

A Legal Review of School Election Requirements

**Prepared for the
2023 School Election Law Refresher**

New York State School Boards Association, Inc.



APPLICATION OF OTHER LAWS TO SCHOOL DISTRICT ELECTIONS

1. The Election Law applies to school districts only as specifically provided by law (Elec. Law § 1-102; see also Educ. Law § 2609; *Appeal of the Bd. of Educ. of the Hilton CSD*, 56 Ed Dept Rep, Dec. No. 17,091 (2017); *Appeal of Ghezzi*, 55 Ed Dept Rep, Dec. No. 16,890 (2016); *Appeal of Reed*, 55 Ed Dept Rep, Dec. No. 16,871 (2016)). This means that, in general, the Education Law governs district meetings and elections, not the Election Law (Educ. Law Art. 41).
2. One example of where the election law specifically applies to school districts is the “John R. Lewis Voting Rights Act of New York” which provides protection to voters that are members of a race, color or language-minority group against voter dilution, suppression, intimidation, deception or obstruction. It also requires language assistance be provided to language-minority groups beyond that currently required under federal law (Elec. Law §§ 17-200–17-222).
3. Provisions of federal law require school districts located in designated counties to provide election materials in Spanish to ensure greater participation of language minorities in elections (52 USC § 10503). At the time this publication went to press, those counties included Monroe, Nassau, Suffolk and Westchester (86 Fed. Reg. 69611 (Dec. 8, 2021)).

ANNUAL MEETING AND ELECTION

Date, Time and Place of School District Annual Meeting

1. School boards must present the proposed school budget for the upcoming school year for voter approval at the annual meeting and election held both to elect school board members and approve the school budget and other specific propositions (Educ. Law Art. 41 and 53). Each school district must hold its annual meeting and election on the third Tuesday in May.

Voting on school budgets and board member elections on separate days is not permitted.

- a. If, at the request of a local school board, the commissioner of education certifies no later than March 1 that the election would conflict with religious observances, the election may be held on the second Tuesday in May (Educ. Law §§ 1804(4), 1906(1), 2002(1), 2022(1), 2601-a(2)).
 - (1) In such an instance, the date would change only for the district making the request. That district must submit to the Office of Educational Management Services at the State Education Department (SED) a request letter and supporting documentation with sufficient time for processing and issuance of an order allowing the date change (see NYS Education Department Budget Vote Date Change at: <https://www.p12.nysed.gov/mgtserv/budgeting/BudgetVoteDateChange.htm>).
- b. School board elections in the Big 5 take place at different dates and times as specified by law (Educ. Law § 2553).
- c. The date for holding the annual meeting and election may not be altered to await the outcome of contract negotiations before presenting the school budget for voter approval (Educ. Law §§ 1804(4); 2002(1); 2022(1); 2601-a(2); see Opn. of Counsel No. 228, 8 Ed Dept Rep 227 (1969)).

If a school board underestimates the amount needed to meet salary and other obligations under the contract once it is settled, it may:

- Appropriate an additional amount to meet these obligations (see *Matter of New Paltz CSD*, 30 Ed Dept Rep 300 (1991), citing *Matter of Fagan*, 15 Ed Dept Rep 296 (1976)).
- Issue a budget note during the last nine months of the school year, in an amount not to exceed five percent (5%) (more with voter approval) of the district's annual budget (Local Fin. Law §29(3)).

If a school district finds itself in this situation it should consult with the school attorney regarding any restrictions the property tax levy cap may have on the district's ability to utilize these options.

However, if the budget is defeated, the total contingency budget, including the additional amount appropriated by the board, is subject to certain caps on contingency budget expenditures (discussed in more detail below) (Educ. Law § 2023).

2. Most school districts must hold their annual meeting and election during at least six consecutive hours after 6:00 a.m., two hours of which must be after 6:00 p.m., as determined by resolution of the trustees or school board (Educ. Law § 2002(1)).

Small city school districts must hold their annual meeting and election during at least nine consecutive hours, beginning not earlier than 7:00 a.m., two hours of which must be after 6:00 p.m., as established by board resolution (Educ. Law § 2602(3)).

School board elections in large city school districts (see **1:24**) take place at different times as specified by law (§ 2553).

3. School districts that are not divided into election districts and conduct their election or vote by a show of hands or voice vote must hold their annual meeting and election at 7:30 p.m., unless the time is changed by a vote at a previous district meeting (Educ. Law § 2002(1)). In such districts, once the proposed budget has been presented, the meeting may not be adjourned or concluded until the budget has been voted on (*Appeal of Mazzurco*, 6 Ed Dept Rep 101 (1967); see also *Appeal of Kerr*, 76 St. Dep't Rep. 121 (1955)).
4. If the election is not held on the statewide voting day, the school board or the district clerk must call a special district meeting to transact the business of the annual meeting, which must be held on the same date specified by law for conducting a school budget revote.
 - a. If the school board or district clerk fails to call such a special meeting, then the district superintendent of the board of cooperative educational services or the commissioner of education may order a special district meeting to conduct the business of the annual meeting. The officers elected at such a special meeting hold their offices only until the next annual meeting, and until their elected successors have been qualified (Educ. Law § 2005).
5. The annual meeting and election is held at the school(s) designated by the school board for this purpose. If the district does not have a school, or if the school is not accessible or adequate, then the annual meeting and election may be held in any place suitable for the occasion (Educ. Law § 2002(1)).

6. In common school districts, the annual meeting and election is called to order by the sole trustee, the chairperson of the board of trustees, or a person chosen by the trustee or trustees. Once the meeting is called to order, the qualified district voters present at the meeting nominate and elect a qualified voter in attendance to serve as permanent chairperson (Educ. Law §§ 2021(1), 2025(1)).

In union free, central, and small city school districts, a qualified voter appointed by the school board as permanent chairperson declares the polls open and closed at the appropriate time (Educ. Law §§ 2025(2), 2601-a(2), *Appeal of Flippen*, 56 Ed Dept Rep, Dec. No. 17,296 (2017)).

As qualified voters, members of the school board are eligible to serve as chairperson (*Appeal of Uciechowski*, 32 Ed Dept Rep 511 (1993)). However, a school board member running for reelection should avoid serving in that capacity to prevent the appearance of impropriety even though such conduct, on its own, would not warrant overturning the election results (*Appeal of O'Brien*, 54 Ed Dept Rep, Dec. No. 16,772 (2015); *Appeal of Bentley*, 51 Ed Dept Rep, Dec. No. 16,356 (2012)).

ACTIVITIES PRECEDING THE SCHOOL DISTRICT ANNUAL MEETING AND ELECTION

Notice of Annual Meeting

1. The district clerk must publish notice of the date, time, and place of the annual meeting and election four times during the seven weeks preceding the date of the annual meeting and election, in two newspapers having general circulation, or one newspaper of general circulation, if there is only one, with the first publication occurring at least 45 days before the date of the annual meeting and election (Educ. Law §§ 2003(1), 2004(1), 2121(4), 2601-a(2)).
 - a. A newspaper of general circulation is, with narrow exceptions, one that is published at least weekly; that contains news, editorials, features, advertising or other matter regarded as of current interest; that is of paid circulation; and that is sent by at least second class mail (Gen. Constr. Law § 60).
 - b. The fees that newspapers may charge for publishing the notice of annual meeting are set forth in section 8007 of the Civil Practice Law and Rules. A school district may not pay a claim for publication of a notice in a newspaper that does not meet the legal definition of a newspaper of general circulation (Opn. St. Comp. 93-33).
 - c. If no newspaper of general circulation is available, or if both newspapers having general circulation in the district refuse to publish the notice at the rates prescribed by law, the notice must be posted in at least 20 of the most public places 45 days before the meeting (Educ. Law §§ 2003(1), 2004(1), 2601-a(2)).
2. The notice must state the date, time, and place of the annual district meeting and election (Educ. Law §§ 2003(1), 2004(1), 2601-a(2)). It also must include the following:
 - The date, time, and place of the public hearing on the budget (Educ. Law §§ 1608(2), 1716(2), 2601-a(2)).
 - A statement that district residents may obtain a copy of the proposed budget at any district schoolhouse, during designated hours, on each day other than a Saturday, Sunday, or holiday

during the 14 days preceding the date of the annual meeting and election and on the day of the election (Educ. Law §§ 1608(2), 1716(2), 2004(6)(d)).

- Notice of any proposed tax, together with a statement specifying both the purpose and the amount of spending for which the tax will be levied, where such tax is proposed to finance: (1) an addition to or change of site or purchase of a new site; (2) purchase of any new site or structure; (3) grading or improving a school site; (4) purchase of an addition to the site of any schoolhouse; (5) purchase of lands and buildings for agricultural, athletic, playground, or social center purposes; (6) construction of any new schoolhouse or the erection of an addition to any schoolhouse already built; and (7) payment or refund of any outstanding bonded indebtedness (Educ. Law § 416(3)).
- Where required by statute, the substance of each specific proposition to be voted on, for example, a proposition:
 - To levy a tax by installments as a condition prerequisite to the adoption of a bond resolution or capital note resolution where such bonds or capital notes will be issued to finance a specific object or purpose. The notice of the meeting at which such a proposition shall be voted upon must state the estimated maximum cost of each item of such specific object or purpose and the estimated total cost of all the items (Educ. Law §§ 416(2), 2009; see also Local Fin. Law § 41.10). "There is no legal requirement that the notice of the election specify the term of the bonds" (*Appeal of Brousseau*, 39 Ed Dept Rep 397 (1999)), or that the notice or proposition itself include the cost of interest (*Appeal of Hubbard*, 58 Ed Dept Rep, Dec. No. 17,656 (2019); *Appeal of Herloski*, 50 Ed Dept Rep, Dec. No. 16,089 (2010)).
 - To rescind a district vote to raise money or to reduce the amount thereof (Educ. Law § 416(5)).
 - To establish certain reserve funds and/or to make expenditures there from (Educ. Law § 3651(1)(b), (3)).
 - To increase or decrease the number of members of the school board (Educ. Law §§ 1703(2), 2502(4)(b); see also *Appeal of Rosenberg*, 31 Ed Dept Rep 398 (1992); *Appeal of Como*, 30 Ed Dept Rep 214 (1990); *Appeal of Swanson*, 29 Ed Dept Rep 503 (1990); *Appeal of Presutti*, 17 Ed Dept Rep 445 (1978)).
 - To increase or decrease the term of office (i.e., the number of years served) of board members in small city school districts (Educ. Law § 2502(4)(b)).
- A statement that qualified voters may apply for absentee ballots at the district clerk's office and that a list of persons to whom absentee ballots have been issued will be available for inspection in the district clerk's office during each of the five days prior to the day of the election, except Sundays (Educ. Law § 2004(7); cf. Educ. Law §§ 2018-a(6), 2018-b(7), which state that this list need only be available for public inspection in the district clerk's office "during regular office hours until the day of the election").
- The time and place that the board of registration will meet to prepare the register of the school district (where applicable), together with notice that any person who is not already registered, upon proving that he or she is entitled to vote in the district, may have his or her name placed upon the register. In addition, the notice shall state that the register containing the names of qualified voters will be available for inspection in the clerk's office during the hours determined by the district on each of the five days prior to the day of the election, except Sundays (Educ.

Law §§ 2004(5), (6)). Additional rules regarding this particular notice apply to small city school districts (§ 2606(5), (6)).

- A statement that military voters, as defined in section 122.2(f) of commissioner's regulations, who are qualified voters of the school district may apply for a military ballot; the time and manner for requesting and returning an application for such ballot; and notice that military voters may indicate their preference for receiving the application either by mail, facsimile transmission or electronic mail (8 NYCRR § 122.5(a)(3)).
- In districts with a system of personal registration, a statement that military voters, as defined in section 122.2(f) of commissioner's regulations, who are not currently registered may apply to register as a qualified voter of the school district; the time and manner for requesting and returning a registration application; and notice that military voters may indicate their preference for receiving the registration application either by mail, facsimile transmission or electronic mail (8 NYCRR § 122.4(a)(3)).
- That petitions for nominating candidates for office of school board member must be filed in the district clerk's office between 9:00 a.m. and 5:00 p.m. no later than 30 days (20 days in small city districts) before the election (Educ. Law §§ 2003(2), 2004(2), 2601-a(2), 2608(1)).

(1) Note that if the deadline for filing petitions falls on "a Saturday, Sunday or public holiday," the filing may be performed on the "next succeeding business day" (Gen. Constr. Law § 25-a(1); see also *Appeal of Williams*, 36 Ed Dept Rep 270 (1996)). Therefore, when this situation occurs, the notice of the annual meeting and election must state that nominating petitions may be filed with the district clerk, during the hours specified by law, on the Monday following the 30th day before the election (specify date).

Public Hearing on the Budget

1. School districts, must hold a public hearing on the budget at least seven days but not more than 14 days prior to the annual meeting and election or special district meeting at which the school budget vote will occur (Educ. Law §§ 1608(1); 1716(1); 2022(2); 2601-a(3)).

Large city school districts are not required to hold a public hearing on their proposed school budget. Instead, they prepare an itemized estimate of the sum needed for necessary and other authorized expenses. That estimate is then filed with either the mayor, city manager, other city official, or in New York City with the chancellor, as specified in law (Educ. Law §§ 2576, 2590-q).

2. The purpose of the hearing is to present to the voters the proposed school budget for the upcoming school year (*Appeal of Hubbard*, 45 Ed Dept Rep 422; 2006).
 - a. Although district voters have the right to submit propositions that affect the budget if the propositions concern a matter that requires voter approval (such as an increase in transportation mileage limitations), they do not have the right to add items to a school board's proposed budget. The authority to develop a budget for a school district rests with a board of education, not with the voters of the district (*Matter of Young v. Board of Educ.*, 41 A.D.2d 966 (2nd Dept. 1973) *aff'd* 35 N.Y.2d 31 (1974); *Appeal of Sperl*, 33 Ed Dept Rep 388 (1994)).

- b. Similarly, school district voters do not have the right to delete items from the school board's proposed budget (*Matter of Ansel*, 28 Ed Dept Rep 406 (1989); see also *Appeal of Krause*, 27 Ed Dept Rep 57 (1987)).
3. School districts must give notice of the date, time and place of the public hearing in the notice of the annual meeting and election or of a special district meeting (Educ. Law §§ 1608(2); 1716(2)).

Follow up to the Public Hearing- Budget Notice

1. Following the public hearing, school district must mail to all qualified voters in the district a school "Budget Notice", no later than six days prior to the annual meeting and election or special district meeting at which the school budget vote will occur.
2. The budget notice must:
 - a. Compare the percentage increase or decrease in total spending under the proposed budget with total spending under the district budget adopted for the current school year.
 - b. Compare the percentage increase or decrease in total spending under the proposed budget with the percentage increase or decrease in the consumer price index from January 1 of the prior school year to January of the current school year.
 - c. Describe how total spending and the tax levy resulting from the proposed budget would compare with a projected contingency budget, if a contingency budget were adopted on the same day as the vote on the proposed budget. This comparison must:
 - (1) Be in total and also broken down by budget components.
 - (2) Include a statement explaining the assumptions made in estimating the projected contingency budget.
 - d. Include in a format and manner prescribed by the commissioner of education an estimate of the tax savings that would be available to an eligible homeowner under the basic School Tax Relief (STAR) exemption if the proposed budget was adopted.
 - e. Include the date, time and place of the budget vote, in the same manner as in the notice of annual meeting.
 - f. The district's tax levy limit determined pursuant to Education Law §2023-a, and the estimated school tax levy excluding any levy necessary to support expenditures for:
 - (1) Expenditures resulting from court orders or judgments arising from tort actions that exceed 5% of the total tax levied in the prior year.
 - (2) Increases in employer contribution rates to state retirement systems in excess of two percentage points.
 - (3) Capital expenditures. (Educ. Law §2022(2-a)).

THE ANNUAL BOCES MEETING

Date and Purpose of Annual BOCES Meeting

1. The BOCES annual meeting must be held between April 1 and April 15 on a date and at a place and hour designated by the BOCES board president (Educ. Law § 1950(4)(o)).
2. The purpose of the BOCES annual meeting is to present the tentative administrative, capital, and program budgets of the BOCES to school board members of component school districts prior to the vote on the tentative administrative budget (Educ. Law § 1950(4)(o)). Other BOCES-wide business may be conducted at the meeting as well (see NYS Education Department, *Questions and Answers on the BOCES Reform Act* (Oct. 1993)).

Notice of Annual BOCES Meeting

1. Notice of the time, date, and place of the annual meeting must be given to each of the members of the BOCES board and the clerk of each of the component districts by mail at least 14 days prior to the meeting (Educ. Law § 1950(4)(o)).
2. The BOCES must also publish the notice at least once each week within the two weeks preceding the annual meeting, the first publication to be at least 14 days before the meeting in two newspapers having general circulation, or one newspaper of general circulation if there is only one, within the BOCES (Educ. Law § 1950(4)(b)(4)).

In addition to the date, time, and place of the meeting, the notice also must contain the following:

- A statement that the tentative BOCES budgets will be presented to the component school board members at the meeting;
- A summary of the tentative BOCES capital and program budgets in a form prescribed by the commissioner;
- A summary of the tentative BOCES administrative budget in a form prescribed by the commissioner that includes the salary and benefits payable to supervisory and administrative staff of the BOCES and the total compensation payable to the district superintendent of schools; and
- When and where the tentative budgets will be available to the public for inspection (Educ. Law § 1950(4)(b)(4)).

SPECIAL SCHOOL DISTRICT MEETINGS

Purpose of Special District Meetings

1. A *special school district meeting* is a meeting of the qualified voters of the district called for a specific purpose or purposes, such as resubmitting the district budget for a revote or conducting an election to fill a vacancy on the school board (Educ. Law §§ 2006–2008).

Calling Special District Meetings

1. Generally, special district meetings are called by the school board when the board deems it necessary and proper (Educ. Law §§ 2006(1), 2007(1), 2602(2)), or when petitioned by 25 voters or five percent of those voting in the previous annual election, whichever is greater (Educ. Law § 2008(2)). Moreover, the statutory obligations related to calling a special school district meeting with respect to a petition for a voter referendum are vested on the school board, not the superintendent of schools (*Application of Kolbmann*, 48 Ed Dept Rep 370 (2009)).
2. However, the commissioner of education and the district superintendent of the board of cooperative educational services also have authority to call special meetings under certain circumstances as set forth in law (Educ. Law §§ 2005, 2008(1), 2113(2)).
3. A school board may refuse to call a special school district meeting if its purpose is to address matters not within the power of the voters (see Educ. Law § 2021); if its purpose is illegal; if the petition for such a meeting was not filed within 20 days of publication of the passage of a bond or note resolution, pursuant to Local Finance Law section 81.00 (see, for example, *Appeal of Johnson*, 41 Ed Dept Rep 407 (2002)); or if the district asserts another valid reason for refusing to call the requested meeting, subject to review by the commissioner of education (Educ. Law § 2008(2)(a)–(d)).
4. However, school boards must either accept or reject petitions for a special school district meeting within 20 days of their submission (Educ. Law § 2008(2); see *Appeal of French*, 32 Ed Dept Rep 100 (1992)). If a petition is accepted, notice of the meeting must be given within 20 days of the petition’s receipt (§ 2008(2)).

Date and Time of Special School District Meetings

1. There is no date designated by law for holding special school district meetings, except for a special district meeting to conduct a budget revote, which must be held on the third Tuesday in June (Educ. Law § 2007(3)(b)).
2. A special district meeting generally need not continue for any specific period of time, so long as enough time is allowed for all voters present at the meeting to vote on the matters before them (see *Appeal of Faulkner*, 16 Ed Dept Rep 93 (1976)).

However, in small city school districts, a special district meeting must be held at least nine consecutive hours beginning not earlier than 6:00 a.m., at least two hours of which must be after 6:00 p.m. (Educ. Law § 2602(3); *Appeal of Ghezzi*, 55 Ed Dept Rep, Dec. No. 16,890 (2016)).

In addition, in union free and central school districts, a special district meeting for the purpose of electing school board members must be held for at least six consecutive hours between 7:00 a.m. (as opposed to 6:00 a.m. for annual elections) and 9:00 p.m., at least two hours of which must be after 6:00 p.m. Such an election may go longer than the statutory six hours so long as proper notice is given (Educ. Law § 2007(4)).

3. In one case, the commissioner of education upheld the results of a special district meeting held until after 10:00 p.m. (*Appeal of Demos*, 34 Ed Dept Rep 54 (1994)). In another case, the commissioner

applied the statutory time requirements to a special district meeting called by the board of education for a bond referendum (*Appeal of Vera*, 56 Ed Dept Rep, Dec. No. 17,077 (2017)).

Notice of Special District Meeting

1. School districts must include the same items of information in the notice of a special district meeting as are required in the notice of annual meeting, which are applicable to the purpose(s) for which the special district meeting was called (Educ. Law §§ 2006, 2007, 2004).
2. In general, notice of a special school district meeting must be published or posted in the same manner and following the same timeline required for the notice of the annual meeting: 45 days ahead of the meeting, with publication once each week for four weeks in two newspapers of general circulation (Educ. Law § 2007(1)).
3. However, there are two circumstances when a full 45-day notice of a special district meeting is not required:
 - When the special district meeting is called to “revote” on the same budget or a modified budget following defeat at the annual school district meeting; or
 - When the school board rejects all bids for a contract or contracts for public work, transportation, or purchase, and the board deems it necessary and proper to call a special district meeting to take appropriate action.

Under either of these two circumstances, notice of the special district meeting is required only two weeks in advance, by publishing notice once each week during the two weeks before the vote, with the first publication being 14 days before the vote (Educ. Law § 2007(3)(a)).

Districts should be mindful, however, that the law requires them to hold a public hearing seven to 14 days prior to a special district meeting at which a budget vote will occur (Educ. Law §§ 1608(1), 1716(1), 2022(1)). In addition, the law requires districts to mail a budget notice to all qualified voters in the district after the date of the public hearing, but no later than six days prior to a special district meeting at which a school budget vote will occur (Educ. Law § 2022(2-a)).

4. In common school districts, notice must be given to each resident by the district clerk (by hand delivery to their residence) at least six days before the meeting, unless district residents have voted at a district meeting to use another method. In the alternative, notice can be published in two newspapers (or one if there is only one) having general circulation once each week during the four weeks prior to the meeting, with the first publication at least 22 days before the meeting. If no newspaper is available, notice must be posted in at least 20 public places between 22 and 28 days before the meeting (Educ. Law § 2006(1), (2)).

Conduct of Special District Meeting

1. A special school district meeting is conducted in the same way as the annual meeting and election: the chairperson of a special school district meeting is appointed in the same manner and calls the meeting to order. Written records of the proceedings must be kept, and the district clerk serves as

the clerk of the meeting (Educ. Law § 2025). See sections below on conduct of annual district meeting.

VOTER PROPOSITIONS

Policy on Voter Propositions

1. Districts using voting machines must have a policy on the submission of propositions by the voters, for the purpose of preparing ballots for the machine (Educ. Law §2035(2)).
 - a. School boards must ensure compliance with any such rule after it has been established (*Matter of Fetta*, 8 Ed Dept Rep 201 (1969)), but may amend it, in their discretion (Educ. Law § 2035(2)).
 - b. The policy may specify the minimum number of signatures required for such petitions (Educ. Law § 2035(2); *Appeal of Huber*, 41 Ed Dept Rep 240 (2001), *petition dismissed*, *Huber v. Mills*, (Sup. Ct. Albany Cnty. 2003)). According to the commissioner of education, a rule requiring 1,000 signatures on a petition representing 27% of the total number of voters in the previous election is unreasonable (*Appeal of Como*, 30 Ed Dept Rep 214 (1990), *petition dismissed*, *Bd. of Educ.*, *Brentwood UFSD v. Sobol*, (Sup. Ct. Albany Cnty. 1991)).
 - c. The law does not require voters to list their addresses on a petition to add a proposition to the ballot, nor does it require that such a petition contain a sworn statement (*Appeal of Atkins*, 35 Ed Dept Rep 375 (1996)).
 - d. This rule does not apply to propositions placed on the ballot by the school board itself (*Appeals of Hendrickson & Guyer*, 28 Ed Dept Rep 354 (1989)).
2. A voter petition must be filed with the school board at least 30 days before the election date, unless the proposition is required by law to be included in the published or posted notice of the annual or special district meeting (Educ. Law § 2035).
 - a. A board may establish a rule that requires the proposition be submitted a reasonable period of time before the first publication or posting of the legal notice (see *Appeal of Rosenberg*, 31 Ed Dept Rep 398 (1992); see also *Appeal of Como*, 30 Ed Dept Rep 214 (1990), *petition dismissed*, *Bd. of Educ.*, *Brentwood UFSD v. Sobol*, (Sup. Ct. Albany Cnty. 1991); *Appeal of Presutti*, 17 Ed Dept Rep 445 (1978)).
 - (1) The commissioner of education has sustained as reasonable board policies requiring the submission of propositions to the board 90 and 60 days in advance of the annual meeting, where such propositions are of the type that must be included in the notice of annual meeting (see *Appeal of Reynolds*, 42 Ed Dept Rep 231 (2003); see also *Appeal of Presutti*).
 - b. Where required by statute, the substance of each specific proposition to be voted on, for example, a proposition:
 - (1) To levy a tax by installments as a condition prerequisite to the adoption of a bond resolution or capital note resolution where such bonds or capital notes will be

issued to finance a specific object or purpose. The notice of the meeting at which such a proposition shall be voted upon must state the estimated maximum cost of each item of such specific object or purpose and the estimated total cost of all the items (Educ. Law §§ 416(2), 2009; see also Local Fin. Law § 41.10). "There is no legal requirement that the notice of the election specify the term of the bonds" (*Appeal of Brousseau*, 39 Ed Dept Rep 397 (1999)).

- (2) To rescind a district vote to raise money or to reduce the amount thereof (Educ. Law § 416(5)).
- (3) To establish certain reserve funds and/or to make expenditures there from (Educ. Law § 3651(1)(b), (3)).
- (4) To increase or decrease the number of members of the school board (Educ. Law §§ 1703(2), 2502(4)(b); see also *Appeal of Rosenberg*, 31 Ed Dept Rep 398 (1992); *Appeal of Como*, 30 Ed Dept Rep 214 (1990); *Appeal of Swanson*, 29 Ed Dept Rep 503 (1990); *Appeal of Presutti*, 17 Ed Dept Rep 445 (1978)).
- (5) To increase or decrease the term of office (i.e., the number of years served) of board members in small city school districts (Educ. Law § 2502(4)(b)).

Acceptance of Voter Propositions

1. Once a voter petition is received the school board determines whether it meets the requirements of the policy and law in order to be validly placed on the ballot. A school board is required to act to either accept or reject a voter submitted proposition (*Appeal of Nappi*, 57 Ed Dept Rep, Dec. No. 17,387 (2018)).
2. Once any issue has been placed before the voters in a particular year, a school board may refuse to place the issue before the voters again in the same year (*Appeal of Pace*, 47 Ed Dept Rep 515 (2008); *Appeal of Brush*, 34 Ed Dept Rep 273 (1994)).
 - a. An exception would apply when the proposition seeks to abolish any library established by a public vote at the previous district meeting (Educ. Law § 268; *Appeal of Pace*).
3. The school board may refuse to place such a proposition on the ballot if its purpose is not within the power of the voters. This authority must be exercised with care because school boards do not have unfettered discretion to refuse propositions (*Appeal of Como*, 30 Ed Dept Rep 214 (1990)). Examples of propositions the commissioner has found school boards may reject include:
 - a. Would have asked the voters to set aside \$200,000 to fund a lawsuit against school officials. The proposition was not within the power of the voters (*Appeal of Cox*, 37 Ed Dept Rep 404 (1998)).
 - b. Would have required the board to submit a budget to the voters more than once before adopting a contingency budget. School boards, not the voters, have the authority to determine whether to place a budget before the voters a second time or adopt a contingency budget (*Appeal of Osten*, 35 Ed Dept Rep 160 (1995)).

- c. Sought to direct the school board to move the district's administrative offices from leased space into the high school library, as discussed by the board itself at one time. "Decisions concerning the use of school facilities are within the discretion of the board of education" (*Appeal of Johnson*, 44 Ed Dept Rep 382 (2005)).
 - d. Would have required the board to schedule a vote on an alternative budget proposed by a citizens' group before adopting a contingency budget. The authority to develop a budget rests with the school board, not the voters (*Appeal of Sperl*, 33 Ed Dept Rep 388 (1994)).
 - e. Sought to curtail the board's authority to contract with other districts for the education of its students by limiting the choices to three neighboring districts. Although district voters approve contracts with other districts for the education of resident children, only a school board may designate the receiving district(s). Moreover, the applicable statute and regulations do not contain any geographical limitations (*Appeal of Berhalter*, 48 Ed Dept Rep 446 (2009)).
4. A school board may reject a voter proposition if it requires an expenditure of money but fails to specify the amount for which voter approval is sought (Educ. Law §§ 2021, 2035; *Appeal of McNamee*, 56 Ed Dept Rep, Dec. No. 17,103 (2017); *Appeal of Ciffone*, 45 Ed Dept Rep 444 (2006); *Appeal of Leman*, 32 Ed Dept Rep 579 (1993); *Matter of Sampson*, 14 Ed Dept Rep 162 (1974)).
 5. A board of education may not be compelled to place before the voters all propositions submitted in conformity with section 2035 and its bylaws, regardless of ambiguity, feasibility, or difficulty in interpreting election results when conflicting matters are voted on simultaneously. A board must exercise its independent judgment within the law to be certain that the will of the voters can be ascertained (*Appeal of Krause*, 27 Ed Dept Rep 57 (1987); see also *Appeal of Huber*, 41 Ed Dept Rep 240 (2001), *petition dismissed*, *Huber v. Mills*, (Sup. Ct. Albany Cnty. 2003)).
 - a. For example, two conflicting propositions, one for construction, and the other for renovation, should not be placed on the same ballot (*Appeal of McDougal & Murphy*, 37 Ed Dept Rep 611 (1998); see also *Appeal of Martin*, 32 Ed Dept Rep 567 (1993); and *Appeal of Huber*; but compare with *Appeal of Kohilakis*, 33 Ed Dept Rep 513 (1994)).
 6. A school board has the power to alter the language of a proposition submitted by the voters to bring the proposition into conformity with the law. However, it is not required to do so (*Appeal of Como*, 30 Ed Dept Rep 214 (1990), *petition dismissed*, *Bd. of Educ., Brentwood UFSD v. Sobol*, (Sup. Ct. Albany Cnty. 1991); *Appeal of Krause*, 27 Ed Dept Rep 57 (1987); *Appeal of Welch*, 16 Ed Dept Rep 397 (1977)).
 - a. Where it is possible for the school board to make minor modifications to two otherwise mutually inconsistent propositions, such that the voters are presented with a clear choice between alternatives, there is nothing improper about the board submitting both propositions to the voters (*Appeals of the Bd. of Trustees of the George F. Johnson Mem. Library*, 40 Ed Dept Rep 331 (2000)).
 7. A school board should not place propositions on the ballot concerning matters that do not require voter approval because although technically not illegal, the commissioner consistently has advised against this practice because advisory votes may imply voter determination of the issue submitted for consideration (see *Appeal of D'Orazio & Carey*, 41 Ed Dept Rep 292 (2002);

Appeal of Moonan & Richards, 28 Ed Dept Rep 390 (1989); *Matter of Feldheim*, 8 Ed Dept Rep 136 (1969)).

8. Any proposition submitted by the voters which requires an expenditure of money that would result in the tax levy limit being exceeded for the corresponding school year then such proposition must be approved by sixty percent of the voters present and voting unless the proposition falls under an exception to the property tax levy limit (Educ. Law §§2008, 2023-a(9)).

VOTING AT DISTRICT ELECTIONS

Qualified Voters

1. A qualified voter is a person who is a citizen of the United States, at least 18 years old, a resident of the school district for at least 30 days prior to the meeting at which he or she offers to vote, and who is not otherwise prohibited from voting under the provisions of section 5-106 of the Election Law (for example, a person who has been adjudged to be mentally incompetent). Only qualified voters of the school district may vote on a question brought before an annual meeting and election or special school district meeting (Educ. Law §§ 2012, 2603; *Appeal of Dunn*, 59 Ed Dept Rep, Dec. No. 17,809 (2020)).
 - a. School districts may not require voters to pay taxes or have children attending the public schools to be eligible to vote (*Kramer v. Union Free Sch. Dist. No. 15*, 395 U.S. 621 (1969)).
 - b. Military personnel residing on a military base may also be qualified voters in the school district where that base is located (*Appeal of Kuleszo*, 30 Ed Dept Rep 465 (1991)).
2. Owning a home in a school district does not necessarily make the owner a district resident for purposes of being considered a qualified voter eligible to participate in a school district annual or special school district meeting or election. "A person may have only one legal residence or domicile, and that is the place where such person intends to have his or her permanent residence or home. The residency of dual home owners is dependent on the intent and conduct of the owner" (*Appeal of Taylor*, 39 Ed Dept Rep 712 (2000); see also *Appeal of Klein*, 47 Ed Dept Rep 409 (2008); *Appeal of Ryan, Starbuck and Toomey*, 50 Ed Dept Rep, Dec. No. 16,202 (2011)).
3. New York State Election Law provides that incarcerated convicted felons are not eligible to vote. However, once they are no longer incarcerated for such felony, they are eligible to vote (Elec. Law § 5-106(2); see also (*Hayden v. Pataki*, 449 F.3d 305 (2d Cir. 2006); see also *Hayden v. Paterson*, 594 F.3d 150 (2d Cir. 2010)).
4. The district may sue unqualified voters for a fine of \$10 to be used for the benefit of the district (Educ. Law § 2020(3); see also *Appeal of Lyon*, 30 Ed Dept Rep 169 (1990)).

In addition, a person who willfully makes a false statement about his or her qualifications to vote may be found guilty of a misdemeanor (Educ. Law § 2020(1), (2)), and may be subject to a fine of up to \$1,000 and/or imprisonment for up to one year (Penal Law §§ 55.10(2)(b), 70.15(1), 80.05(1)).

Voter Registration in Districts with a System of Personal Registration

1. The law permits, but does not require, school boards in union free and central school districts to provide for personal registration of voters in their districts (Educ. Law § 2014; *Appeal of Dunn*, 59 Ed Dept Rep, Dec. No. 17,809 (2020); *Appeal of King*, 55 Ed Dept Rep Dec. No. 16,865 (2016)). School boards that adopt a resolution providing for personal registration must notify the appropriate board of elections within five days of its adoption (Elec. Law § 5-612(4)). In addition, the school district clerk must notify the board of elections at least 45 days before the date of an upcoming annual district meeting, and at least 14 days before the date of any upcoming special school district meeting (Elec. Law § 5-612(5)).

In comparison, small city school districts are required by law to provide for personal registration of voters in their districts (Educ. Law § 2606).

2. Even in school districts that require personal voter registration (Educ. Law §§ 2014, 2606), qualified voters who are registered with the county board of elections are eligible to vote at school district meetings without further registration (Elec. Law § 5-612(2); see also *Appeal of Crowley*, 39 Ed Dept Rep 665 (2000); *Appeal of Muench*, 38 Ed Dept Rep 649 (1999); and *Appeal of Shortell*, 27 Ed Dept Rep 190 (1987)).
3. The county board of elections is required to provide a list of registered voters to the school district at least 30 days prior to any regularly scheduled election, and a supplemental list of voters who registered after delivery of the first registration list at least 10 days before any regular or special election (Elec. Law § 5-612(3)).

In small city school districts, the school district board of registration may require the board of elections (or other lawful authority having custody of the register(s) used in the last general election preceding the school board election) to turn over the register(s) to the board of registration on or before March 1st of each year for use in preparing the school district registers. At the same time, however, the board of elections (or other authority having lawful custody of the registers) may elect to furnish, in place of the original registers, either a duplicate of the central file registration records, or a list of registered voters, certified to be a complete and accurate copy of the names and addresses of all persons entered in such register for the preceding general election as well as the names of persons who have registered with the board of elections (or other authority) up to five days before the date of furnishing such list (Educ. Law § 2606(2)).

The law authorizes the school board to require the use of such registers on election day for the purpose of verifying the signature of each voter (Educ. Law § 2609(2)). The registers must be returned following the day of the election (Educ. Law § 2606(2)).

4. In union free and central school districts, voter registration lists must be filed in the office of the district clerk immediately upon completion and at least five days before any school district meeting or election and thereafter must be open to public inspection by any qualified voter at all reasonable times and days of the week, except Sunday, up to and including the day of the election (Educ. Law § 2015(1)).

In small city school districts voter registration lists must be filed in the office of the district clerk immediately upon completion and not less than two weeks prior to the day of the election and thereafter at all reasonable times be open to inspection by any qualified voter of the school district (Educ. Law § 2606(6)).

- a. According to the commissioner of education, in small city school districts, there is no requirement that the list of registered voters be made available on the day of the election (*Appeal of Fraser-McBride*, 36 Ed Dept Rep 488 (1997)).

Time and Place of Voter Registration

1. The time and location of voter registration is set by school board resolution subject to the following statutory timeframes:
 - In union free and central school districts, the last day of registration must not be more than 14 days nor less than five days before the annual school district meeting and not more than seven days nor less than two days prior to a special school district meeting (Educ. Law § 2014(2)).
 - In small city school districts, the last day of registration cannot be less than the two weeks preceding the election (Educ. Law § 2606(2)).
 - There are special rules pertaining to central high school districts (Educ. Law § 1906).
 - Registration must be open for at least four consecutive hours between 7:00 a.m. and 8:00 p.m. (Educ. Law §§ 2014(2), 2606(2); see also *Matter of Lortz*, 7 Ed Dept Rep 3 (1967)).
2. The school district board of registration also must conduct registration at the annual meeting and election for the purpose of registering voters to vote in future school district elections (Educ. Law § 2014(2); see also McKinney's 1956 Session Laws of New York, Memorandum of State Education Department for L. 1956, c. 930, pp.1956-57).
 - a. It is improper for a school district to allow any person who registers with the district on election day to vote in the election occurring on that day (*Appeal of Collins*, 39 Ed Dept Rep 226 (1999); see also *Matter of Watson*, 19 Ed Dept Rep 136 (1979)).
4. Subject to approval of the district voters, districts also may authorize registration during the same hours children may be enrolled for a school term or during specified hours of the school day at the office of the district clerk or assistant clerk or at the district's business office (Educ. Law § 2014(2); see also *Appeal of Pecher*, 30 Ed Dept Rep 116 (1990)).
 - a. If approved by the voters, such registration "shall take place at the school or schools within the district designated in the resolution" adopted by the voters (Educ. Law § 2014(2)). In such circumstance, the law provides that a board of registration, at the discretion of the board of education, may not be required to meet solely for the purpose of registering voters (§ 2014(6)).
5. In districts with personal registration, the commissioner has recognized the right of school officials to request proof of residency from a voter prior to the election, as a condition of maintaining the voter's name on the voter registration list (*Appeal of Taylor*, 39 Ed Dept Rep 712 (2000))(redacted copy of tax return- determine which address voter declared for tax purposes).
6. School districts with a system of personal registration must develop a personal registration application form for use by military voters as defined by commissioner's regulation at 8 NYCRR § 122.2(f). A military voter in such a district who is not currently registered may request and obtain an application from the district to register as a qualified voter. The district must include in its notice

of annual meeting a statement that military voters that are not currently registered may apply to register as a qualified voter of the district and include information on the time and manner for requesting and returning the registration application. The notice must also state that the military voter can indicate his or her preference for receiving the registration application by mail, facsimile transmission or electronic mail (§ 2018-d; 8 NYCRR §§ 122.3; 122.4).

7. In small city school districts, if the Board of Elections furnishes the school board with "certified registry lists" in place of the "original registers," the school board may require that any voter offer proof of identity before being allowed to vote, provided that the board must establish "reasonable rules and regulations governing the evidence necessary to prove the identity of each voter" no later than 10 days before the election (Educ. Law § 2609(2)).

Contents of Voter Registration List

1. The registration list used for each district meeting must include the name of everyone who has registered to vote at the meeting, and may include anyone who has registered and voted in prior school district meetings in the preceding four calendar years.
 - a. However, the name of anyone who has died or moved out of the school district, or who otherwise has become ineligible to vote, must be removed (Educ. Law § 2014(2)).
2. More specifically, the registration list must include the name and street address of each voter on the list, arranged alphabetically by last name. If there is no street address, some description must be included that accurately locates the place of residence. It also must have a column or columns in which to indicate whether each person listed has voted previously in any school district election or elections or at any meetings (Educ. Law §§ 2014(2), 2606(2)).
3. In addition, in union free school districts that are components of a central high school district in Nassau County the register must include a column or space to make proper entries relating to the central high school district annual or special meeting (Educ. Law § 1906(4)(c)).

Preparation of Voter Registration List

1. In union free and central school districts, the board of registration and district clerk prepare the voter registration list (Educ. Law § 2014(2)). In small city school districts, such list is prepared by the board of registration (Educ. Law § 2602(5)).

Board of Registration

1. In union free and central school districts that have not been divided into election districts, the board consists of four qualified voters of the district, appointed annually by the school board, no later than 30 days after the district's annual meeting or election, who serve until 30 days after the annual meeting or election the following year (§ 2014(1)). When such districts have been divided into election districts, the board of education must appoint a board of registration that will provide for two members of the board of registration in each election district and designate in which election district each will be present to conduct registration (§ 2014(4)).

In small city school districts, the board must appoint the board of registration annually by February 15th and has discretion to determine the number of individuals to appoint (§ 2606(1)).

2. The board of registration is entitled to compensation at a rate fixed by the school board for each day actually and necessarily spent on the duties of the office (Educ. Law § 2014(1)). In small city school districts, the members of the board of registration are entitled to compensation at a rate not to exceed that paid at general elections in the city (Educ. Law § 2606(1)).

Discontinue a System of Personal Registration

1. The school board may discontinue personal registration by a board resolution passed at least two months before the next school district meeting or election. However, personal registration may not then be re-instituted without voter approval (Educ. Law § 2014(3); see *Appeal of Fitzpatrick*, 28 Ed Dept Rep 194 (1988); see also *Matter of White v. Bd. of Educ. of East Irondequoit CSD No. 1*, 53 Misc.2d 800 (Sup. Ct. Monroe Cnty.), *aff'd*, 28 A.D.2d 828 (4th Dep't 1967)).

On the other hand, school boards in small city school districts may not discontinue their system of personal registration, as they are required by law to maintain such a system (Educ. Law § 2006).

Encouraging Voter Registration

1. Local school boards are required to adopt policies to promote student voter registration and pre-registration. A student who is at least sixteen years of age and who is otherwise qualified to register to vote may pre-register to vote and shall be automatically registered upon reaching the age of eighteen. District policies may include collaboration with county boards of elections to conduct voter registration and pre-registration in high schools. However, completion and submission of voter registration or pre-registration forms shall not be a course requirement or graded assignment for students (Elec. Law § 5-507).
2. In addition, the commissioner of education has dismissed complaints alleging that it was improper for teachers to participate in voter registration drives. In one case where a teacher registered high school seniors to vote, the commissioner ruled that “[t]here is nothing inherently wrong with registering a student to vote provided the student is not directed to vote a certain way” (*Appeal of Hoefer*, 41 Ed Dept Rep 203 (2001)). In another case, the commissioner dismissed an appeal challenging a district’s practice of having its social studies teachers give voter registration forms to students to take home to their parents and then forwarding to the county board of elections those registration forms that were completed by parents and returned to the district (see *Application of Bliss*, 45 Ed Dept Rep 308 (2005)).

However, it is important to distinguish between registration with the school district itself and registration through a county board of elections. If a district has a board of registration or permits registration in the business office or office of the clerk (as authorized by voter proposition), then only members of the board of registration or other authorized district personnel have authority to register voters on the district’s behalf. On the other hand, with respect to registration with a county board of elections, it is not uncommon for third parties to distribute and collect voter registration cards and then mail or deliver them to the county board, which ultimately determines the qualifications of the registrant.

Thus, although a teacher typically would not have any authority to register voters on behalf of a school district, unless, for example, that teacher also was a member of the district’s board of registration, nothing would prohibit a teacher from distributing to students or other persons voter registration cards obtained from the local county board of election, provided that the teacher does not engage in partisan advocacy on school grounds (*Application of Bliss*).

Challenges to Voter Qualifications

1. Any qualified voter has the right, although not the duty to challenge, either prior to or at the district meeting, the qualifications of any other voter (Educ. Law §§ 2015(3), (4), 2019, 2606(8(-9)), 2609(5); *Appeal of Feder*, 61 Ed Dept Rep, Dec. No. 18,066 (2022); *Appeal of Jarmond*, 56 Ed Dept Rep, Dec. No. 17,108 (2017); *Matter of Thompson*, 76 St. Dep't Rep. 162 (1956)).

Anyone qualified to challenge a district voter who does not exercise such right is not allowed to object to such voter's participation (*Appeal of Feder*, 61 Ed Dept Rep, Dec. No. 18,066 (2022); *Appeal of Jarmond*, 56 Ed Dept Rep, Dec. No. 17,108 (2017); *Appeal of Crowley*, 39 Ed Dept Rep 665 (2000); see also *Appeal of Horton*, 35 Ed Dept Rep 168 (1995)).

2. All challenges to the qualifications of a voter must be raised no later than the time the voter goes to the polls to vote (*Appeal of Feder*, 61 Ed Dept Rep, Dec. No. 18,066 (2022); *Appeal of Grant*, 42 Ed Dept Rep 184 (2002); see also *Appeal of Pappas*, 38 Ed Dept Rep 582 (1999); *Appeal of Carlson*, 37 Ed Dept Rep 351 (1998); *Appeal of Fraser-McBride*, 36 Ed Dept Rep 488 (1997)).
3. When a qualified voter challenges a person's qualification to vote, the chairperson presiding at the meeting or election in a non-city district shall require the person offering to vote to make the following declaration: "I do declare and affirm that I am, and have been, for 30 days last past, an actual resident of this school district and that I am qualified to vote at this meeting" (Educ. Law § 2019).

In a city school district, the chairman of the board of inspectors must administer to those challenged the following oath: "I do solemnly swear (or affirm) that I am a citizen of the United States; that I am of the age of eighteen years or more; that I have been an inhabitant of the State for the past year, a resident of the county for the past four months and for the thirty days past an actual resident of this city school district and am therefore qualified to vote at this election" (Educ. Law § 2609(5)).

If the person challenged makes this declaration, then he or she shall be permitted to vote, but if the person refuses, his or her vote must be rejected (Educ. Law §§ 2019, 2609(5)).

4. When a voter makes the declaration required by Education Law § 2019 stating that he or she is qualified to vote, then the burden of proof shifts to the school district to demonstrate that the voter is not qualified (*Appeal of Lyon*, 30 Ed Dept Rep 169 (1990)).
 - a. The board can conduct an investigation following the election to determine if that person was indeed a qualified voter (*Appeal of Boehm*, 27 Ed Dept Rep 96 (1987)). In fact, in at least two reported decisions, the commissioner of education has ordered school boards to conduct such an investigation and to seek the penalties authorized by section 2020 if warranted (see *Appeal of Cobb*, 32 Ed Dept Rep 139 (1992); see also *Matter of Bernocco*, 20 Ed Dept Rep 343 (1980)).

Missing Registration

1. If a person's name cannot be found on the list of registered voters or in the registration poll ledger, then district elections officials shall not permit that person to vote, unless: (1) the person presents a court order requiring that he or she be permitted to vote in the manner otherwise prescribed for voters whose names are on the list of registered voters or in the registration poll ledger; or (2) the

person submits an affidavit attesting to his or her qualifications to vote (Educ. Law § 2019-a(1); see also Educ. Law § 2606(7)).

2. A person permitted to vote by affidavit, must print on the outside of an envelope a sworn statement indicating (1) that he or she has duly registered to vote; (2) the address at which he or she is registered; (3) that he or she remains a duly qualified voter in the election district where he or she resides; (4) that his or her poll record appears to be lost or misplaced or that his or her name has been incorrectly omitted from the list of registered voters; and (5) that he or she understands that any false statement made therein is perjury punishable according to law (Educ. Law § 2019-a(1)(b)).
3. A person who is permitted to vote by affidavit must vote by paper ballot, which is placed inside the envelope upon which the affidavit was written and then sealed therein until the close of the election and the canvassing of ballots (*Id.*; see also *Appeal of Brown*, 38 Ed Dept Rep 816 (1999); *Appeal of Meunch*, 38 Ed Dept Rep 649 (1999)). "If it is determined that a voter who cast an affidavit ballot was not registered, the ballot may not be counted" (*Appeal of Crowley*, 39 Ed Dept Rep 665 (2000); *Appeal of Vaughan*, 33 Ed Dept Rep 189 (1993)).

Voting in School Districts without Personal Registration

1. In districts without personal registration, the Education Law authorizes (but does not mandate) school district election officials to require individuals seeking to vote at any school district meeting to provide one form of proof of residency. As determined by the district, such proof could consist, for example, of a driver's license, non-driver identification card, utility bill or voter registration card (Educ. Law § 2018-c).
2. In addition, district election officials also may require persons seeking to vote to provide their signature, printed name, and address (Educ. Law § 2018-c; *Appeal of Dunn*, 59 Ed Dept Rep, Dec. No. 17,809 (2020); *Appeal of King*, 55 Ed Dept Rep, Dec. No. 16,865 (2016); *Appeal of Pugliese*, 40 Ed Dept Rep 499 (2001)).

Voting in Districts with Personal Registration

1. In districts with personal registration school officials may request proof of residency prior to the annual or special school district meeting as a condition for maintaining the individual's name on the district's voter registration list (*Appeal of Taylor*, 39 Ed Dept Rep 712 (2000)). Such proof could consist, as well, of a "redacted" copy of the voter's income tax return that still allows school officials to see what address the individual has declared as his or her residence for tax purposes (*Id.*).

In small city school districts where the Board of Elections furnishes the school board with "certified registry lists" in place of the "original registers", the school board may require that any individual seeking to vote offer proof of identity before being allowed to vote; In such an instance, the board must establish "reasonable rules and regulations governing the evidence necessary to prove the identity of each voter" no later than 10 days before the election (Educ. Law § 2609(2)).

ABSENTEE BALLOTS

Availability of Absentee Ballots

1. All school districts are required by law to make absentee ballots available to qualified voters for the election of school board members, school district public library trustees, the adoption of the annual budget, and school district public library budgets and referenda (Educ. Law §§ 2018-a, 2018-b, 2613).

A board of cooperative educational services (BOCES) that is holding certain referenda for submission to the voters within the BOCES supervisory district also must make absentee ballots available to qualified voters pursuant to procedures established by regulations promulgated by the commissioner of education (Educ. Law § 1951(2)(s)).

2. Generally, absentee ballots are provided upon proper application to any qualified voter unable to vote in person due to at least one of several reasons specified by law. Those include:
 - In districts with personal registration – absence from county of residence, illness or physical disability, duties related to the primary care for another individual who is ill or physically disabled, veteran’s administration hospitalization, or incarceration other than for conviction of a felony (Educ. Law § 2018-a(2)(a)).
 - In districts without personal registration – illness or physical disability, hospitalization, incarceration for other than conviction of a felony, travel outside the county or city of residence for employment or business reasons, studies, or vacation (Educ. Law § 2018-b(2)).

In addition, military voters unable to vote in person can obtain a military ballot as authorized under the Education Law and commissioner’s regulations, if they are a qualified voter and satisfy other specified requirements (Educ. Law § 2018-d(1); 8 NYCRR Part 122).

3. Dual home ownership does not automatically confer entitlement to an absentee ballot, as a person may have only one legal residence or domicile for purposes of voting at a school district election or budget vote (*Appeal of Ryan, Starbuck and Toomey*, 50 Ed Dept Rep, Dec. No. 16,202 (2011); *Appeal of Klein*, 47 Ed Dept Rep 409 (2008)). Absent proof of permanent residence, the owner of a home within a school district would not be entitled to an absentee ballot (*Id.*).
4. The law is generally silent on when districts must begin making absentee ballot applications available to voters. With the exception of absentee ballots issued upon receipt of a request by letter, nothing in the law specifies how far in advance of an election school districts must begin making applications for absentee ballots available (see *Appeal of Roxbury Taxpayers Alliance*, 34 Ed Dept Rep 576 (1995)).
 - a. However, since the notice of the district meeting must include a statement that qualified voters may apply for absentee ballots at the clerk’s office (Educ. Law § 2004(7)), as a practical matter, ballot applications should be made available at the time of the first publication of the notice of the district meeting and must be made available far enough in advance of the meeting date to permit voters to apply for and return completed ballots as required by law.

5. Education Law §1501-c makes Election Law § 8-407 applicable to "all elections conducted . . . by a school district" pursuant to Title II of the Education Law. Election Law § 8-407 provides that when a county or city board of elections receives 25 or more absentee ballot applications from a nursing home (or other qualifying adult care facility), that board of elections must send elections inspectors to the nursing home between one and 13 days before the election to supervise the completion of absentee ballots by the residents of that facility. It is beyond a school district's authority to supervise the voting (*Appeal of Georges*, 45 Ed Dept Rep 453 (2006)).

Applications for Absentee Ballots

1. The ballot application used in districts with personal registration must be in a form prescribed by the state board of elections which can be found at: <http://www.counsel.nysed.gov/common/counsel/files/absentee-ballot-application-and-instructions-english.pdf>. (Educ. Law § 2018-a(2)(b)).

In districts without personal registration voters may request a ballot by letter, instead of by application (Educ. Law § 2018-b(4)).

2. A person may request more than one absentee ballot application and need not supply a list of the voters who will use the applications (*Appeal of the Roxbury Taxpayers Alliance*, 34 Ed Dept Rep 576 (1995)).
3. School districts with a system of personal registration must automatically mail an absentee ballot to voters whose registration record on file with the county board of elections is marked permanently disabled (§ 2018-a(2)(e)). Districts that do not have a system of personal registration must automatically mail an absentee ballot to voters who have previously applied for an absentee ballot and whose registration record on file with the county board of elections is marked permanently disabled (Educ. Law § 2018-b(2)(g)).
4. All other voters must submit an application prior to obtaining an absentee ballot (Educ. Law §§ 2018-a(2)(a), 2018-b(2)(a)). However, voters in school districts without personal registration have the option to request an absentee ballot by letter (§ 2018-b(4)).
5. In districts with personal registration, the application must be received by the district no earlier than the thirtieth day before the election (Educ. Law § 2018-a(2)(f)). If the absentee ballot is to be mailed to the applicant, the application must be received no later than seven days before the election. If it is to be delivered in person to the voter or his/her agent, the application must be received no later than the day before the election (*Id.*).

In districts without personal registration the application must be received at least seven days before the election if the ballot is to be mailed to the voter, or the day before the election if the ballot is to be issued in person to the voter (Educ. Law § 2018-b(2)(a)). Nonetheless, voters in districts without a system of personal registration may request an absentee ballot by signed letter rather than application, subject to certain specified conditions (Educ. Law § 2018-b(4)).

6. Before actually sending an absentee ballot to those requesting one, districts must review all such applications and determine whether the applicant is a qualified voter and otherwise entitled to vote by absentee ballot (Educ. Law §§ 2018-a(2)(f), (3), 2018-b(3)).

Applications that do not specify the reasons why a voter will be unable to vote in person on the day of the election cannot be accepted (see *Matter of Levine*, 24 Ed Dept Rep 172 (1984), *aff'd*, *Capobianco v. Ambach*, 112 A.D.2d 640 (3d Dep't 1985)). If the application is proper in all respects, the district will issue the voter an absentee ballot either by mail or in person, as requested (Educ. Law §§ 2018-a(2)(g), 2018-b(3)).

7. In addition, in districts with personal registration, absentee ballots must be mailed to the address set forth in the application no later than six days before the election. However, if the applicant or his/her agent delivered the application in person after the seventh day before the election and not later than the day before the election, the absentee ballot must be delivered to the applicant or the agent named in the application when the applicant or the agent appear in the district clerk's office (Educ. Law § 2018-a(2)(g)).

In districts without personal registration, absentee ballots may be mailed or issued in person only directly to the applicant (Educ. Law § 2018-b(3)). Applicants may not designate another individual to receive the ballot on their behalf (*Appeal of Campbell*, 57 Ed Dept Rep, Dec. No. 17,373 (2018)).

8. The board of registration in districts with personal registration must make a list of all persons to whom absentee ballots have been issued, and file the list in the office of the district clerk, where it must be available for public inspection during regular office hours until the day of the election (Educ. Law § 2018-a(6)). In addition, the district must place those names in the district's register indicating that they applied for and were issued such a ballot (Educ. Law § 2018-a(3)).

Similarly, the district clerk or other designee of the school board in districts without personal registration must make a list of all persons to whom absentee ballots have been issued and make it available for public inspection during regular office hours until the day of the election (Educ. Law § 2018-b(7); see also *Appeal of Laurie*, 42 Ed Dept Rep 313 (2003); but see Educ. Law § 2004(7)). An appropriate entry must be made on the poll list (Educ. Law § 2018-b(3)).

There is no statutorily prescribed schedule by which school districts must make the absentee voter ballot list available for public inspection (*Appeal of Williams*, 55 Ed Dept Rep, Dec. No. 16,900 (2016)). However, the list should be made available with sufficient time for a qualified voter to challenge the qualifications of someone on the list to vote by absentee ballot

9. No absentee voter's ballot will be counted unless it is received in the office of the district clerk (clerk or designee of the school board in districts without personal registration) by 5:00 p.m. on the day of the election (Educ. Law §§ 2018-a(8), 2018-b(9); *Appeal of Touré*, 54 Ed Dept Rep, Dec. No. 16,660 (2014)).

Challenging Absentee Ballots

1. Any qualified voter may, prior to the election, file a written challenge to the qualifications of any person whose name appears on the list of absentee voters prepared for transmittal to the election inspectors on the day of the election, stating the reason for such challenge (Educ. Law §§ 2018-a(6), 2018-b(7)).
 - a. The written challenge must be transmitted by the clerk or designee to the election inspectors on the day of the election (*Id.*).

2. The law does not permit a person to wait until after the election to challenge another person's right to vote by absentee ballot (see *Appeal of Karliner*, 36 Ed Dept Rep 30 (1996)).
 - a. However, in one case, the commissioner excused a petitioner's untimely challenge, finding that the board's failure to make available a list of all persons to whom absentee ballots were issued "prevented petitioner from having a reasonable opportunity to challenge the disputed absentee ballots at the time of the election" (*Matter of Levine*, 24 Ed Dept Rep 172 (1984), *aff'd sub nom. Capobianco v. Ambach*, 112 A.D.2d 640 (3d Dep't 1985)).
3. The commissioner of education has ruled it improper for districts with personal registration to open and/or count absentee ballots before the polls close because in those districts any qualified voter may challenge an absentee ballot during the public canvassing of such ballots after the polls close (Educ. Law § 2018-a(10), (11); *Appeal of Pappas*, 38 Ed Dept Rep 582 (1999)).
4. There is no requirement that school board candidates or their poll watchers be present when the absentee ballots are opened (*Appeal of Christner*, 54 Ed Dept Rep, Dec. No. 16,760 (2015); *Appeal of Bennett*, 48 Ed Dept Rep 311 (2009); *Appeal of Georges*, 45 Ed Dept Rep 453 (2006)).

MILITARY BALLOTS

1. A military ballot is a ballot that school districts must make available pursuant to Education Law § 2018-d, for use by military voters as defined in section 122.2(f) of commissioner's regulations, who are unable to vote in person for the:
 - Election of school board members and school district public library trustees,
 - Adoption of a district's annual budget and school district public library budget and referenda (Educ. Law § 2018-d(1)(c); 8 NYCRR § 122.2(c)).
2. Military ballots must be provided to qualified voters who meet the qualifications of Education Law § 2012, including military personnel residing on a military base within a school district located in New York State for a period of 30 days prior to the district meeting at which they wish to vote (8 NYCRR § 122.2(g)), who either:
 - Are in actual military service as defined in law and commissioner's regulations (Educ. Law § 2018-d(1)(a); 8 NYCRR § 122.2(e), (f)), and will be absent from the district on the day of the election by reason of such service, or
 - Have been discharged from such military service within 30 days of an election (Educ. Law § 2018-d(1)(b); 8 NYCRR § 122.2(f)).

Military ballots must also be provided to a spouse, parent, child or dependent of a service member who is accompanying or being with the service member, if they are qualified voters of the same district as the service member (*Id.*).

Applications for Military Ballots

1. A military voter, including eligible family members, must submit a separate application for a military ballot for each separate election at which they wish to vote. However, an application for a military ballot for a school district or public library budget vote is also deemed to constitute an application for any necessary revote (8 NYCRR § 122.5(a)).
2. Along with their application for a military ballot, military voters, including eligible family members, may designate a preference for receiving their application by mail, facsimile transmission or electronic mail, which remains in effect until revoked or changed by the military voter (8 NYCRR § 122.3(b)(1), (2)). If they do not designate a preference, the military ballot application will be transmitted by mail (8 NYCRR § 122.3(b)(3)).
3. The military ballot application must be received in the office of the district clerk or appropriate official designated by the school district public library as applicable no later than 5:00 p.m. on the day preceding the last day for transmission of military ballots (8 NYCRR § 122.3(d)).

Applications timely received are processed in the same manner as absentee ballots in accordance with Education Law §§ 2018-a and 2018-b (8 NYCRR § 122.9(b)).

4. School districts and district public libraries, as applicable, must make a list of military voters to whom military ballots have been issued and make such list available for public inspection in the same manner as absentee ballots in accordance with Education Law §§ 2018-a(6) and 2018-b(7); (8 NYCRR § 122.6(g)).

Transmitting and Return of Military Ballots

1. Military ballots must be mailed or otherwise distributed in accordance with the preference indicated by the military voter and eligible family members for the receipt of such ballot (8 NYCRR § 122.3(b)), no later than 25 days before the election except in city school districts with less than 125,000 inhabitants where the military ballots must be mailed or otherwise distributed no later than 14 days before the election (Educ. Law § 2018-d(4); 8 NYCRR § 122.3(e)).
2. Military ballots cannot be canvassed unless received by the school district or the district public library, as applicable:
 - Before the close of the polls on election day and showing a cancellation mark of the U.S. or a foreign country's postal service, or showing a dated endorsement of receipt by another agency of the U.S. government, or
 -
 - Not later than 5:00 p.m. on election day and signed and dated by the military voter and one witness thereto, with a date which is ascertained to be not later than the day before the election (Educ. Law § 2018-d(6); 8 NYCRR § 122.9(a)).

Timely received military ballots are canvassed in the same manner as absentee ballots in accordance with Education Law §§ 2018-a and 2018-b (8 NYCRR § 122.9(b)).

ANNUAL MEETING AND ELECTION LOGISTICS

In General

1. School districts must ensure that their designated polling locations have adequate access and parking for the disabled during the times the polls are opened. That was not the case where, during dismissal time, a school's driveway was open only to school buses and a school's additional parking lot was closed for construction (*Appeal of Goldstein*, 46 Ed Dept Rep 355 (2007)).
2. All qualified voters who are present at the polling place at the time the polls close must be allowed to vote (Educ. Law §§ 2033, 2609(4); *Appeal of Caswell*, 48 Ed Dept Rep 472 (2009); *Appeal of Fugle*, 32 Ed Dept Rep 480 (1993)). However, a voter who signs the voting ledger but leaves without voting and returns later may be prevented from voting because there would be no way to determine whether he or she already cast a vote (*Appeal of Antaki*, 47 Ed Dept Rep 228 (2007), *petition dismissed*, *Antaki v. Mills* (Sup. Ct. Albany Cnty. 2008)).
3. There is no statutory authority permitting the use of proxy votes at school district meetings (*Appeal of Mauro*, 35 Ed Dept Rep 517 (1996); *Matter of Kirchof*, 70 St. Dep't Rep. 33 (1949); *Matter of Dist. No. 1 of the Town of Pittstown*, 58 State Dep't Rep. 423 (1937)).

Election Districts

1. Small city school districts must be divided into election districts, except that those with a population of less than 10,000 may designate the entire city school district as a single election district (Educ. Law § 2604; *Appeal of Saleh*, 51 Ed Dept Rep, Dec. No. 16,310 (2011)).
2. Union free and central districts, on the other hand, may be divided into election districts if they have adopted a system of personal registration (*Appeal of Buzzard*, 53 Ed Dept Rep, Dec. No. 16,623 (2014); *Matter of Christie*, 1 Ed Dept Rep 5 (1958); see also *Matter of Nicoletta*, 7 Ed Dept Rep 115 (1968)). The reason for this rule relates to the right of every qualified voter to challenge the qualifications of any other person offering to vote at a district meeting or election. No person can be physically present in more than one polling place at a time. Therefore, if a district is divided into election districts, such that voting occurs simultaneously in multiple locations, the only way an individual can exercise his or her right to challenge the qualifications of multiple voters who may vote in different locations, is by examining the list of registered voters prior to voting day and filing a written challenge to the qualifications of voters whose names appear on the register (see Educ. Law § 2015; *Matter of Christie*).
3. Union free and central school districts with personal registration of voters may be divided into election districts by action of the board or by a majority vote of the qualified voters present and voting at a district meeting (Educ. Law § 2017(1); see also *Matter of Clarke*, 13 Ed Dept Rep 256 (1974)).
 - a. Once the decision is made, the school board must immediately adopt a resolution dividing the district into the number of election districts as it may determine. The election districts so formed continue in existence until modified by board resolution (Educ. Law § 2017(2)).

(1) Any such resolution must be adopted at least 30 days before the annual or special meeting or election. *Id.*

- b. Each election district must have at least 300 qualified voters, and if possible, have a school building (Educ. Law § 2017(1), (2)).
4. School boards in small city school districts may pass a resolution modifying election districts already in existence. As with union free and central school districts, election districts in small city school districts should contain a public schoolhouse where possible, in which voting shall take place. A city school district with less than 10,000 inhabitants may designate the entire school district as a single election district (Educ. Law § 2604; *Appeal of Saleh*, 51 Ed Dep[t Rep, Dec. No. 16,310 (2011)).

Voting Booths

1. Voting booths must be used at school district meetings in districts other than common school districts (Educ. Law §§ 2030(2), 2609(3)).

Voting Ballots

1. Generally, ballots must be used at school district meetings. However, in school districts that prior to 1998 conducted their vote at the annual meeting, votes may be taken by recording the ayes and nays of the qualified voters attending and voting at the district meeting (Educ. Law §§ 2022(3), 2608, 2031, 2032).
2. Ballots are prepared at the expense of the school district (Educ. Law §2032(4)). On the day of the election, the district clerk provides a sufficient supply of ballots to the election inspectors (§§ 2032(4), 2608(3)).
3. Ballots may be printed, typed, or mimeographed (Educ. Law § 2032(2)(a)). In common school districts, ballot may also be provided in a written format (Educ. Law § 2032(1)). If scanning ballot machines are utilized, the district may contract with a printer to provide ballots that the machines can read.
4. When used for school board elections, ballots must contain the names of candidates who have been nominated, listed in the order determined by drawing lots (Educ. Law §§ 2032(2)(b), 2608(2)). If hand-counted paper ballots are used, a choice is indicated by an “x” or a “√” by pencil or pen in a square before the name of the candidate (Educ. Law § 2032(2)(d)).
5. Space for write-in votes must be provided to afford voters the opportunity to select an alternative candidate of their choice for each vacancy to be filled (Educ. Law § 2032; *Appeal of Thomas*, 47 Ed Dept Rep 442 (2008)). In districts where candidates run for specific seats on the board (Educ. Law § 2018(a)), one blank space must be provided under the name of the last candidate for each specific office for write-in candidates (Educ. Law § 2032(2)(e)).

Where candidates run at large for every vacancy rather than for a specific seat, space for write-in votes equal to the number of vacancies to be filled must be provided (*Appeal of Thomas*).

6. If the ballot does not have an open space for write-in votes, and the outcome of the election is affected as a result of the omission, the election may be nullified by the commissioner of education (*Appeal of Bd. of Trustees of Syosset Pub. Library*, 32 Ed Dept Rep 460 (1993); see also *Appeal of Thomas*, 47 Ed Dept Rep 442 (2008)).

But in comparison, in a case where a ballot contained too many spaces for write-in candidates the commissioner of education did not invalidate the election because the intent of the voters could be ascertained and there was no proof that the use of the ballot was fraudulent or substantially affected the election results (*Appeal of Morton*, 61 Ed Dept Rep, Dec. No. 18,118 (2022)).

7. When used for votes on expenditures or to authorize a tax levy, the ballot must contain the respective proposition for the school budget, a capital project or other propositions such as those to purchase school buses or to change the transportation mileage limitations (Educ. Law § 2022(3)). Ballots must also include information on other types of propositions such as for an increase or decrease in the number of members in a school board (see Educ. Law § 1703).
8. A ballot also must contain the name of the school district and instructions for how to complete the ballot, including how to write in a candidate (Educ. Law §§ 2032(2), 2608(4); see generally *Appeal of Decker*, 62 Ed Dept Rep, Dec. No. 18,207 (2022) (although three of the five voting booths contained signs that erroneously instructed voters to vote for “up to two candidates” and were present for about five out of the nine hours the voting was conducted, the district stated that the ballots themselves contained correct instructions and that it was the practice of each election inspector to notify voters that they could vote for three candidates so the commissioner stated there was no proof this error affected the outcome of the election)).

Voting Machines

1. The use of voting machines while optional, is considered to be in compliance with any provision of law requiring the vote to be by ballot (Educ. Law §§ 2035(1), 2611; *Hurd v. Nyquist*, 72 Misc.2d 213 (Sup. Ct. Albany Cnty. 1972); *Matter of Nicoletti*, 21 Ed Dept Rep 38 (1981)).
2. A voting machine or machines may be purchased by the school district or, with the consent of the county board of elections, the school district may use voting machines belonging to the county or the town in which any part of the school district is located. Rental and other terms or conditions are set by resolutions of the board of elections (Educ. Law § 2035(1); Elec. Law § 3-224).
3. If voting machines are used, they must be examined by the election inspectors before each use to ensure all the counters are set at zero and that each machine is in all respects in proper condition for use (§§ 1951(2)(g), 2035(1); see also *Appeal of Breud, Jr.*, 38 Ed Dept Rep 748 (1999)).
4. Where voting machines are used, it is improper to require voters to cast write-in ballots in a separate ballot box (*Appeal of Emond*, 54 Ed Dept Rep, Dec. No. 16,754 (2015); *Matter of Yost*, 21 Ed Dept Rep 140 (1981)).

Poll Lists, Exit Polls, Poll Watchers

1. The district clerk, assistant clerk(s), or the inspector(s) must maintain a poll list that contains the names and addresses of individuals who actually vote at an annual or special school district meeting. The name and legal residences of all voters must be recorded as they deposit their ballots (§§ 2029, 2609(4); see *Appeal of Gang*, 32 Ed Dept Rep 337 (1992)).
2. A school district’s technical failure to maintain a complete and accurate poll list would not be grounds to invalidate an election, absent proof that this irregularity affected the outcome of the

election (*Appeal of Crowley*, 39 Ed Dept Rep 665 (2000); *Appeal of Diamond*, 39 Ed Dept Rep 541 (2000); *Appeal of Singer*, 34 Ed Dept Rep 355 (1995)).

3. Poll lists are public documents and as such must be made available for inspection and copying by interested persons (Educ. Law § 2116). On the day of the election, districts may make poll list(s) available in an evenhanded manner and without undue disruption to the electoral process (*Appeal of Walsh*, 34 Ed Dept Rep 544 (1995); *Appeal of Schneider*, 29 Ed Dept Rep 151 (1989); see also *Appeal of Crowley*, 39 Ed Dept Rep 665 (2000)).
4. There is nothing improper about conducting an "exit poll" at a polling place so long as voter access to the polls is not hampered (*Appeal of Tudor*, 38 Ed Dept Rep 591 (1999)).
5. Poll watchers may only be appointed in school districts that have adopted a system of personal registration (Educ. Law § 2019-a(2)(c), (d); see also *Appeal of Morris*, 37 Ed Dept Rep 590 (1998)). There is no authority for a candidate to appoint poll watchers in districts without personal registration (*Appeal of Chaplin, Jr.*, 30 Ed Dept Rep 420 (1991); see also *Appeal of Morris*, 37 Ed Dept Rep 590 (1998)).
6. Even in districts without personal registration, there is nothing to prevent a qualified voter who supports a particular candidate from being present at a polling place and exercising his or her right to challenge the qualifications of other voters under the Education Law (Educ. Law §§ 2015, 2019, 2609(5)).
 - a. However, such an individual may not interfere with the election or engage in electioneering, which of course, even a designated poll watcher cannot do. According to the commissioner of education, "the mere presence of partisan individuals or groups on school grounds during a school election is not in and of itself improper provided that no electioneering takes place" (*Appeal of Giuliano*, 37 Ed Dept Rep 572 (1998)).

ELECTION PERSONNEL

Chairperson of Election

1. A chairperson is required to declare the polls open and closed and to announce the election results. In common school districts, the annual meeting and election is called to order by the sole trustee, the chairperson of the board of trustees, or a person chosen by the trustee or trustees. Once the meeting is called to order, the qualified district voters present at the meeting nominate and elect a qualified voter in attendance to serve as permanent chairperson (Educ. Law §§ 2021(1), 2025(1)).

In union free, central, and small city school districts, a qualified voter appointed by the school board as permanent chairperson declares the polls open and closed at the appropriate time (Educ. Law §§ 2025(2), 2601-a(2)).

A BOCES board must also appoint a qualified voter as chairperson of a special district meeting. The clerk of the BOCES must inform the voter in writing of the appointment as chairperson (Educ. Law § 1951(2)(h)). If the BOCES has been divided into election districts, the board must appoint a chairperson for each election district (Educ. Law § 1951(2)(q)).

2. If a clerk is a qualified voter of the district, there is no prohibition to the clerk serving as the chairperson.

3. As qualified voters, members of the school board are eligible to serve as chairperson (*Appeal of Uciechowski*, 32 Ed Dept Rep 511 (1993)). However, a school board member running for reelection should avoid serving in that capacity to prevent the appearance of impropriety even though such conduct, on its own, would not warrant overturning the election results (*Appeal of O'Brien*, 54 Ed Dept Rep, Dec. No. 16,772 (2015); *Appeal of Bentley*, 51 Ed Dept Rep, Dec. No. 16,356 (2012)).

Requirement for Election Inspectors

1. In non-city districts, there must be at least two election inspectors for each ballot box or voting machine in use (Educ. Law § 2025(3); *Appeal of Decker*, 62 Ed Dept Rep, Dec. No. 18,207 (2022); *Appeal of Morton*, 61 Ed Dept Rep, Dec. No. 18,118 (2022)).

In small city school districts, there must be at least three election inspectors for each election district (§ 2607).

2. In common school districts, election inspectors are elected by the voters. The election inspectors choose a chief election inspector. There must be at least two inspectors per voting machine or ballot box (Educ. Law § 2025(3)(a)).
3. In union free and central school districts, the school board appoints the election inspectors (at least two per machine or ballot box), and also designates a chief election inspector. Where the district is divided into election districts, the board must appoint a chief election inspector for each election district (Educ. Law § 2025(3)(b)).
4. In small city school districts, the school board is required to appoint three election inspectors for each election district. The inspectors themselves elect one of their number as chairperson. The chairperson may appoint one of the inspectors as assistant poll clerk (Educ. Law § 2607).
5. The failure to appoint the required number of election inspectors can invalidate a school district election if the error affects the outcome of the election (*Appeal of Uciechowski*, 32 Ed Dept Rep 511 (1993)). The same is true if a district removes one of the election inspectors on the day of the district meeting (*Appeal of Lanzilotta*, 48 Ed Dept Rep 428 (2009)).

Qualifications of Election Inspectors

1. In small city school districts the Education Law requires that election inspectors be qualified voters of the school district (Educ. Law § 2607).
2. The Education Law also permits the appointment of 17-year-old students enrolled in a school district to serve as an election inspector or poll clerk (Educ. Law §§ 2025, 2036, 2607, 3207-a; see also Election Law § 3-400(6), (7); Labor Law §§ 132(3), 143(6)), with parental consent (Educ. Law § 3207-a).

The failure to appoint such a student as an election inspector or poll clerk does not constitute cause for invalidating the proceedings of an annual or special school district meeting (Educ. Law § 2036). Students serving as an election inspector or poll clerk while school is in session are to be recorded as in attendance (Educ. Law § 3207-a).

3. Nothing prohibits district employees, school board members, relatives of board members or candidates from serving as election inspectors (*Appeal of Caswell*, 48 Ed Dept Rep 472 (2009); *Appeal of Marchesani*, 44 Ed Dept Rep 460 (2005); *Appeal of Crowley*, 39 Ed Dept Rep 665 (2000); *Appeal of Goldman*, 35 Ed Dept Rep 126 (1995); *Appeal of Bleier*, 32 Ed Dept Rep 63 (1992)).
4. There is no legal requirement that election inspectors receive training (*Appeals of Ghezzi & Farr*, 55 Ed Dept Rep, Dec. No. 16,890 (2016)). From a practical standpoint, however, election inspectors should be trained on the general responsibilities of the position. Moreover, county boards of elections may require that any election inspectors who will be working directly with their scanning ballot machines undergo training as a condition of renting the machines.

Compensation of Election Inspectors

1. Election inspectors in union free and central school districts are compensated at a rate set by the school board (Educ. Law § 2025(5)).
2. Election inspectors in small city school districts are compensated at a rate set by the school board, not to exceed the basic compensation paid to election inspectors at the preceding general election, as fixed by the governing body of the city in which the school district is located (Educ. Law § 2607).

Assistant Clerks and Poll Clerks

1. In union free and central school districts a school board may appoint additional assistant clerks as required to assist the inspectors and district clerks with tasks on the day of an annual or special school district meeting, including keeping true and accurate records of the proceedings (Educ. Law § 2025(3)(b), (4)).

In common school districts the voters may elect assistant clerks as required (Educ. Law § 2025(3)(a)).

In small city school districts, the election inspectors elect someone from their number as poll clerk and the chairperson of inspectors may appoint an assistant poll clerk (Educ. Law § 2607).

2. Under the law, each assistant clerk appointed by a board of education is entitled to compensation at a rate set by the board (Educ. Law §§ 2025(5), 2607).
3. The same way they can serve as election inspectors, 17-year-old students enrolled in a school district may serve as a poll clerk in all school districts with parental consent (Educ. Law §§ 2025(6), 2607, 3207-a; see also Elec. Law § 3-400(6), (8); Lab. Law §§ 132(f), 143(6)). However, the failure to appoint such a student as a poll clerk does not by itself, constitute grounds for invalidating the outcome of the election (Educ. Law § 2036).

COUNTING BALLOTS AND ANNOUNCING RESULTS

In General

1. The election inspectors count the ballots and tally the votes (Educ. Law §§ 2034, 2610; *Appeal of Murtagh*, 19 Ed Dept Rep 179 (1979)).

- a. If voting machines are not used, the inspectors first must count the ballots to determine if they agree with the number of names recorded on the voter list. If they exceed that number, enough ballots must be withdrawn at random by the chief election inspector to reduce the number of ballots to the number of voters. The inspectors then conduct the final ballot count and inform the chairperson of the results of the meeting (Educ. Law § 2034; see Educ. Law § 2610 as to additional or different procedures for canvassing the vote in small city school districts).
2. The chairperson of the meeting at which the election takes place declares the result of each ballot, as announced by the election inspectors (Educ. Law § 2034(7)(a)).
3. If a district has been divided into election districts, and voting machines are used, the election inspectors must make a written report of the results, signed by all the inspectors, to the chief election inspector of each district, who then reports the results to the district clerk within 24 hours. The school board then tabulates and declares the result of the ballot within 24 hours of receiving the results (Educ. Law §§ 2034(7)(b), 2610(4)).
4. All disputes regarding the validity of any district meeting or election must be referred to the commissioner of education (*Appeal of Bennett*, 48 Ed Dept Rep 311 (2009); *Appeal of Ell*, 34 Ed Dept Rep 394 (1995)).
 - a. Upon the filing of a petition, the commissioner of education may annul the vote, and in his or her discretion order a new meeting or election (Educ. Law § 2037; see *Appeal of the Bd. of Educ. of the City Sch. Dist. of the City of Elmira*, 47 Ed Dept Rep 27 (2007)).
 - b. The petition may be filed by a district resident or a school board itself (see *Appeal of the Bd. of Educ. of the Goshen CSD*, 47 Ed Dept Rep 352 (2008); *Appeal of the Bd. of Educ. of the City Sch. Dist. of the City of Elmira*; *Appeal of the Bd. of Educ. of the Honeoye CSD*, 45 Ed Dept Rep 58 (2005)).
 - c. The commissioner's decisions in these matters are final and not subject to review (Educ. Law § 2037).

Counting Absentee Ballots

1. Immediately after the closing of the polls the election inspectors examine the absentee ballots. If a person's name on an envelope as a voter has already voted in person or if there is no signature on the envelope it will be set aside unopened and returned to the clerk (Educ. Law §§ 2018-a(10), 2018-b(11)).

In districts with personal registration, the election inspectors will compare the signature on each envelope with the signature on the register of the person of the same name registered at the same address. If the signatures correspond, the inspectors certify thereto by signing their initials opposite the name of the voter in the register (Educ. Law § 2018-a(10) .
2. Absent any grounds for rejecting such ballot, the election inspectors will open the envelope containing the absentee ballot, withdraw the ballot and deposit it in the proper ballot box without unfolding it. Absentee ballots must remain folded until they are actually counted (Educ. Law §§ 2018-a(10), 2018-b(11); see also Educ. Law §§ 2018-a(6), 2018-b(7)). The election inspectors

will then count or canvass the absentee ballots along with the other ballots cast or the votes recorded on voting machines (Educ. Law §§ 2018-a(12), 2018-b(12)).

3. Inspectors must count absentee ballots which contain an “x” or a check mark “✓” where the intent of the voter is discernible, even if the ballot instructions directed voters to completely fill in a circle (Educ. Law §§ 2018-(a)(4), 2032(2)(d), 2034(2)(d); *Appeal of the Bd. of Educ. of the Hilton CSD*, 56 Ed Dept Rep, Dec. No. 17,091 (2017)).

Counting absentee ballots with incorrect or no dates is not unlawful. Missing or inaccurate dates on the ballot envelopes are not grounds for voiding a ballot (*Appeal of Georges*, 45 Ed Dept Rep 453 (2006)).

4. In school districts with personal registration, the election inspectors must examine and open the absentee ballot envelopes in public so that qualified voters present in the polling place have an opportunity to object to the voting of any such ballot (Educ. Law § 2018-a(11); *Appeal of Pappas*, 38 Ed Dept Rep 582 (1999)). There is no requirement, however, that the absentee ballots be opened in front of candidates running for a seat on the school board or their poll watchers (*Appeal of Jarmond*, 56 Ed Dept Rep, Dec. No. 17,108 (2017); *Appeal of Christner*, 54 Ed Dept Rep, Dec. No. 16,760 (2015); *Appeal of Bennett*, 48 Ed Dept Rep 311 (2009), *vacated on other grounds, Bennett v. Mills* (Sup. Ct. Albany Cnty. 2009)). Neither is there a requirement that there be a public announcement as to the counting of the ballots (*Appeal of Bennett*; *Appeal of Pappas*), or that there be a close proximity between the counting of the absentee ballots and other votes cast (*Appeal of Bennett*).

In contrast, in districts without personal registration, there is no requirement that absentee ballots be examined and opened in public (*Appeal of Rogers*, 61 Ed Dept Rep, Dec. No. 18,119 (2022); *Appeal of Goethe*, 61 Ed Dept Rep, Dec. No. 18,108 (2022)).

Counting Write-in Votes

1. There is no requirement in the Education Law that a voter place a check mark or an “x” or any other kind of mark next to the name of the write-in candidate (*Appeal of Titus*, 36 Ed Dept Rep 407 (1997); *Appeal of Gresty*, 31 Ed Dept Rep 90 (1991)). If the name of a qualified person is written on a write-in ballot, it must be counted.
2. In addition, write-in ballots with minor misspellings of a candidate’s name should be credited to that candidate in the absence of a showing that there is another district resident with the same or a similar name (*Appeal of Cook*, 20 Ed Dept Rep 1 (1980)).
3. Furthermore, even though a candidate’s name is pre-printed on a ballot, a voter is not precluded from writing in the candidate’s name in the space set aside for the school board position for which the candidate was running (*Appeal of Reed*, 55 Ed Dept Rep, Dec. No. 16,871 (2016)).

However, write-in ballots cast in the correct column but the wrong row should be counted because the voter’s intent is apparent and should not be frustrated (*Id.*).

VOTER APPROVAL OF THE PROPOSED SCHOOL BUDGET

1. There is no minimum percentage of total qualified voters residing in the district required to approve a school budget (*Appeal of Sherrill*, 43 Ed Dept Rep 312 (2003)). If a proposed budget complies with the district’s tax levy limit, a simple majority of those present and voting is required for approval (see *Appeal of Gibeau*, 30 Ed Dept Rep 279 (1991)).

It also is well established that “blank and void ballots are not considered in determining whether a proposition received a majority vote” (*Matter of Lush*, 77 St. Dep’t Rep. 175 (1957)).

2. If the proposed budget requires a tax levy which exceeds the limit such budget requires approval by 60% of the votes cast in order to be adopted. (Educ. Law §2023-a(6)). School boards proposing a budget that exceeds the tax levy limit must include in the ballot a statement that indicates, in substantially the same form:

- a. “Adoption of this budget requires a tax levy increase of _____ which exceeds the statutory tax levy increase limit of ___ for this school fiscal year and therefore exceeds the state tax cap and must be approved by sixty percent of the qualified voters present and voting”. (Educ. Law §2023-a(6)(b)).

3. If a school district presents multiple propositions where the core budget proposition is under the tax levy limit but the addition of the expense of an additional proposition would result in a levy over the limit the voter approval necessary is determined by type of proposition. The following chart represents the necessary voter approval when the core budget proposition and the additional proposition result in a levy over the limit:

Additional Proposition Type + Main School Budget Proposition Exceed Tax Levy Limit	Required Level of Voter Approval
Proposition for additional transportation service	60% or more
Proposition for additional educational programs (separate from main budget proposition)	60% or more
Proposition for capital expenditure	Simple majority
Proposition for capital transportation expenditure	Simple majority

4. School boards can submit a budget or any proposition involving the expenditure of money for a vote at a district meeting, no more than two times (including a revote if the voters reject the proposed budget at the annual meeting and election or the special district meeting where the budget vote occurs (Educ. Law §§ 2022(4); 2601-a(4)).
5. School boards may not submit to the voters more than twice during any 12-month period a proposition for the construction of a new schoolhouse or an addition to an existing schoolhouse at the same site. Moreover, the second such proposition may not be submitted to the voters within 90 days of the first vote.

However, neither of these limitations applies where the voters approve a building project, but the bids that subsequently are received on the project exceed the amount approved by the voters (Educ. Law §416(6)).

VOTER REJECTION OF THE PROPOSED SCHOOL BUDGET

School District Options

1. If a majority of the qualified district voters present and voting at the annual meeting and election or special district meeting at which the vote on the budget occurs reject the proposed school budget, a school board may do one of the following:
 - a. Prepare and adopt a contingency budget without going back to the voters, subject to the caps on contingency budgets. In this case, the board may levy a tax sufficient to pay for teachers' salaries and items that constitute ordinary contingent expenses (Educ. Law §§ 2022(4),(5); 2023; 2601-a(4),(5)).
 - b. Present the original budget for a second vote, or a revised budget, at a special district meeting, within the limitations set by law (§§ 2022(4), 2601-a(4)).
 - c. Adopt a contingency budget, and then present one or more propositions to the voters, giving them the opportunity to vote to fund services that cannot be provided without voter approval.
 - (1) A separate proposition may be presented for each such service, or several services may be included in one proposition (*Appeal of Aarseth*, 32 Ed Dept Rep 506 (1993)).
 - (2) Nothing prohibits school districts from combining several unrelated objects and purposes in a single proposition (Local Fin. Law § 11) such as the reconstruction of various school buildings, the purchase and installation of oil tanks, and the purchase of school buses (*Appeal of Friedman*, 36 Ed Dept Rep 431 (1997)).
 - (3) The various propositions submitted should not be in conflict with each other, such as one for construction and the other for renovation (see *Appeal of McDougal & Murphy*, 37 Educ Dept Rep 611 (1998)), so that the will of the voters can be ascertained (*Appeal of Krause*, 27 Educ. Dep't. Rep. 57 (1987)).
2. A school board is under no obligation to submit a budget to the voters more than once prior to the adoption of a contingency budget, and the voters cannot compel it to do so (Educ. Law § 2022(4), (5); *Appeal of Osten*, 35 Ed Dept Rep 160 (1995); *Appeal of Brosseau*, 31 Ed Dept Rep 155 (1991)).

Date and Time of Budget Revote

1. If a school district chooses to hold a budget revote it must be held on the third Tuesday in June, the statewide day for holding a school district budget revote.
2. The budget revote may be held, instead, on the second Tuesday in June only if the commissioner of education, at the request of a school district, certified no later than March 1st that such revote would conflict with religious observances (Educ. Law §§ 1804(4); 1906(1); 2005; 2006(1); 2007(3); 2601-a(2),(4); 2022(4)).

Two Vote Limitation

1. School boards may not submit a proposed budget or budget proposition to the voters more than twice (Educ. Law §§ 2022(4); 2601-a(4)).
2. If voters fail to approve a proposed budget or budget proposition after the second submission, the board must adopt a contingency budget.

RETENTION OF ELECTION RECORDS

General Requirements

1. The "Records Retention and Disposition Schedule LGS-1", which all school districts and boards of cooperative educational services (BOCES) must follow, sets forth specific periods of time that various types of school elections records must be maintained.
 - a. For example, "final election results, including election inspectors' return and statement of canvass (where information is not duplicated in report of final election results) and election results report" must be permanently maintained.
 - b. Intermediate records used to compile final election results, including tally sheets, voting machine tabulation, detailed breakdown of results by wards or election districts and election inspectors' returns and statements of canvass (where information is duplicated in reports of final elections results) must be maintained for one year after the election.

Schedule LGS-1 is available electronically at

<http://www.archives.nysed.gov/records/local-government-record-schedule/lgs-1-title-page>.

2. In districts that use paper ballots and ballot boxes, the Education Law further requires that after the election is over and the results have been announced, the election inspectors must lock and seal the ballot boxes, and the chief election inspector must deliver them to the district clerk. Thereafter, the ballot boxes cannot be opened, except: (1) upon order of the commissioner; or (2) after the elapse of a period of six months without challenge to the election, the board passes a resolution ordering the opening of the ballot boxes and the destruction of the ballots therein (§ 2034(6)).

IMPROPER ADVOCACY

General Rule

1. School districts are prohibited from spending public money to encourage voters to vote in favor of the school budget or any proposition. District funds may not be used to express "favoritism, partisanship, partiality, approval or disapproval . . . of any issue, worthy as it may be" (*Phillips v. Maurer*, 67 N.Y.2d 672 (1986); see also *Appeal of Romano*, 61 Ed Dept Rep, Dec. No. 18,076 (2022); *Appeal of Hubbard*, 58 Ed Dept Rep, Dec. No. 17,656 (2019)).

This prohibition is not limited to advocating a "yes" vote. Even subtle promotional activities are prohibited (*Appeal of Meyer*, 38 Ed Dept Rep 285 (1998)).

In one case, the commissioner of education admonished a district for purchasing and placing signs created by an outside group on district property that stated, "Supporting Our Public Schools" and

“ACT for Education” shortly before the budget vote. The display of the signs in front of the district’s schools, one of which was the sole polling site and some of which were placed adjacent to the signs reminding voters of the time and location of the budget vote, as well as endorsement of the signs by offering them for sale through the district’s social media account constituted an appearance of partisanship. The commissioner ordered the district to ensure that in the event the district displays the signs in the future, that they are displayed in a time and manner that does not suggest improper advocacy for the school budget (*Appeal of Herloski*, 57 Ed Dept Rep, Dec. No. 17,361 (2018)).

2. However, “it is not impermissible *per se* to state that rejection of the budget may result in the elimination of programs” (*Appeal of Julian*, 42 Ed Dept Rep 300 (2003)). Similarly, it does not constitute partisan activity to fail to disclose the effects of rejection (*Appeal of Lombardo*, 46 Ed Dept Rep 282 (2006)). In addition, there is nothing wrong with stating, as fact, in a district newsletter, that a particular proposition has the “unanimous support of the board of education” if indeed that is the case (*Appeal of Brown*, 43 Ed Dept Rep 231 (2003)).
3. Districts may provide purely factual materials on the school budget or other ballot propositions through means aimed at reaching the electorate as a whole in order to help them make an informed decision (*Appeal of Herloski*, 57 Ed Dept Rep, Dec. No. 17,361 (2018); *Appeal of Sotirovich*, 51 Ed Dept Rep, Dec. No. 16,360 (2012); *Appeal of Prentice*, 38 Ed Dept Rep 736 (1999)). In fact, school boards and school superintendents have a “statutory obligation to present and publicize school budgets so as to ‘promote public comprehension’” (*Gersen v. Mills*, Sup. Ct., Albany Cnty., Special Term, Sheridan, J., Apr. 21, 2000, unreported, *rev’d on other grounds*, 290 A.D.2d 839 (3d Dep’t 2002)). Such activities promote “the general public policy of this State to foster public awareness and understanding of governmental actions and to encourage participation therein” (*Gersen*, citing Pub. Off. Law § 84).

However, if factual information distributed by a district is later found to be inaccurate, the commissioner of education may overturn the results of a vote and order a new meeting on the matter (see *Appeal of Wolverton*, 46 Ed Dept Rep 208 (2006), *petition dismissed*, *Bd. of Educ. Campbell-Savona CSD v. Mills*, (Sup. Ct. Albany Cnty. 2006)). That was the case with respect to a school district annexation vote where the voters were not given accurate information regarding the financial status of one of the districts involved (*Id.*).

The commissioner of education refused to overturn an election based upon a claim of improper advocacy lodged based upon an email communication sent to subscribers of the district mass communication list. The email contained factual information in a Q&A format about the budget, the budget vote and election, and a meet the candidates night. The commissioner determined this did not amount to improper targeting because any person could subscribe to the email list through a link on the district website and the Q&A was also posted to the website and the district Facebook page (*Appeal of Romano*, 61 Ed Dept Rep, Dec. No. 18,076 (2022)).

Examples of Improper Advocacy by a District

1. Determining precisely what type of language constitutes improper advocacy can be difficult. For example, in one case, a district pamphlet included a statement indicating that a favorable vote on a bond referendum for school construction and renovation would “bring families back” to the community. The commissioner of education has ruled, for example, that while the district’s use of the statement “presents a close question . . . on balance . . . the statement is intended to persuade the public by promoting the positive consequences of a ‘yes’ vote. It does not set forth objective

facts designed to educate or inform the public. Thus, this statement constitutes improper advocacy.” The commissioner then admonished the district “to refrain from speculating about the effect future proposals might have on bringing families back to the city in an attempt to persuade the public to take a particular position on such propositions” (*Appeal of D’Oronzio*, 41 Ed Dept Rep 457 (2002)).

In yet another case, the commissioner admonished a district based on a letter from the superintendent that included the sentence: “*Unfortunately*, with a school budget defeat and the adoption of an austerity budget, we are not able to make these purchases or provide the services as stated above without voter authorization [emphasis added].” According to the commissioner, “[t]he use of ‘*unfortunately*,’ in the context of the letter, could be construed as improper advocacy on behalf of the propositions and the use of such term or similar language should be avoided” (*Appeal of Schadtler*, 38 Ed Dept Rep 599 (1999); see also *Appeal of Eckert*, 40 Ed Dept Rep 433 (2000); *Appeal of Miller*, 39 Ed Dept Rep 348 (1999)).

2. In contrast, a court overturned a commissioner’s decision, which held that a school district’s use of the word “need” in informational materials describing the proposed school budget constituted improper advocacy (*Gersen v. Mills* (Sup. Ct. Albany Cnty. 2000), Special Term, Sheridan, J., unreported, *rev’d on other grounds*, 290 A.D.2d 839 (3d Dep’t 2002)). According to the court, the district was simply “explaining the reasons for various provisions in the budget, [and] such relatively neutral language neither advocates a position nor ‘patently exhorts’ the voters to cast their ballots in favor of the proposed budget” (*Id.*).

Advocacy by Individual School Board Members and School Officials

1. Individual school board members and other school officials, acting in their personal capacity, have the same right as any other member of the community to express their views on public issues (*Appeal of Pulizzi*, 57 Ed Dept Rep, Dec. No. 17,249 (2017); see also **5:33**). Individual school board members may actively support a proposed budget and other ballot propositions, as long as they do so at their own expense and on their own behalf. In other words, they cannot use district funds, facilities, or channels of communication, or claim to be speaking on behalf of the school board and must avoid giving the impression they are doing so (*Appeal of Munoz-Feliciano*, 54 Ed Dept Rep, Dec. No. 16,773 (2015); *Appeal of Bentley*, 51 Ed Dept Rep, Dec. No. 16,356 (2012); *Appeal of Johnson*, 45 Ed Dept Rep 469 (2006)). In one case, the commissioner found that a school board president’s statement during a meeting to a member of the League of Women Voters (LWV) asking the LWV to make a statement that the organization was not opposed to a bond proposal constituted improper advocacy as it was done in his official capacity and was soliciting support (*Appeal of Skinner*, 62 Ed Dept Rep, Dec. No. 18,210 (2022)).
2. Board members expressing their personal views in a letter to the editor must “clearly distinguish their personal views from those of the board they represent” (*Appeal of Wallace*, 46 Ed Dept Rep 347 (2007); see also *Appeal of Koehler*, 52 Ed Dept Rep, Dec. No. 16,373 (2012)). A byline of an editorial that identifies the author as a board member would be inappropriate, because it gives the impression that the author was speaking in his or her official capacity (*Id.*).
3. In one case, for example, the commissioner of education found that while it would be improper for a board member to use the district’s postage permit to mail partisan materials, there would be nothing improper about the same board member using his own private bulk mail permit to distribute campaign literature in support of candidates running for the school board (*Appeal of Allen*, 39 Ed Dept Rep 528 (2000)). Likewise, there is nothing improper about a board member expressing his

or her personal views regarding school board candidates through the use of his or her personal email account (*Appeal of Leger-Vargas*, 54 Ed Dept Rep, Dec. No. 16,771 (2015)).

However, in another case the commissioner cautioned a board member running for re-election to avoid sending emails from his personal email account to district-issued email addresses seeking support for his re-election (*Appeal of Casey-Tomasi*, 57 Ed Dept Rep, Dec. No. 17,301 (2018)).

Individual board members who prepare and pay for flyers without the use of district resources must still take care not to mislead voters (see *Appeal of Vogel*, 46 Ed Dept Rep 481 (2007)).

4. According to the commissioner of education, districts must take affirmative steps to ensure that teachers and staff do not convey partisan positions to students on school time on matters pending before the voters (*Appeal of Lawson*, 36 Ed Dept Rep 450 (1997)).

Likewise, a federal district court in New York upheld a school district regulation that prohibited staff from wearing political buttons in the classroom. The regulation required that all school personnel “maintain a posture of complete neutrality” and “not wear buttons, pins, articles of clothing, or any other items advocating a candidate, candidates, slate of candidates or political organization/committee.” The court agreed with the school district that such displays of political partisanship are inconsistent with a school district’s educational mission, can improperly influence students and impinge on their right to learn in an environment free from partisan political influence, and convey a message of school district support for the view expressed by such displays (*Weingarten v. Bd. of Educ. of the City Sch. Dist. of the City of N.Y.*, 680 F.Supp.2d 595 (S.D.N.Y. 2010)).

However, the commissioner also has ruled that there was nothing improper about a teacher explaining the meaning of a “contingency budget” to students in class because the teacher only provided factual information to the students (*Appeal of Roxbury Taxpayers Alliance*, 34 Ed Dept Rep 576 (1995)).

Use of School District Facilities and Channels of Communication

1. The commissioner of education has ruled that districts cannot do indirectly that which they cannot do directly. In general, this means that school officials can neither actively encourage nor tacitly permit anyone else to use district facilities or channels of communication to engage in promotional activities. School boards are “ultimately accountable for how district facilities and resources are used and must avoid even the appearance of impermissible partisan activity” (*Appeal of Cass, Furnkranz & Poet*, 46 Ed Dept Rep 321 (2007); *Appeal of Maliha*, 41 Ed Dept Rep 367 (2002); see also *Appeal of McBride*, 39 Ed Dept Rep 702 (2000); *Appeal of Karpoff*, 40 Ed Dept Rep 459 (2000), 192 Misc.2d 487 (Sup. Ct. Albany Cnty. 2001), *aff’d*, 296 A.D.2d 691 (3d Dep’t 2002), *appeal denied*, 99 N.Y.2d 501 (2002)).

Thus districts should not:

- Make sets of mailing labels available to outside organizations including the parent-teacher association (PTA), in the absence of safeguards to ensure that such district resources will not be used to exhort the electorate to vote in a particular way (*Appeal of Hoey & Kosowski*, 45 Ed Dept Rep 501 (2006); *Appeal of Allen*, 39 Ed Dept Rep 528 (2000); see also *Appeal of Lawson*, 38 Ed Dept Rep 713 (1999)).

- Allow distribution of PTA flyers urging passing the budget in students’ backpacks (*Appeal of Hoey & Kosowski*).
 - Use district resources to produce and disseminate videos that include district students and staff that was filed during school time, contained unprovable and sensational claims, and featured district staff and students advocating for the passage of a bond (*Appeal of Skinner*, 62 Ed Dept Rep, Dec. No. 18,210 (2022)).
2. A district also may not allow a union to utilize district facilities and channels of communication to advocate, even if a collective bargaining agreement provision exists that otherwise allows a union “the right to use office machines and equipment for union business” (*Appeal of Himmelberg*, 46 Ed Dept Rep 228 (2006)). According to the commissioner of education, such an agreement cannot authorize unconstitutional partisan use of district resources (*Id.*). Therefore, it was improper for a union to:
- a. use a district’s email system to disseminate a message endorsing two candidates running for the school board (*Id.*; *Appeal of Williams*, 55 Ed Dept Rep, Dec. No. 16,900 (2016)).
 - b. use school mailboxes to distribute flyers to union members urging them to vote for certain preferred board candidates. Although the superintendent told union leaders to desist and directed building principals to retrieve the flyers from the mailboxes upon learning of the distribution, the commissioner admonished the district to take steps to prevent other groups from taking similar action in the future (*Appeal of Van Allen*, 38 Ed Dept Rep 701 (1999); see also *Appeal of Hoefler*, 41 Ed Dept Rep 203 (2001)).

In contrast, a federal district court in New York enjoined a school district from enforcing a regulation that prohibited teachers from placing campaign materials related to a presidential election in their colleagues’ mailboxes and from posting such materials on union bulletin boards in areas closed to students (*Weingarten v. Bd. of Educ. of the City Sch. Dist. of the City of N.Y.*, 591 F.Supp.2d 511 (S.D.N.Y. 2008); but see *Weingarten v. Bd. of Educ. of the City Sch. Dist. of the City of N.Y.*, 680 F.Supp.2d 595 (S.D.N.Y. 2010)).

3. According to the commissioner of education, school officials may permit student editors of a district-funded newspaper to editorialize in support of particular school board candidates or the proposed school budget, provided that the district does not act to influence the content of such editorials. Moreover, students may distribute literature on school grounds expressing their opinions about school budget votes and elections, subject to the imposition of reasonable restrictions by the district on the time, place, and manner of distribution; provided, however, that the district does not use district personnel or funds to support such activities (*Appeal of Doro*, 40 Ed Dept Rep 281 (2000)).

ELECTION OF SCHOOL BOARD MEMBERS

Statutory Qualifications

1. To qualify for membership on a school board in a common, union free, central, central high school, or small city school district, an individual:
 - a. Must be able to read and write (Educ. Law § 2102).

- b. Must be a qualified voter of the district; that is, a citizen of the United States, at least 18 years of age or older, and not adjudged to be an incompetent (Educ. Law §§ 2102, 2012, 2502(7); Elec. Law § 5-106(6)). (Note: a convicted felon is barred from running for a seat on a school board while he or she is incarcerated for such felony (Elec. Law § 5-106(2)-(4)).
 - c. Must be and have been a resident (but need not be a taxpayer) of the district for a continuous and uninterrupted period of at least one year (30 days in the city of Rensselaer (§ 2502(9-a)(d)) immediately before the election (Educ. Law §§ 2102, 2502(7), (9)(d); see also *Appeal of Baleno*, 30 Ed Dept Rep 358 (1991); see *Appeal of Crawford*, 59 Ed Dept Rep, Dec. No. 17,785 (2019)).
 - d. May not have been removed from any school district office within the preceding year (Educ. Law § 2103(2); *Application of Montante*, 57 Ed Dept Rep, Dec. No. 17,148 (2017)).
 - e. May not reside with another member of the same school board as a member of the same family (Educ. Law § 2103(3); *Rosenstock v. Scaringe*, 40 N.Y.2d 563 (1976)).
 - f. May not be a current employee of the school board (Educ. Law §§ 2103(4)).
 - g. May not simultaneously hold another incompatible public office (*Matter of Schoch*, 21 Ed Dept Rep 300 (1981)).
2. In large city school districts, different rules of law and/or exceptions to the above rules may govern membership on the school board (see Educ. Law §§ 2553(1), 2590-b(1)(a), (4)(e), 2590-c(1), (5)). For example, in New York City, no person may serve at the same time on more than one city-wide council or on both a city-wide council and any community district education council (Educ. Law § 2590-c(5)).
 3. The United States Supreme Court declared unconstitutional any ban on the eligibility of members of the clergy to run for public office, provided they meet all the statutory qualifications (*McDaniel v. Paty*, 435 U.S. 618 (1978)).
 4. A school district may not require candidates for a school board position to meet eligibility requirements in addition to those imposed by statute (*Application of Grinnell*, 37 Ed Dept Rep 504 (1998); *Matter of Guilderland CSD*, 23 Ed Dept Rep 262 (1984)).
 - a. The commissioner of education invalidated a "gentlemen's agreement" observed by a school district for more than 60 years, under which seats of elected school board members were allocated among the communities comprising the district (*Appeal of Gravink*, 37 Ed Dept Rep 393 (1998)).

Former Employee May Be Candidate

1. A former employee of the school district may serve on the school board even where the school board could address a matter directly pertaining to the former employee's personal interests, such as continuing retiree health insurance benefits, because contracts with a teachers' union, which is a "voluntary nonprofit association," are exempt from the provisions of the conflict of interest law (*Appeal of Budich*, 48 Ed Dept Rep 383 (2009); *Application of Casazza*, 32 Ed Dept Rep 462 (1993); Gen. Mun. Law § 802(1)(f)).

Employment of Relatives by School District not bar to Candidacy

1. There is no prohibition against the employment of spouses, children, or other relatives of board members to positions in the district. Nor are board members prohibited from being elected or appointed to the board if that person's spouse, child or other relative is employed by the district.
 - a. Furthermore, due to a specific statutory exception, a "contract of employment" between the district and a board member's relative does not create a prohibited conflicting interest for the board member (Gen. Mun. Law § 800(3)(a); *Appeal of Pulizzi*, 57 Ed Dept Rep, Dec. No. 17,249 (2017); *Appeal of Budich*, 48 Ed Dept Rep 383 (2009); *Appeal of Behuniak & Lattimore*, 30 Ed Dept Rep 236 (1991)).
 - b. The Education Law, however, requires a two-thirds vote by the board to employ a teacher who is related to a board member by blood or by marriage (Educ. Law § 3016).
 - (1) The two-thirds vote requirement does not apply and has no effect on the continued employment of a tenured teacher who is initially hired before his or her relative is elected or appointed to the school board (*Appeal of Heizman*, 31 Ed Dept Rep 387 (1992)).
 - (2) The commissioner of education has determined that the two-thirds vote requirement applies to the appointment of school social workers and supervisory staff (*Appeal of McNamara*, 30 Ed Dept Rep 272 (1991); *Appeal of Levine*, 76 St. Dept. Rep. 41 (1955)).

INCOMPATIBILITY OF OFFICE

Introduction

1. There is no general prohibition against holding two or more public offices at the same time (Opn. Att'y Gen. I 82-1 (1982)). However, there may be situations in which two public offices or positions of employment may be in conflict with each other. In such an instance, a school board member would be precluded from holding two such offices or positions simultaneously (*People ex rel. Ryan v. Green*, 58 N.Y. 295 (1874)).
2. Two public offices or employment positions may be incompatible with each other if a statute or the common law doctrine of compatibility precludes school board members, district officers or employees from holding such positions simultaneously. For example, one person cannot simultaneously hold two public offices or positions of employment if one office is subordinate to the other, such that the person would essentially be his or her own boss, or if the functions of the two positions are inherently inconsistent with each other, such as serving simultaneously as the district's finance officer and as the auditor responsible for the integrity of the district's finances (see *O'Malley v. Macejka*, 44 N.Y.2d 530 (1978); Opn. Att'y Gen. I 92-13). There must be a great likelihood of a division of loyalties or a conflict of duties between the offices, not merely a possibility that such complications may arise on occasion.
3. Two questions must be answered to determine if dual office holding is permissible:
 - a. whether there is an express prohibition against the board member holding or running for the office in question; and

- b. whether the duties of the two offices may be legally incompatible.
4. The doctrine of compatibility of office does not prohibit an individual from being a candidate for election to a second office where that office is incompatible with the first, if he or she intends to resign from the first office if elected to the second.
- a. However, if there is a specific provision of law that makes two offices or positions incompatible, such a provision of law may expressly disqualify a person from even being a candidate for a second incompatible office or position (Opn. Att'y Gen. I 89-62). The failure of an individual to resign from a statutorily incompatible office prior to election as a school board member would require a school district to nullify the election of such individual to its school board (*Appeal of Fries*, 50 Ed Dept Rep, Dec. No. 16,182 (2010)).
 - b. Once elected and upon accepting the second office, an individual vacates the first office automatically (Opn. Att'y Gen. I 89-62; *People ex rel. Ryan v. Green*, 58 N.Y.295 (1874)).
5. Even where two public offices or positions of employment are compatible, a situation may arise in which holding both offices creates a conflict of interest. If this occurs, the conflict can be avoided by declining to participate in the conflicted matter (Opn. Att'y Gen. I 92-13).

Statutory Prohibitions for Dual Office Holding by Board of Education Members

1. The Education Law specifically prohibits a board member from simultaneously holding the positions of:
- a. district superintendent,
 - b. clerk,
 - c. tax collector,
 - d. treasurer,
 - e. librarian,
 - f. from being an employee of his or her school board (Educ. Law §§ 2103(1), (4); see also Opn. Att'y Gen. I 93-38)
 - (1) A board member of a board of cooperative educational services (BOCES) may not be employed by any of that BOCES' component districts (Educ. Law § 1950(9); see also *Appeal of Reynolds*, 42 Ed Dept Rep 278 (2003)), even when the work is on a short-term per diem basis (Opn. Att'y Gen I 2007-2).
 - g. In small city school districts, the Education Law provides that school board members may not hold any city office other than that of police officer or firefighter (Educ. Law § 2502(7); Opn. Att'y Gen. I 90-80, I 87-6.
 - (1) Decisions determining whether an employee holds an office within the meaning of this provision turn on the presence of traditional indicia of office, such as the taking of an oath of office, the filing of an undertaking or bond, designation as

an office holder in a city charter, significant policy-making authority and other job characteristics including duties and supervisory relationships (*Application of Washock*, 41 Ed Dept Rep 280 (2002); Opn. Att’y Gen. I 90-80, I 87-6).

2. Additionally, a town supervisor may not be a trustee of a school district (Town Law § 23(1)). But there is no prohibition against a deputy town supervisor serving as a member of a school board (Opn. Att’y Gen. I 96-29).

Exception

1. In union free and central school districts, however, a board member may be appointed clerk of the board and of the district (Educ. Law §§ 2130(1), 1804(1); *Matter of Hurtgam*, 22 Ed Dept Rep 219 (1982)).

Other Positions Determined to be Incompatible with Board of Education

1. Counsel to the state attorney general has expressed the opinion that a public school board member may not serve simultaneously as:
 - A member of the school board of a private school within the district (Opn. Att’y Gen. I 87-58);
 - A director of weights and measures in small city school districts (Opn. Att’y Gen. I 90-80);
 - A district attorney with jurisdiction over the school district or board of cooperative educational services (BOCES) (Opn. Att’y Gen. I 2000-13);
 - A city’s common council in small city school districts (Opn. Att’y Gen. I 84-61);
 - A city’s corporation counsel in a small city school district (Opn. Att’y Gen. I 96-2); or
 - A city’s board of ethics in a small city school district (Opn. Att’y Gen. I 2008-5).
2. The state Advisory Committee on Judicial Ethics has indicated that a part-time judge may not seek election to a local school board because the Rules of the Chief Administrator of the Courts prohibit judges from campaigning for elective office (Advisory Committee on Judicial Ethics Opns. 09-90, 90-79, 89157/90-7; 22 NYCRR § 100.5(A)(1)(c), (d)).
In contrast, the same Committee has opined that a part-time judge may serve on a BOCES board because that board is not popularly elected and does not levy taxes (Advisory Committee on Judicial Ethics Opn. 03-135). For similar reasons, a part-time justice may accept “appointment” to the board of trustees of a publicly-funded school district for children with disabilities (special act school district) (Advisory Committee on Judicial Ethics Opns. 13-166/13-166(A), 94-59; 22 NYCRR § 100.4(C)(3)).

The Advisory Committee also has stated that a judge or support magistrate who already has been elected or appointed to a school board should resign because the position on the school board is one that may involve dealing with educational controversies that are incompatible with holding judicial office (Advisory Committee on Judicial Ethics Opns. 18-71; 90-79, 90-63, 89-157/90-07; see also 22 NYCRR § 100.5).

Offices Compatible with Board of Education for Dual Office Holding

1. A school board member may serve simultaneously in the following offices:
 - Trustee of a public library (*Matter of Schoch*, 21 Ed Dept Rep 300 (1981); Opn. Att’y Gen. I 81-110);
 - Town assessor (Opn. Att’y Gen. I 2000-14; Opn. St. Comp. 73-1174);
 - Employee of a board of cooperative educational services (*Appeal of Reynolds*, 42 Ed Dept Rep 278 (2003); *Matter of Todd*, 19 Ed Dept Rep 277 (1979));
 - Village mayor or village trustee (Opns. Att’y Gen. I 91-59, I 81-17; see also Village Law § 3-300);
 - Member of a town zoning board of appeals (Opn. Att’y Gen. I 84-68);
 - Member of town board of assessment review (Opn. Att’y Gen. I 92-26);
 - Member of a city school board and county director of real property tax services (Opn. Att’y Gen. I 93-9);
 - Member of a city school board and city supervisor whose only function is to represent the city on a county legislature (Opn. Att’y Gen. I 2005-16);
 - County treasurer, county legislator, and county clerk (Opns. Att’y Gen. I 2002-21, I 82-1; Opn. St. Comp. 55-7802);
 - Volunteer in an athletic department of the school, depending upon the significance of the volunteer’s responsibilities (Opn. Att’y Gen. I 92-13);
 - Deputy town supervisor and member of town council (Opn. Att’y Gen. I 96-29; Opn. St. Comp. 67-354);
 - Trustee of a not-for-profit foundation that raises money and makes gifts to the school district (Opn. St. Comp. 2008-1); and
 - Police officer or firefighter in a municipality outside the school district or within the school district unless prohibited by the legislative body for whom they are employed (§ 2103-a; Opn. St. Comp. 78-297).

This is only a partial list of opinions on compatibility of office. For more information, contact the state Attorney General’s Office.

Employment of Board Member by School Board

1. There are two instances expressly authorized by law in which a school board member may be employed by the school board while simultaneously serving on the board. A board member may serve as a district clerk (Educ. Law §2103(4)), or the school physician (2/3 vote required) (Gen. Mun. Law § 802(1)(i)).
2. Otherwise, a school board may not appoint one of its members to a position of employment with the district (*Fishman v. Bd. of Educ. of South Country CSD*, 105 A.D.3d 842 (2d Dep’t 2013); *Wood v. Town of Whitehall*, 120 Misc. 124 (Sup. Ct. Washington Cnty.), *aff’d*, 206 A.D. 786 (3d Dep’t 1923); Opn. Att’y Gen. I 87-4; *Appeal of Boeddener*, 28 Ed Dept Rep 578 (1989); see also § 2103(4)).

3. Furthermore, an appointment following a resignation from the board may or may not be proper depending upon the facts and circumstances. For example, it would not be proper for a board to decide to appoint one of its members to an employment position with the district at a future date, prior to the board member's resignation when the board member still sat on the board (*Fishman v. Bd. of Educ. of South Country CSD*; Opn. Att'y Gen. I 87-4; *Appeal of Boeddener*).

NOMINATION OF CANDIDATES FOR SCHOOL BOARD

Specific Seat v. At Large Voting

1. Ordinarily, nominating petitions are for specific seats on the school board (Educ. Law § 2018(a)). However, district voters may choose to make all seats "at large," which means that each nominee is eligible for every vacancy, rather than only for a specific seat (Educ. Law § 2018(b)) and nominating petitions do not state a specific seat (see *Appeal of Martin*, 32 Ed Dept Rep 567 (1993)). A duly adopted "at large" proposition becomes effective at the next election and remains valid until repealed by the voters (Educ. Law § 2018(b); see also *Appeal of Washington*, 56 Ed Dept Rep, Dec. No. 17,024 (2017)).
2. Board members in small city school districts run "at large." The nominating petition must name the specific seat for which the board member is running only if the voters have adopted a proposition requiring candidates to run for specific seats (Educ. Law § 2608(1)).
3. Candidates may be nominated for only one vacancy (Educ. Law § 2018(a)).

Contents of the Petition

1. Nominating petitions must be signed by at least 25 qualified district voters or two percent of the number of voters who voted in the previous annual election of the members of the school board, whichever is greater (Educ. Law § 2018(a); *Appeal of Grant*, 42 Ed Dept Rep 184 (2002)). In small city school districts, nominating petitions must be signed by at least 100 qualified voters (§ 2608(1)).
 - a. A qualified voter is person is a citizen of the United States, at least 18 years old, and a "resident" of the school district for at least 30 days immediately prior to the election at which he or she seeks to vote (Educ. Law §2012)
 - (1) a person need not be a registered voter to satisfy the legal definition of a "qualified voter" (*Appeal of Dreyer*, 18 Ed Dept Rep 235 (1978); see also *Appeal of Crowley*, 39 Ed Dept Rep 665 (2000)).
 - b. There is no limit on the number of nominating petitions a district resident may sign.
2. The petition must include the candidate's name and residence and the residences of the people who signed the petition (Educ. Law §2018(a), 2608(1)).
 - a. In districts where candidates run for specific seats, it must also identify the specific seat for which the candidate is running, including the name of the incumbent, and the length of the term of office to be filled (Educ. Law §§ 2018(a), 2608(1)).
3. The Education Law does not require that nominating petitions be verified; however, a school district may impose such a requirement pursuant to school board policy (see *Appeal of Loughlin*,

35 Ed Dept Rep 432 (1996)). In addition, in city school districts that may conduct certain aspects of their school board elections pursuant to provisions of the Election Law, different rules sometimes apply (see § 2502(9)(c)).

4. Nothing in the Education Law specifies the earliest date that candidates may begin collecting signatures on nominating petitions. In one case, the commissioner ruled that it was not unreasonable for a district to accept nominating petitions that contained signatures collected prior to the posting of the notice of the annual meeting, absent evidence that this practice gave some candidates an unfair advantage over others (*Appeal of Leman*, 32 Ed Dept Rep 579 (1993)).

Deadline for filing nominating petitions

1. Nominating petitions must be filed in the office of the district clerk no later than 30 days (20 days in small city school districts) before the annual or special district meeting at which the school board election will occur, between 9:00 a.m. and 5:00 p.m. (Educ. Law §§ 2018(a), 2608(1)).
 - a. If the deadline for filing nominating petitions falls on "a Saturday, Sunday or public holiday, the filing may be performed on the next succeeding business day" (Gen. Constr. Law § 25-a(1); see also *Appeal of Williams*, 36 Ed Dept Rep 270 (1996)).
2. Notice of the deadline for filing nominating petitions must be published in the notice of the annual or special district meeting (Educ. Law §§ 2003(2), 2004(2), 2007(1), 2601-a(2), 2602(2)).
3. Under certain specified circumstances, the nominating deadline may be extended (see **6:20**). However, a district must adhere to the statutory timeline requirements for the submission of nominating petitions for school board, even if the district incorrectly published or misstated the deadline (*Appeal of Geiger*, 52 Ed Dept Rep, Dec. No. 16,379 (2012); *Appeal of Crespo*, 23 Ed Dept Rep 446 (1984)).

Acceptance of Nominating Petitions

1. A nominating petition may be rejected, for example, if it is not signed by the required number of qualified district voters (§ 2018(a)). A nominating petition may be rejected also if the candidate is ineligible for office or has declared an unwillingness to serve (§ 2035(2)). Although nominating petitions are presented to the district clerk, the school board is authorized to determine whether a board candidate is eligible to serve and to reject a nominating petition from an ineligible candidate (*Appeal of Martin*, 31 Ed Dept Rep 441 (1992)).
2. A failure to include the candidate's name and address or the specific seat or term of office on each page of a multi-sheet petition does not provide sufficient grounds to reject a nominating petition absent proof that persons signing the petition did not know what they were signing (*Appeal of Taubenfeld*, 18 Ed Dept Rep 10 (1978)).

Write-in Candidates

1. A person need not file a nominating petition in order to be elected to serve on a school board. All ballots must have one blank space for each vacancy on the board, in which voters may write in the name of any candidate who is not listed on the ballot (Educ. Law §§ 2032(2)(e), 2608(2); *Appeal of Thomas*, 47 Ed Dept Rep 442 (2008)).

- a. If the ballot does not have an open space for write-in votes, and the outcome of the election is affected as a result of the omission, the election may be nullified by the commissioner of education (*Appeal of Bd. of Trustees of Syosset Pub. Library*, 32 Ed Dept Rep 460 (1993); see also *Appeal of Thomas*).
2. There is no requirement in the Education Law that a voter place a check mark or an "x" or any other kind of mark next to the name of the write-in candidate (*Appeal of Titus*, 36 Ed Dept Rep 407 (1997); *Appeal of Gresty*, 31 Ed Dept Rep 90 (1991)). If the name of a qualified person is written on a write-in ballot, it must be counted.
3. Write-in ballots with minor misspellings of a candidate's name should be credited to that candidate in the absence of a showing that there is another district resident with the same or a similar name (*Appeal of Cook*, 20 Ed Dept Rep 1 (1980)).
4. Where voting machines are used, it is improper to require voters to cast write-in ballots in a separate ballot box (*Matter of Yost*, 21 Ed Dept Rep 140 (1981)).
5. If there are no candidates or not enough candidates properly nominated for each vacancy, the election must still be held, and the vacancies will be filled by the individuals with the most write-in votes (Educ. Law §§ 2032(2)(e), 2034(7)(a)).
 - a. If there are not enough write-in candidates to fill vacancies, any remaining vacancy may be filled pursuant to the provisions of sections 1709(17), 2502(6), or 2113 of the Education Law.

Candidate Withdrawal, Death or Ineligibility

1. If a board candidate, for whom a nominating petition has been duly filed, withdraws the petition, dies, or otherwise becomes ineligible to hold the office of school board member at a point in time later than 15 days before the last day for the filing of nominating petitions, the district is required to extend the nominating deadline by as much as 15 days; provided, however, that in no event may nominating petitions be filed later than 5:00 p.m. on the seventh day before the date of the election (Educ. Law §§ 2018(d), 2608(1); see also *Appeal of Schultz*, 48 Ed Dept Rep 70 (2008)).
2. A candidate who withdraws from an election may resubmit his or her candidacy but that person must file a new petition within the same time limitations applicable to other candidates (Educ. Law § 2018(a)).

Ballot Issues

1. Candidates' names must be grouped together in order, as determined by the drawing of lots, either under the specific vacancy for which they have been nominated, or all together for "at large" seats.
2. The district clerk conducts the drawing "the day after the last possible date for candidates to file a petition. In the event that any candidate is not present in person or by a person designated in a written proxy to accomplish the drawing, the district clerk shall be authorized to act as proxy" (Educ. Law §§ 2032(2)(b), 2608(2); see *Koppell v. N.Y. State Bd. of Elections*, 108 F.Supp.2d 355 (S.D.N.Y. 2000)).
 - b. In one case, the commissioner of education ruled that the failure of the district clerk to draw lots for placement on the ballot by the statutory deadline was a technical error that

did not affect the outcome of the election (*Appeal of Reese*, 34 Ed Dept Rep 187 (1994); see also *Appeal of Olivia*, 16 Ed Dept Rep 355 (1977)).

- c. An appeal from a losing candidate who failed to prove that she lost the election because a district's printer mistakenly printed the candidates' names on the ballot in the wrong order was dismissed (*Appeal of Apgar*, 43 Ed Dept Rep 351 (2004)).
3. In elections for "specific seats" the Education Law requires that "at the top of each group" of candidates running for separate specific seats on a school board there must be a description that includes, at a minimum, "the length of the term of office and the name of the last incumbent, if any, and in addition, a direction that only one vote may be cast in each separate group" (Educ. Law § 2032(2)(b); see also *Appeal of Mead*, 42 Ed Dept Rep 359 (2003); *Appeal of Kuschner*, 39 Ed Dept Rep 770 (2000)).

CAMPAIGN EXPENDITURE AND CONTRIBUTION STATEMENTS

When and What Required for Filing

1. School board candidates must file sworn statements with the district clerk and the commissioner of education that set forth all campaign-related expenditures, including those incurred by others on the candidate's behalf and with the candidate's approval, that together exceed \$500 (§ 1528(1)(a)). This requirement, however, does not apply to candidates for the community district education council of a New York City community school district (*Id.*).
2. To satisfy the "sworn statements" requirement, the document must be signed before a notary public (see *Appeal of the Bd. of Educ. of the Hempstead UFSD*, 55 Ed Dept Rep, 16,878 (2016)).
3. An exception applies if:
 - The candidate expended nothing, or the only expenditures were for personal expenses that when taken together with the total expenditures incurred by others on the candidate's behalf with the candidate's approval do not exceed \$500, and
 - The aggregate amount of all contributions made to the candidate do not exceed \$500 (§ 1528(1)(a)).

In such an instance, the candidate is not required to file such statements with the district clerk or the commissioner of education. However, the candidate would still be required to file with the district clerk a sworn statement to the effect that the expenditures, as well as the contributions received, did not exceed \$500 (*Id.*).

4. In this context, *personal expenses* include only payments for:
 - traveling expenses and expenses incidental thereto,
 - writing, printing and preparing for transmission any letter, circular, or other publication not issued at regular intervals that contain a statement of the candidate's position or view upon public or other questions,
 - stationary and postage, and

- telegraph, telephone and other public messenger services.

All such expenses are limited to those that are directly and personally incurred and paid by the candidate (§ 1528(2)).

5. Persons making expenditures on behalf of the candidate without the candidate's approval must file a sworn statement with the district clerk and the commissioner of education stating that the candidate did not approve such expenditure. Furthermore, such expenditure must be limited to \$25 and is not included in determining the \$500 expenditure threshold amount that requires the candidate to file an expenditure statement (§ 1528(1)(c)).

Time for Filing

1. There are three times when required campaign expenditure and contribution statements must be filed:
 - on or before the 30th day before the election;
 - on or before five days before the election; and
 - within 20 days after the election (§ 1529(1)).
2. Each statement covers the period up to and including the day before the required filing date. However, any contribution or loan in excess of \$1,000 received after the closing date for the most recent required statement, but before the election, must be reported within 24 hours after its receipt (§ 1529(2)).

Consequences for Failure to File

1. In the event that the appropriate statement is not filed with the district clerk, the law provides that the candidate must promptly file a copy of such statement upon notice from the school district and/or the commissioner that the statement was not received. If a candidate still fails to file the statement, then the only way the law can be enforced is for any other "candidate voted for at the election" or "any five qualified voters" to commence legal action in state Supreme Court requesting the court to order the candidate to file the required statements (Educ. Law § 1530).
 - a. In other words, school officials can and should remind candidates to file the appropriate expenditure statements, but only the state Supreme Court has the authority to order candidates to file these statements (see *Appeal of Tang*, 48 Ed Dept Rep 507 (2009); *Appeal of Johnson*, 45 Ed Dept Rep 320 (2005); *Appeal of Muench*, 38 Ed Dept Rep 649 (1999)).
2. A candidate's failure to file a complete statement of election expenditures is an insufficient basis for setting aside the results of a school board election (*Appeal of the Bd. of Educ. of the Hempstead UFSD*, 55 Ed Dept Rep, Dec. No. 16,878 (2016); *Appeal of Johnson*; *Appeal of Muench*).

Financial Disclosure Statements

1. The Ethics in Government Act, which requires individuals holding or running for office to make financial disclosure statements, applies to municipalities with populations of 50,000 or more, but not to school districts (Gen. Mun. Law §§ 810(1), 811).

DAY OF ELECTION

Prohibition Against Electioneering

1. The distribution of materials in support of or in opposition to any particular position within 100-foot zone measured from the entrance to a polling place would constitute impermissible electioneering (Educ. Law §§ 2031-a; 2609(4-a)).
2. District election inspectors must post distance markers delineating the 100-foot zone (Educ. Law §§ 2031-a(1); 2609(4-a)(a); *Cullen v. Fliegner*, 18 F.3d 96 (2nd Cir. 1994))
3. On the day when a school budget vote or revote occurs, a school board may display within any polling place a copy or copies of any budget or proposition to be voted upon (Educ. Law §§ 2031-a(2)).
4. The distribution of purely factual information at polling places is permissible (see *Appeal of VanAllen*, 38 Ed Dept Rep 701 (1999); *Appeal of Leman*, 38 Ed Dept Rep 683 (1999); *Appeal of Hart*, 34 Ed Dept Rep 299 (1994); *Appeal of Tomkins*, 34 Ed Dept Rep 174 (1994)).

Examples Of Activities That Do Not Constitute Electioneering

1. The meeting of a partisan group in a schoolhouse during the hours of an election in and of itself does not constitute electioneering (*Appeal of Giuliano*, 37 Ed Dept Rep 572 (1998)). Nor does the mere presence of partisan officials at a polling place in and of itself constitute electioneering (*Appeal of Loriz*, 35 Ed Dept Rep 231 (1995)). Similarly, it does not constitute electioneering on the part of school board candidates to speak with voters within 100 feet of the polling place, absent evidence the candidates were trying to influence voters (*Appeal of Bentley*, 51 Ed Dept Rep, Dec. No. 16,356 (2012)).

In addition, calling potential voters to encourage them to exercise their right to vote does not necessarily constitute electioneering (*Appeal of Gang*, 32 Ed Dept Rep 337 (1992)). However, it is improper for district personnel to make such calls using a selective list of voters, such as a list of district residents with children enrolled in public school (who arguably are more likely to support the district budget and/or other propositions) (*Appeal of Boni*, 40 Ed Dept Rep 292 (2000); *Appeal of Schadtler*, 38 Ed Dept Rep 599 (1999)).

2. Holding a barbecue fundraiser “at the same time as the election, even if the grill is within 100 feet of the voting booth, does not constitute electioneering in and of itself” (*Appeal of Santicola*, 36 Ed Dept Rep 416 (1997); see also *Appeal of McBride*, 39 Ed Dept Rep 702 (2000)). However, where the company sponsoring the barbecue fundraiser bears the name of and is operated by a candidate for the school board, the commissioner determined in that instance electioneering did occur, because it was reasonable that voters would connect the candidate with the fundraiser and the candidate receive the benefit of the goodwill of those voters (*Appeal of Eckles*, 62 Ed Dept Rep, Dec. No. 18,149 (2022)).

Holding a school concert or honor society event on the night of the budget vote would not be problematic, provided that the district gives notice of the event to all district residents in the same manner and not just to those district residents whom the school board believes will be supportive

of the propositions on the ballot (*Appeal of Sidmore*, 57 Ed Dept Rep, Dec. No. 17,225 (2017); *Appeal of Rampello*, 37 Ed Dept Rep 153 (1997); *Appeal of Sowinski*, 34 Ed Dept Rep 184 (1994)).

Holding an Event on Election Day

1. Holding an event at the polling site on the day of the election was not improper according to the commissioner of education. The district stated that it had hosted events on election day for decades and on this election day, there was a kindergarten welcome session that occupied only about an hour and a half of the 15 hours that polls were open. Based on this, the commissioner found that petitioner failed to prove any impropriety (*Appeal of Puskuldjian*, 62 Ed Dept Rep, Dec. No. 18,230 (2023)).

Penalties for Electioneering

1. Any person who willfully violates the prohibition on electioneering may be found guilty of a misdemeanor (Educ. Law §§ 2031-a(3), 2609(4-a)(c)). However, absent proof that electioneering affected the outcome of an election, proof that electioneering occurred is no basis to overturn the results of the election (*Appeal of Lawson*, 38 Ed Dept Rep 713 (1999); see also *Appeal of Ponella*, 38 Ed Dept Rep 610 (1999); *Appeal of Karliner*, 36 Ed Dept Rep 30 (1996)).

Election and Declaration of Winner

1. School board members are elected either at an annual or special school district meeting by a plurality of the votes cast for each vacancy (Educ. Law §§ 2034(7)(a), 2502(9)(n), (9-a)(n), 2610(4)).
2. In districts with "at large" seats, if there are vacant positions of different lengths, positions are filled in decreasing order of the number of votes and length of office (Educ. Law §§ 2034(7)(c), 2502(9)(n), (9-a)(n), 2610(4)). Thus, the candidate with the highest number of votes is entitled to the position of the longest length.
 - a. Moreover, the law provides that where the term of office for a school board seat expires at the end of the school year, and the seat is vacant, or becomes vacant on the date of the annual meeting and election, "the person elected to fill the full term vacancy is deemed elected to fill the remainder of the term preceding the commencement of the full term" (Educ. Law § 2105(14)).
3. The chairperson of the meeting at which the election takes place declares the result of each ballot, as announced by the election inspectors (Educ. Law § 2034(7)(a)).
4. If the district has been divided into election districts and voting machines are used, the election inspectors must report the results to the chief election inspector of each district, who then reports the results to the district clerk within 24 hours. The school board must then tabulate and declare the result of the ballot within 24 hours of receiving the results (Educ. Law § 2034(7)(b)).
5. The school district clerk must notify in writing every person elected as a school board member (Educ. Law §§ 2108(1), 2121(5), 2610(5)). However, the presence of a person elected to the board at the district meeting at which he or she is elected is considered sufficient legal notice to the candidate of his or her election (Educ. Law § 2108(2)).

- a. The district clerk also must report the names and post office addresses of elected board members to the town clerk of the town where the district is situated. There is a \$5 penalty for failing to do so (Educ. Law § 2121(5)).
6. If there is a tie vote for a board seat, the district must have a run-off election within 45 days. The only candidates in a run-off election are those who tied. No new nominating petitions are required (Educ. Law §§ 2034(10), 2610(6)).

Taking Office once Winner Declared

1. Newly elected school board members are considered to have accepted the office unless they file a written refusal with the school district clerk within five days after receiving notice of their election (Educ. Law § 2108(2)). However, they must take and file an oath of office prior to commencing service on the board.
2. A new board member takes office when the incumbent's term of office expires, or if the seat is vacant at the time of the election, immediately after the election (Educ. Law § 2105(14)).
3. The new board member must file an oath of office (N.Y. Const. art. 13, § 1; Pub. Off. Law § 10). If a new member has not filed an oath of office or is otherwise not qualified to take office when the term begins, the incumbent "holds over" in office until the new member becomes "qualified," that is, takes all the steps necessary to take office (Pub. Off. Law § 5; see *Appeal of Foshee*, 38 Ed Dept Rep 346 (1998); see also *Matter of Waxman*, 19 Ed Dept Rep 157 (1979)).
 - a. The failure or neglect of a board member to file an oath of office within 30 days after the commencement of his or her term causes the office to become vacant (Pub. Off. Law § 30(1)(h); see, for example, *Appeal of Rausch*, 41 Ed Dept Rep 351 (2002); see also *Appeal of Karpen*, 39 Ed Dept Rep 98 (1999)).

CHALLENGES TO ELECTIONS

Process to Challenge Election Results

1. All disputes over any district meeting or election must be referred to the commissioner of education (Educ. Law § 2037), including when the school board itself believes the election results are in dispute (see *Appeal of Bd. of Educ. of the Gilbertsville-Mount Upton CSD*, 59 Ed Dept Rep, Dec. No. 17,836 (2020); *Appeal of Bd. of Educ. of the Massapequa UFSD*, 59 Ed Dept Rep, Dec. No. 17,747 (2019); *Application of the Bd. of Educ. of the Liverpool CSD*, 58 Ed Dept Rep, Dec. No. 17,587 (2019)).
2. Once the results of an election are declared, there is no authority in the election officials or the voters to recanvass the results (*Appeal of the Bd. of Educ. of the Hilton CSD*; *Appeal of LaValley*, 12 Ed Dept Rep 33 (1972)). Only the commissioner has the authority to order a recount of a vote on a school board election (*Appeal of Doro*, 41 Ed Dept Rep 13 (2001); *Matter of Senecal*, 22 Ed Dept Rep 367 (1983); but see *Appeal of Ell*, 34 Ed Dept Rep 394 (1995)).

Furthermore, when the ballots are placed in a locked and sealed ballot box, the box can be opened only upon an order from the commissioner, or upon a school board resolution six months after the vote provided that there are no pending challenges regarding the vote (§ 2034(6); *Appeal of the Bd. of Educ. of the Hilton CSD*; *Appeal of Deposit CSD*, 49 Ed Dept Rep 449 (2010)).

3. The commissioner of education may, at his or her discretion, order a recount of the ballots or a new election (§§ 2034(6)(a), 2037; *Appeal of the Bd. of Educ. of the Crown Point CSD*, 51 Ed Dept Rep, Dec. No. 16,291 (2011); *Appeal of Murtagh*, 19 Ed Dept Rep 179 (1979)). A recount is warranted when the evidence establishes a “substantial attack on the integrity of the tallies and the returns of the inspectors of election, such as a showing of fraud or improper conduct” (*Appeal of Feder*, 61 Ed Dept Rep, Dec. No. 18,066 (2022); *Appeal of the Bd. of Educ. of the Hilton CSD*, 56 Ed Dept Rep, Dec. 17,091 (2017); *Appeal of the Bd. of Educ. of the Crown Point CSD*. A new vote is required when a discrepancy in the vote count has affected the results of the election or budget vote (*Matter of Boyes v. Allen*, 32 A.D.2d 990 (3d Dep’t 1969), *aff’d*, 26 N.Y.2d 709 (1970); *Appeal of Reed*, 55 Ed Dept Rep, Dec. No. 16,871 (2016); see also *Appeal of the Bd. of Educ. of the Crown Point CSD*).

Standard by which Election Results may be Overturned

1. There is a presumption of regularity in the conduct of school district elections. The burden of proof rests on the person who challenges the results to establish all the facts based upon which he or she seeks to have the commissioner overturn the election results. Furthermore, speculation as to the possible existence of irregularities provides an insufficient basis on which to annul election results (*Appeal of Casey-Tomasi*, 57 Ed Dept Rep, Dec. No. 17,301 (2018); *Appeal of Antaki*, 47 Ed Dept Rep 228 (2007), *petition dismissed*, *Antaki v. Mills* (Sup. Ct. Albany Cnty. 2008); *Appeal of DeBeradinis*, 39 Ed Dept Rep 145 (1999); see *Appeal of Palmore*, 62 Ed Dept Rep, Dec. No. 18,221 (2023)).
2. To invalidate the results of a school district election, a petitioner must either: (1) establish not only that irregularities occurred but also that any irregularities actually affected the outcome of the election or were so pervasive that they vitiated the electoral process; or (2) demonstrate a clear and convincing picture of informality to the point of laxity in adherence to the Education Law (*Appeal of Palmore*, 62 Ed Dept Rep, Dec. No. 18,221 (2023); *Appeal of Rogers*, 61 Ed Dept Rep, Dec. No. 18,119 (2022); *Application of the Bd. of Educ. of the East Islip UFSD*, 60 Ed Dept Rep, Dec. No. 18,008 (2021); *Appeal of Holliday*, 60 Ed Dept Rep, Dec. No. 17,947 (2020)).
3. Some examples of where the commissioner of education has overturned an election or budget vote include instances where:
 - The school budget passed by one vote and a 17-year-old student was permitted to vote (*Appeal of Cobb*, 32 Ed Dept Rep 139 (1992)).
 - Several irregularities occurred during the election, including but not limited to, the failure to appoint a sufficient number of election inspectors, failure to open the absentee ballots in public, lack of clarity as to whether paper ballots were counted in the results, and a discrepancy between the number of voters on the poll list and votes cast (*Appeal of Lanzilotta*, 48 Ed Dept Rep 428 (2009)).
 - A district with two capital reserve funds intended to seek voter authorization to appropriate funds from one fund, but the ballot proposition erroneously referred to the other capital reserve fund (*Appeal of the Bd. of Educ. of the Liverpool CSD*, 58 Ed Dept Rep, Dec. No. 17,587 (2019)).

Challenge to Board Member Election

1. In one case the commissioner of education ruled that an incumbent board member who sought reelection to his own seat and wrote his name in the space on the nominating petition identifying himself as the incumbent, technically violated the Education Law because he failed to list his name in the space identifying himself as the "candidate." However, the record established that as each person was asked to sign the nominating petition, the person gathering the signatures explained who was running and described the seat for which the candidate was running. Moreover, there was no proof that any voter was confused about who was seeking the nomination. Therefore, the commissioner dismissed the challenge to the election (*Appeal of Grant*, 42 Ed Dept Rep 184 (2002)).
2. The commissioner of education refused to overturn a board member election based upon claims of issues with the ballot and electioneering as there was insufficient proof that such irregularities affected the outcome of the election. The petitioner, a candidate who did not win a seat, argued that an irregularity occurred because the listing of candidate names in a district email communication was vertical and did not match the presentation of the names on the ballot (horizontal orientation). According to the commissioner, the email that petitioner complained of was sent to the candidates by the clerk as notice of the outcome of the drawing of lots for the order of candidate names on the ballot. The email did not indicate the orientation of ballot. The petitioner did not offer any evidence how this difference affected the election and the claim was dismissed. The petitioner also argued that the incumbent candidates engaged in electioneering because a postcard with their names on it appeared at the polling place and one incumbent was giving away free chicken dinners at a polling location. The clerk averred that a postcard did appear on a table and was removed as soon as it was spotted and was not present for more than a few minutes. Regarding, the chicken dinner, the incumbent was the chief operating officer of a catering company bearing her last name that was engaged for a fundraiser held near the polling place. The commissioner determined that the temporal and physical proximity of the fundraiser by a business bearing the candidate's name and allowed such candidate to reap the benefit of the goodwill of voters who associated her candidacy with the fundraiser. However, the commissioner declined to overturn the election as there was no evidence that the electioneering affected the outcome of the election or that the vote involved any other irregularity that vitiated the fundamental fairness of the election (*Appeal of Eckles*, 62 Ed Dept Rep, Dec. No. 18,149 (2022)).
3. Where a challenge to a board member's election is successful, the commissioner of education has determined that the person initially declared the winner is a de facto board member during the period of time that an appeal of the election results is pending. Therefore, the actions taken by the board during the pendency of the appeal are valid (*Appeal of Titus*, 36 Ed Dept Rep 407 (1997); see also *Appeal of Loughlin*, 35 Ed Dept Rep 432 (1996); and *Appeal of Heller*, 34 Ed Dept Rep 220 (1994)).
4. A candidate who earned the highest number of votes but was ineligible for election to the office of school board member was unsuccessful in petitioning the commissioner to declare her the winner. The school district learned that the petitioner had not resigned the incompatible office prior to the school board election and therefore declared the second highest vote getter as the winner. The commissioner upheld the district's action given that the petitioner was ineligible for office (*Appeal of Fries*, 50 Ed Dept Rep, Dec. No. 16,182 (2010)).

Challenge Based upon Deficiencies in Election Notice

1. If a district fails to comply with the legal requirements for providing adequate public notice, the results of the budget vote and/or board member elections, in all likelihood, will be upheld and will not be found illegal, unless it appears that the failure to give proper notice was willful or fraudulent (Educ. Law § 2010; see also *Appeals of Campbell & Coleman*, 41 Ed Dept Rep 207 (2001)).
 - a. "Where the notice given is reasonably calculated to and effectively does give notice to the public of the election, a technical failure to give proper notice is not a basis for invalidating the result" (*Appeal of Winograd*, 42 Ed Dept Rep 180 (2002)).
2. A district provided correct information for publication in the local newspaper, indicating that it would hold its budget hearing on May 6 of that year. However, the newspaper incorrectly advertised the date of the hearing as May 5. Observing that all the other information the district provided to community residents listed the correct date, the commissioner of education found nothing willful or fraudulent about the error in the notice of the budget hearing and refused to overturn the results of the election (*Appeal of Leman*, 39 Ed Dept Rep 35 (1999)).
3. The commissioner refused to overturn the election results where the district had published notice in only one newspaper, not realizing until just five days before the election that the law generally requires publication in two newspapers, at which point in time it was too late to correct the error. The commissioner found that the error was not willful or fraudulent, especially since, upon discovering the error, the district mailed and hand-delivered a flyer regarding the election to district households (*Appeal of Hebel*, 34 Ed Dept Rep 319 (1994); see also *Appeal of Winograd*, 42 Ed Dept Rep 180 (2002); *Appeal of Bartosik*, 37 Ed Dept Rep 531 (1998); and *Application of Martin*, 32 Ed Dept Rep 208 (1992)).
4. A school district did not act improperly when it placed six signs along roads bordering district schools and ten signs at major intersections throughout the district, informing the public of the date and time of the budget vote and election. The district had properly published notice of the meeting in the newspaper and placement of the signs was not improper advocacy given the signs' content (*Appeal of Tillet*, 52 Ed Dept Rep, Dec. No. 16,473 (2013)).

Challenge Based upon Ballot, Machine or Poll List Deficiencies

1. A school district's technical failure to maintain a complete and accurate poll list is no basis to invalidate an election, absent proof that this irregularity affected the outcome of the election (*Appeal of Crowley*, 39 Ed Dept Rep 665 (2000); *Appeal of Diamond*, 39 Ed Dept Rep 541 (2000); *Appeal of Singer*, 34 Ed Dept Rep 355 (1995); *Matter of Kavanaugh*, 5 Ed Dept Rep 19 (1965)).
2. Discrepancies between the machine count and the sign-in sheets at the conclusion of an election do not necessarily require that the commissioner invalidate an election absent evidence "that the outcome of the election was affected by the apparent failure of some voters to sign the poll list" (*Appeals of Campbell & Coleman*, 41 Ed Dept Rep 207 (2001)).
3. The commissioner of education invalidated the results of a special school district meeting where a district sought authorization to expend monies from a reserved fund. The district had two capital reserve funds and intended to seek voter authorization to appropriate funds from one fund, but the ballot proposition erroneously referred to the other capital reserve fund. The proposition passed and the district argued that it could be inferred that the voters would have approved the expenditure if the correct reserve fund had been named in the proposition. According to the commissioner, there

was no basis in law to make such assumption and to do so would contravene the statutes that requires explicit voter approval (*Appeal of the Bd. of Educ. of the Liverpool CSD*, 58 Ed Dept Rep, Dec. No. 17,587 (2019)).

4. The election of school board members was upheld in a case where the petitioners claimed there were machine deficiencies which affected the tally of the votes. The petitioner argued the voting machines were programmed incorrectly in that the names of the candidates were not input in the same order they appeared on the ballot. However, the county deputy commissioner of elections averred that the order that candidate names are entered into the machine and thus appeared on the machine tape is irrelevant to the candidate's ballot line. The deputy commissioner further provided evidence of the testing of the machines to assure accuracy prior to the election. Thus the commissioner determined there was no basis to overturn the election on that claim. The commissioner additionally rejected an argument that a small discrepancy (six) between the number of ballots recorded on the machines and the number of voters who signed the poll list was proof of an irregularity affecting the outcome of the election, noting it is not unusual for such discrepancies to arise. Given the petitioner did not submit any evidence that this discrepancy affected the outcome of the election, the commissioner declined to overturn the results (*Appeal of Goethe*, 61 Ed Dept Rep, Dec. No. 18,108 (2022)).

Challenge Based upon Write-In Ballot

1. Petitioner challenged his election loss alleging the electronic voting machine did not count a write-in ballot for him. Had the vote been counted Reed and the other candidate, Hatcher, would have tied.

The district clerk averred that during the course of the election there was no review of the scanned ballots to determine if write-in votes were cast on the ballots. The day after the election the clerk reviewed the scanned ballots and discovered this disputed ballot which contained write-in votes for candidates in spots other than those so designated. Upon the advice of counsel, the ballot was not counted to avoid improperly conducting a recount, which only the commissioner may order. The district as part of its papers stated it did not object to the commissioner ordering a recount or new vote if it was determined an error occurred.

The commissioner examined a certified copy of the ballot in question and identified two issues. First, rather than filling in the oval next to the voter's candidate of choice, the voter wrote the names of his selections under each seat. Compounding this error, the voter did not write his selections in the boxes designated for write-ins but rather in a box directly under each candidate's name. According to the commissioner, a voter is not precluded from writing in a candidate's name even if it is already printed on the ballot. In determining whether the ballot should be counted, the commissioner considered interpretations of election law as guidance for interpreting the education law. Cases in the election law context have allowed votes for candidates to be counted when the names were written in the correct column but the wrong row. "Where the intent of the voters is apparent... it should not be frustrated by technical rules." Similarly, Education Law §2034 provides that if it is impossible to determine the voter's choice than the ballot shall not be counted for such office. The commissioner determined, in this case, it was not impossible to determine the choice of the voter in question.

Based on the foregoing, the commissioner found that the petitioner established both that irregularities occurred and affected the outcome of the election. Specifically, she found error that the ballots were not reviewed for write-in votes and that the ballot in question should have been

counted. As such she annulled the election results and ordered a new election be held no later than annual vote in May 2016. *Appeal of Reed*, 55 Ed Dept Rep, Dec. No. 16,871 (2016).

Appeals Commenced by Boards of Education

1. The Board of Education of the Whitney Point Central School District petitioned the commissioner of education seeking an order for a recount of the ballots based upon a failure of the election officials to follow the instruction manual for counting the ballots which resulted in mathematical errors. The poll workers unilaterally opted to split the ballots between two groups and tally them separately, rather than the district procedure which offered a mechanism to compare results to ensure they matched. They also refused the use calculators provided by the district clerk. This method resulted in multiple errors including certifying a total of 441 votes when there were only 433 votes cast and one was invalidated. Moreover, the number of tallies marked did not match the numbers the poll workers added to come up with the total counts. Based upon the foregoing the commissioner declared that irregularities affected the integrity of the election and a recount was warranted. The commissioner also recommended the district appoint different election workers in the future (*Appeal of the Bd. of Educ. of Whitney Point CSD*, 61 Ed Dept Rep, Dec. No. 18, 137 (2022)).

2. The board of education in the Monticello Central School District initiated an appeal seeking a recount to update the tally of the votes based in part upon a tabulation error that occurred due to a spreadsheet formula not updating. Nominations in this district are made for specific seats and there were three seats up for election. The first two seats had two candidates each and the third seat had three candidates. The district was divided into election districts, and each had one voting machine except for a single district which had two machines. The initial tally certified by the board was incorrect as it did not include the results from one voting machine in the single election district which had two machines. That tally also did not include the 20 affidavit ballots as they would not have affected the outcome because the margins between the winning candidates and the next highest candidate were larger than that. Upon discovery of the tabulation error, the winning candidates remained the same, but the margins of victory became smaller for seats two and three (15 and 16 votes respectively). According to the commissioner, the district clerk conducted an informal review of the 20 affidavit ballots and determined that six of the voters were not qualified to vote. That meant there were only 14 affidavit ballots that were considered valid and counting them would not affect the outcome of the election. The commissioner determined that although errors had occurred, there was no evidence they would affect the outcome of the election and she declined to order a recount and dismissed the appeal (*Appeal of the Bd. of Educ. of Monticello CSD*, 62 Ed Dept Rep, Dec. No. 18,167 (2022)).

3. A board of education sought an order annulling the election results and certification of results for two board seat in the 2021 annual election based upon tallying errors. Candidates run for specific seats in the district. There were three candidates for the first seat and one candidate for the second seat. After the election, the district clerk discovered tallying errors when completing a “Post Election Processing Form.” Based upon those errors, the district clerk determined that candidate Dorgan had actually received 915 votes and was the winner of the first seat, rather than candidate Kalinowski who received 745 votes. Additionally, candidate Walsh who ran unopposed also had received additional votes that were not correctly tallied. The commissioner invalidated the results in part, determining that the results for the first seat were affected by irregularities. The results for the second seat were not invalidated however, since the candidate ran unopposed and the change in the tally did not affect the outcome (*Appeal of the Bd. of Educ. of East Islip UFSD*, 60 Ed Dept Rep, Dec. No. 18,008 (2021)).

4. A board of education sought an order to correct an error after an election regarding one member's term of office. The board was filling three seats during the election, all of which should have been for three-year terms but one seat was labeled as a two-year term. The candidate who received the third most votes was seated for the two-year term. The board realized the mistake and brought an appeal to confirm that the member was entitled to the three-year term. Because the error was inadvertent, the commissioner of education ordered that in the interest of justice, the error had to be rectified and the member was entitled to a three-year term (*Appeal of the Bd. of Educ. of the Starpoint CSD*, 62 Ed Dept Rep, Dec. No. 18,215 (2022)).