



School Board Elections Considerations Related to COVID-19

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Write-in Candidate Registration Deadline

Now that the April 3rd deadline for filing a write-in registration has passed, the school district clerk or a designee should communicate with each of the district’s municipal clerks to:

1. Identify the registered write-in candidates (if any); and
2. Ensure that the municipalities are aware, for each school board contest that is on the ballot, whether write-in votes need to be counted (1) for all persons who receive write-in votes; or (2) only for registered write-in candidates. This is determined under [section 7.50\(2\)\(em\)](#) of the state statutes, and the general rule is that a write-in candidate needs to register to have their votes counted if there is at least one candidate who was certified to appear on the ballot for each open position in the office that the write-in candidate is seeking.

Delivery of Elections Materials by Municipal Clerks

IMPORTANT UPDATE AS OF 4/10/20:

Summary: In most cases, it should be possible for school districts to receive elections materials from municipal clerks by end of day on Tuesday April 14. In some cases, the materials may not be available until April 15. The [Elections Commission is directing school district boards of canvassers](#) to begin their canvass **no later than 9:00 a.m. on Thursday April 16.**

Additional Detail: The Wisconsin Elections Commission has [directed municipalities](#) (i.e., cities, towns, and villages) as follows:

1. The municipal elections inspectors may begin the work of completing election night procedures, including processing late-arriving absentee ballots and tallying write-in votes, on or before April 13 before 4:00 PM, but no results should be generated until after the 4:00 PM deadline.
2. Municipalities (cities, towns, and villages) should convene their municipal board of canvassers (MBOC) after the completion of the election night procedures. Preferably the MBOC will convene on April 13 once the unofficial results have been compiled. However, if circumstances preclude this, then the MBOC may convene the following morning (i.e., on Tuesday).
3. When the municipal canvass process is completed, materials should be packed up and prepared for routing to the county and school district.
4. Municipalities should provide materials to the county and school district ***as soon as possible*** so they can complete their canvass in a timely manner.

The Elections Commission did **not** give municipalities a specific deadline for providing elections materials to school district clerks. However, considering the guidance that was provided to municipalities, it appears likely that most school districts will be able to receive elections materials from their municipal clerks by the end of day on Tuesday April 14. In some municipalities, it is possible that the materials may not be available for school districts until sometime on Wednesday April 15. (It is **unlikely** that the materials will be available for school districts on the evening of April 13.)

In light of these developments, the Elections Commission has directed school districts to begin their canvass by no later than 9:00 a.m. on Thursday April 16.

Now that the Elections Commission has issued its guidance, school district clerks or their designees should contact each of their municipal clerks to coordinate a time and method for the delivery of the elections materials that are needed to conduct the canvass of the school board election. Based on that information, a final date and time for the canvass can be selected.

School district clerks and their designees should continue to monitor all [clerk communications](#) from the Wisconsin Elections Commission as they relate to the availability of elections materials and the school district canvass.

Choosing a Meeting Date/Time for the Board of Canvassers

IMPORTANT UPDATE AS OF 4/10/20:

Summary:

- The Elections Commission is directing school district boards of canvassers to begin their canvass **no later than 9:00 a.m. on Thursday April 16.**
- School district boards of canvassers do **not** need to meet on Tuesday April 14; and, in most cases, it will be impractical to attempt to schedule a school district canvass on the 14th. This is due to uncertainty about the specific time that elections materials will be available from the municipal clerks.
- It should be possible for many school districts to receive elections materials from municipal clerks by end of day on Tuesday April 14.
- Depending on information that school districts receive from their municipal clerks about the municipal processes, it may be most practical to schedule the school district board of canvassers meeting either for some time on Wednesday April 15 or for the morning of Thursday April 16 (no later than 9:00 a.m.).
- Nothing prohibits the school district board of canvassers from meeting on Tuesday April 14 if all of the necessary materials are available. However, under the April 10 guidance issued by the Elections Commission, attempting to do so may place unnecessary pressure on the municipalities and risks the possibility that materials will not be available as anticipated.

Additional Detail: Due to the court-ordered extension of the deadline for receiving absentee ballots (until 4:00 pm on Monday April 13) and resulting delays in the post-election procedures that must be performed by elections inspectors and municipalities, the [Wisconsin Elections Commission has advised school districts](#) that they are **not** required to complete the school district canvass by the normal, statutory deadline. Instead, school district boards of canvassers are to begin their canvass **by no later than 9:00 a.m. on Thursday, April 16.**

Now that the Commission has issued its guidance, school district clerks or their designees should contact their municipal clerks to coordinate timing. Based on those discussions, the school district clerk can select a specific date and time for the canvass and prepare the official notice of the meeting of the board of canvassers. (In some cases, this will be an amended notice that changes the date/time of the canvass.) As noted above, the Elections Commission did **not** give municipalities a specific deadline for providing elections materials to school district clerks.

Giving Public Notice of the Meeting(s) of the Board of Canvassers

1. The meetings of the school district board of canvassers are subject to the public notice requirements of the Wisconsin Open Meetings Law.
 - a. The Open Meetings Law requires governmental bodies to communicate notice of their meetings (1) to the public; (2) to those news media who have filed a written request for such notice; and (3) to any designated official newspaper of the governmental body or, if none exists, to a news medium likely to give notice in the area.
 - b. The notice must include the date, time, location, and subject matter of the meeting. In addition, if the district is going to provide members of the public with remote access to observe the proceedings of the canvass, a Department of Justice advisory states that the meeting notice should also include information and instructions related to the remote access option(s).
2. Public notice of a meeting of the school district board of canvassers shall be given at least 24 hours prior to the commencement of the meeting unless, for good cause, such notice is impossible or impractical, in which case shorter notice may be given. However, in no case may the notice be provided less than 2 hours in advance of the meeting.
3. Under a new amendment to the Open Meetings Law, and subject to any direction that is given in school board policy (e.g., a local policy that identifies 3 public posting locations that shall be used for all district-related meeting notices), the presiding officer of a governmental body or his/her designee now has discretion to give notice of a meeting to the public using any of the following methods:
 - a. Posting a notice in at least 3 public places likely to give notice to persons affected; or
 - b. Posting a notice in at least one public place likely to give notice to persons affected and placing a notice electronically on the governmental body's internet site; or
 - c. By paid publication in a news medium likely to give notice to persons affected.

When applying the above-listed options to the meeting notice of the board of canvassers, there is some ambiguity as to whether the school district's website can automatically be deemed to be the "internet site" of the board of canvassers (which typically would not have its own, separate site). To avoid such arguable issues of interpretation under this new statute, a district could simply post the meeting notice in 3 public places and place the notice on the district website.

Filling a Temporary Vacancy on the Board of Canvassers

It is possible that one or more members of the board of canvassers will be unavailable to conduct the canvass for reasons related to the COVID-19 pandemic or due to other reasons (including schedule changes forced by the extension to absentee voting). In this situation, another eligible elector of the school district needs to be identified to fill the temporary vacancy. The appointee could be another member of the school board provided that he/she is not a candidate in the 2020 spring election. The appointee (as well as the other electors on the board of canvassers) should take an oath of office as an election official.

1. If a temporary vacancy involves a member of the board of canvassers other than the school board clerk, the clerk is authorized to fill the vacancy by making a replacement appointment. [Section 7.53\(3\)\(a\)](#) of the state statutes provides that, except when the clerk is a candidate in the election, “the school district clerk shall appoint a member to fill any other temporary vacancy on the board of canvassers.”
2. If the current school district clerk is a candidate in the election, then the clerk is never permitted to participate in the canvass. In that situation, after the clerk appoints two electors to serve on the board of canvassers, the two appointees must appoint a third elector of the district to serve in the place of the clerk. See [section 7.53\(3\)\(a\)](#) of the state statutes.
3. If the school board clerk is not a candidate in the election, but the clerk is unable to attend and participate in the canvass, the statutes are less clear on the procedure for replacing the clerk.
 - a. If, pursuant to [section 120.05\(3\)](#), the school board has acted to appoint another board member to perform the duties of the clerk in the temporary absence or disability of the clerk, then the board-appointed board member (if he/she is not a candidate in the election) could likely serve on the board of canvassers in place of the clerk as part of carrying out his/her board-authorized role as a deputy clerk.
 - b. If the school board has not taken any action to select another board member to serve as a deputy clerk under section 120.05(3), then section 7.53(3)(a) of the state statutes (quoted above) appears to suggest that the clerk would appoint an elector to fill his/her own temporary vacancy. However, [guidance issued by the Wisconsin Elections Commission \(at p. 64\)](#) suggests that the two remaining members of the board of canvassers are the appointing authority in this situation. One possible way to resolve this conflict would be for the clerk and the two remaining members to all authorize the same appointee.

WASB recommends that school districts create and retain some type of record that clearly identifies how someone came to be appointed as member of the board of canvassers. For example, this might be a letter (or even an email) of appointment from the board clerk to the person.

Conducting the Meeting of the Board of Canvassers

The meeting(s) of the board of canvassers should occur in a location where all persons who attend the meeting in person can observe appropriate social distancing protocols to the extent practical.

1. Remote participation by the members of the board of canvassers: Is it possible?

Several school districts have asked about the possibility of conducting a “virtual meeting” of the board of canvassers. WASB continues to monitor the website of the Elections Commission for any guidance about whether it would be appropriate to attempt to run the meeting of the board of canvassers as a virtual meeting. Understandably, however, most of the guidance that is being issued prior to the election concerns the process for running the polls on election day.

As things stand at the end of March, WASB is not aware of any guidance that expressly prohibits the members of the board of canvassers from conducting a virtual meeting using communications technology. **However**, at the same time, general guidance from the Wisconsin Department of Justice indicates that whether it is appropriate for a governmental body to hold a virtual meeting under the

Open Meetings Law is to be determined on a “case-by-case” basis. The following issues would make holding a virtual canvass very challenging from the perspective of remote participation by the members of the board of canvassers:

1. The need for the members of the board of canvassers to take an oath of office as an election official. If a district were to consider a virtual meeting, the oaths may need to be administered in advance given that the official oath needs to be in writing and given additional challenges that are associated with the possible remote administration of an oath. (See below regarding oaths of office for board members.)
2. The nature of the duties of the board of canvassers, including:
 - a. The need to directly examine a variety of records and election materials, and
 - b. The need to commonly sign certain documents.
3. Complications with arranging for adequate public access to the meeting. Under the Open Meetings Law, the open session meetings of every governmental body must be reasonably accessible and open to the public at all times.

It may be possible to overcome the challenges identified above (e.g., by arranging for videoconference technology, having at least one person physically present to handle and show the materials, exploring electronic signature methods under [Chapter 137](#) of the state statutes, etc.). However, it also may not be worth the effort it would take to make the necessary arrangements.

School districts may wish to consider contacting the members of the board of canvassers ahead of time to ask if any of them have concerns about coming to the district to conduct the canvass, noting that social distancing protocols will be observed to the extent possible. Their responses may inform decisions regarding the best way to approach the meeting. In addition, school districts should monitor any forthcoming guidance from the Elections Commission that may relate to this issue. But, as things stand, there does not appear to be a definitive answer as to whether the canvass can be accomplished through a virtual meeting.

2. What about remote access to the board of canvassers meeting for members of the public?

Although public interest in attending the meetings of a school district’s board of canvassers tends to be very low, the obligation still exists to provide for reasonable public access. Given the inherent nature of the canvassing process, it is possible that minimally-adequate public access may require a videoconference-type platform (including live streaming of video and audio) and/or in-person access. That is, due to the nature of the duties of the board of canvassers (which involve examining a variety of documents), this may be an example of the type of meeting for which providing the public with only remote telephone access to the meeting would not be sufficient. Nonetheless, compared to the challenges that exist with arranging potential remote participation by the actual canvassers, arranging for possible remote public observation of the canvass is somewhat less complex. Finally, as previously mentioned above, if a school district is going to offer remote public access for purposes of observing the canvass, a Department of Justice advisory states that the public notice of the meeting should include specific information and instructions about the remote access option(s).

For other general information about conducting the canvass, refer to the [Election Administration Manual for Wisconsin School District Clerks](#), as published by the Wisconsin Elections Commission.

Filing and Receiving Recount Petitions

If the vote count for any office in the election is close enough that one or more candidates would be permitted to file a petition for a recount, then the school district will, at a minimum, need to arrange to have an authorized person available to receive a possible recount petition.

According to state law, any candidate who is an “aggrieved party” (as determined by vote count calculations specified under sections [9.01\(1\)\(a\)5](#) and [9.01\(1\)\(ag\)5](#) of the state statutes) may petition for a recount. Under those statutes, there is an “aggrieved party” if:

1. For an election at which 4,000 or fewer votes are cast for the office that the candidate seeks, a candidate who trails the leading candidate, as defined in section [9.01\(1\)\(ag\)5](#), by no more than 40 votes.
2. For an election at which more than 4,000 votes are cast for the office that the candidate seeks, a candidate who trails the leading candidate, as defined in section [9.01\(1\)\(ag\)5](#), by no more than 1 percent of the total votes cast for that office.

The petitioner shall file the petition with the school district clerk not earlier than the time of completion of the canvass and **not later than 5 p.m. on the 3rd business day** following the last meeting day of the board of canvassers. (The same deadline applies to the filing of a petition for a recount of a school district referendum by any voter who qualifies as an “aggrieved party” in connection with a close referendum.)

If the district’s designated filing office for filing election-related petitions is closed or not operating under regular hours due to the COVID-19 pandemic, it may be especially important for the board clerk or his/her designee to be in direct communication with any candidates who are aggrieved parties regarding their options for filing a recount petition. It is possible that someone will need to be at the designated filing location until 5:00 p.m. on the filing deadline.

Issuing Certificates of Election

1. After the school district board of canvassers determines the results of the election, the school district clerk is required to issue a Certificate of Election ([Form EL-153](#)) to each winning candidate.
2. In prior elections, school district clerks were required to wait to issue the certificates until after the expiration of the deadline for filing a recount petition (i.e., three business days after the board of canvassers completes its work). However, under a new law that took effect on March 5, 2020, it is now permissible to issue a Certificate of Election as soon as the board of canvassers completes its work, but only if the results of the canvass show that there is no “aggrieved party” under the election recount statutes. Whether there is an “aggrieved party” is determined based on the difference in the number of votes received by the various candidates in the specific election. (See sections [7.53\(4\)](#), [9.01\(1\)\(a\)5](#), and [9.01\(1\)\(ag\)5](#) of the state statutes.)
3. The school board clerk or a designee may wish to contact the winners of the election to confirm receipt of the Certificate of Election and to make clear arrangements for the administration of the oath of office.

Administering the Oath of Office

Each person who wins a seat on the school board as a result of the spring election (including each incumbent who is re-elected to a new term) must take and file the official oath of office **on or before** the fourth Monday in April (i.e., on or before April 27, 2020). It is WASB's understanding that failing to take and file the oath of office by the statutory deadline creates a vacancy in the office (i.e., the person loses their seat on the school board).

1. The official oath is a **written** oath (see [Form EL-154](#)) that must be "subscribed and sworn to" before an official who is authorized to administer oaths. The officials who are authorized to administer the oath of office for school board members include (but are not limited to) the school district clerk, any notary public, and also municipal clerks. See [section 887.01](#) of the state statutes.
2. State law does **not** require school board members to take their official oath at a school board meeting.
3. Regardless of who administers the oath of office to a board member-elect, the written oath needs to be **both** taken **and** filed with the school district clerk (or a designee acting on his/her behalf) on or before the fourth Monday in April. See sections [120.06\(10\)](#) and [17.03\(7\)](#) of the state statutes. It is **not** sufficient, for example, for someone to take their written oath before the deadline, and then deliver it for filing only when they attend their first board meeting in May.
4. Taking and filing the official oath qualifies an individual to take office on April 27, 2020 (the fourth Monday in April), but the person's actual term of office never begins until April 27, 2020.

In light of the COVID-19 pandemic and the state-wide Safer at Home Order, several school districts have contacted WASB with concerns about the administration of the oath. Specifically, they are anticipating the possibility that some individuals who are elected to the school board may either (1) be in a mandatory or strongly-recommended self-quarantine; or (2) express a clear preference against taking the oath in any in-person setting. Also, at a minimum, school closures and the changes to board meeting schedules caused by the pandemic create a situation where school district offices are less likely to be open and staffed with a person who is authorized to administer the oath than would otherwise be the case. As a result, the question arises whether the oath can be administered remotely.

In the vast majority of cases, WASB believes that the individuals who are elected to the board should be able to find an acceptable method of taking the oath of office in an in-person setting once they realize the number of people who can administer the oath and once they take into account that strong social distancing practices can still be incorporated into the procedures.

However, in exceptional circumstances, it may become necessary to consider other options. As of the end of March, the WASB is aware of the following documents that have been issued by the Department of Financial Institutions (DFI, the agency that regulates notaries in Wisconsin):

- Emergency Guidance on Remote Notarization:
[http://www.wdfi.org/Apostilles Notary Public and Trademarks/pdf/Emergency%20Guidance%20-%20Remote%20Notarization.pdf](http://www.wdfi.org/Apostilles%20Notary%20Public%20and%20Trademarks/pdf/Emergency%20Guidance%20-%20Remote%20Notarization.pdf)

- Additional Guidance on Remote Online Notarization:
http://www.wdfi.org/Apostilles_Notary_Public_and_Trademarks/pdf/Remote%20notarization%20-%20webpage%20announcement.pdf

The short summary of the information provided in the DFI documents is that they indicate that becoming qualified to perform notarial acts in an online, remote setting requires special DFI-approved training and the use of specialized software. A notary public cannot simply start a videoconference using a popular social media or electronic meeting app and then notarize documents just because they are able to see and hear a person remotely.

It is not at all clear how a school district clerk's authority to administer an oath of office fits in with the DFI's guidance for notaries. However, there is no express authority for a school board clerk to use a remote process for oath administration or to use a process that is any less secure and robust than the requirements that appear to apply to a notary public who is performing the same act. As a result, in exceptional situations where taking an in-person oath is not practical, a person who needs to take an oath of office as a school board member might refer to the information provided by the DFI and further explore the use one of the providers of remote-notarization services, as identified therein. Ultimately, given the uncertainty related to the remote administration of oaths, school districts are encouraged to refer this issue to their district legal counsel and follow the advice of their attorney. But, in the absence of any new information, WASB is recommending at this time that school district clerks should **not** attempt to administer an oath of office remotely.

District Reporting of Referendum Results (if applicable)

IMPORTANT UPDATE AS OF 4/8/20:

State law requires school districts to report referendum results to the DPI within 10 days after the referendum is held. According to a DPI School Finance Bulletin issued on April 7, because of final court rulings, absentee ballots mailed on April 7 "have until Monday, April 13 to be received and counted by municipal clerks, implying that district boards of canvassers will not be able to certify results until Tuesday, April 14 at the earliest. Therefore, due to the current extraordinary circumstances, the DPI will count the 10-day period from Monday, April 13, and referendum reports through the School Finance Reporting Portal will not be due until Thursday, April 23." The DPI still encourages districts to complete their referendum reports as soon as possible.

Refusing Salary as a Board Member

State law provides that a school board member may send written notification to the school district clerk and the school district treasurer that the school board member wishes to refuse to accept the salary that he or she is otherwise entitled to receive for his/her service as a board member.

For a board member who is elected at the spring election, the deadline for filing such a notice of refusal is "no later than the day on which the board member takes the official oath of office and before the board member performs any services in his or her capacity as a board member." Upon filing the notice, the period of refusal will last until the end of the 2020 tax year, and the notice cannot be rescinded.

Although a notice of refusal of salary needs to be in written form, there is no requirement that such a notice be notarized or witnessed. Therefore, the notice can be sent by U.S. Mail, as an email attachment, etc. WASB recommends that the school district clerk or a designee reach out to each newly-elected board member to inform them of this process and to ensure that any notices of refusal are sent and received as intended.

Adjustments to New Board Member Orientation Procedures

School district leadership teams across the state have many different approaches to the orientation of newly-elected school board members. However, it is probable that nearly every district is going to have to make some changes to their normal practices and procedures in light of the COVID-19 pandemic. It is worth spending some time thinking about necessary or desirable adjustments ahead of time. Start by reviewing the board's policies to determine if any orientation procedures or activities that are prescribed by policy may need to be suspended or modified in light of the conditions caused by the pandemic.

Selecting Board Officers at the Reorganization Meeting

School boards with at least 5 members are required to annually elect their officers (president, clerk, etc.) on or within 30 days after the fourth Monday in April. Under [section 19.88](#) of the state statutes, the annual election of board officers is the one time that school boards are permitted to use a secret ballot.

School boards that are conducting (or that anticipate conducting) virtual meetings have inquired about how to conduct a secret ballot in the context of a virtual meeting. In response to that question, an initial point is that secret ballots are permitted, but not required by the statute. Because the statute grants discretion, some boards may have existing policies that specify that secret ballots shall be used, or that specify that the board will determine its method of voting for officers each year at the outset of the reorganization process. Generally, a school board may amend or suspend the application of any such policy if necessary, but it is important to know if the board has such a policy and what it currently says.

The next step is figuring out what the board wants to do. For example, a board could approve one of the following options:

1. If the meeting at which the election of officers occurs will include the remote participation of board members, the board could decide (via a motion or policy adopted by the board) not to use secret ballots in the election of officers this year.
2. The board could decide to hold the election of officers at a meeting called by the board where remote participation by board members will not be permitted and secret ballots will be used (i.e., conduct a traditional in-person meeting to select officers while observing social distancing protocols).
3. The board could decide to authorize board members to participate in the election of officers either in person or remotely, such that the individuals who are present in person may submit unsigned ballots, whereas remote participants would not have that option. However, the board would need to recognize that, in some scenarios under this process, some or all votes from an unsigned ballot may be able to be attributed to a specific board member by process of

elimination. This potential appeal of this concept is lessened by its relative complexity and by the fact that it may not even achieve its intended purpose.

4. A board may be able to devise and approve some other process for submitting votes for board officers from remote locations that addresses both a desire for secrecy and the need to ensure that the votes were validly cast. A board may wish to have any such option reviewed by legal counsel prior to moving forward with it.

The first option listed above is generally the most straightforward approach for boards that wish to conduct the election of officers with the remote participation of board members. It is important to reiterate that (1) boards are not required to use secret ballots for the election of board officers; and (2) any board decisions about the procedures for electing officers this year need to be made by accounting for any existing policies or procedures that have been adopted by the board (including any newly-adopted policy about conducting virtual meetings).