



SCHOOL ELECTION 2023 QUESTIONS AND ANSWERS

Below are frequently asked questions about the upcoming April and November general elections. The answers to these questions are based upon the best information available in January 2023. For information on the 2023 school budget deadlines, please review the New Jersey Department of Education’s 2023 School Election and Budget Calendar at www.njsba.org under Our Services – Legal – Topical School Law Library, “[School Elections FAQ](#).” This calendar reflects dates that the Department of Education revised pursuant to *N.J.S.A. 19:60-1*, which gives the Commissioner the authority to change the annual school election date or any other school budget or election calendar date if it coincides with a period of religious observance that limits significantly the usual activities of the followers of a particular religion or that would result in significant religious consequences for such followers. Additional 2023 school budget and election date information can be found on the [NJDOE District Wide Budget page](#). See particularly the [school election and budget procedures calendar](#).

Another source of guidance and information about election dates is the Division of Elections’ 2023 [Election Information webpage](https://njelections.org/election-information.shtml), <https://njelections.org/election-information.shtml>, as well as the [chronological election timeline](https://nj.gov/state/elections/election-chronologicaltimelines.shtml), <https://nj.gov/state/elections/election-chronologicaltimelines.shtml>. Please note that P.L. c. 37 changed the date for mail-in ballot transmission from the 40th to 45th day before an election (for elections after July 2011), with certain exceptions, and would permit a referendum to exceed the municipal levy cap to occur on the same day as Special School Elections.

On January 17, 2012, Gov. Chris Christie signed legislation, P.L. 2011, c.202, which permits communities to move the April annual school board member election to November while eliminating the vote on a district’s proposed budget that is at or below the tax levy cap.

Under the law, there are three ways a community can move the election:

1. A board of education can pass a resolution,
2. The municipal governing body, or
3. Bodies can pass a resolution or voters can pass a public question that is presented to them at the November General Election.

Pursuant to *P.L. 2013, c. 172*, prior to holding a meeting for the adoption of the resolution to move the date of the annual school election, the governing body or bodies of the municipality or municipalities constituting the district shall provide adequate notice of the meeting to the affected board or boards of education.

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Pursuant to *P.L. 2012, c. 78*, approved December 7, 2012, notice in writing to change the date of a school election from the third Tuesday in April to the first Tuesday in November, shall be given to the county clerk no less than 60 days prior to the third Tuesday in April to take effect for that year's election. For a change from the first Tuesday in November to the third Tuesday in April, notice must be given to the county clerk no less than 85 days prior to the third Tuesday in April, to take effect for that year's election. Timely notice shall also be given by the board of education or municipal governing body adopting such resolution to any other affected boards of education and municipal governing bodies.

Unlike a move to a November election date, there is no four (4) year election requirement prior to a move from November to April.

Any additional changes to the school election process will be posted on the New Jersey School Boards Association's website.

Boards are urged to consult with their board attorneys for legal advice concerning the school election process.

Annual School Election – Date

1. When does the annual school election take place?

Annual school district elections take place either on the third Tuesday in April or on the first Tuesday after the First Monday in November. The April school election is held in each Type II school district, including regional districts, on the third Tuesday in April, except the date may be moved by the Commissioner for periods of religious observances.

On January 17, 2012, Gov. Chris Christie signed legislation, P.L. 2011, c.202, which permits communities to move the April annual school board member election to November while eliminating the vote on a district's proposed budget that is at or below the tax levy cap.

2. Can the Commissioner change the date of the annual school election?

Yes. The Commissioner of Education shall make any adjustments to the school budget and election calendar which may be necessary to change the annual school election date or any other school budget and election calendar date if that date coincides with a period of religious observance. Should calendar adjustments be necessary, the Commissioner must notify the local school boards, county clerks and boards of election no later than the first working day in January of that election year. 19:60-1.

P.L. 2008, c. 129 <http://www.njleg.state.nj.us/2008/Bills/PL08/129.pdf> clarified that “a period of religious observance” means any day or portion thereof on which a religious observance imposes a substantial burden on an individual’s ability to vote. The period of religious observance must limit significantly the usual activities of the followers of a particular religion or result in significant religious consequences for such followers.

For example, in 2011, the date of the election, Tuesday, April 19, was changed to Wednesday, April 27, as it coincided with a period of religious observance, the first full day of Passover. Other related dates on the 2011-2012 budget and election calendar were changed as well. Neither the April nor November general election dates were changed in 2012, although the September special school election date was moved to Monday, September 24, 2012 as Tuesday, September 25 marked the beginning of Yom Kippur.

Neither, the dates of the annual school election nor the dates of the special school elections were changed for 2013. However, some election-related dates for the April election were affected by a period of religious observance. As Good Friday occurred on March 29, dates were revised for finalizing the budget, which changed from March 22 to March 21, 2013, the earliest date for holding a hearing on the budget changed from March 22 to March 21, 2013 and the last day for holding a public hearing and for adopting a budget changed from March 29 to March 28, 2013.

In 2004 the Commissioner, exercising his right to change the annual school election date if it coincides with a period of religious observance, moved the April school election date from Tuesday,

April 15, the first day of Passover, to Wednesday, April 23, 2014. In examining possible alternative dates, the Department took into consideration all religious observances during the time following April 15 including Holy Thursday, Good Friday and the last two days of Passover.

3. Has the annual school election date ever been changed for any other reason?

Yes. When deemed necessary, the Legislature has enacted special legislation to change the election date and/or other dates in the election and budget processes. It is not uncommon for this to occur in the first year of the first term of a new governor. In 1990, the first year of the Florio administration, the election date was changed from Tuesday, April 5 to Tuesday, April 24, resulting in numerous date changes in the election and budget processes. In 1994, the first year of the Whitman administration, many of the election and budget-related dates were revised, although the date of the election, Tuesday, April 19, remained unchanged. Additionally, in 1991, the first year of enactment of the Quality Education Act, the election date was postponed from Tuesday, April 2 until Tuesday, April 30.

4. Why do changes often occur in the school budget/election calendar in the first year of the first term of a new Governor?

Some statutory dates and other affected dates on the budget and election calendar may be revised as a result of an extension of the date of the Governor's State Budget Message. The Budget Message occurs at 12 noon on a date on or before the fourth Tuesday in February in each year. *N.J.S.A.* 52:27B-20. However, the budget message is often delayed in an inaugural year when there is a new Governor. The Commissioner releases state aid figures to school districts within two days following the Governor's Budget Message. *N.J.S.A.* 18A:7F-5. The delay in the release of state aid figures can cause delay of budget development or the election. *N.J.S.A.* 18A:7F-5c authorizes the Commissioner to make any adjustments to the school budget calendar that may be necessary to conform with the state aid notification date that follows the Governor's State Budget Message.

In 2016, the Governor's Budget Message was scheduled for Tuesday, February 16, with state aid figures to be released to school districts by Thursday, February 18.

In 2010, the Governor's Budget Message was changed from the fourth Tuesday in February to March 16 by *P.L.* 2009, c. 269. The extension of time was designed to give new Governor Christie's administration sufficient time to transition. In 2010, the Commissioner additionally adjusted the budget calendar under the authority granted in *N.J.S.A.* 18A:7F-5c.

Similarly, there have been adjustments to the calendar in other past years. For instance, [P.L. 2006, c. 2](#) extended the time for then newly-elected Governor Corzine to give his 2006 Budget Message until March 23, 2006, and the Senate and Assembly leadership amended the legislative calendar to designate Tuesday, March 21, as the date for Governor Corzine's first annual budget address. For 2007 and 2008, respectively, the Governor gave his Budget Messages on February 22 and February 26. For 2009, the Governor extended the date of his Budget Address to March 10 under the

authority of [P.L. 2009, c. 15](#), and several statutory dates were revised to reflect the state aid notification date of March 12.

Special Elections

6. Can school elections occur on dates other than the annual school election?

Yes. The board of education of a Type II (elected) school district may call a special election on the fourth Tuesday in January, the second Tuesday in March, the last Tuesday in September or the second Tuesday in December, when in its judgment the interests of the schools require it. *N.J.S.A. 19:60-2*.

The January special school elections had been legislatively eliminated for years in which a primary presidential election occurs, by operation of a 2008 amendment to *N.J.S.A. 19:23-40* which also moved the primary election date to an earlier day in February. A 2011 amendment to *N.J.S.A. 19:2340, P.L. 2011, c.134*, moved the presidential election primary to June and restored the January special school election in those years.

N.J.S.A. 19:60-2 authorizes the Commissioner to change, in any school year, any date authorized for a special school election if that date coincides with a period of religious observance. The law requires the Commissioner to inform local school boards, county clerks, and boards of election of the adjustment no later than the first working day in January of the year in which the adjustments are to occur.

P.L. 2008, c. 129, clarified that “a period of religious observance” means any day or portion thereof on which a religious observance imposes a substantial burden on an individual’s ability to vote. The period of religious observance must limit significantly the usual activities of the followers of a particular religion or result in significant religious consequences for such followers.

In 2012, the September special school election date was moved to Monday, September 24, 2012 as Tuesday, September 25, 2012 marked the beginning of Yom Kippur.

7. What are special school elections?

A special election is a school election that is held at a time other than the annual school election. *N.J.S.A. 19:1-1*. It is not the budget election and is generally related to a supplemental financial issue or a bond referendum. Note however, if there is a tie vote or a failure to elect due to improper election procedures, a special election is used to fill the vacancy on the board. *N.J.S.A. 18A:12-15*. Boards should consult with their attorneys concerning how to proceed if there is a tie or failure to elect under *N.J.S.A. 18A:12-15*.

This election for board vacancies does not appear to be one of the special elections mentioned in *N.J.S.A.* 19:60-2. Judicial intervention may be needed to resolve the apparent conflict between the two statutes.

8. What kind of notice must be given for a special school election?

The board of education shall give the municipal clerk or clerks and the county board of elections no less than 60 days' written notice of its intention to hold a special school election. *N.J.S.A.* 19:60-2.

April School Election

- a. The board secretary is responsible for receiving nominating petitions (50 days prior to the election) *N.J.S.A.* 19:60-7. Board member candidates are strongly encouraged to contact the board secretary in advance to confirm the filing deadline.
- b. The board secretary is responsible for receiving objections to nominating petitions, no later than the fourth day after the deadline for filing petitions, *N.J.S.A.* 19:13-10. If an objection is timely filed, the board secretary must notify the candidate, forthwith by mail at the address listed in the candidate's petition (*N.J.S.A.* 19:13-10) and should notify the board of education in order for the board to determine the challenge by the 44th day prior to the election, *N.J.S.A.* 19:60-7. In this way, the board is able to convene a public meeting to hear the objection while maintaining compliance with Open Public Meetings Act. In the event that no objections are filed, the board may simply cancel the meeting. The New Jersey Division of Elections [Chronological Election Timeline](#) has determined that the last day on which a school board candidate may file a petition with the Superior Court alleging a violation or threatened invasion of the candidate's rights under the nominating petition is the 46th day before the April election,; *N.J.S.A.* 19:60-7.
- c. The board secretary is also responsible for accepting the withdrawal of candidates' names when given notice by the candidates, 44 days prior to the April election. *N.J.S.A.* 19:60-7.
- d. The board secretary is responsible for holding a drawing for ballot positions and certifying results to the county clerk within two days of the drawing. The person making the drawing shall make public announcement at the drawing of each name, the order in which the name is drawn and the term of office for which the drawing is made; a separate drawing shall be made for each full term and for each unexpired term, respectively. *N.J.S.A.* 19:60-8;
- e. Finally, the board secretary is responsible for certifying and forwarding to county clerk any public questions to be acted upon, not later than 10 a.m. of the 18th day prior to the election. *N.J.S.A.* 19:60-4. The Department of State, Divisions of Elections, requests that boards of education submit the public question to the county clerk as early as possible to allow for the absentee ballots and sample ballots to be printed and delivered on time.

November General Election

- a. During the November General Election, the county clerk is responsible for receiving nominating petitions by the last Monday in July. *N.J.S.A. 19:60-7*;
- b. The county clerk is responsible for accepting withdrawals from school board candidates for the November general election; such withdrawals must be filed with the county clerk 70 days prior to the November 3 General Election, which is *N.J.S.A. 19:60-7*. Defective petitions, except for the addition of signatures, on or before the third day after the last day for the filing of petitions; *N.J.S.A. 19:13-13*;
- c. The county clerk is responsible for accepting filed objections to nominating petitions *N.J.S.A. 19:13-10*. Whenever a timely objection to a November school board petition is filed with the county clerk, the clerk must make a determination on the objection on or before the 10th day after the last day for filing school board member candidate petitions,
- d. The last day on which a candidate may file a verified complaint with the Superior Court alleging an invasion of that candidate's rights under the nomination petition is the 12th day after the deadline for filing a petition. *N.J.S.A. 19:60-7*
- e. During the General Election, the county clerk retains ballot drawing duties in those districts with November elections, *N.J.S.A. 19:60-8*. According to *N.J.S.A. 19:14-12*, the county clerk shall hold a drawing for ballot positions. The drawing must take place at 3:00 p.m. on the 85th day prior to the election. *N.J.S.A. 19:14-12*;
- f. Finally, the board secretary is responsible for certifying and forwarding to county clerk any public questions to be acted upon, no later than 10 a.m. of the 60th day prior to the election. *N.J.S.A. 19:60-4*. The Department of State, Divisions of Elections, requests that boards of education submit the public question to the county clerk as early as possible to allow for the absentee ballots and sample ballots to be printed and delivered on time.

For school elections, it is not the board secretary's responsibility to investigate and verify that the information contained in a nominating petition is correct, that all the voters are properly registered voters and that all names and addresses are correct. The board secretary's role is to determine if the nominating petition is facially correct, 10 signatures, all sections completed, etc. While some boards of education will go so far as sending employees to the county clerk's office to verify voter registration and signatures, it is not required. A board secretary is not explicitly authorized to disqualify a nominating petition. Should a board secretary believe that there is an objectionable aspect to the nominating petition, such as signatures from individuals who are not registered voters or an incurable conflict of interest, an objection to the petition should be filed, with the board of education making the decision if the petition is to be disqualified. See also, Questions 69-72.

12. What is the role of the local board of education in the annual school election?

The local board of education:

- a. Sets the hours of election within the statutory limitations. For all school elections held at a time other than the general election, the polls shall be open between 5 p.m. and 9 p.m. and during any additional time the school board may designate, between 7 a.m. and 9 p.m. Starting in January 2017, the polling hours for school elections held at a time other than the general election, shall be between 4 p.m. and 8 p.m. and during any additional time which the school board may designate, between the hours of 6 a.m. and 8 p.m. *See, P.L.2015, c. 181*. For a November general election, held on the date of the general election, the polls shall be open from 6:00 a.m. to 8:00 p.m. by statute, *N.J.S.A. 19:15-2*;
- b. Sets the hourly rate of compensation for school election workers for school elections held at a time other than the November general election, *N.J.S.A. 19:45-6*;
- c. Rules on objections to nominating petitions for school elections held at a time other than the November general election, on or before the 44th day preceding the election. (See question 70) *N.J.S.A. 19:60-7*;
- d. May, in the case of a regional school district, identify the constituent municipality's share on the ballot, *N.J.S.A. 19:60-9 and 18A:13-17*;
- e. Pays for all costs, charges and expenses of school elections held at a time other than the November general election. *N.J.S.A. 19:60-12*. In the event the annual school election is moved to the November general election, the board of education and county board of election shall enter into an agreement, pursuant to guidelines established with the Secretary of State under which the board of education shall pay any agreed upon increase in the costs and charges of copies that may be associated with holding the school election simultaneously with the general election, *N.J.S.A. 18A:60-1.1*;
- f. *N.J.S.A. 18A:36-27* requires boards of education and appropriate officials in nonpublic schools to provide a voter registration form, summary of voter registration eligibility requirements, and material describing the role of a citizen and the importance of voting, to each eligible high school pupil prior to the graduation date for the school year. Previously, the law only required that voting information be provided to graduating pupils in conjunction with the voter registration drive conducted by each county commissioner of registration.

13. What is the role of the local municipal clerk in school elections?

On or before April 1 of each year, the municipal clerk certifies to the county board of elections a suggested list of polling places, *N.J.S.A. 19:8-2*. The municipal clerk also assists the county board of elections and the county clerk, in the distribution and collection of election materials. *N.J.S.A. 19:9-5*.

14. What is the role of the County Clerk in school elections?

The county clerk has a variety of school election duties including, but not limited to printing ballots, printing and mailing sample ballots, advertising for and mailing mail-in ballots, and reporting the result of the tally sheets. *N.J.S.A.* 19:49-4, 19:53C-20, 19:57-8, 19:57-16, 19:60-10.

For the **November general election**, the county clerk is specifically responsible for certain legal requirements and mechanical duties for running the election, including

- a. Receiving nominating petitions for the general election, on or before 4:00 p.m. the last Monday in July before the primary election. *N.J.S.A.* 19:60-7;
- b. Withdrawing candidates' names from the general election when given notice by the withdrawal, deadline, which is the 70th day prior to the General Election. *N.J.S.A.* 19:60-7;
- c. Receiving timely filed objections to general election nominating petitions no later than the fourth day after the last day for filing petitions. *N.J.S.A.* 19:13-10; *N.J.S.A.* 19:60-7;
- c. Ruling on written objections to nominating petitions on or before the 10th day after the last day for the filing of petitions for candidates seeking election as a member of the board of education at the November general election, deadline June 14, 2019. *N.J.S.A.* 19:60-7.

15. What is the role of the County Board of Elections?

The county board of elections has a variety of school election duties, including but not limited to publishing election notices, appointing and certifying district board of election workers, appointing the judge and inspector for the school election, receiving requests for and appointing and certifying challengers, establishing polling places, advertising the election, redistricting, ordering voting authority pads, counting mail-in ballots, recounts and certifying the election and in certain counties, ordering poll list books and informing candidates that voting machines are ready for inspection. *N.J.S.A.* 19:8-3.1, 19:8-5.1, 19:9-2.

16. What is the role of the Superintendent of Elections?

Not all counties have a superintendent of elections. In Atlantic, Bergen, Burlington, Camden, Essex, Gloucester, Hudson, Mercer, Monmouth, Morris and Passaic counties, the superintendent of elections has a variety of school election duties including but not limited to those involving voter registration, changes of residence, informing candidates that voting machines are ready for inspection and maintaining voter books and voting machines.

17. Who handles complaints about Election Day irregularities?

All complaints are referred to the county election officials, with an appeal to a designated Superior Court judge within the county where the school district is located. See, generally *Current N.J. Court Rules 4:3-2*. Complaints concerning election crimes would be handled by the prosecutor in the county where the alleged crime occurred or the Attorney General's office.

18. Does the New Jersey Attorney General have a role in the process?

Yes. The Secretary of State is the Chief Elections Officer of New Jersey. Prior to April 1, 2008, the electoral division was under the [New Jersey Attorney General](#). *N.J.S.A. 52:16A-98*. The Attorney General retains various responsibilities with respect to the oversight of the county boards of election and Superintendents of Elections. See, for example, *N.J.S.A. 19:8-3.3* regarding the accessibility of polling places.

19. Who ensures compliance with the campaign expenditures requirements?

The Election Law Enforcement Commission (ELEC) ensures compliance with the required reporting of campaign contributions, campaign materials and campaign spending. *N.J.S.A. 19:44A1 et seq.* All candidates are required by law to comply with the provisions of the "New Jersey Campaign Contributions and Expenditures Reporting Act." Detailed regulations implementing the ELEC law can be found at *N.J.A.C. 19:25-1.1* to *19:25-26.10*. For further information, call ELEC at 609-292-8700 or 1-888-313-ELEC (3532) (toll free within New Jersey) or visit the website, www.elec.state.nj.us. For more on election reporting requirements, see the discussion later in this document under "Campaign Contributions/Expenditures." See Question 46.

Polling Places

20. How are polling places established?

On or before April 1 of each year, the municipal clerk certifies to the county board of elections a suggested list of places in the municipality that are suitable for polling places. The county board of elections selects the polling places and may choose buildings not on the suggested list when the county board of elections deems it expedient. In no case shall the authorities in charge of a public school or other public building deny the request of the county board for the use, as a polling place, of any building they own or lease. *N.J.S.A. 19:8-2*. Each polling place selected must be accessible to individuals with disabilities and to the elderly unless the Attorney General determines that a state of emergency exists that would otherwise interfere with the administration of that election, or the Attorney grants a temporary waiver. *N.J.S.A. 19:8-3.1*. (See also Question #22.)

On or before May 15 of each year the county board of elections certifies a list of the selected polling places to the sheriff, county clerk, superintendent of elections and each municipal clerk. *N.J.S.A. 19:8-4*. Where the county board fails to agree on the polling place for any election district, within five days of an election, the county clerk shall select the polling place. *N.J.S.A. 19:8-2*.

21. Where can polling places be located?

The county board of elections must give preference to schools and public buildings if space can be made available without “detrimental interruption of school” or the usual public services provided in the building. In no case shall the authorities in charge of a public building deny the request of the county board to use any building they own or lease, as a polling place. *N.J.S.A.* 19:8-2. If school officials believe that holding an election in a particular school building would cause detrimental interruption of the school day, they are encouraged to communicate this information to the county board of elections. School officials should be prepared to explain the reasons for anticipating “detrimental interruption.” Should the county board persist in its designation of that school as a polling place, the school district’s remedy would appear to be in Superior Court, and the board should seek assistance from its legal counsel.

The county board may select schoolhouses or public buildings as polling places in any municipality in the county whether or not the school or buildings are located within the election district for which the polling place is established. The county board of elections shall also designate the rooms or places, entrances and exits to be used.

A polling place other than a schoolhouse or public building may be selected when the county board of elections determines that an inconvenience would be caused to the voters of the election district by locating the polling place in a schoolhouse or public building.

In selecting polling places, consideration shall be given to the needs of individuals with disabilities and the elderly. *N.J.S.A.* 19:8-3.

For elections that take place in school buildings (other than school elections), the school district will be reimbursed for the use of the building by agreement, for expenses of light, janitorial and other services. *N.J.S.A.* 19:8-2; *N.J.S.A.* 19:60-12. The county board determines and certifies to the board of chosen freeholders the amount to be paid. It may not exceed the amount paid for polling places in private premises. *N.J.S.A.* 19:8-3.

22. Must polling places be accessible to elderly and physically disabled voters?

Yes, they must be accessible under both federal and State law. [42 USCS § 1973ee-1](#); *N.J.S.A.* 19:8-3.7

Each polling place selected by the county board of elections must be accessible to elderly and physically disabled voters unless the Attorney General determines that a state of emergency exists that would interfere with the election. Pursuant to *N.J.S.A.* 19:8-3.1, the Attorney General may grant a temporary waiver if no accessible polling place is available, but may only do so twice for each polling place. A polling place shall be accessible if it is in compliance with the federal Americans

with Disabilities Act. *N.J.S.A.* 19:8-2. On or before May 15 of every other year, an advisory committee reports to the Secretary of State and the county board of elections a list of inaccessible polling places in the county. *N.J.S.A.* 19:8-3.4. A non-lapsing state fund is established to improve the accessibility of polling places. *N.J.S.A.* 19:8-3.8. Each year the county board certifies a list of polling places so selected to the sheriff, the county clerk and superintendent of elections and each municipal clerk in the county. *N.J.S.A.* 19:8-4.

The elderly and disabled are entitled to voting aids including conspicuous signs in the interior passageways at the polling place, sample ballots identifying the accessibility of the polling place, and voting instructions conspicuously displayed at the polling place, and registration, voting, and election information by telecommunication device, or TDD. *N.J.A.C.* 13:17-6.9.

23. What can elderly or physically disabled voters do if they are assigned to an inaccessible polling place?

In the event that a polling location has been reported inaccessible by the county board of elections and such board has not been able to correct any instances of inaccessibility, or has been unable to relocate such polling location to an accessible site, affected elderly and disabled voters may apply for a mail-in ballot. The voter will, upon advance request, be permitted to either vote at an alternative accessible polling place or be provided with a mail-in ballot. *N.J.S.A.* 19:8-3.2; *N.J.A.C.* 13:17-6.9.

24. Can polling places be consolidated?

Yes. Polling places can be consolidated in school elections. Upon the request of a board of education or the municipal clerk or upon its own initiation, the county board of elections may designate the polling place and voting equipment of one election district to serve as the polling place and voting equipment of one or more other election districts. To be eligible for consolidation, a polling place must have had no more than 500 ballots cast for each of the two preceding annual school elections by the voters of the election districts for which that polling place is designated. If, at two consecutive annual school elections after consolidation, more than 500 ballots are cast in the consolidated election district, the county board of elections shall effect an appropriate revision. *N.J.S.A.* 19:60-3(b)(1).

25. How are election duties assigned when polling places are consolidated?

The county board of elections shall designate at least two members from among the members of the consolidated election districts to perform school election duties. One of the persons so designated shall serve as judge and another as inspector for school elections. *N.J.S.A.* 19:60-3(b)(2).

Advertisements/Notices

26. Must the board secretary or the board of education advertise the board seats up for election at the upcoming annual school election and, if so, when?

For the April Annual School Election there is no statutory or regulatory requirement that the board secretary or the board of education advertise the seats up for election. Certain county boards of election recommend that, for the April Annual School Election, an advertisement of candidacy information be made in January. For the **November General Election**, the school business administrator shall certify to the county clerk a statement designating the public offices to be filled at the **November General School Election** before the date of the primary election. *N.J.S.A. 19:60-7*.

27. What advertisements and notices are required for school elections?

Once, during the 30-day period preceding the date fixed for the closing of the voter registration books for the school election, the county board of elections shall publish notice of the school election. The voter registration deadline is 21 days prior to the election.

The notice shall include:

- a. The day, time and place thereof;
- b. The offices, if any, to be filled at the election;
- c. The substance of any public question to be submitted to the voters thereof;
- d. That a voter who, prior to the election, shall have moved within the same county without:
 - i. filing on or before the 21st day preceding the election, a notice of change of residence with the commissioner of registration of the county or the municipal clerk of the municipality in which the voter resides on the day of the election,
 - ii. returning the confirmation notice sent to the voter by the commissioner of registration of the county, if such a notice has been sent to the voter, or
 - iii. otherwise notifying the commissioner of registration of the voter's change of address within the county shall be permitted to correct the voter's registration and to vote in the school election by provisional ballot at the polling place of the district in which the voter resides on the day of the election;
- e. That if the voter has any questions as to where to vote on the day of the election, the voter may contact the county commissioner of registration or municipal clerk to determine the proper polling place location for the voter; and
- f. Such other information as may be required by law. *N.J.S.A. 19:12-7(b)(3)*.

Notice of the school election shall also be published once during the calendar week preceding the week in which the school election is held. *N.J.S.A. 19:12-7*.

For the **November general election**, the notice shall include:

- a. That the annual school election will be held on the day and between the hours and at the places so provided by statute;
- b. The place or places at which and the hours during which a person may register, the procedures for transfer of registration and the date on which the books are closed for registration or transfer of registration;
- c. The school board offices to be filled, notice of any school district proposition to be submitted to the people;
- d. The existence of registration and voting aids;
- e. The availability of assistance to a person unable to vote due to blindness, disability or inability to read or write;
- f. That a voter who, prior to the election, shall have moved within the same county without:
 - i. filing, on or before the 21st day preceding the election, a notice of change of residence with the commissioner of registration of the county or the municipal clerk of the municipality in which the voter resides on the day of the election,
 - ii. returning the confirmation notice sent to the voter by the commissioner of registration of the county, if such a notice has been sent to the voter, or
 - iii. otherwise notifying the commissioner of registration of the voter's change of address within the county shall be permitted to correct the voter's registration and to vote in the school election by provisional ballot at the polling place of the district in which the voter resides on the day of the election;
- g. That if the voter has any questions as to where to vote on the day of the election, the voter may contact the county commissioner of registration or municipal clerk to determine the proper polling place location for the voter; and

A county board of elections shall post a voter information notice, known as a voter's bill of rights, in a conspicuous location in each polling place before the opening of the polls on the day of any election. Notices of the school election shall set forth a general description of the contents of the voter information notice, how the notice may be viewed or obtained prior to the day of an election, and that the notice will be posted in each polling place on the day of an election. *N.J.S.A. 19:12-7.1.*

Notice of the school election shall also be published once during the calendar week preceding the week in which the school election is held. *N.J.S.A. 19:12-7.*

28. What is a provisional ballot?

A provisional ballot is used when the voter is registered to vote in a county but has moved within that county since registering to vote; or is registered to vote in the election district in which that polling place is located but the voter's registration information is missing or otherwise deficient. The person using the provisional ballot must sign a statement that includes a provision that they are not using a provisional ballot for fraudulent purposes.

For a school election, the provisional ballots shall be printed in ink. The provisional ballots shall be uniform in size, quality and type and of a thickness that the printing thereon cannot be distinguished from the back of the paper, and without any mark, device or figure on the front or back other than as provided in this act. Each such ballot shall include near the top thereof and in large type the designation PROVISIONAL BALLOT. In all other respects, the provisional ballots shall conform generally to the other ballots to be used in the election district for the school election.

The clerk of the county shall arrange for the preparation of each provisional ballot package with an appropriate number of provisional ballots, a corresponding number of envelopes with affirmation statements, and a corresponding number of written notices. Additional provisional ballots, envelopes, and notices shall be available for delivery to that election district on the day of the election, if necessary.

Contact the county clerk for further information on use of provisional ballots. *N.J.S.A.* 19:31-11, 19:53C-1. Additional information is available on the Division of Elections [website](#).

29. Who is responsible for publishing the notices for mail-in ballots?

N.J.S.A. 19:63-1 *et seq.*, "[The Vote by Mail Law](#)," P.L. 2009 c. 79, became effective July 1, 2009. It replaced former laws in *N.J.S.A.* 19:57 regarding voting by absentee ballot. Under the 2009 law, any qualified and registered voter who wishes to vote by mail may obtain a mail-in ballot. The county clerk is responsible for publishing notices of mail-in ballots for school elections in a regional or other school district comprising more than one municipality; the clerk of the municipality is responsible for publishing mail-in ballot notices for elections in a school district comprising a single municipality. *N.J.S.A.* 19:63-6. The Secretary of State shall provide the public notice deemed necessary to inform members of the armed forces of the United States and overseas federal election voters on how to obtain valid overseas federal election voter registration and ballot applications. *N.J.S.A.* 19:63-6.

30. When and how are the notices for mail-in ballots to be published?

Absentee ballot laws were replaced by "[The Vote by Mail Law](#)," P.L. 2009 c. 79. The notice to persons desiring a mail-in ballot shall be published before the 55th day immediately preceding the holding of any election. The format of the notice is contained right in the law. The notice shall be published separately in at least one newspaper in each district in which the election is to be held or

if no newspaper is published in the district, then in a newspaper published in the county and circulating in the district. All notices shall be displayed advertisements. *N.J.S.A.* 19:63-6. See also, questions 91-95.

Challengers

31. What are challengers?

A challenger is an individual appointed by a candidate, whose appointment papers are issued by the county board of elections. The challenger has the authority to challenge the right to vote of any person. Challengers may be present while votes are being counted and have the right to challenge the counting or rejecting of any ballot or part of a ballot. *N.J.S.A.* 19:7-5.

32. Can a candidate be challenger?

Yes. A candidate for board of education office may be a challenger and may likewise appoint two challengers for each election district. *N.J.S.A.* 19:7-2. However, only one challenger appointed for a party, candidate, or public questions may be present in the polling place at a time, unless express permission is given by the district board of elections. *N.J.S.A.* 19:7-6.1. Challengers may also be appointed as proponents or opponents of a referendum. *N.J.S.A.* 19:7-2.

33. What is the deadline for the appointment of challengers?

The appointment of or application by candidates for challengers and alternates shall be filed with the county board of elections not later than the second Tuesday preceding the annual school election. The second Tuesday preceding the annual school election is also the last day for appointment of challengers for public questions by petition. In order to be appointed as a challenger, a person must be a registered voter in the county in which the election district is located. *N.J.S.A.* 19:7-3; *N.J.S.A.* 19:7-4.

Candidates

34. What are the legal requirements to become a school board member?

- a. Each member of any board of education shall, pursuant to *N.J.S.A.* 18A:12-1:
 - i. Be a United States citizen;
 - ii. Be a resident of the district for at least one year at the time of election or appointment;
 - iii. Be able to read and write;
 - iv. Be a registered voter in the district where the person is submitting the nominating petition;
 - v. Not be “disqualified” as a voter pursuant to *N.J.S.A.* 19:4-1
 - vi. Has not been convicted of any of the crimes or offenses enumerated in *N.J.S.A.* 18A:12-1 or conspiracy to commit or attempt to commit any of said crimes.

- b. Board of education members may not, pursuant to *N.J.S.A.* 18A:12-2 and 12-3:
 - i. Be the mayor or a member of the governing body of the municipality or, in the case of special services or vocational schools, the county, or ii. Have a direct, or indirect, contract with or claim against the board.

Additionally, pursuant to *N.J.S.A.* 18A:12-3 if a board member ceases to be a resident of the district, his membership on the board shall immediately cease.

35. What are the nepotism restrictions on board candidacy?

The nepotism regulations (*N.J.A.C.* 6A:23A-6.2) do not place restrictions on a candidate's legal ability to run for or serve on the board. Candidates who have relatives who are currently seated board members are not precluded from running for, being elected to and serving on the board of education. Candidates who have relatives who are currently employed in the school district are not precluded from running for, being elected to and serving on the board of education.

However, nepotism provisions place restrictions on the board's ability to hire "relatives" of board members or of the chief school administrator. Once a board member is elected, the board may not hire that board member's relative, and may lose state aid and be adversely affected in state monitoring (QSAC) for doing so. Existing relatives who are employed by the district may remain employed and be promoted. In exceptional situations, a district may employ a relative of a school board member or chief school administrator but only with approval from the Executive County Superintendent of Schools, which will only be granted if the district demonstrates that it conducted a thorough search for candidates and that the relative is the only qualified and available person for the position.

Also an individual board member whose relative works for the district will be restricted from discussing or voting on collective bargaining agreements to which the relative is a member. "Relatives" are broadly defined under the nepotism regulations to include a spouse, civil union/domestic partner, parent, child, sibling, aunt, uncle, niece, nephew, grandparent, grandchild, son-in-law, daughter-in-law, stepparent, stepchild, stepbrother, stepsister, half-brother or half-sister of the individual or of the individual's spouse or partner civil union partner or domestic partner, whether related to the individual or the individual's spouse or partner by blood, marriage or adoption. *N.J.A.C.* 6A:23A-6.2.

In recently issued public advisory opinions, the School Ethics Commission has expanded the restrictions on board member collective negotiations participation to include family members beyond the "relative" definition set forth above and other non-family members. Board members who have family members who are employed in other school districts who are members of similar statewide unions with which the board is negotiating will be restricted in collective negotiations participation as well. Board members who have family members or certain other non-family members employed in the school district will be limited on participation in personnel decisions regarding CSAs, supervisors and principals.

36. What would cause a voter to be “disqualified”?

A person would be disqualified as a voter, pursuant to *N.J.S.A. 19:4-1*, if that person were:

1. Determined by a court to lack the capacity to understand the act of voting,
2. Convicted of a violation of Title 19 where voting privileges were revoked as part of the criminal punishment, unless pardoned or restored by law, or
3. Serving a sentence or on parole or probation as a result of a conviction of an indictable offense.

37. Must a board member meet all of these requirements at the time of filing his/her petition?

No. The following requirements (see question 34) apply to membership on the board, not to candidacy, citizenship, the ability to read and write, not being disqualified as a voter, an absence of convictions of enumerated crimes or offenses, and an absence of conflicts with and/or claims against the board. These requirements must be met at the time the individual is sworn into office.

The requirement of one-year residency in the district must be met by the date of election or appointment. An individual must be a registered voter before the deadline for filing the nominating petition.

Individuals having a contract with or a substantial and material claim against the board must resolve the contract or substantial and material claim prior to being sworn in as a board member. See *Margadonna*, 2003 *S.L.D.* June 2. However, if the board member will not qualify for office even if elected, such as where the board member expresses unwillingness to resolve the contract or abandon the claim, then the candidate may not appear on the ballot as a candidate for membership on board member. *Toms River v. Luthman*, 2008 *S.L.D.* March 14. See also questions 67-68.

Generally, the voter registration requirement for candidates must be satisfied at the time of filing of the nominating petition (see question 65). Note that a person meets the statutory criteria for becoming a board member if registered to vote at the time of filing the petition, even if the person registered to vote on the day before filing the nominating petition. Unlike voting in the election, there is no timeline prior to the nominating petition deadline by which voter registration must occur.

While voter registration must be completed prior to filing, the candidate need not be eligible to vote until Election Day. Therefore, someone who turns 18 after the filing deadline but prior to Election Day, and who has previously registered to vote, has properly filed his/her petition and may be a candidate for the school board election.

Voters must register to vote on or before the 21st day before the election. *N.J.S.A.* 19:31-6. Applications for registration can be obtained from the [Division of Elections](#), the [Commissioners of Registration](#) office in the county of residence, or the municipal clerk. Registration forms are also available in various state agencies and at Division of Motor Vehicle offices and can be obtained while transacting agency business. Registration may also be accomplished by mail. *N.J.S.A.* 19:31-6.

Residency requirements are timed not to membership, but to election. The requirement in *N.J.S.A.* 18A:12-1 that a board member be a resident “and shall have been such for at least one year immediately preceding his appointment or election” is satisfied if the candidate will have resided in the district for one year by the time the board member is duly elected. While this language speaks to the election, considering that the election results are not certified until the Monday following the school election, a reasonable interpretation of this requirement is that the residency is satisfied if the individual has been a resident for at least one year preceding the certification of election results.

38. Can someone under 18 years of age serve as a board member?

No. Only a registered voter can serve as a board member. Since a citizen cannot be a registered voter if under 18, no one under that age may serve as a board member. *N.J.S.A.* 19:31-5, 6. However, candidates who will reach the age of 18 prior to the school board election may register to vote in advance of their 18th birthday so long as they register prior to filing their nominating petitions. *N.J.S.A.* 19:31-6.3.

N.J.S.A. 18A:36-27 was amended by P.L.2009, c.281 to require that, the board of education of each school district and school official in nonpublic schools, provide a voter registration form, a summary of voter registration eligibility requirements, and material describing the role of a citizen and the importance of voting to each eligible high school pupil prior to the graduation date for the school year. Prior law required schools to provide similar information to pupils in conjunction with voter registration drives conducted by the county commissioner of registration. The new law was intended to increase the likelihood that students will receive voting information.

39. May a student serve as a board member?

Yes, provided the student meets all other qualification requirements set forth above. For instance, a student was elected to the Millburn board of education in the November 2019 election. Students elected to the board should be mindful to avoid [ethical conflicts that might arise because of their status as a student](#). See, [Advisory Opinions A36-17 and A06-18](#)

40. Can a candidate file petitions for both a full term vacancy and a partial term vacancy?

No. The petition requires that the candidate swear that the candidate agrees to accept and qualify into office as a board member if elected. Since the candidate can only hold one position on a board of education if elected, the candidate may file for only one vacancy. See *Kueken*, 1990 *S.L.D.* 527

(board member with 1 year remaining could not run for a new 3-year term without resigning the seat she held prior to the printing of the ballot) and *West Milford, 1977 S.L.D. 339* (candidate could not simultaneously seek election to two separate seats on the board.) Nothing would prevent a candidate from filling out more than one nominating petition, but only one can be filed with the board of education in question. *N.J.S.A. 19:60-6*

41. Can a person serve on two boards of education at the same time?

Dual elected office holding is not permitted. N.J.S.A. 19:3-5.2 prohibits a person from holding two elective public offices simultaneously. This law means, for example, that a person cannot serve on both an elected regional school district board of education and an elected constituent board of education. However, there is a grandfathering provision for persons who held multiple elected offices on February 1, 2008, the effective date of the law.

These office holders may continue to serve in multiple elected offices until such time as the office holder loses an election. *N.J.S.A. 19:3-5.2*.

This requirement only applies to elected offices. It does not prevent a board member from serving on an elected local board of education and an appointed county vocational board of education at the same time. See Questions 34 and 67.

On May 30, 2018, [the Appellate Division reversed a November 2016 decision](#) where, a Superior Court judge in Passaic County ruled that N.J.S.A. 19:3-5.2, the dual office holding statute, did not apply to seats on two different non-paying elected boards of education. The Appellate Division opined that there was no carve out to the prohibition on dual office holding for school board members.

In a different jurisdiction, a longtime board member from the West Long Branch board of education accepted a position filing a vacancy on the Shore Regional Board of Education, thereby serving on two elected boards of education. The appointment to the Shore Regional board of education was not challenged.

In the 2014 November school election, a Monmouth county community elected a new board member who was a seated elected fire commissioner. After he was sworn into office as a board member, he had to decide from which office he would resign. He chose to resign from the school board position since his fire commissioner office was a paid position.

During the 2015 November school election cycle, the following scenario came up in several school districts:

A board candidate filed a timely nominating petition with the county clerk (before July 27, 2015). The Board of Education receives a letter of resignation from an existing board member in August. The term of the resigning board member extends beyond January 2016, placing the board of

education in the position of filling the vacancy (within 65 days as per *N.J.S.A.* 18A:12-15). The remaining term, if any, would go up on the ballot in the November 2016 election.

As to whether a board member who does not fall under the grandfathering provision can run for two elective positions simultaneously (with the intention of only serving on one if elected in both), and whether a currently seated board member can run for a different elected position with an overlapping term, see Question 67 and 68.

42. Can a person who has been convicted of a felony be a candidate for the board?

Board of education candidates/members who have been convicted of certain crimes or offenses enumerated in *N.J.S.A.* 18A:12-1, or conspiring to commit or attempt said crimes, do not meet the qualifications for board membership.

43. Can candidates be endorsed by a political party?

There is no statute specifically prohibiting candidates from being endorsed by a political party. However, keep in mind that no political party designation may appear on the school election ballot. *N.J.S.A.* 19:60-1. It should be noted that the Commissioner of Education has traditionally frowned on political party endorsements of school board members, as school elections should be nonpartisan. *I/M/O the Annual School Election in the Brick School District*, 93 *N.J.A.R.* 2d 360. With the change by many boards of education to a November election, NJSBA has seen an increase in political party endorsement and mayor and council member endorsements.

44. Can candidates be endorsed by a local school employees' union?

Yes, but accepting such endorsement may restrict the candidate's ability to participate fully in certain discussions and votes of the board of education. The School Ethics Commission has ruled that it would be a violation of the School Ethics Act for board members who are endorsed by the local teachers union to participate in current negotiations with that union, among other prohibitions. See [SEC Advisory Opinion A13- 02](#) (12/2/02). Board members should consult with the board attorney concerning any potential or actual ethical conflicts arising under the school laws.

45. Can sitting board members endorse candidates?

Current board members who wish to endorse a candidate should comply with [SEC Advisory Opinion A02-06 \(3/10/06\)](#) and [A36-14 \(10/29/14\)](#) requiring a board member to indicate that such endorsement is their personal view and not that of the board of education. If social media or electronic communications are used to endorse or support a candidate, the endorsing board member should use their personal social media or electronic communication accounts and not those of the school district.

46. Can candidates run as a slate?

Effective May 30, 2018, board of education candidates are now permitted to be bracketed with other school board candidates of their choice on the election ballot. Two or more candidates may file a joint petition that may include a designation of not more than three words that conveys the principles that the candidate or candidates therein named represent. N.J.S.A. 19:60-9. The designation shall not contain the name, or any derivative or any part thereof, as a noun or an adjective of any political party entitled to participate in a primary election. N.J.S.A. 19:60-1(b). Brackets are counted as one ballot for drawing purposes. N.J.S.A. 19:60-8.

Campaign Contributions/Expenditures

47. Must a candidate report all campaign expenditures?

The New Jersey Campaign Contributions and Expenditures Reporting Act, and its implementing regulations, *N.J.S.A.* 19:44A-1 et seq. and *N.J.A.C.* 19:25-1.1 et seq., require all school board candidates who receive any contribution from any source, including their own funds or in-kind services, regardless of the amount, to file a Certificate of Organization and Designation of Campaign Treasurer and Depository form (D-1 or D-2) with the [Election Law Enforcement Commission](#) (ELEC). This is a basic form that designates a treasurer and lists the bank in which the campaign bank account is located. ELEC has a form, www.elec.state.nj.us/pdf/files/forms/compliance/manef.pdf that describes all of the reporting requirements for candidates and contains all of the necessary forms that must be filed concerning financing of a board member's campaign. (Note that all forms are located at the end of the [Manual](#), starting on page 49.) Form D-1 is filed within 10 days of the first contribution or expenditure.

The general rule is candidates who receive no contributions, make no expenditures and therefore, do not establish candidates committees, must still file form A-1 (i.e., Candidates Sworn Statement that total amount to be spent for his candidacy does not exceed \$5,100). However, unlike other candidates, school board and write-in candidates do not have to file form A-1. *N.J.A.C.* 19:25-8.4(d).

Any candidate who intends to spend more than \$5,100 must make a more extensive and detailed report to ELEC (Form R-1, Report of Contributions and Expenditures) and comply with a number of other procedural requirements (see the [Manual](#) for explanation). Thresholds for joint campaigns are \$9,700 for two candidates and \$14,000 for three or more candidates. *N.J.S.A.* 19:44A-16; *N.J.A.C.* 19:25-8.4(d) (see the [Manual](#) for explanation).

A school board campaign, which is to cost \$5,100 or less, is exempt from the detailed reporting requirements. However, even if expenditures do not exceed \$5,100, any currency contribution regardless of amount, and any contribution (monetary, in-kind, or loan) totaling more than \$300 from any one source, must be reported to ELEC with the source identified. (Form C-1, Supplemental Contributor Information). In addition, ELEC must be notified in writing of any contribution totaling more than \$1,600 that is received from the 13th day prior to the election up to

and including the date of the election. (Form C-1, Supplemental Contributor Information) [N.J.S.A. 19:44A-16](#); [N.J.A.C. 19:25-8.6](#). (See the [Manual](#) for explanation.) This report is filed 29 days and 11 days before the election and 20 days after the election, or within 48 hours of receiving the contribution for contributions of more than \$1,600 received within 13 days of the election.

All candidates should be aware that certain filings may also have to be made to the county clerk. Campaign reports and quarterly campaign reports can now be filed electronically through the Internet. The R-1 Electronic Filing System (REFS) is customized software developed by the staff of the Commission. To receive the free REFS software to file electronically a candidate must attend a training session where software will be distributed, and apply for a registration number and PIN. Click [here](#) for more information about electronic filing:

For further information call ELEC at 609-292-8700 or toll free at (888) 313-ELEC (3532) or visit the website, <http://www.elec.state.nj.us>. The Commission's mailing address is NJ Election Law Enforcement, Commission, P.O. Box 185, Trenton, NJ 08625-0185.

48. When are the ELEC reporting dates?

The following information can be found on the ELEC website at <http://www.elec.state.nj.us/forcandidates/datescurrent.htm>:

All candidates are strongly encouraged to seek the guidance of the Election Law Enforcement Commission and refer to www.elec.state.nj.us/pdf/files/forms/compliance/man-ef.pdf for additional guidance on these and other reporting requirements. ELEC may also be reached at 609-292-8700 or 1-888-313-ELEC (3532).

All candidates should also be aware of [pay-to-play legislation](#) that may have resulted in the local board of education adopting policies governing campaign contributors' ability to subsequently contract with the board. [N.J.S.A. 40A:11-51](#). Additionally, all for-profit businesses should be aware, if they have received contracts valued at more than \$50,000 in a calendar year, any contributions to candidates' campaigns must be disclosed to ELEC. The Department of Community Affairs maintains a [website](#) with information about pay-to-play laws.

Also, Department of Education Accountability Regulations prohibit a school board from awarding contracts costing \$17,500 or more to any business that has made a reportable contribution to a member of the board of education during the preceding year. The regulations also prohibit a board member from receiving any contributions from a business during the term of a contract with that business. [N.J.A.C. 6A:23A-6.3](#).

All board candidates are encouraged to contact their local board offices to find out if their board has a pay-to-play policy, and to also consider the impact of accepting contributions from businesses should the candidate be elected, as these contributions may affect the contributors from whom the candidate accepts contributions, by disqualifying the business from receiving a contract with the board of education.

No candidate or holder of elective public office or that candidate's agent or representative may solicit campaign contributions, directly or indirectly, on property owned or leased by the State, or by any county, municipality, board of education of a school district, fire district, authority, or any other instrumentality of the State or local entity. Note, however, that the solicitation prohibition shall not apply when the public property is made available, through rent, reservation or otherwise, for the exclusive use of any group for a non-governmental purpose as a meeting location. *N.J.S.A.* 19:44A-19.1

49. May the board of education expend public funds in support of the budget?

The answer to this question is a qualified yes. The leading case on this issue, *Citizens to Protect Public Funds v. Parsippany-Troy Hills Board of Education*, 13 *N.J.* 172 (1953), indicates that boards of education may make reasonable expenditures in order to provide the voters with relevant facts to aid them in making an informed decision. Boards must present the facts in a fair, unbiased manner. For example, if the budget provides for improved educational facilities, the voters must also be told of the resulting negative consequences such as increased taxes. The basis for this decision is that boards are spending public monies when they seek to inform the public. This money belongs equally to supporters and opponents of the budget and should not be spent in a manner favoring one side of the issue.

NJSBA received an inquiry regarding volunteers making calls from the school district regarding the school budget (April election) or a bond referendum urging people to get out and vote. As long as the caller provides accurate neutral information (polling hours, sites, date of election etc.) and does not urge voters to "vote yes", that practice should survive a legal challenge. Consult your board attorney.

Accountability regulations adopted by the Department of Education require that as a condition of state aid, boards must spend dollars efficiently with regard to public relations on election issues. *N.J.A.C.* 6A:23A-5.2. Boards must annually adopt a maximum dollar limit for public relations, and district publications must be produced and distributed in the most cost-efficient manner possible. Boards may not use expensive materials, like multi-color glossy publications, where less expensive methods are available and appropriate.

Boards may not distribute any publications to the district community at large that include a picture of a board member within 90 days before an election. Any publication distributed by the board to the community at large within 60 days before any election must first be submitted to the Executive County Superintendent for review. Excessive public relations activities that are not cost-effective are prohibited, as are all activities advancing a particular position on school elections/ referenda. Public relations activities, including prohibition on having a dedicated public relations staff position or contracted service provider, are also addressed in the efficiency standards, *N.J.A.C.* 6A:23A-9.3 and are applicable to charter schools. *N.J.A.C.* 6A:23A-22.6.

50. Can board members speak for or against a budget?

The answer is a qualified yes. If no public monies are involved, a board member is not constrained by the *Parsippany-Troy Hills* case and its progeny and may speak in favor of, or against, the budget. However, board members should be aware that the school ethics laws and local board policies would govern their public statements. In general, board members may express their individual opinions as long as they identify themselves as members of the board of education, indicate that their opinions are their own and not that of the board, that the information is accurate and not confidential, and as long as the private action does not compromise the board.

<http://www.state.nj.us/education/legal/ethics/advisory/cat5/a03-07.pdf>

<http://www.state.nj.us/education/legal/ethics/advisory/cat5/a02-06.pdf>

<http://www.state.nj.us/education/legal/ethics/advisory/cat5/a36-14.pdf>

51. May a board of education involve pupils in the election process?

The involvement of pupils in school election matters, the budget, bond referendum, or candidate election is always a controversial one and should be looked at closely from a legal and public relations point of view. *N.J.S.A.* 18A:42-4 prohibits the distribution in school buildings or on school grounds, of materials through children that promote, favor or oppose any candidacy, bond issue proposal or public question. This involves not only the annual school election and special school elections such as bond referenda but also general and municipal elections as well. Similarly, pupils may not be requested or directed by any official or employee of the public schools to engage in any activity that tends to promote, favor or oppose candidacy, bond issues, proposals, or public questions. Neutral literature, such as a reminder to vote without favoring any particular position, voter registration or absentee ballot information may be carried home by pupils. Boards of education are required to have a policy to carry out the purposes of this statute. *N.J.S.A.* 18A:42-4.

Whether a private entity such as a PTO or local teachers union can involve pupils in the election process will depend on the private entity's own bylaws and policies. In no circumstances can literature that favors or opposes any public question or candidate be distributed through children through the schools even if the literature is prepared and paid for by the private entity. *N.J.S.A.* 18A:42-4.

Lastly, *N.J.S.A.* 18A:42-4 requires that "the board of education of each school district shall prescribe necessary rules to carry out the purposes of this section."

52. May board candidates distribute campaign literature on school grounds during the school day?

Should a board of education adopt such a campaign literature distribution policy, there is a concern that promotional literature may be received by students. As stated above, the board must adopt policy to safeguard against the distribution of promotional campaign materials to students. Boards should consider adopting a policy that creates reasonable time, place, and manner restrictions to

prevent the likelihood that students will receive promotional literature during the school day in school buildings, or on school grounds, parking lots, etc.

With regard to distribution of election materials to staff and other non-student visitors to the building, the board should consider a policy containing time, place and manner restrictions for the distribution of any information by persons outside of the school. Most boards have policies that limit the dissemination of literature by visitors, to assure that the school is not inundated with flyers, that distribution is done in an orderly fashion and without disrupting the school environment or impairing student safety (e.g., in busing areas, during student arrival or dismissal time, etc.) Collective bargaining agreements or board policy may also regulate the use of teacher mailboxes to prevent disruption with the educational environment.

No candidate or holder of elective public office or that candidate's agent or representative may solicit campaign contributions, directly or indirectly, on property owned or leased by the State, or by any county, municipality, board of education of a school district, fire district, authority, or any other instrumentality of the State or local entity. Note, however, that the solicitation prohibition shall not apply when the public property is made available, through rent, reservation or otherwise, for the exclusive use of any group for a non-governmental purpose as a meeting location. *N.J.S.A. 19:44A-19.1.*

53. May board candidates distribute campaign literature on school grounds after school hours?

Once again, board policy controls. Fewer restrictions may be placed on the distribution of election materials after school hours at public forums (e.g., board of education or PTA meetings) than during school hours, as the potential for disruption of the educational environment is diminished. Boards should consider that any policies containing reasonable time, place and manner restrictions should be supported by the need to promote an orderly distribution and to prevent the disruption or interference with official proceedings. The need for such restrictions will depend on the location of the proposed distribution. For example, while it may be argued that distribution of political materials in the board meeting room during the meeting could be disruptive, it would be more difficult to sustain that argument for limitations on distribution outside of the meeting room or after the meeting outside the building.

Of course, on the date of the election, the distribution of any promotional materials within one hundred feet of the polling place is prohibited electioneering. *N.J.S.A. 19:34-15.*

Lastly, candidates should be aware that the solicitation of campaign contributions on publicly owned property is prohibited. *N.J.S.A. 19:44A-19.1.*

See also, Questions 51 and 47.

54. May a board restrict a teacher's wearing of buttons supporting a candidate or public question?

The wearing of such buttons could be viewed as a request or direction to students to engage in an activity which tends to promote, favor or oppose such candidate or question, in violation of *N.J.S.A.* 18A:42-4. Additionally, boards of education and other government bodies have considerable flexibility in regulating the employee speech that could interfere with the public body's underlying goal or mission. A New Jersey court ruled that a school district could prohibit teachers from wearing buttons reading "NJEA SETTLE NOW" while in the presence of students in the school, on the principle that teachers may be required to confine their classroom activities to providing students with a thorough and efficient education. *Parsippany-Troy Hills Educ. Ass'n v. Parsippany-Troy Hills Bd. of Educ.*, 2018 N.J.Super. Unpub. LEXIS 1751 (July 23, 2018); *Green Tp. Educ. Ass'n v. Rowe*, 328 N.J. Super.525 (App. Div. 2000). However, a board would be limited in its ability to restrict a teacher's right to wear campaign buttons outside the presence of students.

Nominating Petitions

55. May a board member wear a button to a board meeting, supporting the budget or a candidate for board office or other government office?

While the legality of such activity has not been tested, such a practice may be fraught with potential problems under the School Ethics Act. Granted, board members do not necessarily surrender the rights that they have as private citizens, including free speech rights, when they become school board members. However, it is not apparent to the public whether a board member's speech represents the official position of the board, or simply one board member's personal view.

In another context, the School Ethics Commission (SEC) has cautioned board members against writing letters to the editor without explicitly disclaiming the board's authorization for the letter. See, *Advisory Opinion A03-07* (April 2, 2007). The prospect for confusion is especially acute when the board member acts in his official role at an officially convened board meeting.

Further, under the School Ethics Act, *N.J.S.A.* 18A:12-24.1(e), any private speech must not compromise the board. It is possible that in some contexts wearing a campaign button to a board meeting could harm the board by stirring controversy and divisiveness, and thereby distracting the board from district business.

Arguably, a board member who wears a campaign button for a candidate could be viewed as providing that candidate with an unwarranted privilege or advantage in violation of the School Ethics Act, *N.J.S.A.* 18A:12-24(b). The board member could also be viewed under *N.J.S.A.* 18A:12-24.1 (f), as surrendering his independent judgment to special interest or partisan political groups or to use the schools for personal gain or for the gain of friends.

The wearing of buttons to support partisan offices such as President or Governor poses concerns in addition to those discussed above. The appearance of partisanship on non-partisan boards of education may subject the selection of local board members and local educational issues to partisan

politics, diverting the board from its mission to provide a thorough and efficient education to the district's students.

On the other hand, the School Ethics Commission has said that a board member does not need to specifically disassociate him/herself from the board for speech on matters that are not matters that have been before the board for consideration. In that matter, no violation of the School Ethics Act was found when a board member wrote letters to two newspapers regarding Governor Christie's capping of superintendent salaries in which she did not identify herself as a board member. *Hartman*, SEC July 26, 2011. The School Ethics Commission clarified that the requirements of A03-07 only applied to matters that had been before the board of education for consideration.

Boards of education may wish to consult their board counsel on the best way to address the issue through a board policy on political activity in the schools, specifically at board of education meetings.

56. What is the filing deadline for candidate nominating petitions?

The deadline for filing candidate-nominating petitions for the April school election is 4 p.m. of the 50th day preceding the election. *N.J.S.A.* 19:60-7. Note that in *Pritel v. Burris*, 94 *N.J. Super.* 486 (App. Div. 1967), a township clerk's refusal to accept a nominating petition five minutes after closing was deemed arbitrary. The 4:00 p.m. deadline was held to be ministerial at best, since the clerk was present in the office until after 5:30 p.m. In general, courts will read elections laws liberally, as "it must be read in light of the broad purpose of the election laws to prevent disenfranchisement of qualified voters (concerning write-in votes). Candidates are strongly urged, however, to submit their petitions in a timely manner.

57. Can the Board Secretary in the April school election or a county clerk for the November general election demand to know who is asking for the petition as well as who plans to use it?

No. It is permissible to ask, but an answer cannot be required. The Board Secretary should indicate that he/she is requesting the information only to be able to share any election information and changes with the petitioning candidate. While it would appear that the same standard would apply to the county clerk for the November general election NJSBA is not aware of any specific requirement for same.

58. Is there a standard form of nominating petition?

No. Any form is acceptable for the **April school election** so long as it contains the statutorily required information. *N.J.S.A.* 19:60-5, 6, 7. NJSBA annually prepares a sample nominating petition that are included in its [School Board Candidate Kit](#) that is distributed to local districts through NJSBA's website, www.njsba.org/candidacy.

NJSBA's sample petition has been deemed an acceptable form by most county clerks. It should be noted, however, that certain county clerks have developed and require use of their own form of nominating petition. Check with the school board secretary and county clerks in your county for details. If using the NJSBA sample petition, it is recommended the candidate remove the word "sample" to avoid confusion.

For the **November general election**, the answer varies depending upon county. Some counties use a variation of the NJSBA sample nominating petition and some have created their own document. Check with your county clerk for details.

59. Must the candidate use the local district petition?

In most cases, for the **April school election**, no. The candidate may pick up a petition form from any school district or may use one of his/her own making, as long as it contains all the required information and signatures. Certain counties require that the county form be used. Check with your county clerk to see if the county form is required.

For the **November general election**, the answer varies by county including the form of petition and availability. Some counties make petitions available through the school district and the local county clerk offices and some only the county clerk office. Check with your county clerk for details.

60. Can the candidate bring in more than one petition for the same seat, if the sum total of the signatures is equal to the required number of signatures?

Yes. So long as the requisite number of signatures is presented, any number of petitions may be submitted for the same candidate for the same seat. Each separate petition must contain a notarized verification of the signatures by one of the signatories and should contain the candidate's acceptance as well as all other required information. The statute requires that the verifier of the signatures be a signer of the petition, one of whom may be the candidate. If multiple pages are used, each page should be signed and verified like the first signatory page. *N.J.S.A. 19:60-5, 6.*

61. How many signatures are required on a nominating petition?

A nominating petition must be signed by at least 10 persons, one of whom may be the candidate himself. Each of the signers of the petition must be a qualified voter of the school district or, in the case of a regional school district, qualified voter of the constituent district, which the candidate shall represent on the regional board of education. In the case of a merged or consolidated school district, the signer may be a qualified voter of any of the municipalities who make up the merged or consolidated school district. It is recommended that candidates obtain more than 10 signatures in case one or more signatures are invalidated. *N.J.S.A. 19:60-5, 7.*

62. Can a candidate sign and/or verify his/her own petition?

Yes. A candidate may be one of the 10 signatories of the petition and, if the candidate is one of the signatories, may verify the signatures. *N.J.S.A.* 19:60-7. See also, *N.J.S.A.*19:13-7. A 2010 amendment to *N.J.S.A.* 19:60-5, P.L. 2010, c.68, specifically states “a candidate shall be permitted to sign or circulate or both sign and circulate, the petition required to nominate that candidate for membership on the board.”

63. What is contained in the verification?

The verification consists of a statement that the petition is signed by each of the signers in his/her own handwriting and that the signers are to the verifier’s best knowledge and belief, legally qualified to vote at the election at which the candidate shall be voted for and that the petition is prepared and filed to endorse the candidate. *N.J.S.A.* 19:60-5.

64. Can someone sign more candidates’ petitions than there are vacancies?

While there is no specific statutory answer to this question, one court has held that a signer could sign petitions only for as many candidates as there are seats on the board up for election. *I/M/O the School Board Election in the Borough of Bergenfield*, No. BER- L-2497-04 (Law Div. March 25, 2004).

65. Can a person sign two nominating petitions for a candidate who wants to complete forms for both a full term and partial term and decide at a later date the seat for which the person wants to be a candidate?

Yes. Nothing would prevent a citizen from signing both forms. However, the candidate can only file for one of the seats on the board.

66. Must the petitioner-candidate be a registered voter? Must other signatories of the petition be registered voters? Must the circulator be a registered voter?

Yes. The Commissioner of Education has held (*Delay*, 1991 *S.L.D.* 288) that the voter registration requirement for candidates must be satisfied at the time of filing of the nominating petition. Since the shift of school election responsibility to the counties in 1996, the Commissioner no longer rules on election issues. More recently in *Algarin v. Haledon Board of Education*, 408 *N.J. Super.* 266 (L. Div. 2009), <http://caselaw.findlaw.com/nj-superior-court/1019690.html> a state Superior Court judge ruled a candidate was not disqualified when she falsely signed the candidate's acceptance and oath of allegiance which stated she was qualified to serve, although she was not a registered voter. The judge allowed her name to go on the ballot because she did not know that election officials had removed her name from the list of eligible voters, and because she re-registered before filing her nominating petition.

Non-candidate signers of a petition do not need to be registered voters at the time the petition is filed. However, they must be registered voters by the deadline for amending the petition; that deadline is, as per *N.J.S.A.* 19:60-7 for April elections, is the 44th day preceding the **April school**

election, and for **November general elections**, the 10th day after the last day for the filing of petitions. See, *Saunders v. Toms River BOE*, 144 N.J. 371 (1996) (adopting the dissenting opinion in 289 N.J. Super. 225 (App. Div. 1996)) where the Court ruled a 10-signature petition containing the signature of a voter who is not registered can be cured, if the voter registers by the deadline for amending the petition. See also, question 37.

The person who circulates the petition shall not be required to be a registered voter, but shall be voter eligible, which means at least 18 years of age, a resident of this State, a citizen of the United States, and not otherwise disqualified under the New Jersey Constitution. *N.J.S.A. 19:13-7*

67. In a regional district, must the petition signatories be from the same constituent district as the candidate?

Yes, a signer from another constituent district within the regional district is not acceptable and should not be counted as one of the 10 necessary signatories. Signers must be qualified voters of the candidate's constituent school district. *N.J.S.A. 19:60-5*. In the case of a merged or consolidated school district, the signer may be a qualified voter of any of the municipalities which make up the merged or consolidated school district.

68. May a candidate run for a regional and constituent district board of education at the same time?

The Commissioner of Education has held that a board member, who cannot certify on his petition that he will agree to accept the office, cannot run. See *Kueken*, 1990 S.L.D. 527. Under this line of reasoning, since a board member running for two elected offices is prohibited from serving on both, he/she cannot certify that he/she will accept the office. In 2009, a Superior Court judge in Bergen County ruled that a candidate may not stand for election to both a regional and a constituent elected school board. The Judge indicated that permitting a candidate to run for both seats, and later allowing him to choose on which board to serve, would disenfranchise the voters who supported the candidate and result in an appointment to the vacant seat by the Executive County Superintendent rather than the electorate. (Order dated 3/26/2009, *Isaacson v. Closter Bd. of Education and County Clerk*)

Pursuant to *N.J.S.A. 19:3-5.2* (*P.L.2007, c.161*, effective February 1, 2008) newly elected public officials are prohibited from simultaneously holding more than one elective office. The prohibition pertains to all elected officials, but includes a grandfathering exception for public officials who were serving in two elected offices on the effective date of the law. Those grandfathered elected public officials can continue to run for and serve in those offices so long as there is no break in service in either position. In a November 2016 decision, a Superior Court judge in Passaic County ruled that *N.J.S.A. 19:3-5.2*, the dual office holding statute, did not apply to seats on two different non-paying elected boards of education. The board member was allowed to retain his position on the Haledon board of education, an elementary school district, while accepting a seat on the Manchester Regional high school board of education, a seat to which he had just been elected. The judge found that the Legislature's intention in enacting *P.L. 2007, c. 161* was to prevent an

individual from receiving salary and pension benefits simultaneously through two publicly funded, election positions. New Jersey school board membership is uncompensated, making the prohibition on dual office holding not applicable to elected boards of education. On appeal, however, the Appellate Division said the lower court's determination was not supported by the statute. The Appellate Division held that school board members may not be elected to two school boards, nor sit simultaneously on two boards absent statutory authority. The court found that the Legislature specifically exempted volunteer board members of fire districts from the dual-office holding restriction. N.J.S.A. 40A:9-4(6). The court specifically said that the Legislature could have included unpaid school board members as well in this exemption, but chose not to do so.

However, the 2008 law does not prevent a person who currently sits on an appointed board of education, such as the county vocational board of education, from running for a local elected board of education.

Nor does the law prevent someone covered under the grandfathering provision from running for both the regional and constituent districts. The law contains a grandfathering exception that applies to board members who served on a local district board and a regional school board at the time the law became effective. These members will be allowed to continue to serve in both roles as long as they continue to be re-elected. Once a break in service occurs, however, their ability to hold more than one office ends.

Where board members currently serving on both a regional and constituent run again for both offices, separate nominating petitions would need to be filed for each seat. Since signers for the regional board must be from the constituent district in question, the same people could sign both petitions.

69. Can a currently seated elected board member run for a different elected office before his/her term expires?

NJSBA is aware of a situation in the November 2009 elections where a member of the state legislature ran for mayor in that legislator's town without resigning the state legislature position beforehand. Once elected to mayor, the state legislator resigned from the state office and accepted the office of mayor. No known challenge was made to the mayoral candidacy.

In the 2014 November school election, a Monmouth county community elected a new board member who was a seated elected fire commissioner. After he was sworn into office as a board member, he had to decide from which office he would resign. He chose to resign from the school board position since his fire commissioner office was a paid position.

During the 2015 November school election cycle, the following scenario came up in several school districts:

A board candidate filed a timely nominating petition with the county clerk (before July 27, 2015).

The Board of Education received a letter of resignation from an existing board member in August. The term of the resigning board member extended beyond January 2016, placing the board of education in the position of filling the vacancy (within 65 days as per *N.J.S.A.* 18A:12-15). The remaining term, if any, would go up on the ballot in the November 2016 election.

Question: Can the board candidate who has filed a nominating petition for the November 2015 election apply for and accept the vacancy position? The answer turns, to some degree on the petition withdrawal date of September 4, 2015.

Before the Withdrawal Deadline (September 4, 2015)

1. If the board candidate withdraws her petition, he/she is free to accept the unexpired term, if so selected by the board.
2. If the board candidate does not withdraw the petition he/she could not accept the unexpired term position as he/she has, by submitting the petition, certified that if elected, he/she will serve.
Since he/she cannot serve on two board seats at the same time after the withdrawal deadline – September 4, 2015. (See *Kueken v. Guzman*, 1990 *S.L.D.* 527)

After the Withdrawal Deadline (September 4, 2015)

1. Since the board candidate did not withdraw her petition, he/she could not accept the unexpired term position, as he/she has by submitting the petition, certified that if elected, will serve. Since he/she cannot serve on two board seats at the same time after the withdrawal deadline – September 4, 2015. (See *Kueken v. Guzman*, 1990 *S.L.D.* 527)

As to whether a board member who does not fall under the grandfathering provision can run for two elective positions simultaneously (with the intention of only serving on one if elected in both), and whether a currently seated board member can run for a different elected position with an overlapping term, see Question 67 and 68.

Pursuant to *N.J.S.A.* 18A:12-3 when a member of a local or regional board of education shall become mayor or a member of the governing body of the municipality, his membership on the board shall immediately cease. The same holds true for county special services and county vo-tech board members who become members of the county governing body. At the local or regional level, those offices are often both elected offices. The Legislature recognized that currently seated board of education members could run for other elected offices and addressed the conflict by removal from the board of education by operation of law once the person became a member of the governing body.

In an analogous situation, for board members with a contract or claim against the board under *N.J.S.A.* 18A:12-2, the Commissioner of Education has held that whether such a board member may appear on the ballot as a candidate depends on whether the candidate is willing and able to resolve the contract or claim if elected. *Toms River v. Luthman*, 2008 *S.L.D.* March 14, OAL Docket No.

EDU-898-08, Agency Docket No. 63-2/08. If this same premise were to apply in the dual officeholding context, a board member would be able to appear on the ballot if he were to represent that he would resign his other office if elected. See also Questions 34 and 41.

70. Must the Board Secretary or County Clerk verify the accuracy of a petition once it is filed?

No. The board secretary must check the petition filed for school elections held at a time other than the November general election to ensure it is properly completed. It is not the responsibility of the board secretary to investigate and verify that the information contained in a nominating petition is correct, that all the voters are properly registered voters and that all names and addresses are correct. The board secretary's role is to determine if the nominating petition is facially correct; 10 signatures, all sections completed, etc. While some boards of education will go so far as sending employees to the county clerk's office to verify voter registration and signatures, it is not required. A board secretary is not explicitly authorized to disqualify a nominating petition. Should a board secretary believe that there is an objectionable aspect to the nominating petition, such as signatures from individuals who are not registered voters or an incurable conflict of interest, an objection to the petition should be filed with the board of education making the decision if the petition is to be disqualified. See also, Question 11.

71. What happens if the Board Secretary or County Clerk is made aware that a nominating petition is defective?

The board secretary should ask the person making the verbal objection to file a written objection to the nominating petition with the board secretary for school elections held at a time other than the November general election. If the board secretary is aware of a defective nominating petition, the board secretary is not precluded from filing an objection to the allegedly defective petition.

For the November general election, the role of the county clerk would appear to be similar.

72. When is the deadline for filing a written objection to a nomination petition?

The last day for filing a written objection to a nominating petition with the board secretary for the **April school election** is no later than the 4th day after the last day for the filing of nominating petitions (the 46th day prior to the election). *N.J.S.A. 19:13-10, 19:60-7.*

The last day for filing a written objection to a nominating petition for the county clerk for the **November general election** is the 4th day after the last day for the filing of nominating petitions. *N.J.S.A. 19:13-10, N.J.S.A. 19:60-7.*

73. Who decides if a nominating petition is defective?

For the **April school election**, the board of education must decide whether a nominating petition is defective and must file its determination on the objection with the county clerk on or before the 44th day preceding the school election. *N.J.S.A.* 19:60-7.

It is recommended that boards of education with April elections prudently plan for the possibility of a nominating petition objection, by timely advertising for a special meeting.

The School Ethics Commission has ruled that Board members did not violate the School Ethics Act when they voted on objections to a nominating petition that they had signed. *Vickner v. Dunham et al., Ewing, Mercer County*, C18-03, 8/26/03.

For the **November general election**, *N.J.S.A.* 19:60-7 states the county clerk shall file the clerk's determination on the objection on or before the 10th day after the last day for the filing of petitions for candidates seeking election as a member of a board of education at the **2019 November school election**.

74. Can a candidate amend a defective petition and if so what is the deadline?

It depends. A candidate at the **April school election** whose nominating petition is defective may amend the petition, except for the addition of signatures; the last day for amending it is the 44th day prior to the election. A petition that is defective solely because of an insufficient number of signatures may not be amended. *N.J.S.A.* 19:13-13, 19:60-7. (See question 76 for an exception.)

For the **November general election**, *N.J.S.A.* 19:60-7 states that the last day that a candidate seeking election as a member of a board of education at the **November general election** may amend a defective petition is the 10th day after the last day for the filing of the nominating petition.

75. Can a petition be amended if it contains an insufficient number of signatures?

No. A substitute petition, completely redone, can be submitted prior to the filing date, but signatures may not be added to the original petition. *N.J.S.A.* 19:13-13. (See question 76 for an exception.) Note that where a petition only has 10 signatures and one of those signers is not a registered voter, the petition is not defective. This is a curable defect, if done so by the deadline for amending the petition. *Saunders v. Toms River BOE*, 144 *N.J.* 371 (1996) (adopting the dissenting opinion in 289 *N.J.* Super. 225(App. Div. 1996)).

76. What happens if a defect is discovered in the nominating petition after the deadline for filing objections with the board secretary or county clerk?

Nominating petitions in apparent conformity shall be deemed valid unless a written objection is filed with the board secretary, no later than the 46th day preceding the election. *N.J.S.A.* 19:13-10, 19:60-7. If an objection to the petition is timely filed, notice of the objection must be promptly mailed to the affected candidate, addressed to the place of residence as given in the petition of nomination.

77. What happens if the candidate has signed the verification but was not one of the listed signatures? Can the candidate add his own signature to cure the defect?

In the court decision, *In the Matter of Cowan*, 265 *N.J. Super.* 171 (App. Div. 1993), the Appellate Division found a similar defect to be curable in a matter involving a nominating petition for General Assembly candidates. The court read the prohibition on adding signatures to be for purposes of reaching the minimum required number. The candidate was permitted to add his name to the list of signatures. If there are a sufficient number of signatures, it makes no difference whether the cure is by subsequent signature of the verifier or by a substituted verification.

78. May a candidate withdraw a nominating petition?

Yes. The last day on which a candidate may withdraw a petition is the 44th day before the date of April school election. The name of that candidate will be withdrawn by the board secretary and not printed on the ballot. *N.J.S.A.* 19:60-7.

The last day on which a candidate at the **November general election** may withdraw a petition is the 60th day before the date of the **November general election**. The name of that candidate will be withdrawn by the county clerk and not printed on the ballot, *N.J.S.A.* 19:60-7.

Situations have occurred where candidates have had their names removed from the ballot after the withdrawal deadline but before the ballot has been printed. Examples include removal by court order, death of a candidate and relocation of a candidate out of the school district. Some of those situations have involved a simple removal of the name by the county clerk. Others have involved seeking a declaratory judgment from a Superior Court judge with a resulting court order. (See question 118)

79. What can a candidate do if the candidate believes that his/her rights under the nominating petition have been affected?

A candidate may file a verified complaint in Superior Court setting forth any invasion or threatened invasion of candidate's rights under the nominating petition. The last day for such a filing for the **April school election** shall be the 46th day before the election. *N.J.S.A.* 19:60-7.

For the **November general election**, the last day for such a filing with the court shall be the 12th day after the last day for the filing of petitions for board of education candidates seeking election. *N.J.S.A.* 19:60-7.

80. Is a nominating petition a public record?

The Commissioner of Education in *Sokolosky v. Cheloc*, 1989 *S.L.D.* 1434, upheld a citizen's right to access nominating petitions as public records. Under the Open Public Records Act, it would appear that a nominating petition is a disclosable government record. Rulings of the Government Records Council appear to indicate that the GRC considers nominating petitions to be public records, although the GRC has declined to rule that candidate petitions are "immediate access" records because said records are not specifically identified under OPRA as such. *Carter v. Franklin Fire District*, GRC (May 29, 2012). Boards should consult with their board attorneys or the [Government Records Council](#) concerning public access to nominating petitions.

Ballots and Ballot Position

81. Can candidates use titles or nicknames for their names on the ballot?

No. A candidate for board of education is not entitled to use a professional title (Dr.) preceding his name on the ballot unless authorized to do so by statute or unless the professional title is necessary to protect the voting public from confusion or deception. *Sooy v. Gill*, 340 *N.J. Super.* 401 (App. Div. 2001). Concerning the use of nicknames on the ballot, candidates should consult the county clerk's office.

82. Do vacancies on the board go on the ballot?

It depends on when the vacancy occurs:

If the vacancy occurred within the 60 days immediately preceding the **April school election**, the vacancy is filled in accordance with *N.J.S.A.* 18A:12-15 and the newly appointed member serves until the reorganization meeting following the second annual election. The remainder of the term is filled at the second annual election at which time the unexpired term, if any, would be placed on the ballot.

If the vacancy occurred prior to 60th day immediately preceding the election the newly appointed member serves only until reorganization meeting following the next election. The remainder of term, if any, is filled at that next election. *N.J.S.A.* 18A:12-15.

For the **November general election**, the analysis is similar, however the third Monday in July is substituted for the 60th day preceding the April election. *N.J.S.A.* 18A:12-15.

If the vacancy occurred after the third Monday in July preceding the **November general election**. *N.J.S.A.* 18A:12-15 requires the newly appointed member serves until the reorganization meeting following the second annual election. The remainder of the term is filled at the second annual election, at which time the unexpired term, if any, would be placed on the ballot.

If the vacancy occurred prior to the third Monday in July preceding the **November general election**, the member appointed to fill the vacancy serves until the reorganization meeting following the election.

83. When must the school election ballot be ready?

Every county clerk must have ready for the printer a copy of the official ballot required by law to be printed for use at the school election no later than the 17th day preceding the **April school election**. *N.J.S.A. 19:60-9*.

For a special school election, the ballot must be ready no later than two business days following receipt by the county clerk of the official notice of ballot content. *N.J.S.A. 19:60-9*.

For the **November general election**, the ballot must be ready in accordance with *N.J.S.A. 19:14-1*, 50 days before the election.

84. When does the drawing of names for ballot position occur?

For the April annual school election, the drawing of names for ballot position is performed by the secretary of the board of education seven working days after the last day for filing of nominating petitions. The time and place for the drawing of name for ballot position is left to the discretion of the board. While the board of education office or the site of board of education meetings would be a logical location, the statute is silent concerning time and place *N.J.S.A. 19:60-8*.

85. What is the role of the board secretary in the drawing for ballot position?

For the **April school election**, the secretary of the board of education draws the names, makes public announcement of the drawing of each name, the order in which the name is drawn and the term of office for which the drawing is made. Within two days after the drawing for ballot position, the secretary of the board of education must certify the results of the drawing to the county clerk.

The board secretary has no role in the drawing of ballot positions for the November election.

86. Must the candidates be notified of the time and place for the drawing of ballot positions?

There is no statutory requirement for candidate notification of the drawing for ballot position. The statute is silent as to time, place or notification requirements. However, notification of the candidates by the board secretary, county clerk or his/her designee as appropriate is highly recommended.

87. Do the candidates have to be present for the drawing for ballot position?

No, but they are permitted to attend if they choose to do so.

88. When is the deadline to submit public questions to the County Clerk?

The secretary of the board of education shall, no later than 10:00 a.m. of the 18th day preceding the April school election, forward to the county clerk any public question to be voted upon by the voters at the election. *N.J.S.A. 19:60-4.*

For the **November general election**, the secretary of the board of education shall, no later than 10:00 a.m. of the 60th day preceding the **November general election**, certify and forward to the county clerk any public question to be voted on by the voters at the election. *N.J.S.A. 19:60-4.*

Voters and Voting

89. Must the voter be of legal age at the time of registration?

No. As long as the voter is 18 by the day of the school election, the voter is eligible to register and, if properly registered, vote in the election. *N.J.S.A. 19:31-5.*

90. What are the requirements for voter registration?

Registration must take place no later than 21 days preceding the election date before the commissioner of registration, either at the county board of elections or the superintendent of elections, as applicable. *N.J.S.A. 19:31-5, 19:31-6.* To be eligible to register, a person must be:

- a. 18 years of age as of the date of the election,
- b. A citizen of the United States, and
- c. A resident of the State and county for at least 30 days prior to the election.

91. Must the voter be a resident of the district for at least 30 days prior to the time of registration?

No. As long as the voter meets the residence requirements by the school election day, the voter is eligible to vote in the election. The 30-day residency requirement applies to State and county residency only.

Mail-in Ballots

92. When may a voter use a mail-in ballot?

A qualified voter is entitled to vote using a mail-in ballot in any election held in New Jersey, including school elections. A voter who applies for a mail-in ballot may indicate a wish to vote by mail-in ballot in any single election, or in all future elections in which the voter is eligible to vote, including, but not limited to, general and school district elections. *N.J.S.A.* 19:63-3

93. Who is responsible for publishing the notices for mail-in ballots?

The county clerk, in the case of a school election in a regional or other school district comprising more than one municipality, or the clerk of the municipality for a school district comprising a single municipality. *N.J.S.A.* 19:63-6.

94. When and how are the notices for mail-in ballots to be published?

Notice to qualified and registered voters desiring mail-in ballots must be published prior to the 55th day immediately preceding the election. Notices shall be published separately in at least one newspaper in each district in which the election is to be held or, if no newspaper is published in the district, then in a newspaper published in the county and circulating in the district. All notices shall be display advertisements. Additionally, the New Jersey Secretary of State shall provide public notice as may be deemed necessary to inform eligible overseas voters and members of the United States armed forces how to obtain valid overseas ballot applications. *N.J.S.A.* 19:63-6.

95. When must mail-in ballots be requested?

If a qualified voter desires to vote by mail, a mail-in ballot must be requested in writing from the county clerk no later than 7 days before the election. *N.J.S.A.* 19:63-3; 19:63-5; *N.J.A.C.* 15:10-4.

Voters who request mail-in ballots by mail should provide sufficient time for postal delivery. Mailin ballots may also be requested in person from the county clerk the week prior to the election on any day up to 3 p.m. of the day before the election. A qualified voter, including, not limited to, a voter who is sick or confined, may make mail ballot application by authorized messenger. *N.J.S.A.* 19:63-3; *N.J.A.C.* 15:10-4.2.

96. What is the deadline for receipt of mail-in ballots?

Mail-in ballots must be received by the county board of elections or its designee no later than 8 p.m. (the time designated for the closing of polls) on the day of the election. *N.J.S.A.* 19:15-2, 19:63-16..

Sample Ballots

97. Must sample ballots be provided in school elections?

Yes. The county clerk shall cause sample school election ballots to be printed in the same manner as for the general election. *N.J.S.A. 19:60-10; 19:14-21*. The county clerk shall deliver and the municipal clerk or commissioner of registration shall mail, as applicable per *N.J.S.A. 19:14-21*, sample ballots to all registered voters. A voter who registers after the 29th day prior to a school election may, instead of a sample ballot, be sent notice of the voter's polling place, information on where to obtain a sample ballot prior to the election, a statement that a sample ballot will be available at the polling place on the date of the election, and, if applicable, information on a county website where a sample ballot may be viewed. *N.J.S.A. 19:60-10.1*.

98. What is the deadline for mailing sample ballots?

Per *N.J.S.A. 19:60-10*, the latest time at which the county clerk may furnish sample ballots for mailing shall be the eighth day preceding the school election. *N.J.S.A. 19:60-10*. However, this statute does not appear to have been amended to include November school elections and therefore it appears only to apply to April election districts. *N.J.S.A. 19:14-25*.

Electioneering

99. What is electioneering?

The following conduct constitutes prohibited electioneering:

- a. If a person shall on election day tamper, deface or interfere with any polling booth or obstruct the entrance to any polling place, or obstruct or interfere with any voter, or loiter in or near the polling place, or, with the purpose to obstruct or interfere with any voter or to unduly delay other voters from voting, spend an inordinate amount of time in the polling booth, or do any electioneering within any polling place or within one hundred feet thereof, that person shall be guilty of a crime of the third degree. *N.J.S.A. 19:34-6*.
- b. The following conduct prohibited below constituting a fourth degree crime:
 - i. No person shall, within the polling room, mark his ballot in a place other than in the polling booth or show his ballot, nor shall anyone request such person to show his ballot during the preparation thereof, nor shall any other person inspect such ballot during the preparation, thereof or after it is prepared for voting in such a way as to reveal the contents, nor shall any person within the polling place or within a hundred feet thereof, loiter, electioneer, or solicit any voter. *N.J.S.A. 19:34-7*.
 - ii. No voter, at any election where official ballots are used, shall knowingly vote or offer to vote any ballot except an official ballot as provided under law. Such conduct is a fourth degree crime. *N.J.S.A. 19:34-7*.
 - iii. No person shall, on any pretext carry any official ballot from the polling room on any election day except such persons authorized to do so. Such conduct is a fourth degree crime. *N.J.S.A. 19:34-7*.

- c. If a person shall distribute or display any circular or printed matter or offer any suggestion or solicit any support for any candidate, party or public question within the polling place or room or within a distance of one hundred feet of the outside entrance to such polling place or room, that person shall be guilty of a disorderly persons' offense. *N.J.S.A.* 19:34-15.

Under an exception to the electioneering statute, minors are not prohibited from the polling place where there is authorized simulated voting for minors by the county board of elections. By extension, working at or supervising a polling place where such authorized simulated voting is occurred is also not prohibited. *N.J.S.A.* 19:34-6; see also *N.J.S.A.* 19:15-8.

100. What are the penalties for electioneering?

If found guilty of electioneering, a person may be subject to the following penalties, in accordance with applicable law:

1. For third degree electioneering, up to a \$15,000 fine and 3-5 years in prison;
2. For fourth degree electioneering, up to a \$10,000 fine and a prison term not to exceed 18 months;
3. For a disorderly persons' offense, up to a \$1000 fine.

N.J.S.A. 2C:43-3; *N.J.S.A.* 2C:43-6; *N.J.S.A.* 19:34-6-7, -15; see also *N.J.S.A.* 19:34-47.

Election Contests

101. What is a “recheck?”

A recheck is a comparison of the official statements containing the results of the election, as certified and filed by the various district boards, against the actual voting machine counts. *N.J.S.A.* 19:52-6.1(5)

102. Who may request a recheck?

The defeated candidate may petition the Superior Court in the appropriate county for a recheck. In a matter involving a public question, 10 or more qualified voters may petition the Superior Court for a recheck. The recheck must be requested on or before the 15th day following the election. *N.J.S.A.* 19:52- 6.

103. What is the cost for a recheck?

The Superior Court judge must impose a cost upon the petitioners of \$2.00 per district to be rechecked. If the recheck uncovers an error or errors that change the results of the election or public

question, the county clerk shall pay the cost of the recheck to the candidate or petitioners upon a warrant of the Superior Court. If the election or public question results are unchanged following the recheck, the county clerk will deposit the cost of the recheck in the county treasury upon a warrant by the Superior Court. *N.J.S.A. 19:52-6.*

104. What if the recheck finds a discrepancy?

Discrepancies in the recheck are noted and, upon completion of the recheck, a certification along with a report fully identifying the discrepancies that have been found shall be filed with the Superior Court. If, during the recheck, it appears that there has been a sufficient change in the tally of votes cast to affect the result of the election, any defeated candidate or interested parties whose interest may be affected adversely may, within 7 days, apply to the Superior Court judge to continue the recheck. At any time during the recheck procedure, the applicant(s) may abandon the recheck and receive back his/her/their deposit for the districts that were unchecked. *N.J.S.A. 19:52-6.1.*

105. What is a “recount”?

A recount is a second count of the votes actually cast during an election. Any candidate who has reason to believe an error has been made in counting the votes may apply to a Superior Court judge, in the appropriate county where the relevant election district(s) is/are located, for a recount, on or before the 17th day following the election. Similarly, any ten voters, who have reason to believe that an error has been made in counting the vote on any public question, may likewise apply for a recount. *N.J.S.A. 19:28-1.*

106. What fees are involved in requesting a recount?

The Superior Court judge assigned to the recount shall establish the sum of money to be deposited. The applicant must deposit an amount, which is in proportion to the number of votes required to be recounted. In any event, the deposit amount shall not exceed \$25.00 per district to be recounted. The judge shall also establish the compensation, costs and expenses of the recount.

Whenever, as a result of the recount, it appears that an error or errors have occurred that would change the election results, or the vote tally is changed by 10 votes or 10% of the total votes cast (whichever is greater), the costs and expenses of the recount in the relevant election district shall be paid by the state, county or municipality in which the election was held upon the warrant of the Superior Court. If the recount does uncover an error that would change the election results, the costs and expenses of the recount in the relevant election district shall be paid out of the deposit made by the party seeking the recount. *N.J.S.A. 19:28-2.*

107. What if an error has been made?

After receiving a petition, the judge has the authority to direct the county board to conduct a public recount. The judge has the authority to decide all disputed questions that the county board fails to decide by a majority vote. *N.J.S.A. 19:28-3.*

If it appears that an error has been made that is sufficient to change the outcome of the election, the judge shall issue an order revoking the certificate of election already issued. In addition, the judge shall issue an order directing the chair and clerk of the county board of canvassers to issue another certificate in favor of the person who has received the plurality of votes cast. However, if the person who initially received the most number of votes before the recount makes a request of the Superior Court judge, the election certificate is not issued until a recount has been completed in all districts in which the initial winning candidate ran for office.

If, during the further recount, the person to whom the certificate of election was already issued gains sufficient votes so such person has more votes than the contestant, the judge may order the recount shall not proceed unless the contestant shall make an additional deposit of money, as determined by the judge, but which shall not exceed \$25.00 per district. If there is a tie, as a result of the recount, the judge shall issue an order revoking the certificate that was originally issued by the board of canvassers. *N.J.S.A. 19:28-4.*

108. Can the results of an election be contested?

Yes. The election of any person to public office or the approval or disapproval of a public question may be contested by the voters of this state or any of its political subdivisions affected thereby. Grounds for overturning an election include, but are not limited to:

1. Malconduct, fraud, or corruption by members of the election district board or the board of county canvassers.
2. Ineligibility of an elected or tied candidate(s),
3. Criminal conviction(s) disqualifying an elected or tied candidate from voting, absent a pardon prior to the election,
4. Bribery by an elected or tied candidate,
5. Illegal votes or rejection of legal votes sufficient in number to change the election result,
6. An error by a board of canvassers in counting the votes or declaring the election results, if the error would change the election results,
7. Other cause showing that another candidate was the person legally elected,
8. A nominating petition not filed in good faith or that the affidavit attached to such petition is false or defective, or
9. Payment, promise to pay, or expenditure of money or other things of value, or incurring liability, in excess of what is permitted under law.

N.J.S.A. 19:29-1.

109. What is the deadline for filing a petition to contest a result from the annual school election?

The petition, contesting a result from the annual school election, must be filed no later than 32 days after the election, unless the grounds for challenging the election results are based on statements, deposit slips or vouchers filed as permitted by law. A petition contesting the results of a recount may be filed within 12 days of the announcement or determination of the recount. *N.J.S.A. 19:29-3.*

Election Results

110. When are election results certified?

The board of county canvassers of each county meets the Wednesday next after the school election, at 12 o'clock noon at the county courthouse and certifies the election results. *N.J.S.A. 19:19-1, -4, -6.*

111. What happens if there is a tie vote on the budget during the April election?

The budget is not approved and is deemed defeated. *N.J.S.A. 19:3-6.*

112. What happens in the event of a tie among the candidates?

If the tied members can both be seated on the board, there is no problem. It is only important if the tie vote is for the last seat and/or the only seat up for election. In such cases, there will be, pursuant to *N.J.S.A. 18A:12-15*:

1. A recount and certification of the election results,
2. If the vote remains tied, a special election within 60 days of the annual school election will be held, limited to the tied candidates,
3. An appointment by the county superintendent if, at the special election, the candidates receive an equal number of votes. Boards should consult with their board attorneys concerning a special election in this instance in light of *N.J.S.A. 19:60-2*. (See Questions 6-8)

113. What happens if there is a failure to elect due to improper election procedures?

A special election is held within 60 days of the annual school election, limited to the disputed seats and to those who were already candidates at the annual school election. *N.J.S.A.* 18A:12-15. (See Questions 6-8)

114. What happens if there is a failure to elect due to improper campaign practices?

The Commissioner of Education will fill the vacancy or vacancies. *N.J.S.A.* 18A:12-15.

115. How are write-in votes counted?

Pursuant to *N.J.S.A.* 19:16-3:

1. If the candidate's name is already on the ballot, then the write-in for that person is not counted.
2. If a person's name is written in more than once, the write-in vote is counted only as one vote.
3. The name of the write-in must be reasonably attributed to the actual individual with no confusion. The final determination rests with the district board of election in the first instance and ultimately with the Superior Court. See *N.J.S.A.* 19:16-4; *Petition of Fifteen Registered Voters o/b/o Flanagan*, 129 *N.J. Super.* 296 (App. Div. July 12, 1974).

116. What happens if a candidate wins the seat he/she is running for, and also receives the highest number of votes as a write-in candidate for another seat?

The successful candidate would get to choose his/her seat on the board. A vacancy would exist in the other seat and would be filled in the usual manner for filling vacancies. *N.J.S.A.* 18A:12-15; see *N.J.S.A.* 19:3-5.2. For example, a candidate who wins the three-year term for which he/she is running, and also receives the highest number of votes as a write-in candidate for a one-year unexpired term, would get to choose whether to serve in the three-year or one-year position.

117. What happens if there are fewer candidates than there are board of education seats available?

1. Write-in votes are counted and the individual with the highest number of write-in votes is offered the position as long as that person is a qualified candidate. If the person elected does not wish to serve, the most recent available opinion from election officials is that there has been an absence of candidates and the county superintendent appoints. It *does not* go to the next highest vote getter. *N.J.S.A.* 19:3-4.
2. If there is a tie among the write-in candidates, even with as little as one vote apiece, a special election is called among the write-in candidates if more than one of them is eligible and wishes to hold the position. *N.J.S.A.* 18A:12-15, *N.J.S.A.* 19:3-4.

3. If there is a vacancy resulting from an absence of candidates to the school board, then the county superintendent shall make an appointment to fill the vacancy. *N.J.S.A.* 18A:12-15.

118. Is there a minimum number of write in votes necessary for election?

No. If a particular school board seat has no nominees, a single write-in vote can elect, so long as, the write in candidate qualifies for and agrees to accept the office. *N.J.S.A.* 19:3-4.

119. What happens if a duly elected board member dies before taking office? How is the vacancy filled?

Traditionally, the opinion from election officials has been that the deceased elected candidate is unable to serve because of a lack of qualifications. Pursuant to *N.J.S.A.* 18A:12-15(a) the executive county superintendent fills the vacancy. It does not automatically go to candidate with the next highest vote tally. *N.J.S.A.* 19:3-4.

In the November 2014 school election, deceased candidates were elected in two counties; Passaic and Salem. In Passaic County, the executive county superintendent appointed a person to fill the vacancy. In Salem County, election officials directed the board of education to fill the vacancy. (See question 77)

120. How does a write-in candidate take the candidate's oath of office?

In the traditional campaign, candidates for board office circulate a nominating petition wherein district residents who are qualified to participate in the school election endorse a particular candidate by signing the nominating petition. In that petition, the candidate must also certify he or she is qualified to be a member of the local board of education, consents to stand as a candidate for election, and if elected, agrees to accept and qualify into the contested office. The candidate must further affirm and declare that he or she is not disqualified as a voter pursuant to *N.J.S.A.* 19:4-1.

Obviously, a successful write-in candidate will not have circulated a petition nor have certified as to the above qualifications for office. In such cases, it is important that the successful write-in candidate file the mandatory candidate's certification before taking the actual oath of office. The successful write-in candidate should be prepared to make the appropriate filing in the county clerk's office before taking the oath of office for the board of education. Each successful write-in candidate should contact the county clerk to make the appropriate filing as soon as possible after the election. Ideally, such a filing should be made with the county clerk prior to the county clerk's certification of results of the election on the Monday after the election is completed.

Election by Mail

121. Can a school district election be conducted by mail?

Yes. A municipality with a population of 500 or fewer persons, according to the latest federal decennial census, may conduct all elections by mail, provided there is an affirmative vote to do so by the governing body of the municipality and by the governing body of the county in which the municipality is located. *N.J.S.A.* 19:62-1 to 4.

122. When are ballots mailed in a school election conducted by mail?

No sooner than 20 days prior to the day of the election, nor later than the 14th day prior to the day of the election, the county clerk shall mail a ballot to each person registered to vote in the municipality at the election. *N.J.S.A.* 19:62-2.