

Budget Vote & Election Webinar: Update & Review for District Clerks

Westchester Putnam School Boards Association

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Governing Law

By statute, the Annual Meeting, Budget Vote and Election is the third Tuesday in May:

This year: May 21, 2024
(Education Law § 2002)

Generally, Education Law governs the school district budget vote and election.

Election Law only applies where specified in the statute.

Election Law provides that any person registered to vote under Article 5-612 of the Election Law may vote at school district meetings or elections.

New York Early Mail Voter Act



- On September 20, 2023, Governor Hochul signed into law the New York Early Mail Voter Act, which establishes an early mail voting system in New York State (Ch. 481 Laws of 2023). The law became effective on January 1, 2024, and applies to elections held thereafter.
- With respect to school districts and BOCES, the Act amends various sections of the Education Law to provide for early mail voting for the election of members of the board of education and library trustees, the adoption of the annual budget and school district public library budget and referenda.
- Qualified voters may vote as an early mail voter (if personal registration district, must also be registered)
- Adds new sections 2018-e (personal registration districts) and 2018-f (poll registration districts) which set forth the procedures for how early mail voting will occur.
- The Commissioner of Education is directed to promulgate regulations with respect to procedures governing BOCES elections.

New York Early Mail Voter Act

- A lawsuit has been filed by several individuals and organizations challenging the New York Early Mail Voter Act on constitutional grounds (*Stefanik, et al. v. Hochul, et al.*, Sup. Ct. Albany Co., Index No. 908840-23). For relief, the plaintiffs seek to invalidate the Act and enjoin its implementation.
- On December 26, 2023, the Albany County Supreme Court issued a decision denying plaintiffs' request for a preliminary injunction to enjoin the provisions of the Early Mail Voter Act while its lawsuit challenging the law is pending. A notice of appeal has been filed.
- On January 16, 2024, the Appellate Division, Third Department denied the plaintiffs' motion for a preliminary injunction to enjoin enforcement of the Early Mail Voter Act while its appeal of the lower court's ruling is pending.
- On February 5, 2024, the Albany State Supreme Court dismissed the action.

New York Early Mail Voter Act

Updating Legal Notice

- The legal notice must be updated to include information about the availability of early mail voting applications and the availability of the list of persons to whom such applications have been issued (i.e. available five days prior to the day of the election, except Sundays, and posting at the polling place[s]). Education Law §2004(7)
- May wish to also state in legal notice that a challenge to an early mail voter may not be made on the basis that the voter should have applied for an absentee ballot. See Education Law §2018-e(6) and §2018-f(7).

New York Early Mail Voter Act

Ballot Applications

- For Districts with Personal Registration – Obtain/Use form application prescribed by the State Board of Elections. The statute lists the required elements that must be included which will be incorporated into the State-prescribed form.
- Must be received no earlier than 30 days before the election (**NOT before April 22, 2024**).
- If the application requests that the early mail ballot be mailed, the application must be received no later than 7 days before the election (**May 14, 2024**).

New York Early Mail Voter Act

Ballot Applications

For Districts with Personal Registration (cont'd)– If the applicant or their agent delivers the application to the district clerk in person, such application must be received not later than the day before the election (**May 20, 2024**).

The district clerk is responsible for examining each application to “determine from the information contained therein whether the applicant is qualified ... to receive an early mail ballot” §2018-e(2)(e).

For applications received at least 7 days before the election (**by May 14, 2024**), the district clerk must mail, by regular mail, an early mail ballot to each qualified applicant who requested that such early mail ballot be mailed to the address set forth on the application, no later than 6 days before the election (**May 15, 2024**). See §2018-e(2)(f).

New York Early Mail Voter Act

Ballot Applications

For Districts with Personal Registration (cont'd)– If the applicant or their agent delivers the application to the district clerk in person after the 7th day before the election and not later than the day before the election, the district clerk must deliver the early mail ballot for a qualified applicant to the applicant or the agent named in the application when the applicant or agent appears in the district clerk's office.

New York Early Mail Voter Act

Ballot Applications

- For Districts without Personal Registration (Poll Registration) – Create an application form (which may look similar to absentee ballot application but which will refer to early mail ballot).
- The application form must incorporate the specific elements listed in statute setting forth: 1) the voter's name and residence address (including street number, if any, or town/rural delivery route, if any); and 2) that they are or will be, on the day of the school district election, a qualified voter of the school district in which they reside (in that they are or will be on such date over 18 years of age, a U.S. citizen, and have or will have resided in the district for 30 days prior to the election).
- Be sure to include the declaration required by statute, i.e. "I hereby declare that the foregoing is a true statement to the best of my knowledge and belief, and I understand that if I make any material false statement of application for an early mail ballot, I shall be guilty of a misdemeanor. "

New York Early Mail Voter Act

Ballot Applications

- For Districts without Personal Registration (Poll Registration) (cont'd) –
- The early mail application must be received by the district clerk at least 7 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 personally delivered to the voter (**May 14, 2024; May 20, 2024**).
- Unlike districts with personal registration, there is **no** authority in the statute for providing the ballot to someone other than the requesting voter. See Education Law §2018-f(2), (3).
- Section 2018-f also allows voters to request early mail ballots by letter in the same manner voters may currently request absentee ballots.
- The law provides that an applicant for an early mail ballot shall submit an application setting forth their name and residence address and that they are or will be a qualified voter of the school district on the day of the election.

New York Early Mail Voter Act

Prepare/ Arrange for Ballot Envelopes

- The law requires specific wording to be printed on the front and back of the early mail ballot envelope, including the prescribed Statement of the Early Mail Voter. (See Education Law §2018-e [personal registration] and Education Law §2018-f [poll registration]).

Prepare/Arrange for Ballots

- The law requires that ballots for early mail voters “shall be, as nearly practicable” in the same form as those to be voted at the District election, and, if the election is to be conducted by voting machine, the early mail ballot shall conform as closely as possible to the manner in which the names of the candidates, the questions and propositions appear on the voting machine ballots, and shall also contain a space for write-in or write-ins. Also, on the back of the early mail ballots shall be printed the following words “**Official Ballot, Early Mail Voter.**”

New York Early Mail Voter Act

Create/Maintain List of Persons to Whom Early Mail Ballots Issued

- The District Clerk (Board of Registration in Personal Registration Districts) must make a list of all persons to whom early mail voter ballots have been issued and maintain the list in the office of the Clerk for public inspection during regular office hours until the date of the election in order to allow for any qualified voters to challenge. A challenge to an early mail ballot may not be made on the basis that the voter should have applied for an absentee ballot.

New York Early Mail Voter Act

Prepare for Handling/Canvassing Early Mail Ballots

- Early Mail Ballots must be received by the Clerk no later than 5 p.m. on the day of the election (**May 21, 2024**). On the day of the election, the Clerk is to deliver the early mail ballots to the election inspectors.
- In Personal Registration Districts – After the close of the polls, the inspectors are to examine the ballots, compare the signature, if any on the envelope, with the signature on the register and if found to correspond, they are to initial the register. If the person who is found to be registered and has not voted in person (and there's no successful challenge made) then the envelope is to be opened and the ballot to be deposited in the proper box(es) and the inspector shall enter the words "early mail vote" at an appropriate place in the register.
- In Districts without Personal Registration (Poll Registration) Districts – After the close of the polls, if it is determined that the person whose name is on the envelope and has not voted in person (and there's no successful challenge made) and there is a signature on the envelope, then the envelope is to be opened and the ballot is to be withdrawn without unfolding and deposited in the proper box(es).

District Clerk's Role in the Annual Budget Vote and Election

- Serves as the Clerk of “all meetings and elections.” Educ. Law § 2025(3).
- Keeps a true and accurate written record of all the proceedings; file such written record within 24 hours after the election. Educ. Law §§ 2025(4) & 2121(1).
- Board of Education also appoints Assistant Clerks “as required.” Educ. Law § 2025(3)(b).
- Board of Education shall appoint “**qualified voter**” as “acting clerk” in the “absence or inability to act” of the District Clerk. Educ. Law § 2025(3)(b).
- District Clerk informs election inspectors to post distance markers 100 ft from polling place for purpose of designating area restricted from electioneering. Educ. Law §§ 2031-a, 2609(4)(a).

Board of Education Appointments

In Union Free and Central School Districts the Board of Education appoints:

- Chairperson of the Election (must be “qualified voter”)
 - Chairperson calls meeting to order. Educ. Law § 2025(2).
 - No restrictions barring a Board member from position.
- An acting Clerk in the District Clerk’s absence or inability to act. (Must be “Qualified Voter.”) Educ. Law § 2025(3)(b).
- Assistant Clerks as required. Educ. Law § 2025(3)(b).
- Two election inspectors for each Ballot Box or Voting Machine at all times. *Appeal of Lanzilotta*, Dec. No. 15,905 (Mar. 2009).
- No express requirement that election inspectors be “qualified voters” or district residents.
- A student 17 years of age is eligible to serve as election inspector. Educ. Law § 2025(6).
 - Educ. Law § 3207-a – parental consent required; counts for attendance credit.

Election Inspectors

- Board of Education designates a Chief Election Inspector. Educ. Law § 2025(3)(b).
- Inspectors must inspect the machines before the machines are used. Educ. Law § 2035.
 - All counters set at zero; ballot labels are properly placed; machine is in proper condition for use.
- If District is divided into election districts:
 - The Board shall appoint a Chief Election Inspector for each election district; and
 - The Chief Inspector of Election declares polls open and closed.
- District employees, school board members, relatives of Board members or candidates not prohibited from serving as election inspectors. *Appeal of Caswell*, Dec. No. 15,920 (May 2009).

Poll List

- A poll list containing the name and legal residence of every person whose vote shall be received shall be kept by the District Clerk. Educ. Law § 2029.
- Where voting machines are used, discrepancies between a machine count and # of names on the poll list do not invalidate an election, absent evidence that the outcome was affected by the apparent failure of some voters to sign the poll list. *Appeals of Campbell & Coleman*, Dec. No. 14,665 (Dec. 2001).
- The Poll List should include all voters who vote whether in person, or by absentee, early mail, or military ballots.

Voter Qualifications and Registration

- Qualified voter: citizen of U.S., 18 years of age, resident of district for at least 30 days prior to meeting, and not otherwise prohibited under Election Law § 5-106. Educ. Law § 2012.
- A Board of Education in Union Free, Central and Small City School Districts **may** provide for personal registration of voters. Educ. Law §§ 2014 & 2606.
- Any person otherwise qualified to vote who is registered under the election law (i.e. registered with the Board of Elections) shall be entitled to vote at school elections. Election Law § 5-612(2); Educ. Law § 2014(5).
- School district uses both its own registration lists and lists transmitted from Board of Elections
- Board of Elections delivers registration lists no later than 30 days immediately prior to school district election; supplemental list 10 days prior to election. Election Law § 5-612(3).

Personal Registration Procedures

- If personal registration is adopted, the Board of Education must notify the Board of Elections of the date of the annual meeting and election at least 45 days in advance. Election Law § 5-612(5).
- Board of Education annually designates, not later than the 30th day following the annual meeting, **four qualified voters** to constitute Board of Registration; serves until the 30th day following the next annual meeting or election of the District. Educ. Law § 2014(1).
- If vacancy occurs on Board of Registration, Board of Education may designate qualified voter to fill a vacancy. Educ. Law § 2014(1).
- Board of Registration conducts registration at the annual meeting and election to register voters for **future** elections. Educ. Law § 2014(2).

Registration Date

- Board of Registration meets on date(s) designated by School Board – CLERK ATTENDS (Different For Small City School Districts and Special District Meetings).
- Registration must be open for AT LEAST FOUR CONSECUTIVE HOURS BETWEEN 7:00 a.m. AND 8:00 p.m.
 - The last date of registration must not be more than 14 days nor less than 5 days before the vote.
 - **This year any day from May 7, 2024 through May 16, 2024**
- Board of Education may discontinue personal registration by resolution at least 2 months before the next District meeting or election. Personal registration may only be re-instituted with voter approval.
- May only divide into election districts if there is personal registration. Educ. Law § 2017.

Failure To Register (Districts with Personal Registration)

- Failure to register with District or with Board of Elections means person may not vote at election.
- Unlawful for a District to allow a person who registers with the District **on election day** to vote that day.
- Subject to voter approval: registration during specified hours of school day at office of District Clerk or Business Office by the District Clerk, Assistant District Clerk or member of Board of Registration. Educ. Law § 2014(2).
- If school district provides for registration during the school day, the Board of Registration, at the discretion of the Board of Education, may not be required to meet prior to the annual meeting solely for the purpose of registering voters. Educ. Law § 2014(6).

Districts **without** Personal Registration (Educ. Law § 2018-c)

- In Districts **without** Personal Registration, any **qualified voter** may present themselves to vote, and after their name is placed on the poll list, may cast a ballot.
- In Districts without personal registration, the law permits the Board to adopt a policy requiring all persons offering to vote to provide one form of proof of residency (e.g., driver's license, non-driver's ID, utility bill).
- Such District may also require all persons offering to vote to provide their signature, printed name, and address.
- Any qualified voter may challenge qualifications of another voter (only at District meeting).

Voter Registration List (Districts with Personal Registration)

- Board of Registration prepares the list of registered voters. Educ. Law § 2014(2).
- List must include everyone who registered to vote at previous election and may include anyone who registered and voted in preceding 4 years.
- Must be filed in the office of the District Clerk **at least 5 days before the election.** Educ. Law § 2015. **(this year- May 16, 2024)**
- Must be available for inspection by any qualified voter at “all reasonable times” up to and including day of election (except Sunday). (Different for small city school districts).
- In Districts with personal registration, the Commissioner has recognized the right of school officials to request proof of residency prior to election; i.e., redacted copy of income tax. Appeal of Taylor, Dec. No. 14,357 (May 2000).
- Board of Registration shall remove from register names of persons known to be deceased and who have moved out of the district. Educ. Law § 2014(2).

Challenge to Voter Qualifications (Districts with Personal Registration)

- Qualified voters may challenge names that appear on list either prior to or at the District Meeting. Educ. Law § 2015(3).
- Statements and challenges shall be received and preserved by the **District Clerk**.
 - Statements and challenges shall be filed with the register of voters which is delivered to the election inspectors on the day of election. Educ. Law § 2015(4)(5).
 - Upon the face of the statement/challenge the District Clerk shall write clearly what action was taken.
- **Challenges must be raised no later than the time the voter presents him or herself at the polls to vote.**
- The right to challenge is given to every qualified voter; no duty upon the Board of Education to offer a challenge.
- A challenge to an early mail voter may not be made on the basis that the voter should have applied for an absentee ballot.

On The Day of The Election (Districts with Personal Registration)

- District Clerk shall cause a copy of the register to be delivered before the opening of the polls to inspectors of election at each voting site. Educ. Law § 2015(5).
- If a challenged voter offers to vote **and their name is on the voter registration list**, the voter must complete the following written declaration:

“I do recite and affirm that I am and have been for 30 days last past, an actual resident of this school district and I am qualified to vote at this meeting.” Educ. Law § 2019.
- If challenged voter makes the declaration, **shall be permitted to vote by machine. If challenged voter refuses to make the declaration, vote must be rejected.**

On The Day of The Election (Districts without Personal Registration)

- Allegedly unqualified voters must be challenged at the election when presenting themselves to vote. They are permitted to vote upon making the sworn declaration set forth above. Educ. Law § 2019.

Challenge Procedure Where Voter Not on List (Districts with Personal Registration)

- Education Law § 2019-a governs the procedures for voting by persons whose names are not on registration list and provides for voting by affidavit ballots.
- If name not on list of registered voters, may not vote unless:
 - Court order; or
 - Swears in written affidavit (printed on an envelope) that he/she has duly registered, the address where registered, he/she remains a duly qualified voter and his/her poll record appears to be lost or misplaced, or his/her name has been incorrectly omitted. The affidavit must include an acknowledgement that he/she understands any false statement is perjury punishable according to law.
 - **Voter then permitted to vote by paper ballot** which is placed inside the envelope containing his/her affidavit and sealed until canvassed (“Affidavit Ballot”).

Affidavit Ballots (Education Law § 2019-a)

- Not Counted By Election Inspectors – Special Procedures for Casting and Canvassing Such Votes. Educ. Law § 2019-a(2)-(4).
- Section 2019-a(2)(b) requires Board to designate itself or approved employees to act as a set of poll clerks to cast and canvass paper ballots before certifying results of election.
- Board must set time and place for a meeting of poll clerks that takes place within 10 days after the election.
- Paper affidavit ballots of persons for whom no registration is found on District or Board of Elections list must be rejected.
- Notice of rejection of ballot must be given to voter together with the reason therefor and registration information.
- If voter is found to have registered his or her ballot shall be cast and counted.

Affidavit Ballots (Educ. Law § 2019-a)

- To invalidate the results of a school district election, petitioner must demonstrate that the outcome of the election was affected by the District's failure to comply with Section 2019-a.
 - In *Appeal of Rodriguez*, the Commissioner found that the district's failure to offer an affidavit ballot to 39 eligible voters whose names could not be located on the poll list affected the outcome of the election because petitioner lost his bid for a seat by 38 votes. Dec. No. 12,704 (May 1992).
 - In *Appeals of Campbell & Coleman*, the Commissioner determined that the petitioners failed to establish that allowing voters whose names did not appear on the poll list to cast affidavit ballots would have affected the outcome of the election. Dec. No. 14,665 (Dec. 2001).

Notice of Annual Meeting and Election “Legal Notice”

- District Clerk is required to give notice of Annual District Meetings, Special District Meetings, and Adjourned District Meetings. Educ. Law § 2121(2)-(4).
- Publish Notice a minimum of 45 days prior to uniform vote day. Educ. Law §2004(1).
 - Publish 4 times within the seven weeks prior to the election – **This year first publication must occur between April 4, 2024 and April 6, 2024.**
 - Publish in 2 newspapers having a general circulation within the District (or 1 if there is only 1).
 - “General Circulation” – newspaper that is published at least weekly, contains news, editorials, advertising, etc.; paid circulation and sent by at least 2nd class mail.

Notice Requirements (Educ. Law §§ 2003, 2004)

- The date, time, and place of the annual meeting and election.
- The date, time and place of the public hearing on the budget.
- A statement that district “residents” may obtain a copy of the budget at any schoolhouse in the district, during designated hours, on each day other than a Saturday, Sunday or holiday, during the fourteen days preceding the date of the annual meeting and election.
- Where required by statute, the substance of a specific proposition to be voted on (e.g., reserve funds, increase/decrease number of Board members).
- Bond resolution or capital note resolution where bonds or capital notes will be issued to finance a specific purpose.

Notice Requirements (Cont'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).

Notice Requirements (Cont'd)

- Statement 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 before the election. **(This year, Monday, April 22, 2024).**
 - Educ. Law §§ 2003(2), 2004(2), 2007(1), 2601-a(2), & 2602(2); Gen. Constr. Law § 20.
- Statement that qualified voters may apply for early mail and absentee ballots at the district clerk's office and that a list of persons to whom early mail and absentee ballots have been issued will be available for inspection in the district clerk's office during each of the five days prior to day of the election, except Sundays.
 - Educ. Law §§ 2004(7), 2018-a(6), 2018-b(7), 2018-e(6), & 2018-f(7).

Notice Requirements (Cont'd)

- Where applicable, a statement of the time and place that the board of registration will meet to prepare the register of the school district together with notice that any person, upon proving that he or she is entitled to vote in the district, may have his/her name placed upon the register.
- The notice shall state that the register containing the names of qualified voters will be available for inspection in the clerk's office during hours determined by the district on each of the five days prior to the day of the election, except Sundays. (**This year, voter register available as of May 16, 2024**).
 - Educ. Law §§ 2004(5)-(6) & 2606(6).

Notice Requirements (Cont'd)

- Requirements for legal notice regarding military ballots:
 - The notice shall include a statement that military voters who are not currently registered may apply to register as a qualified voter of the school district.
 - The statement shall also include information regarding the time and manner for requesting and returning registration application.
 - The statement shall also give notice that the military voter may indicate their preference for receiving the registration application.
 - The notice shall also include a statement that military voters who are qualified voters of the school district may apply for a military ballot.
 - Must also include the time and manner for requesting and returning the ballot application.
 - Such statement shall also give notice that the military voter may indicate their preference for receiving the application.

8 NYCRR §§ 122.3, 122.4, 122.5

Nominating Petitions

- **Board Member Qualifications:** must read/write; “Qualified voter;” resident one year before election; cannot be current employee or hold incompatible office.
- **Nominating Petitions** must be filed with the Clerk not later than 30 days preceding the election. Educ. Law § 2018(a).
 - 30th day is a Sunday – next business day is used (**this year, Monday April 22, 2024**).
 - Must be signed by at least 25 qualified voters or 2% of the voters who voted in the previous **annual** election of the members of the board, whichever is greater.
 - Educ. Law § 2018 does not set the earliest date upon which signatures may be collected, so no prohibition to obtaining signatures on nominating petitions prior to adoption of public notice of election.

Nominating Petitions

- Clerk's obligation: limited to ensuring proper number of signatures on petition and timeliness.
- Responsibility for determination that candidate is ineligible rests with Board of Education.
- Ballot Positions – Drawing by lot conducted by District Clerk day after the petition filing deadline. If candidate not present, Clerk may draw lot.
- A Board's incorrect statement of filing deadline does not authorize longer deadline. Appeal of Geiger, Dec. No. 16,379 (Jul. 2012).
- Notify persons elected in writing; notify Town Clerk.

Candidate Eligibility

- Appeal of Perlman, et al., 62 Ed Dept Rep, Decision No. 18,251 (March 13, 2023)
- In this appeal, the Commissioner addressed the meaning of the word “family” in Education Law §2103(3) which states that “[n]ot more than one member of a family shall be a member of the same board of education in any school district.” The Attorney General has previously held that “family” in this context refers to those who reside in the same household, and thus siblings or cousins who live in separate residences may simultaneously serve as members of the same school board.
- Petitioner challenged the determination of the board to permit a candidate to run for a position on the board where their cousin served on the board.
- The Commissioner deferred to the Attorney General’s interpretation of the statute and declined to adopt a more expansive definition of “family” as urged by the petitioner.

Ballots

- Board of Education provides ballots and ballot box or voting machines.
- Ballots and machines must provide for write-in candidates.
- The District Clerk must “cause to be delivered to the inspectors of election, on the day of the meeting or election and not before, a sufficient supply of the ballots for the use of the qualified voters.” Educ. Law § 2032(4).
- Section 2035 authorizes the use of voting machines.
- Section 2032, which sets forth the requirements for ballots, has not been amended to reflect new requirements for electronic voting machines.

Ballots

- **Election Law § 8-312(1)** permits up to 3 ballots per voter for mistakes. (“3 strikes, and you are out”) “If voter wrongly marks, defaces or tears a ballot, he or she may successively obtain one ballot at a time, not exceeding three ballots in all...”
- **However, the Education Law does not contain such a rule.**
- **No express authority in Education Law that voters only be provided up to 3 ballots if they wrongly mark or deface ballot.**
- Commissioner: election may be overturned if evidence that turning away voters affected outcome. *Appeal of Circello*, Dec. No. 13,936 (May 1998).
- Spoiled/defective ballots – sealed in envelope, endorsed by inspectors and placed in ballot box. Educ. Law §§ 2032(3) & 2034(6).

Write In Candidates

- Open space for each seat up for election must be provided on the ballot for write in votes. Educ. Law § 2032(2)(e).
- When voting machines are used, it is improper to require voters to cast write-in ballots in separate ballot box.
- Commissioner rejected argument that where candidates run at large, Education Law § 2032(2)(e) is not applicable and multiple write-in spaces are not required.
 - “Board of education may not limit the opportunity of voters to choose an alternate write-in candidate for each vacancy to be filled. . . regardless of whether the candidates run at-large or for specific seats. . . the board is required to provide slots for write-in votes equal to the number of board vacancies to be filled. *Appeal of Thomas*, Dec. No. 15,748 (May 2008).

Paper Ballots (Educ. Law § 2032)

Paper ballots are similar to ballots used with electronic voting machines, with some key differences. For paper ballots:

- A voting **square** shall be provided to the left of the name of each candidate upon the ballot.
- A single cross X mark in pen or pencil, or a single check ✓ mark, in pen or pencil, in the voting square shall indicate a vote.
- Instructions need to state how voting is done on the ballot and must include a statement that failure to properly vote with a cross X or check ✓ mark may render the ballot or portion thereof void.

For paper ballots, the Board of Education must provide a suitable ballot box in which ballots, folded so as to conceal the marking thereon, shall be deposited as received. Educ. Law § 2030(1).

Canvassing/Counting Paper Ballots (Educ. Law § 2034)

Once the polls close, the election inspectors count the ballots found in the ballot box without unfolding them, except so far as is necessary to ascertain that each ballot is single.

Election inspectors then compare the number of ballots found in the ballot box with the number of persons recorded on the poll list as having voted at the meeting or election.

- If there are more ballots than there are names on the poll list, the ballots are then placed back in the ballot box and mingled.
- The Chief Election Inspector then publicly draws out the number of excess ballots in a random fashion.
- The excess ballots are then sealed in an envelope and endorsed by the Chief Election Inspector.

Then the ballots are counted or canvassed and the votes for each candidate is tallied and counted by the election inspectors.

Canvassing/Counting Paper Ballots (Educ. Law § 2034)

Void the entire ballot if the voter:

- does any act extrinsic to the ballot such as enclosing any paper or other article in the folded ballot;
- defaces or tears the ballot;
- makes an erasure thereon; or
- makes any mark other than a mark specified in the instructions for the purpose of voting. (“irregular marks”).

Partially void ballot:

- An erasure or mark other than a mark specified in the instructions for the purpose of voting, made in a voting square will render the ballot blank as to the office in connection with which it is made. (e.g., two votes for a single seat).

“No ballot shall be declared void or partially blank because a cross X mark or check ✓ mark thereon is irregular in form.” Educ. Law § 2034(3)(d).

Canvassing/Counting Paper Ballots (Educ. Law § 2034)

- Voided ballots are sealed in an envelope, endorsed by the election inspectors, and placed in ballot box. (The Commissioner will need to review voided ballots if election is challenged on appeal).
- Ballots and envelopes are placed in the ballot box(es), box(es) are sealed and locked by election inspectors and deposited by the chief election inspector with the district clerk.
- Unused ballots are placed in sealed package for chief inspector to return with ballot box(es) to district clerk.
- Once ballot box(es) and package containing unused ballots are sealed, they may only be opened in limited circumstances. Educ. Law § 2034(6).

Paper Ballots and Early Mail/Absentee Voting

- Once the early mail/absentee ballot envelope is opened (after following procedures for verifying signature, confirming registration of voter if applicable, confirming person hasn't voted in person, and if there is no sustained challenge to voter) and the ballot is withdrawn, the ballot remains folded and then deposited into the ballot box. (Educ. Law §§ 2018-a[10], 2018-b[11], 2018-e[10], 2018-f[11]). This prevents the election inspector (and everyone else) from knowing how the voter voted.
- Once the folded ballot enters the ballot box, then Education Law § 2034 takes over and the canvassing and counting of ballots is the same as with any paper ballots (§ 2610 for small city school districts)
- The ballots are then counted or canvassed by the election inspectors (and only the election inspectors) and the votes cast for each candidate shall be tallied and counted by the election inspectors (Educ. Law § 2034[2]).

Absentee Ballots

Appeal of Hilton CSD, Dec. No. 17,091 (May 2017):

- Commissioner reviewed absentee ballot instruction that instructed voters to fill in the voting bubble above the name of the board candidate and said :“Any mark in a voting bubble other than a complete fill will render the ballot void”.
- The District explained that the absentee ballots were designed similarly to the electronic scan ballots. Seven absentee ballots contained a “check” or “x” in the corresponding bubble, and were rejected by the election inspectors.
- The Commissioner held that the instructions on the absentee ballots stating that failure to completely fill in the bubble renders the ballot void, are inconsistent with the Education Law. If the intent of voter can be determined, ballot should be counted. Accordingly, these ballots should have been counted.

Early Mail/Absentee Ballots

- District Clerk must keep a list of all persons to whom early mail and absentee ballots have been issued – available for public inspection until day of election.
 - No date stipulated but should probably be done *at least* 5 days prior to election or by **May 16, 2024**. Educ. Law §§ 2018-a(6), 2018-b(7), 2018-e(6) & 2018-f(7).
- **Ballots must be received in District Clerk's office by 5 PM on date of election.** Educ. Law §§ 2018-a(8) & 2018-b(9).
- Statement of Absentee Voter set forth in Education Law §§ 2018-e(5)(b) and 2018-f(6)(b).
- Statement of Early Mail Voter set forth in Education Law §§ 2018-e(5)(b) and 2018-f(6)(b).
- Education Law §§ 2018-a and 2018-e – govern process if district has personal registration. **Amendments to 2018-a became effective March 9, 2020.**
- Education Law §§ 2018-b and 2018-f – govern process if district does not have personal registration (poll registration).

Canvass of the Votes and Declaration of Results (Educ. Law § 2034)

1. Upon close of polls inspectors shall count the ballots (including early mail and absentee) and tally votes cast.
2. Compare the number of ballots to the poll list.
3. Inspectors shall announce to the chairperson the results of the ballot
4. The chair shall declare the results as announced by the inspectors.
5. If election districts, inspectors must submit a signed written report of the results to the Chief Inspector who shall file same with the District Clerk within 24 hours. The Board of Education shall, within 24 hours, tabulate and declare the results of the election.
6. No provision giving voters or candidates the right to witness the tally of the votes.

Canvass of Early Mail and Absentee Ballot

- District Clerk transmits all early mail and absentee voters' envelopes received by 5:00 p.m. to inspectors; inspectors check the register or poll list to verify early mail or absentee voter didn't vote.
- If person's name, residence and signature, as stated on envelope, are not on register, or if no signature is on envelope – envelope returned unopened to District Clerk.
- Absentee ballots do not have to be counted in presence of candidates but must be counted in public. *Appeal of Bennett*, Dec. No. 15,870 (2009); *Appeal of Matathias*, Dec. 17,997 (2021).
 - **In Districts with PERSONAL REGISTRATION Commissioner has determined that to open/count Absentee Ballots before polls close violates Section 2018-a(10).** *Appeal of Pappas*, 38 Ed. Dept. Rep. 582 (Mar. 1999).
 - The same process should be followed with respect to the counting of early mail ballots.

Election Disputes

- Disputes concerning the validity of any district meeting or election are resolved by the Commissioner of Education. (Educ. Law § 2037).
- Commissioner may annul results of a meeting or election and order a new meeting or election. *Appeal of Bd. of Education, Minerva CSD*, Dec. No. 16,628 (2014).
- Sole method of securing recount – Appeal to Commissioner. Ed. Law § 2034(6)(a); *Appeal of Bennett*, Dec. No. 15,870 (2009); *Appeal of Crown Point CSD*, Dec. No. 16,291 (2011); *Appeal of Bd. of Education, Whitney Point CSD*, Dec. No. 18,137 (2022).
- In *Appeal of Whitney Point CSD*, Commissioner held a recount was necessary where poll workers' method of counting ballots resulted in multiple errors which may have affected the outcome.
- In *Appeal of Hilton CSD*, Commissioner held: "there is nothing in the Education law which gives the assistant superintendent [or chief election inspector] the right to open the ballot box to recanvass void absentee ballots and to declare a new result." Dec. No. 17,091 (2017).
- In *Appeal of Minerva CSD*, the Commissioner determined that a new vote was necessary when the sole voting machine used in the re-vote malfunctioned in failing to register 9 votes. "Where the results of an election do not accurately reflect the will of the voters due to a voting machine malfunction, results must be set aside."

To Invalidate Results of Election

- Challengers must establish:
 - That irregularities occurred AND that those irregularities ACTUALLY affected the outcome of the election; or
 - That irregularities were so PERVASIVE that they vitiated the electoral process; or
 - Irregularities demonstrate a clear and convincing picture of informality to the point of laxity in adherence to the Education Law.
- “[I]t is a rare case where errors in the conduct of an election become so pervasive that they vitiate the fundamental fairness of the election.” *Appeal of Lanzilotta*, Dec. No. 15,905 (2009) (Commissioner found numerous such errors did vitiate fundamental fairness of election).
- Improprieties must be substantial and not merely technical in nature. Challengers bear the burden of proof that irregularities occurred and affected outcome of election. *Appeal of Decker*, Dec. No. 18,207 (2022) (Commissioner noted challenger failed to prove either the number of election inspectors or a ballot instruction error affected election results.)

Retaining/Preserving Election Records

Generally, the “Records Retention and Disposition Schedule for New York Local Government Records” or (“LGS-1”) (8 NYCRR §§ 185.5 and 185.15) governs.

- Note: Previously, Records Retention and Disposition Schedule ED-1 governed. However, on **July 13, 2020** the Regents adopted amendments to the Commissioner’s Regulations to approve the above records retention schedule. The Regulations, which became effective August 1, 2020, required school districts to implement the new schedule by **January 1, 2021**.

Minimum retention periods:

- Final election results must be permanently maintained.
- Intermediate records used to compile final results (i.e.: tally sheets and voting machine tabulations) must be maintained for one year after election, unless election is contested.
- Voter Registration Records – 5 years.
- Candidate campaign expenditure/contribution statements that are filed with district clerk must be preserved for three years from date of filing. Educ. Law § 1529.

Retention of Ballots

- Sample Ballot – Permanently maintained.
- Voted and Unused Ballots:
 - Pursuant to Education Law § 2034(6)(b), after 6 months, if no proceeding has been commenced, the Board of Education may by written resolution order the unsealing and opening of the ballot box and the destruction of all ballots contained therein together with unused ballots.
 - **Retention Schedule – requires that voted ballots be maintained for a period of one year after the election.**
 - **Best practice** – keep voted ballots for at least one year after the election pursuant to the Retention Schedule. Any action with respect to voted or unused ballots should be by Board resolution.
 - Caveat – if litigation is pending all ballots may have to be maintained!

Military Ballots Legislation & Regulations

- On November 11, 2019, the Education Law was amended to add a new § 2018-d to permit military voters to vote by military ballot in school district elections.
- In 2020, the Board of Regents adopted regulations to implement § 2018-d. The regulations included a new procedure for personal registration of military voters as qualified voters of the district (for districts with personal registration) in addition to new procedures for requesting a military application and a military ballot. The regulations also specify what must be in the notice of annual meeting. See 8 NYCRR Part 122.
- Military voters may designate a preference to receive a military voter registration application form , military ballot application or military ballot by mail, facsimile transmission or electronic mail.
- Whenever ballot is requested to be received by fax or email, the voter must also be sent a form that includes the information normally appearing on the inner envelope to return the ballot (i.e., the prescribed military voter information and affirmation).
- The voter's original military ballot application and ballot must be returned to the District Clerk by mail or in person.
- The military ballot must be completed in the manner described in § 2018-d(5).
- Districts must distribute military ballots as soon as practicable but not later than 25 days before the election (14 days for small city school districts).

Military Ballots – Timelines

- Military ballots must be distributed in accordance with the preferred method of transmission designated by the military voter, as soon as practicable, but not later than 25 days before the election (**by April 26, 2024**) (14 days before the election or by May 7, 2024 in small city school districts).
- 3 days before the first day for distribution of military ballots, the board of education must determine the name of all candidates duly nominated for public office and the amendments, referenda, propositions and questions to be voted for on such ballots (**April 23, 2024**) (May 6, 2024 for small city school districts).
 - Importantly, if any nomination on the military ballot is later found to be invalid, the ballot is still valid, but no vote cast for any such candidate on such ballot will be counted in the election.
 - Failure to include any candidate or proposition or question on the military ballot will not affect the validity of the election with respect to the office for which the nomination was made or any other matter.

Military Ballots –Timelines (Cont'd)

- **Therefore, as a practical matter, due to the need to distribute military ballots on or before Friday, April 26, 2024, the budget will need to be adopted before such deadline.**
 - In other words, the last day to adopt the budget is the latest day a district would be able to adopt the budget and still distribute military ballots by the military ballot distribution deadline (likely by **April 23, 2024**, the date by which the board must determine the names of candidates, and other referenda and propositions to be voted for on the ballot).
- Similarly, the district must submit the property tax report card by the close of business day after the Board adopts the budget and property tax report card. Therefore, as a practical matter, the date to submit the tax report card would likely need to be earlier than the actual deadline of **April 29, 2024**.

Canvassing Military Ballots

The board must canvass all military ballots that are:

- received by the board of education before the close of the polls on election day and showing a cancellation mark of the U.S. postal service or a foreign country's postal service, or show a dated endorsement of receipt by another agency of the U.S. government; **or**
- are signed and dated by the voter and one witness thereto, with a date which is ascertained to be not later than the day before the election and which must be received in the office of the clerk of the district not later than 5 p.m. on the day of the election, **May 21, 2024.**

Election inspectors process the ballots in the same manner as early mail and absentee ballots.

Thank you for listening!

Questions?