

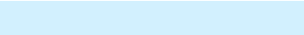
Winter Wisdom: Budgets & Ballots

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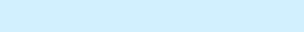
Legal Update

- For all elections after April 1, 2026, school districts must send the following information to the state Board of Elections in order to create a voting and elections database:
 - election results;
 - voter history files;
 - voter registration lists;
 - maps or other configuration of districts (as specified by the State BOE);
 - the number of and **reasons** for valid and invalid absentee and affidavit ballots;
 - election day poll sites; and
 - other data as the state board of elections requests.
- The method and mode of transmission will be detailed by the state Board of Elections in regulation
- Nothing in the law requires an election authority to create or otherwise provide a record it is not capable of collecting.



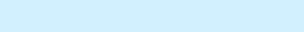
Legal Update

- Must transmit data upon certification of the election and completion of voter history files – small city and central/union free
- Records will be posted on a state website except for voter registration records (available upon request)
- The state Board of Elections will publish a list of entities who did not comply
- State Attorney General can enforce this law



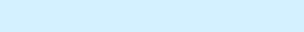
Canvassing

- Should early mail and absentee ballots be canvassed and counted separately?
- *“When the casting of early mail voters’ ballots shall have been completed, the inspectors shall ascertain the number of such ballots which have been deposited in the ballot box by deducting from the number of envelopes opened the number of missing ballots, and shall make a separate return thereof in duplicate. The number of early mail voters’ ballots deposited in the ballot box shall be added to the number of other ballots deposited in the ballot box in order to determine the number of all ballots to be accounted for in the ballot box. Such ballots shall then be counted or canvassed by the inspectors of election along with the other ballots cast at such school district election, or, where voting machines are used, shall be added to the votes recorded on such machines.” NY CLS Educ § 2018-e*



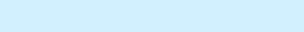
Intersected Properties

- Where does someone vote whose property is intersected by the boundary lines of two districts?
 - There is no caselaw or statutory language that we could find
 - When you designate a district for your children, you are designating that you are a resident of that district, so that is where you vote
 - If you do not have children in school, then you vote in the district you designate on your state income tax forms
 - You do not get to vote twice



Polling Locations

- Who sets the boundaries for polling locations?
 - The Board of Education
- How do we correct them when NTS' system is different?
 - Convince NTS to change them in their system
 - Have the Board of Education adopt new boundaries that coincide with the county's polling locations



Permanently Disabled List

- Some County BOEs have determined that if a voter on the permanently disabled voter list requests an early mail ballot from the County, the voter is removed from the permanently disabled list.
- School districts receive the permanently disabled list from the County

Legal Notice

- Publication Requirements - Four times in the seven weeks preceding the annual meeting, vote and election with the first notice to be published at least forty-five days before. (April 2nd – April 6th)
- Contents
 - Deadline for filing candidate petitions:
 - 30 days before the vote in Union Free/Central School Districts (April 21st)
 - 20 days before the vote in Small City School Districts (April 30th)
 - Personal Registration Requirements
 - Absentee and Early Mail Ballot Application Deadlines
 - Military Voters
 - Availability of voter lists

Education Law § 2002, 2003, 2004

Propositions

- Board-initiated propositions that require expenditure of funds
 - If the proposition must be included in the legal notice, it must be submitted at least 45 days before the election.
- Voter-initiated propositions
 - The Board must prescribe the requirements in their bylaws or policy manual. (Ed. Law § 2035)
 - This includes prescribing how many signatures the voter must have on their petition.
 - If the proposition must be stated in the legal notice, the proposition must be submitted at least 45 days before the election
 - Ed. Law § 2021 sets forth voter powers

Voter-Initiated Propositions

- Board may reject a proposition if it is not within the powers of the voters
Appeal of Munch, Decision No. 15,667
- Board may reject a proposition if the proposition asks for advisory opinions
Appeal of Wait, Decision No. 16,353
- Board may revise the language of a proposition to bring the proposition into conformity with the law, but is not required to do so
Appeal of Como, Decision No. 12,438

Candidate Petitions

- The law does not contemplate electronic signatures.
- Signature Thresholds
 - Union Free/Central – 2% of number who voted in last annual election or 25, whichever is greater.
 - Small City – 100 voters
- Deadlines
 - 30 days before election (Union Free/Central) – until 5 P.M.
 - 20 days before election (Small City)
 - What if candidate withdraws, dies or becomes ineligible less than 15 days before deadline?
 - Deadline extended for another 15 days provided no less than 7 days before the vote.

Ed. Law § 2018

Candidate Petitions

- Must include:
 - Name and residence of the candidate;
 - If not at-large: describe the specific vacancy on the board for which the candidate is nominated;
 - Include length of term and the name of the last incumbent, if any; and
 - The residence of each signer.
- No limit to how many petitions a qualified voter can sign.
- The District Clerk is not required to verify every signature and address

When Can I Make Candidate Packets Available?

- There is nothing in the law that says how candidate petition packets have to be distributed, or when they can be distributed.
- The District Clerk can post the packets online.
- Anyone can pick up the packet – it does not have to be the person running.

Candidate Qualifications

- Who is responsible for ensuring that the candidate is qualified for the position?
 - It is the candidate's obligation.
 - If they win a seat and then are found out to have lied, they would be removed from the Board
- Can we require the Board candidate to sign an attestation of qualification for board service when they return their nominating petition?
 - There is no requirement in the law for this.
 - The candidate packet should include specific information on the qualifications.

Candidate Expenditure Statements

- How many must be filed?
 - Must file 3 (30 days before, 5 days before and 20 days after election).
- With whom?
 - District Clerk
 - But if more than \$500, also file with Commissioner!
- If the candidate receives \$1,000 contribution or loan after close of filing period, must be filed within 24 hours.
- What if the candidate fails to file?
 - Another candidate must commence legal action in Supreme Court to enforce the requirement.
 - Failure to file is not a basis to set aside the results of the election.

Candidate Ballot Placement

- How is the candidate order determined?
 - Drawing of lots conducted the day after the last date for candidates to file petitions
 - What if the school is closed that day?
 - Names of all candidates shall be arranged by drawing lots with a direction that as many candidates may be voted for as there are vacancies to be filled
 - If separate specific office, must group candidates for that office together under a description of that office for which those candidates are nominated
- Must have one blank space under the name of the last candidate of each specific office for write-ins
- What if new petitions are received before extended filing date if a nominee withdraws, dies or becomes ineligible?
 - Re-draw order
 - Re-issue absentee ballots previously sent

Appeal of Christina Arroyo Rodriguez

Decision No. 18,372
(January 10, 2024)

- Petitioners raised allegations challenging the conduct for the 2023 election for School Board trustee seats. Chief among the complaints was the Petitioner's name was incorrectly printed on the ballot as Cristina Arroyo, instead of Cristina Arroyo Rodriguez.
- The appeal was dismissed for a failure to join the necessary parties.
- However, the Commissioner did address the incorrect name, stating the petitioner failed to demonstrate that any irregularity affected the outcome of the election.
- The Commissioner also, admonished the District and encouraged the District to make sure all candidates' names are accurately printed on future ballots.

Early Mail Voting

- Before actually sending an early mail ballot to individuals requesting one, districts must review all such applications and determine whether the applicant is a qualified voter.
- Districts must keep a list of all persons to whom early mail ballots have been issued. The list must be available for public inspection during regular office hours until the day of the election.
- An application for an early mail ballot must include the following declaration:
 - “I hereby declare 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 a early mail ballot, I shall be guilty of a misdemeanor”

Early Mail Voting

- Unlike with absentee voting, voters requesting an early mail ballot need not supply a reason why they cannot appear in person at the polls on election day.
- Despite this difference, the timelines for applying for and requesting an early mail ballot are the same as those for absentee ballots.

Early Mail Voting

Personal Registration	Poll Registration
• Voters can either register with the County or personally register with the District Clerk. • Must have an application that conforms to the State Board of Election's form: https://www.counsel.nysed.gov/sites/counsel/files/24-04-school-application-with-form.pdf • The board of registration/clerk must make a list of all person's early mail ballots have been issued or the district clerk should make the list if there is no board of registration.	• Voters don't have to be person's they just have to swear they are qualified to vote. • Must have an application that conforms with the requirements of the Education Law. • A letter requesting a ballot can also be submitted by a voter • The district clerk must make a list of all person's early mail ballots have been issued.

Can I Accept Applications Electronically?

- It is our opinion that the District can accept applications electronically.
- There is nothing in the law that prevents this.
- It simply states the timeline for when it has to be received by the District Clerk depending upon how you want the ballot delivered to you.
- The District Clerk will still check the signature against the voter registration paperwork.
- No bias is created by accepting it electronically.

Absentee Ballots – Poll Registration

- Application deadlines:
 - At least seven days before the election if ballot to be mailed
 - At least one day before the election if it is to be delivered personally to the voter
- Available to any qualified voter who will be unable to vote in person due to illness or physical disability, hospitalization, incarceration, travel outside the voter's county or city of residence for employment or business reasons, studies or vacation on the day of the election.
- Automatically send an absentee ballot to anyone whose records are marked "permanently disabled".
- District clerk must then record the name of the voter to whom the ballot was issued on a list of absentee ballots.

Absentee Ballots – Personal Registration

- Absentee ballot application is provided by NYSED
 - <http://www.counsel.nysed.gov/common/counsel/files/absentee-ballot-application-and-instructions-english.pdf>
- Reasons for requesting absentee ballot :
 1. absent from the county of his or her residence; or
 2. unable to appear at the polling place because of illness or physical disability, or duties related to the primary care of one or more individuals who are ill or physically disabled, or because he or she will be or is a patient in a hospital; or
 3. an inmate or patient of a veteran's administration hospital; or
 4. absent from his or her voting residence because he or she is detained in jail awaiting action by a grand jury or awaiting trial, or confined in jail or prison after a conviction for an offense other than a felony, provided that he or she is qualified to vote in the election district of his or her residence.
- Voter can designate an agent to pick up the ballot for them.

Absentee Ballots – Personal Registration

- Ballot applications cannot be received more than 30 days before the vote (April 21)
- Ballots must be mailed no later than 6 days before the vote
- If voter brings application in person after that, the absentee ballot should be handed to them by the district clerk

Military Voter - Registration

- For districts with personal registration
- Voter registration applications must be received by 5:00 p.m.. on the day before:
 - The District's Board of Registration meets; or
 - The last day for transmission of military ballots
- Language on military registration must be included in the legal notice
- Military registration forms must contain specific language from the Commissioner's Regulations

Military Voters – Absentee Ballot

- All communication with military voters must contain the mailing address of the Board
- Can designate a preference to receive a ballot by mail, fax or email
 - Designation remains in effect until revoked
 - If no designation is made, or not enough information is provided, the ballot should be sent by mail
- The original ballot application and ballot must be returned to the district by mail or in person
- The regulations state exactly what must be on the application.
- Ballots must be sent out as soon as practicable, but no later than:
 - 25 days before the election – central/union free
 - 14 days before the election – small city
- Three days before this, the ballot needs to be completed, including names of all candidates

Military Voters – Absentee Ballot

- Procedure for the voter:
 - The ballot has to be folded, placed inside the inner affirmation envelope, and sealed
 - Affirmation must be signed and the blanks must be filled in
 - Place the inner envelope in the outer enveloped
- If they received the ballot by email or fax
 - Send the military ballot
 - Include a form that includes the information normally appearing on the inner envelope for the regular ballot
- Ballots can only be **mailed back or returned in person**
- Ballots received by 5pm on the day of the vote are canvassed with other absentee ballots
- Voter must make the request for an absentee ballot each vote (but not for a revote)
- Clerks must maintain a list of all military voters who received ballots

Voting Rights Act

- A jurisdiction is covered when the number of voting age citizens (based on the current census) who speak a single language:
 - Is more than 10,000; or
 - More than 5% of all voting age citizens; or
 - Exceeds 5% of the residents of an Indian reservation; and
 - The illiteracy rate is higher than the national illiteracy rate
- Covered minority groups:
 - American Indians
 - Asian Americans
 - Alaskan Natives
 - Spanish-heritage citizens

Voting Rights Act

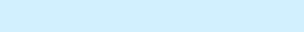
- Local counties covered:
 - Bronx (Hispanic)
 - Kings (Hispanic and Chinese)
 - Monroe County (Hispanic)
 - Nassau (Hispanic)
 - New York (Hispanic and Chinese)
 - Queens (Asian Indian, Bangladeshi, Chinese, Hispanic, and Korean)
 - Suffolk (Hispanic) and
 - [Westchester \(Hispanic\)](#)

Voting Rights Act

- All registration or voting notices, forms, instructions, ballots, written materials or information relating to the electoral process must be provided in English and the required language.
- Voters are entitled to receive assistance from a person of their choice.
 - Should provide someone who speaks the required language.

Improper Advocacy

- District sponsored information cannot advocate for voters to vote a certain way – they must be factual
 - Examples:
 - “The capital project would result in a 50% reduction in energy costs to the District.” – This flyer is ok
 - “Voting yes will make our students and teachers happier.” – This flyer is not ok because it advocates for a position
- Targeting selective lists of voters is not permissible
 - Pre-recorded vote reminder messages to parents only (Appeal of Schatle, Dec. No. 14,102)
 - Printed coupons to elementary school students for each voting parent that if returned on the day of vote would enable student to receive free homework pass or a free book (Appeal of Hiller, Dec. No. 15,704)



Election Day Conundrums

- Election inspectors and poll watchers
- Affidavit ballots
- Events held during the election
- Electioneering

Election Inspectors

- There must be at least two election inspectors per machine in non-city school districts
- Union free and central school districts
 - School board appoints the election inspectors and also appoints assistant election inspectors as needed
 - School board designates a chief election inspector
- Small city school districts
 - School board appoints three election inspectors for each election district and may appoint additional inspectors as needed
 - Inspectors elect a chairperson and the chairperson may appoint an assistant poll clerk

Student Election Inspectors

- Must be 17 years old
- Need consent of school district and parents
- They must not be absent from school
- The law is silent about training requirements
- They are entitled to payment

Poll Lists

- Do you need to have a sign-in sheet for voters?
 - Education Law Section 2029: “A poll list containing the name and legal residence of every person whose vote shall be received shall be kept by the clerk and the assistant clerk or clerks of the meeting or election.”
 - If you don't have one, how do you record the appearance of voters who voted by affidavit or declaration ballot?
 - It can be digital or hand written

Poll Watchers

- Districts with personal registration
 - A school board candidate may designate poll watchers
- Districts without personal registration
 - There is no explicit authority to designate poll watchers
 - Nothing prevents a qualified voter from being present at a polling place and exercising his/her right to challenge the qualifications of other voters
 - But, this person must not interfere with the election or engage in electioneering
- In either case, this person may not interfere with the election or engage in electioneering

Affidavit Ballots vs. Declarations

- If a person arrives to vote but their name is not on the list of voters, they may complete an affidavit ballot.
- Affidavit ballots (districts with personal registration)
 - The person must swear that:
 - He is duly registered to vote
 - His registration poll record appears to be misplaced or lost, or his name has been incorrectly omitted from the list of registered voters
 - Print the affidavit on an envelope
 - The voter votes on a paper ballot and places the ballot in the envelope
 - Seal the envelope and return it to the Board with the other records of the election
 - Ed. Law §§ 2019, 2019-a

Affidavit Ballots vs. Declarations

- Declaration ballots (districts without personal registration)
 - If someone challenges a voter as unqualified, the chairman must require the person to make a declaration
 - Union free/Central declaration- : “I do declare and affirm that I am, and have been, for the thirty days last past, an actual resident of this school district and that I am qualified to vote at this meeting.”
 - Small city declaration: 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.
 - If the person makes the declaration, then they can vote on the machines

Wrong Polling Places

- What do you do if a voter appears at the wrong polling site?
 - Direct them to the proper polling site
- If they vote by affidavit or declaration ballot at the wrong polling place, there is no record of their vote in the poll books, unless you keep sign-in sheets, and there is the possibility that they will vote twice

Media

- The press can be present on district property
- They cannot obstruct the voting process
- The District could prohibit them from questioning people within the 100 foot barrier if they are discussing people's opinions on the propositions or the candidates

Events During the Election

- Holding events the same day as the election is not per se improper, BUT the District must give notice of the event to all district residents in the same manner and not just to those residents who the Board feels would vote for the budget

Electioneering

- Electioneering is not permitted within a 100-foot zone measured from the entrance to the polling place.
- Election inspectors must post distance markers
- Example of electioneering: distributing a candidate's campaign materials
 - The District can post factual information within the 100 foot zone
- Nothing prohibits conducting “exit polls” as long as voter access to the polls is not hampered
- Ed. Law § 2031-a

Electioneering

- Students wearing “Vote Yes to Save RCS” were not considered electioneering where the Petitioner could not prove that the students walked within 100 feet of the polling place . The fact that voters may have walked by the students to get to the polling place did not constitute improper electioneering.
 - Appeal of Pasquini, Dec. No. 16,500
- A Board candidate was seen speaking with voters within 100 feet of the polling place. However, since no one could prove the candidate was speaking to voters about the election in an effort to influence their vote, the Commissioner did not find this to be electioneering.
 - Appeal of Ewart, Dec. No. 15,127
- The Commissioner found a violation where a Board candidate was seen walking people from their cars to the polling place and asked them to vote for her within 100 feet of the polling place.
 - Appeal of Touré, Dec. No. 16,660

Improprieties to be Avoided

- Incumbent Board Members running for re-election should not serve as chairperson of the annual meeting
 - Appeal of Bentley and Boll, Decision No. 16,356

Post-Vote Quandaries

- Canvassing machine votes, absentee and affidavit ballots
- Certifying the result
- Discrepancies in vote counts
- Who gets the seat
- Oaths of office

Canvassing Votes

- How are the votes counted?
 - Tabulate machine votes first
 - Tabulate absentee ballots and early mail ballots second
- Who counts?
 - Election Inspectors
 - They count all write ins, absentee and early mail ballots
 - District clerk should not be canvassing the vote
- Who announces the result?
 - The chairperson of the meeting declares the result of each ballot, as announced by election inspectors
 - District clerk records the results
 - Election districts – inspectors' written report goes to the chief election inspector of the election district
 - The chief election inspectors file their reports with the district clerk within 24 hours
 - The Board must, within 24 hours, declare the results
- Ed. Law § 2034

Canvassing Votes

- What about folding papers in the ballot, defacing or tearing the ballot or making an erasure?
 - Voids the ballot
- What about marks other than marking an “X” or checkmark on a ballot, or other marks that makes it impossible to determine the voter’s choice for a particular candidate?
 - Renders the ballot or the voter’s choice for that office blank, but does not void it
- What do you do with voided or blank ballots?
 - Seal in envelope

Canvassing Votes

- What if voters write in the name of a candidate but fail to mark the box next to the write in signature line with an “X?”
 - In Appeal of Gresty, Dec. No. 12,580, the Board invalidated several ballots because the voters wrote in the name of a candidate but did not mark an X or a check mark in the adjacent box.
 - The Commissioner found that writing the name of a candidate is sufficient to indicate a vote. There is no requirement that a voter must place a mark in an adjacent box.

Absentee Ballots

- How are they counted?
 - After the closing of the polls the election inspectors examine absentee ballots
 - Open the envelope, remove the ballot, and then put it in the proper ballot box
 - The election inspectors will then canvass the absentee ballots along with the other ballots cast. This must be done on election day.
- Where must they be opened?
 - Absentee ballots must be opened in public so that qualified voters present can object to the voting of any ballot
 - They do not have to be opened in front of the candidates or their poll watchers
- Ballots received after 5:00 p.m. on election day are invalid
- Missing or inaccurate dates on the ballot envelopes are not grounds for voiding the ballot

Absentee Ballots

- How does someone challenge an absentee ballot?
 - Any qualified voter can, prior to the election, file a written challenge to the qualifications of any person whose name appears on the list of absentee voters
 - The written challenge must be transmitted by the clerk or designee to the election inspectors on the day of the election
 - An absentee ballot cannot be challenged after the election.
- What if the signatures on the ballot and the register do not match, envelope contains no signature, person's name not on register or person who signed envelope voted in person?
 - Inspectors must return the envelope unopened to the district clerk

Absentee Ballots

- The Commissioner held that failure to maintain a list of persons receiving absentee ballots is “an open invitation to fraud and threatens the integrity of the electoral process.” A district’s failure to maintain a list was found to be a laxity that threatened the integrity of the election. The failure to post such a list prevented voters from challenging absentee ballots at the time of the election.
 - The Commissioner annulled the results of this election and ordered a revote.
 - Appeal of Touré, Dec. No. 16,660 (2014).

Absentee Ballots

- Can you pre-mark poll books with “voted absentee” so poll workers will know if someone who presents themselves to vote also submitted an absentee ballot?
 - Yes.
- Can you have a team in a central location dedicated to canvassing absentee ballots?
 - No. See previous slide on canvass procedures.

Counting Early Mail Ballots

Personal Registration	Poll Registration
• To canvass the ballot, the inspectors should compare the signature to the register. If they correspond, then the inspector should sign off on the register with their initials. • If the person has not voted in person, and no objection is made and sustained, their envelope should be opened and the ballot withdrawn without unfolding and deposited into the proper box. • The election inspectors should note if there is no ballot in the envelope. • Ballots should be counted along with the other ballots cast at the election. If voting machines are used, the early mail ballots should be added to the votes recorded on such machines.	• If the envelope is unsigned, the ballot should be laid aside unopened and returned to the district clerk. • If the person has not voted in person, and no objection is made and sustained, the envelope should be opened and the ballot withdrawn without unfolding and deposited into the proper box, and the inspectors shall enter the words “early mail vote” in the register. • The election inspector should note if there is no ballot in the envelope. • Ballots should be counted along with the other ballots cast at the election. If voting machines are used, the early mail ballots should be added to the votes recorded on such machines.

Counting Early Mail Ballots

- Any written challenges to early mail voters must be transmitted to the inspectors of election on election day
- A challenge cannot be made that a voter should have applied for an absentee ballot

Affidavit Ballots

- How are they counted?
- The Board or its designee(s) (could be District Clerk) has to consider each affidavit ballot at a meeting called no more than 10 days after the election
 - Five days prior to the meeting, notice must be sent by first class mail to each candidate entitled to have watchers or challengers present at the polls
- At the scheduled meeting, each affidavit envelope must be considered
 - Reject any ballot not sealed in the envelope
 - Reject any ballot of any voter for whom there is no registration poll record or central registration record in the office of the board of elections
 - After canvassing the votes, add the tally to the previous tally of all votes and announce the result

Affidavit Ballots

- Any person lawfully present can object to a ballot not being counted and the inspectors must then make a determination
- Must notify anyone whose affidavit ballot was rejected, along with the reason for the rejection and the appropriate time to register or reregister.
 - Include an application for personal registration if appropriate

Varied Terms

- If there is an unexpired term to fill that is scheduled to expire at the conclusion of the school year, the candidate with the highest number of votes is elected to that position
- If there is an unexpired term to fill which is shorter than regular term, the candidate with the lowest number of votes that would still make him eligible for a position is elected to that position
- The District Clerk must provide written notice either personally or by mail to each person elected
- If an individual is elected to fill an expired term, their term begins when the election results are declared
 - Oath of office can be administered that night if the candidate is present or within 30 days of the election, otherwise position will become vacant
 - If a current board member is elected to fill a vacancy, he/she must resign from his/her current seat and file a new oath of office to fill the vacancy to which he/she was elected

Hypothetical

- There are four open seats:
 - Seat 1 – Sheldon's seat expires June 30, 2025
 - Seat 2 – Mary's seat expires June 30, 2025
 - Seat 3 – Missy's seat expires June 30, 2025, but she resigned in January 2025 and no one was appointed to the vacancy
 - Seat 4 – Georgie's seat expires June 30, 2027, but he resigned in November 2024 and Paige was appointed to fill the vacancy
- What happens if:
 - Sheldon runs and gets the fourth highest votes?
 - Mary runs and gets the third highest votes?
 - Paige runs and wins the most votes?
 - Paige runs and gets the fourth highest votes?
 - What if you only had 3 candidates who ran? The write-in with the most votes (5) was Billy.

Certification of Results

- Who certifies the result of the vote?
 - The Board of Education
- When may they certify the results?
 - Districts with personal registration: not until the affidavit ballots are canvassed
 - Districts without personal registration: as soon as all the votes are canvassed
- Ed. Law § 2034

Discrepancies

- All disputes must be referred to the Commissioner of Education
- Can someone request to re-canvass the voting machines?
 - Nothing in the Education Law authorizes the re-canvassing of the votes cast at elections.
 - The law requires that after all votes have been canvassed, the ballot boxes be sealed and can only be opened upon order of the Commissioner.

Discrepancies

- The Commissioner has annulled the election results when voting machines did not properly tabulate the votes if the irregularities affected the outcome of the vote or if the outcome of the vote makes it unable to determine the will of the voters.
 - See, Appeal of BOE of the Goshen Central School District, Dec. No. 15,721; Appeal of BOE of the Minerva Central School District, Dec. No. 16,628.

Appeal of Onteora CSD

Decision No. 18,171
August 3, 2022

After the closing of the polls, there were 8 more ballots than there were names on the poll list. Eight ballots were removed at random from the ballot boxes. However, they were not subtracted from the vote count.

One candidate won their seat by only seven votes.

The District requested a recount from the Commissioner.

How do you think the Commissioner ruled?

Appeal of Onteora CSD

Decision No. 18,171
August 3, 2022

The Commissioner did not order a recount because the District could not prove that failing to remove the 8 ballots would result in a change in the election results.

The inaccurate vote count resulted from “mere negligence” and did not meet the required standard. The District could not prove that the “irregularities were so pervasive that they vitiated the electoral process or demonstrated informality to the point of laxity in adherence to the Education Law.”

The “Saving Grace”

- In order to invalidate the results of an election, it must be shown that irregularities occurred, and that these irregularities affected the outcome
 - A candidate speaking with voters within 100 feet of a polling place did not invalidate election because there was no proof he was influencing voters to vote a certain way
 - Appeal of Bentley, Decision No. 16,356