

# **BOARD OF EDUCATION RETIREMENT SYSTEM**

## **Board Meeting Agenda**

### **September 26, 2023**

1. Calendar Item 1: Noting of the Minutes of the Meetings of the Board of Education Retirement System held on June 13, 2023 and June 14, 2023 – **FOR CONSIDERATION AND ACTION.**
2. Executive Director’s Update – **FOR DISCUSSION.**
3. Calendar Items 2-17: Ordinary Business – **FOR CONSIDERATION AND ACTION.**
4. Calendar Item 18: Adoption of the Disability Committee’s Recommendations – **FOR CONSIDERATION AND ACTION.**
5. Calendar Item 19: Authorization to the Comptroller of the City of New York to Invest, Sell and Exchange the Funds of the Retirement System – **FOR CONSIDERATION AND ACTION.**
6. Calendar Item 20: Authorization to Enter into an Agreement with Savills, Inc. to Provide Real Estate Advisory Services to the Board of Education Retirement System – **FOR CONSIDERATION AND ACTION.**
7. Calendar Item 21: Authorization to Amend an Agreement with Vitech Systems Sub LLC. – **FOR CONSIDERATION AND ACTION.**
8. Calendar Item 22: Direction to the Comptroller Regarding the Use of BIPOC Investment Managers for the Board of Education Retirement System Portfolio– **FOR CONSIDERATION AND ACTION.**
9. Calendar Item 23: Ratification of Prior Acts of the Board – **FOR CONSIDERATION AND ACTION.**
10. Calendar Item 24: Authorization to the Comptroller of the City of New York to Commit a Portion of the Real Estate Portfolio of the Board of Education Retirement System – **FOR CONSIDERATION AND ACTION.**
11. Calendar Item 25: Amendment to the Asset Allocation Policy for the Investments of the Board of Education Retirement System – **FOR CONSIDERATION AND ACTION.**

12. Calendar Item 26: Internal Audit Semiannual Update – **FOR DISCUSSION.**
13. Calendar Item 27: Amendment to Videoconferencing Procedures – **FOR CONSIDERATION AND ACTION.**
14. Calendar Item 28: Authorization to Permit Hardship Distributions from the BERS Tax- Deferred Annuity Program in Reliance on Self-Certification by the Applicant – **FOR CONSIDERATION AND ACTION.**
15. Calendar Item 29: Authorization to Permit Hardship Distributions from the BERS Tax-Deferred Annuity Program that Include Earnings on Contributions – **FOR CONSIDERATION AND ACTION.**

**Board of Education Retirement System**  
**SUMMARY MINUTES**  
**Meeting of the Board of Trustees**  
**June 13, 2023**

**Appearances via WebEx:**

Karine Apollon  
Phoebe-Sade Arnold  
Tazin Azad  
Lilly Chan  
Marjorie Dienstag  
Khari Edwards  
Gregory Faulkner  
Anita Garcia  
Sheree Gibson

Anthony Giordano  
Angela Green  
Alison Hirsh  
John Maderich  
Donald Nesbit  
Alan Ong  
Maisha Sapp  
Thomas Sheppard  
Ephraim Zakry

Mr. Faulkner submitted a Resolution to Amend the Investment Policy Statement in Relation to the Use of Black, Indigenous, and People of Color Financial Institutions for the Board of Education Retirement System of the City of New York. On a motion by Mr. Faulkner and a second by Ms. Chan, the Board considered the resolution submitted by Mr. Faulkner.

Mr. Edwards arrived at approximately 4:13 PM.

Mr. Sheppard arrived at approximately 4:16 PM.

Ms. Hirsh arrived at approximately 4:18 PM.

Ms. Dienstag arrived at approximately 4:35 PM.

Mr. Zakry arrived at approximately 4:49 PM.

Ms. Azad left at 6:10 PM.

Ms. Arnold left at 6:11 PM.

Mr. Sheppard left at approximately 6:26 PM

On a motion by Mr. Faulkner and a second by Mr. Giordano, the Board voted in favor of ending debate on the proposed resolution and moving directly to a vote. Ms. Apollon, Ms. Dienstag, Mr. Edwards, Mr. Faulkner, Mr. Giordano, Ms. Green, Mr. Maderich, Mr. Nesbit, Mr. Ong, Ms. Sapp and Mr. Zakry voted in favor. Ms. Gibson and Ms. Hirsh voted to oppose.

A quorum check was requested by Deputy Executive Director, Daniel Miller. It was confirmed that the Board continued to maintain quorum. The Board voted in favor of the resolution to Amend the Investment Policy Statement in Relation to the Use of Black, Indigenous, and People of Color Financial Institutions for the Board of Education Retirement System of the City of New York. Ms. Dienstag, Mr. Edwards, Mr. Faulkner, Mr. Giordano, Ms. Green, Mr. Maderich, Mr. Nesbit, Mr. Ong, and Ms. Sapp voted in favor of the resolution. Ms. Apollon, Ms. Gibson, and Ms. Hirsh voted to oppose. Ms. Chan, Ms. Garcia, and Mr. Zakry abstained from the vote.

Ms. Sapp left at 6:33 PM.

Ms. Gibson left at 6:38 PM.

**Agenda Item 1 - Calendar Item 1:** Noting the Minutes of the Meeting of the Board of Retirement held on May 9, 2023. On a motion by Mr. Giordano and a second by Ms. Garcia, this item was unanimously approved.

**Agenda Item 2:** Executive Director's Update.

**Agenda Item 3 - Calendar Items 2-17:** Ordinary Business. On a motion by Mr. Maderich and a second by Mr. Zakry, these items were unanimously approved.

The meeting was adjourned at approximately 6:53 PM.

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**Board of Education Retirement System**  
**SUMMARY MINUTES**  
**Meeting of the Board of Trustees**  
**June 14, 2023<sup>1</sup>**

**Appearances via WebEx:**

Karine Apollon  
Lilly Chan  
Marjorie Dienstag  
John Dorsa  
Khari Edwards  
Gregory Faulkner  
Anita Garcia  
Sheree Gibson  
Anthony Giordano  
Angela Green

Naveed Hasan  
Alison Hirsh  
Jessamyn Lee  
John Maderich  
Donald Nesbit  
Alan Ong  
Kaliris Salas-Ramirez  
Maisha Sapp  
Thomas Sheppard  
Ephraim Zakry

Mr. Hasan arrived at 4:09 PM  
Mr. Nesbit arrived at 4:10 PM  
Mr. Faulkner arrived at 4:10 PM  
Ms. Gibson arrived at 4:11 PM  
Mr. Dienstag arrived at 4:13 PM  
Mr. Maderich arrived at 4:13 PM  
Ms. Salas-Ramirez arrived at 4:13 PM  
Mr. Sheppard arrived at 4:13 PM  
Mr. Zakry arrived at 4:13 PM  
Ms. Green arrived at 4:28 PM

Ms. Garcia left the meeting at approximately 5:09 PM  
Mr. Nesbit began chairing the meeting at approximately 5:15 PM.

**Agenda Item 4 - Calendar Item 18:** Adoption of the Actuary's Recommendation Regarding the Tier III/IV/VI Loan Insurance Premium Rate for Fiscal Year 2024. On a motion by Mr. Sheppard and a second by Mr. Faulkner, this item was unanimously approved.

**Agenda Item 5 - Calendar Item 19:** Authorization for the Adoption of an Administrative Budget for Fiscal Year 2024 for the Board of Education Retirement System. On a motion by Mr. Faulkner and a second by Mr. Zakry, this item was approved. Ms. Chan, Ms. Dienstag, Mr. Edwards, Mr. Faulkner, Ms. Garcia, Ms. Gibson, Mr. Giordano, Ms. Green, Mr. Hasan, Ms. Lee, Mr. Maderich, Mr. Nesbit, Mr. Ong, Ms. Salas-Ramirez, Ms. Sapp, Mr. Sheppard and Mr. Zakry voted in favor. Ms. Apollon and Ms. Hirsh voted to oppose.

Mr. Maderich left at approximately 5:26 PM.  
Ms. Garcia rejoined the meeting at approximately 5:28 PM  
Ms. Salas-Ramirez left at approximately 5:49 PM

**Agenda Item 6 - Calendar Item 20:** Authorization for a Commitment of Funds to the Roth

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<sup>1</sup> The Board held an emergency meeting as the business scheduled for June 13, 2023 was not completed.

Implementation Capital Budget of the Board of Education Retirement System. On a motion by Mr. Sheppard and a second by Mr. Zakry, this item was approved. Ms. Chan, Ms. Dienstag, Mr. Edwards, Mr. Faulkner, Ms. Garcia, Ms. Gibson, Mr. Giordano, Ms. Green, Ms. Hasan, Ms. Lee, Mr. Nesbit, Mr. Ong, Ms. Sapp, Mr. Sheppard and Mr. Zakry voted in favor. Ms. Apollon and Ms. Hirsh voted to oppose.

Ms. Hirsh left at approximately 6:28 PM. Mr. Dorsa served as the Comptroller's Designee to the Board for the remainder of the meeting.

**Agenda Item 7 - Calendar Item 21:** Authorization to the Comptroller of the City of New York to Invest, Sell and Exchange the Funds of the Retirement System. On a motion by Mr. Sheppard and a second by Ms. Dienstag, this item was approved. Ms. Apollon, Mr. Edwards, Ms. Garcia, Ms. Gibson, Mr. Giordano, Mr. Hasan, Mr. Dorsa, Mr. Nesbit, Mr. Ong, Ms. Sapp, Mr. Sheppard, and Mr. Zakry voted in favor. Ms. Chan, Mr. Faulkner, Ms. Dienstag, Ms. Lee, and Ms. Green abstained from the vote.

Ms. Lee left at approximately 6:31PM.

No other items of business were presented. On a motion by Mr. Sheppard and a second by Ms. Gibson, the meeting was adjourned at approximately 6:46 PM.

DRAFT

**September 2023**

**ADOPTION OF THE DISABILITY COMMITTEE'S RECOMMENDATIONS**

- WHEREAS,** the Disability Committee of the Board of Trustees ("Disability Committee") held a meeting on September 14, 2023; and
- WHEREAS,** the Disability Committee reviewed applications for disability retirement; and
- WHEREAS,** the Disability Committee has made recommendations to the Board of Trustees regarding certain applications; now therefore be it
- RESOLVED,** that the Board of Trustees hereby adopts the recommendations of the Disability Committee with regard to the applications reviewed on September 14, 2023.

Respectfully Submitted,

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Sanford R. Rich  
Executive Director

September 2023

**AUTHORIZATION TO THE COMPTROLLER OF THE CITY OF NEW YORK TO INVEST,  
SELL AND EXCHANGE THE FUNDS OF THE RETIREMENT SYSTEM**

- WHEREAS,** in order that the receipts of monies, as and when they are credited to the fund, may be invested at the earliest possible moment, it is necessary that the Comptroller of the City of New York (the Comptroller), as custodian of the funds of the Board of Education Retirement System (BERS), be authorized to invest the available cash funds of said System, as they accumulate; now therefore be it
- RESOLVED,** that the Comptroller, as custodian of the funds of BERS, is hereby authorized to invest the funds of said System during the period of October 1, 2023 to December 31, 2023 in any investment authorized pursuant to the Administrative Code of the City of New York, the Retirement and Social Security Law, the Education Law, the Banking Law or as otherwise authorized by the laws governing the investments of said System, provided the Trustees of said System have heretofore approved such investment or hereafter approve such investment; and be it further
- RESOLVED,** that during the term of this delegation, investments in any asset class or category not previously authorized by BERS shall be made by the Comptroller only with the prior approval of the Trustees of said System; and be it further
- RESOLVED,** that the Comptroller is authorized to hold, sell, assign, transfer or dispose of any of the properties, securities or investments in which any of the funds of BERS shall have been invested, including the proceeds of such investments and any monies belonging to such fund, subject to the terms, conditions, limitations and restrictions imposed by law upon the Trustees of said System; and be it further
- RESOLVED,** that the Comptroller is authorized to execute BERS' corporate governance policy, including casting BERS' proxy votes, engaging portfolio companies and regulators, and submitting shareowner proposals that have been approved by the BERS Board of Trustees or a Committee of the Board authorized to approve shareholder proposals; and be it further
- RESOLVED,** that any termination, expiration or revocation of this delegation to invest shall not affect any binding commitment previously made by the Comptroller pursuant to such delegation and the Comptroller shall have the power to discharge fully any such binding commitment according to its terms.

Respectfully Submitted,

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Sanford R. Rich  
Executive Director



September 2023

**AUTHORIZATION TO ENTER INTO AN AGREEMENT WITH SAVILLS, INC. TO PROVIDE REAL ESTATE ADVISORY SERVICES TO THE BOARD OF EDUCATION RETIREMENT SYSTEM**

**WHEREAS,** the Board of Education Retirement System (BERS) has determined a need for real estate advisory services to relating to the potential relocation of BERS offices and associated negotiation of a lease; and

**WHEREAS,** the administrative staff of BERS have recommended Savills, Inc. (Savills) to provide such real estate advisory services; and

**WHEREAS,** the Board of Trustees accepts the recommendation of the administrative staff; and

**WHEREAS,** it is the desire of the Board of Trustees to contract with Savills for a period of twelve months commencing in fiscal year 2024 with an option to renew; now therefore be it

**RESOLVED,** that the Board of Trustees authorizes the Executive Director of BERS to enter into a contract with Savills for real estate advisory services commencing in fiscal year 2024 for a period of twelve months with an option to renew and subject to agreement by Savills. If any of the foregoing terms are not agreed upon by the parties to the contract, the proposed contract will be brought back to the Board for further review and action before such a contract is executed.

Respectfully Submitted,

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Sanford R. Rich  
Executive Director

**AUTHORIZATION TO AMEND AN AGREEMENT WITH VITECH SYSTEMS SUB LLC**

**WHEREAS,** in January 2019, the Board of Education Retirement System (BERS) contracted with Vitech Systems Sub LLC (Vitech) to provide computer consulting services for the development of the next generation of its Comprehensive Pension Management System (CPMS); and

**WHEREAS,** in September 2020, the Board of Trustees authorized the Executive Director to enter into a contract with Vitech Systems Sub LLC for the addition of the V3locity Digital Self Service (DSS) platform commencing in Fiscal Year 2021 and continuing unless terminated pursuant to the terms of the associated agreements; and

**WHEREAS,** the DSS platform has been successfully rolled out and has been in active use by BERS staff, members and retirees since March 2022, with a maximum CPMS database storage capacity of 1.5 terabytes (TB); and

**WHEREAS,** after years of continuous use, administrative staff report that the CPMS database storage capacity has been exhausted, and recommend an increase of 1 TB to the database storage capacity; and

**WHEREAS,** the Board accepts the recommendations of the administrative staff regarding the need for additional CPMS database capacity; now therefore be it

**WHEREAS,** Vitech has represented that it is willing and able to provide an additional 1 TB of CPMS database storage capacity at a cost of \$4,200 per month; and

**RESOLVED,** that the Board authorizes an additional commitment of funds for additional database storage capacity in an amount not to exceed \$50,400 per annum; and be it further

**RESOLVED,** that the Executive Director of BERS be authorized to receive and control funds and to direct the Comptroller of the City of New York to disburse funds in accordance with this resolution.

Respectfully Submitted,

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Sanford R. Rich  
Executive Director

September 2023

**DIRECTION TO THE COMPTROLLER REGARDING THE USE OF BIPOC  
INVESTMENT MANAGERS FOR THE BOARD OF EDUCATION RETIREMENT  
SYSTEM PORTFOLIO**

**WHEREAS**, the Board of Trustees (Board) is committed and required to invest the members' pension assets with qualified managers to generate investment returns for the exclusive benefit of, and in order to pay retirement benefits to, BERS members and their beneficiaries; and

**WHEREAS**, the Board implements all policies consistent with the Trustees' fiduciary duties, BERS Investment Policy Statement (IPS), and applicable federal, state and local laws; and

**WHEREAS**, a "Staff FAQ Relating to Investment Adviser Consideration of DEI Factors" published by staff of the United States Securities Exchange Commission advises:

An investment adviser is required to have a reasonable belief that the advice it provides is in the best interest of the client based on the client's objectives. Such a reasonable belief that advice is in the best interest of the client typically includes consideration of a variety of factors. Accordingly, an adviser that recommends other investment advisers to or selects other advisers for their clients may consider a variety of factors in making a recommendation or selection, *including, but not limited to, factors relating to diversity, equity, and inclusion*, provided that the use of such factors is consistent with a client's objectives, the scope of the relationship, and the adviser's disclosures. Further, the adviser's fiduciary duty does not mandate restricting such a recommendation or selection to investment advisers with certain specified characteristics, such as a minimum amount of assets under management or a minimum length of track record.

and

**WHEREAS**, legal scholars, citing studies by prominent business schools and investment institutions, have found evidence supporting a correlation between diversity practices and financial performance, and stronger evidence that diversity is a "key ingredient for cognitively 'smart' businesses," and have posited that there is a "business argument for Diversity" based on "its impact on the corporation's reputation with regulators and key stakeholders and, by extension, on its cost of capital, access to talent and business partners, and

its attractiveness to customers ... [and] the rational basis for business leaders to conclude that attention to good [diversity, equity and inclusion] practices makes good business sense in terms of improving the likelihood that a corporation will be sustainably profitable;" and

**WHEREAS**, the Board is committed to integrating diversity and inclusion into its decision-making, including consideration of firmwide diversity in the selection of consultants and investment managers and supporting diversity among service providers to its investment managers; and

**WHEREAS**, the Board believes that professionals and decision-makers who come from diverse backgrounds contribute different points of view that enhance organizational quality and economic performance; and

**WHEREAS**, in order to achieve the best economic performance, the Board wishes to maximize opportunities for members of the Black, Indigenous, and People of Color (BIPOC) community, to be considered for positions as managers of BERS assets;

**RESOLVED**, that the Board will establish prudent parameters for investment manager searches that promote the consideration of qualified BIPOC managers and financial service providers; and

**BE IT FURTHER RESOLVED**, that the Board directs the Bureau of Asset Management (BAM), in coordination with BERS administrative staff, to take prudent steps to increase the use of qualified BIPOC managers. These steps shall include but not be limited to the following:

- BERS' general consultant shall include at least one BIPOC manager in recommendations to BAM for public markets searches when appropriate and consistent with the searches' evaluation criteria; and
- BERS' private asset specialty consultants and BAM shall consider qualified BIPOC private asset managers in the private asset classes in which BERS invests, when appropriate and consistent with evaluation criteria; and

**BE IT FURTHER RESOLVED**, that BAM and BERS staff provide the Board with an annual diversity report with a section describing assets

managed by BIPOC managers, broken out by class and manager; and a section describing diversity metrics of all managers.

Respectfully Submitted,

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Sanford R. Rich  
Executive Director

September 2023

**RATIFICATION OF PRIOR ACTS OF THE BOARD**

- WHEREAS,** Section 5a of the BERS Rules and Regulations specifies that each act of the Board shall be by a resolution adopted by the majority of the Board as a whole; and
- WHEREAS,** the Board wishes to ratify certain acts of the Board that were adopted by a majority of trustees present at the Board meeting; now therefore be it
- RESOLVED,** that the Board of Trustees hereby ratifies the following acts of the Board:

	<b><u>Resolution</u></b>	<b><u>Meeting Date</u></b>
<b>1</b>	Resolution to Amend the Investment Policy Statement in Relation to the Use of Black, Indigenous, and People of Color (BIPOC) Financial Institutions for the Board of Education Retirement System of the City of New York (BERS).	6/13/2023
<b>2</b>	Approval of the Minutes of the May 9, 2023 Board Meeting	6/13/2023
<b>3</b>	Approval of the Ordinary Business of the Board of Education Retirement System	6/13/2023
<b>4</b>	Authorization to the Comptroller of the City of New York to Invest, Sell and Exchange the Funds of the Retirement System	6/14/2023

Respectfully Submitted,

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Sanford R. Rich  
Executive Director

**AUTHORIZATION TO THE COMPTROLLER OF THE CITY OF NEW YORK TO COMMIT A PORTION OF THE REAL ESTATE PORTFOLIO OF THE BOARD OF EDUCATION RETIREMENT SYSTEM**

**WHEREAS,** after review and discussion of the analyses and recommendations of BERS' investment advisor, the Comptroller of the City of New York ("the Comptroller") and Aksia TorreyCove Partners ("the Consultant"), with the concurrence of the administrative staff of BERS, recommend that the Executive Committee ("the Committee") allocate a commitment of \$40 million of the real estate portfolio to an investment management fund in accordance with the recommendations of the Comptroller; and

**WHEREAS,** the Committee accepts the recommendations from the Comptroller, the Consultant, and the administrative staff, regarding the selection of an investment manager and has determined that funds should be committed accordingly; and

**WHEREAS,** the Committee has been authorized by the Board of Trustees (Board) to approve additional investments in funds previously approved by the Board, or their successor funds, on substantively identical terms; now therefore be it

**RESOLVED,** that the Committee hereby directs the Comptroller to effectuate the foregoing process by allocating a commitment of \$40 million of the real estate portfolio consistent with the Comptroller's recommendation dated June 19, 2023; and be it further

**RESOLVED,** that the Committee directs that such allocation process shall be completed within a reasonable period of time and in a manner consistent with the Comptroller's guidelines for such transactions; and be it further

**RESOLVED,** that the Committee hereby directs the Comptroller to report to the Committee on the progress of such allocation and to make such recommendations to the Committee as the Comptroller shall deem appropriate with respect to such allocation.

Respectfully Submitted,

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Sanford R. Rich  
Executive Director

**AMENDMENT TO THE ASSET ALLOCATION POLICY FOR THE  
INVESTMENTS OF THE BOARD OF EDUCATION RETIREMENT SYSTEM**

**WHEREAS,** the Board of Trustees (the “Board”) of the Board of Education Retirement System of the City of New York (the “System”) has adopted recommendations from its investment consultant, Segal Marco Advisors, and from its investment advisor, the Comptroller of the City of New York (the “Comptroller”), regarding the Asset Allocation Policy for the Investments of the Board of Education Retirement System (“BERS”); and

**WHEREAS,** Segal Marco Advisors and the Comptroller of the City of New York have reviewed BERS’ current Asset Allocation Policy and recommended certain modifications; now therefore be it

**RESOLVED,** that the Board of Trustees adopts the revised Asset Allocation as indicated below:

	Previous Target	Current Allocation with Placeholders as of 06/30/2023	Recommended Policy
Cash	0.0%	0.56%	0.5%
Inflation Linked Bonds	4.0%	3.01%	0.0%
Real Estate	8.0%	8.98%	8.0%
Infrastructure	4.0%	3.69%	4.0%
Fixed Income	16.0%	13.74%	21.5%
Bank Loans	0.0%	0.00%	0.0%
High Yield	8.0%	8.94%	6.0%
Private Credit/Opportunistic Fixed Income	5.0%	3.03%	5.0%
U.S. Equity	30.0%	29.89%	34.0%
Developed Equity (U)	10.0%	10.65%	9.0%
Emerging Markets Equity	6.0%	5.26%	4.0%
Private Equity	9.0%	11.78%	8.0%
Economically Targeted Investments (ETI)	0.0%	0.47%	0.0%
<b>Sum</b>	<b>100.00%</b>	<b>100.00%</b>	<b>100.00%</b>

Respectfully Submitted,

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Sanford R. Rich  
Executive Director



## AMENDMENT TO VIDEOCONFERENCING PROCEDURES

**WHEREAS,** Chapter 56 of the Laws of 2022 (“Chapter 56”) amended the Open Meetings Law to establish requirements for how and when a public body may use videoconferencing when conducting its meetings; and

**WHEREAS,** in accordance with Chapter 56, on May 26, 2022, the Board of Trustees adopted videoconferencing procedures establishing requirements for how and when the Board and/or its committees may use videoconferencing when conducting meetings; and

**WHEREAS,** on May 3, 2023, Governor Kathy Hochul signed legislation enacting Chapter 58 of the Laws of 2023 (“Chapter 58”), which amended the Open Meetings Law to permit the Board, through its written videoconferencing procedures, to allow for a member of the Board with a disability to attend a Board meeting or a committee meeting via videoconference and to be considered present for purposes of fulfilling quorum requirements; and

**WHEREAS,** the Board wishes to amend its videoconferencing procedures pursuant to Chapter 58 so as to permit trustees with a disability to attend meetings via videoconference; now therefore be it

**RESOLVED,** that the Board adopts the following amended videoconference procedures on behalf of itself and its committees:

1. A quorum of Trustees must be present at one or more noticed physical locations where members of the public may attend in person. Notice of a meeting shall state the physical location(s) where the meeting will be held, where in-person attendance is possible, and state that the meeting will include a videoconferencing component and indicate where members of the public may view and, if applicable, participate in the meeting.
2. A Trustee not needed for a quorum may attend a meeting via videoconferencing in a location that is not accessible to members of the public under “extraordinary circumstances,” including, but not limited to, a disability, illness, caregiving responsibilities, or any “other significant or unexpected factor(s) or event(s).” Should a Trustee qualify to attend a meeting via videoconferencing at a location that is not accessible to members of the public, they may participate in the meeting and vote.
3. **Notwithstanding Paragraphs 1 and 2 above, any Trustee who has a disability<sup>1</sup> as defined in §292 of the Executive Law, where such disability renders the Trustee unable to participate in-person at any meeting location where the public can attend, shall be considered present for purposes of fulfilling the quorum requirements despite attending such meeting via videoconference, provided, however, that the remaining criteria required by the Open Meetings Law are otherwise met; and provided, further, that the Board or committee maintains at least one physical location where the public can attend such meeting.**

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<sup>1</sup> Pursuant to §292 of the Executive Law, “the term “disability” means (a) a physical, mental or medical impairment resulting from anatomical, physiological, genetic or neurological conditions which prevents the exercise of a normal bodily function or is demonstrable by medically accepted clinical or laboratory diagnostic techniques or (b) a record of such an impairment or (c) a condition regarded by others as such an impairment...”

4. Should the Board choose to use videoconferencing in a particular meeting, it will include audio and visual components that ensure that participants can be heard, seen and identified during the meeting. If a Trustee participates in a meeting by videoconference at a location which is not accessible to members of the public, members of the public will also be allowed to attend the meeting by videoconference.
5. Public sessions of Board meetings will be webcast for public viewing to the extent practicable.
6. Minutes of each meeting shall list all members of the Board who attended remotely at a location not accessible to members of the public.
7. Meetings conducted using videoconferencing will be recorded and the public session will be posted on BERS' website within five business days of the meeting and remain available for at least five years.
8. Procedures governing member and public attendance of Board meetings via videoconference will be posted on BERS' website.

Respectfully Submitted,

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Sanford R. Rich  
Executive Director

September 2023

**AUTHORIZATION TO PERMIT HARDSHIP DISTRIBUTIONS  
FROM THE BERS TAX-DEFERRED ANNUITY PROGRAM  
IN RELIANCE ON SELF-CERTIFICATION BY THE APPLICANT**

- WHEREAS,** the BERS Tax-Deferred Annuity Program (“the BERS TDA Program”) was originally established in 1970 pursuant to 26 U.S.C. 403(b) and Section 3109-A of the New York Education Law, and consistent with legacy regulations applicable to 403(b) plans, currently permits hardship distributions only when written records are submitted to support the type and amount of financial hardship; and
- WHEREAS,** on December 29, 2022, the President signed into law the SECURE 2.0 Act of 2022<sup>1</sup>, which authorizes 403(b) plans to permit hardship distributions in reliance on self-certification by the applicant<sup>2</sup>; now therefore be it
- RESOLVED,** that the Board of Trustees hereby authorizes the Executive Director to permit hardship distributions from the BERS TDA Program in reliance on self-certification by the applicant, and delegates the implementation of any related operational revisions to the Executive Director or his authorized delegate.

Respectfully Submitted,

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Sanford R. Rich  
Executive Director

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<sup>1</sup> Division T of the Consolidated Appropriations Act of 2023.

<sup>2</sup> Section 312 of the SECURE 2.0 Act.

September 2023

**AUTHORIZATION TO PERMIT HARDSHIP DISTRIBUTIONS  
FROM THE BERS TAX-DEFERRED ANNUITY PROGRAM  
THAT INCLUDE EARNINGS ON CONTRIBUTIONS**

- WHEREAS,** the BERS Tax-Deferred Annuity Program (“the BERS TDA Program”) was originally established in 1970 pursuant to 26 U.S.C. 403(b) and Section 3109-A of the New York Education Law, and consistent with legacy regulations applicable to 403(b) plans, currently permits hardship distributions to include only contributions; and
- WHEREAS,** on December 29, 2022, the President signed into law the SECURE 2.0 Act of 2022<sup>1</sup>, which conforms the hardship distribution rules for Section 403(b) plans to those of Section 401(k) plans,<sup>2</sup> thus authorizing 403(b) plans to permit hardship distributions that include earnings on contributions; now therefore be it
- RESOLVED,** that the Board of Trustees hereby authorizes the Executive Director to include earnings on contributions in hardship distributions from the BERS TDA Program, and delegates the implementation of any related operational revisions to the Executive Director or his authorized delegate.

Respectfully Submitted,

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Sanford R. Rich  
Executive Director

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<sup>1</sup> Division T of the Consolidated Appropriations Act of 2023.

<sup>2</sup> Section 602 of the SECURE 2.0 Act.