstention appropriate?

In general, board members are encouraged to take a stand and cast a vote on matters of business that come before the board. However, in some instances, abstention may be required by law. For instance, a board member may not vote or participate in the making of a contract of a public school teacher or instructor where the board member is related to the individual under consideration as father, brother, mother or sister, or acts in any matter in which the board member has an interest (RC 3319.21).

Furthermore, the Ohio Ethics Commission (OEC) has taken the position that RC 2921.42, which imposes criminal liability in certain public contract situations involving public officials, prohibits a board member from authorizing, voting or otherwise using the authority or influence of his or her office to secure approval of an individual employment contract with his or her family members, including a sibling, parent, child or spouse (Ohio Ethics Opinion No. 82-003). RC 2921.42 also prohibits a board member from voting to authorize any board contract for property or services with the official, his or her business associate or a member of his or her family. If any of these matters come before the board, the related board member should abstain from the vote. Although it is not germane to voting, the subject of this fact sheet, it should be noted that the Ethics Law also prohibits the board member in this situation from participating as a board member in consideration of the matters, including discussing, deliberating or making recommendations. More information about these restrictions is available in these OEC publications:

- <http://links.ohioschoolboards.org/61730>
- <http://links.ohioschoolboards.org/76852>

A board member also should abstain from voting on any matter before the board if the board member has a conflict of interest. A conflict of interest occurs when a matter that is before the board will result in a definite and direct benefit or detriment to the board member or someone with whom he or she has a close tie, such as a family member or business associate. For example, if a matter before the board would affect the value of property owned by the board member, he or she should abstain from voting on that matter. As noted above, the Ethics Law also prohibits the board member from participating in any other way in the board's consideration of the matter. More information about conflicts of interest is available from OEC.

Are there any restrictions on the time and place of a board vote?

Yes. The Sunshine Law provides that a resolution, rule or formal action of any kind is invalid unless adopted in an open meeting. Therefore, board

members cannot vote on any matter in executive session. Furthermore, under the same law, a resolution, rule or formal action adopted in open session is invalid if it results from deliberations in executive session, unless the matter is one that the board of education is entitled by law to discuss in executive session (RC 121.22(H)).

Is it permissible for a board member who is not physically present at a board meeting to cast a vote?

In a normal situation, no. The Sunshine Law provides that a member must be present in person at the meeting in order to be considered present to vote on any issue and to be considered for purposes of determining a quorum. Members may participate in deliberations by electronic means but may not vote and are not considered present for a quorum (RC 121.22(C)).

However, during the state of emergency declared by Gov. **Mike DeWine** because of the COVID-19 pandemic, the General Assembly passed a provision allowing boards of education to meet virtually. Board members who are attending a meeting of the board using any virtual means are permitted to vote at board meetings during this period, and their votes will be counted as if they were present physically at the meeting. The provision that allows virtual participation is scheduled to expire on July 1, 2021.

May a board president make or second a motion?

Yes. The Ohio attorney general has taken the position that the president, as a member of the board, is permitted to initiate or second a motion (1960 Informal Opinion of the Ohio Attorney General, No. 244; 1937 Ohio Atty.Gen.Ops. No. 37-466).

How should board action on a particular motion be conducted and recorded?

By statute, the board treasurer is required to publicly call the roll of board members and enter on the records the names of those voting "Aye" and the names of those voting "No" upon motions involving the following matters:

- the purchase or sale of real or personal property;
- the employment of a superintendent, teacher or other employee;
- the election or appointment of an officer;
- the payment of any debt or claim;
- the adoption of any textbook.

A board member may demand that the treasurer call the roll and record the names of those voting in favor or against a motion with regard to any other motion or resolution before the board (RC 3313.18).

While Ohio law does not require a treasurer to publicly call the roll and obtain votes individually in all instances, it is a suggested practice. It is

recommended that the treasurer enters in the minutes of each board meeting the individual members voting in favor of or against a given motion, as well as those abstaining. The treasurer should also record the name of the member who initiates the motion and the name of the member who seconds it (1937 Ohio Atty.Gen.Ops. No. 37-466).

Who declares the vote as having passed or failed?

It is the duty of the board president to declare that a motion has passed or failed. Accordingly, the board president should familiarize himself or herself with the parliamentary authority used by the board and legal requirements relating to passage of motions and resolutions (“Robert’s Rules of Order,” Section 44; RC 3313.18).

Are there ways to avoid voting on every item?

Yes. A board of education may avoid the strict procedural requirements in a large number of cases through the adoption of an annual appropriation resolution. If the annual appropriation resolution is adopted by a majority vote of the full membership, the board of education may thereafter adopt a general resolution dispensing with the adoption of

separate resolutions for particular matters if the appropriation resolution has provided for these matters.

Under RC 3313.18, the board of education may, by such general resolution, dispense with the adoption of resolutions authorizing the following:

- the purchase or sale of property, except real estate;
- the employment, appointment or confirmation of officers and employees, except as otherwise provided for by law;
- the payment of debts or claims;
- the salaries of superintendents, teachers and other employees.

Furthermore, through the adoption of an annual appropriation resolution, a board of education may delegate certain employment decisions to its administrative officers. If the board of education has adopted an annual appropriation resolution, it may, by general resolution, authorize the superintendent or other officer to appoint employees as are provided for in such annual appropriation resolution (RC 3313.47). However, appointment of certificated/ licensed employees always requires board action.

number of votes needed for:

Item	5-member board	7-member board	statutory reference (Ohio Revised Code)
Declaration of necessity to issue bonds under 133.18	3	4	Majority of the members (133.01 (U))
Filling vacancies of initial members of ESC governing board after merger	3	4	Majority of all remaining members (3311.054)
Board members in ESC plan appointed by elected members	3	4	Majority of full number of elected members (RC 3311.056)
Revising or rescinding an ESC plan by elected board members to appoint new members to governing board	5	7	Unanimous vote of all elected members (3311.056)
Severance of an ESC and annexation to an adjacent ESC	3	4	Majority of all its (the board’s) members (3311.059)
District change of classification upon advancement of majority of territory from village to city	3	4	Majority of full membership (3311.07)
Local school district may become exempt from supervision of the ESC governing board	3	4	Majority of full membership (3311.08)

number of votes needed for:

Item	5-member board	7-member board	statutory reference (Ohio Revised Code)
Joint vocational or cooperative educational school district board may adopt resolution to levy tax in excess of 10-mill limitation to purchase a new site; enlarge or improve existing site; or provide for current expenses of a joint vocational or cooperative educational school district	4	5	2/3 of the board's full membership (3311.21)
Dissolution of joint vocational school district	3	4	Majority of full membership of JVS board (alternate method: simple passage of resolutions by a majority of the boards of education of the districts participating in the JVSD (3311.217))
Transfer of territory from one school district to another local school district (ESC governing boards only)	3	4	Majority of full membership (3311.22, 3311.231)
Transfer of city, exempted village or local school district territory to adjoining district	3	4	Majority of full membership of the board of education to which territory is to be transferred (3311.24)
Transfer of entire district to another district after proposal by State Board of Education	3	4	Majority of full membership of board in district to be transferred (3311.38)
Dissolution of cooperative education district	3	4	Majority of full membership of the board of education of a cooperative education district (3311.54)
Rejection of municipal school district's chief executive officer's recommendation that a teacher eligible for continuing status be reemployed*	N/A	N/A	3/4 of full membership of a municipal school district (7 of 9 members) (3311.81(D)(1))
Declaration by remaining members that reasons for a member's absence for 90 days are insufficient to continue membership	3	4	2/3 of remaining board members (3313.11)
Filling of a vacant board seat	3	4	Majority of remaining board members (3313.11)
Purchase or sale of real estate or personal property	3	4	Majority of full membership (3313.18)

number of votes needed for:

Item	5-member board	7-member board	statutory reference (Ohio Revised Code)
Election or appointment of officer	3	4	Majority of full membership (3313.18)
Adoption of textbook	3	4	Majority of full membership (3313.18)
General authorization to dispense with separate resolutions authorizing purchase or sale of personal property, appointment of employees, etc.	3	4	Majority of full membership (3313.18)
Appointment of treasurer pro tempore	3	4	Majority of full membership (3313.23)
Determination that treasurer's incapacity is removed	3	4	Majority of full membership (3313.23)
Removal of treasurer pro tempore at any time for cause	4	5	2/3 of full membership (3313.23)
Appropriate and expend funds, and enter into contracts, to investigate, explore, prospect or drill for petroleum, gas and minerals or by-products on lands owned by the board	4	5	2/3 of all of the members of the board (3313.451)
Appropriate and expend funds, and enter into contracts, to extract, produce, sell, use or transport petroleum, gas, minerals or their components or byproducts for lands owned by the board	3	4	Majority of all of its (the board's) members (3313.451)
Requirements when any school district board bids for contracts in excess of \$50,000 to build, repair, enlarge or demolish any school building	4	5	2/3 of all its (the board's) members (two provisions) (3313.46)
Action to affirm, reverse, vacate or modify an order of student suspension or expulsion, or to reinstate the student	3	4	Majority of full membership (3313.66)
Drawing money from a replacement fund established pursuant to RC 3315.11 for the replacement, restoration, repair or improvement of property	3	4	Majority of the full membership (3315.13)
Adopting a resolution to submit a bond issue relative to tax levy in excess of 10-mill limitation (following conditional approval by the Ohio Facilities Construction Commission)	3	4	Majority of all of its (the board's) members (3318.06)
Adopting a resolution to submit a bond issue to the electors to pay for the remaining school district portion in order to qualify for state assistance under the School Partnership Assistance Expedited Local Partnership Program (Ohio Facilities Construction Commission)	3	4	Majority of all of its (the board's) members (3318.36)

number of votes needed for:

Item	5-member board	7-member board	statutory reference (Ohio Revised Code)
Resolution to participate in the 1:1 School Facilities Option Program (Ohio Facilities Construction Commission)	4	6	Affirmative vote of not less than 4/5 of the board's full membership (3318.39)
Appointment of superintendent pro tempore	3	4	Majority of full membership (3319.011)
Removal of superintendent pro tempore at any time for cause	4	5	2/3 of the members (3319.011)
Reemployment of any assistant superintendent, principal, assistant principal or other administrator when superintendent refuses to nominate	4	6	3/4 vote of full membership (3319.02)
Reemployment of a teacher in city, exempted village, local and joint vocational districts when superintendent refuses to nominate	4	6	3/4 of full membership (3319.07)
Rejection of superintendent's recommendation that a teacher eligible for continuing status be reemployed*	4	6	3/4 of full membership (3319.11)
Selection of textbooks	3	4	Majority of full membership (3329.08)
Rejection of findings and recommendations of fact-finding panel by board or employee organization under statutory impasse resolution procedure	3	5	3/5 vote of its total membership (4117.14)
Transfer funds in certain cases	4	5	2/3 of full membership (5705.14)
Resolution declaring the necessity for certain transfer of funds	3	4	Majority of all members (5705.16)
Resolution of necessity to proceed for levying a tax outside 10-mill limitation (not emergency)	4	5	2/3 of all its members (5705.21)

*This voting requirement, taken out of context, can be deceptive. Boards should review the entire procedure under RC 3319.11 before taking any action.

The information in this fact sheet is intended as general information. It should not be relied upon as legal advice. If legal advice is required, the services of an attorney should be obtained.