

LEGAL UPDATE

Four County School Boards Association District Clerk Workshop October 29, 2025

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ELECTION RESULTS REPORTING

Election Results Reporting

- Chapter 56 Part LL § 1 enacts the Dr. John L. Flateau Voting and Election Database of New York Act, **effective April 1, 2026**.
- Chapter 56 Part LL § 2 adds a new provision to the election law requiring the State Board of Elections to set up the New York voting and elections database. Election authorities, including a **school district**, that administers its own elections or maintains its own voting and election records must **transmit required information** to the database (Elect. Law § 3-112(1), (1-a)).
- The State Board of Elections must promulgate **regulations** on data standards for processing and transmitting records to the state database within 180 days of the effective date of the law (Elec. Law § 3-112(1-b)).
- Nothing in the law requires an election authority to create or otherwise provide a record it is not capable of collecting.

Election Results Reporting (Continued)

- Information that is required to be transmitted, if the election authority is able to maintain records, includes copies of:
 - Election results at the election district level.
 - Contemporaneous voting registration lists.
 - Voter history files.
 - Maps or other documentation of the configuration of districts in any format or formats as specified by the state board of elections.
 - Tabulations of the number of valid and invalid affidavit ballots, reasons for which such ballots were invalid and the quantity and disposition of affidavit ballots subject to the cure procedure of Election Law 9-209(3).
 - Tabulation for the number of valid and invalid absentee ballots, the reasons for which absentee ballots were invalid, the quantity and disposition of absentee ballots subject to the cure procedure of Election Law 9-209(3).
 - Lists of election day poll site and early voting site and maps or other documentation of configuration of election districts in formats specified by the state board of elections.
 - Adopted districting or redistricting plans for every election in every political subdivision.
 - Any other publicly available data as requested by the state board of elections. (Elec. Law § 3- 112(2)).

Election Results Reporting (Continued)

- Such records must be transmitted by **January 1** following such election, or ten days after an election, whichever is later. The records will be **posted** to the New York Voting and Elections database website, however, individual voter registration records shall not be published on the website but may be requested pursuant to procedures set out in Election Law § 3-103(5) (Elec. Law § 3-112(2)).
- Every 6 months the state board of elections will publish a **list** of election authorities that are **not in compliance** with the record sharing requirements, such entities will be given ten days to cure its noncompliance or provide an adequate reason for noncompliance. Adequate reasons may be determined by the board of elections in its regulations. **Enforcement actions** may be commenced by the State Attorney General (Elec. Law § 3-112(4)).
- Chapter 56 Part LL § 4 adds a new provision to the education law requiring **small city school districts** transmit the publicly available information to the New York State voting and elections database as required by Election Law § 3-112, upon certification of the election and completion of voter history files (Educ. Law § 2614)).

Election Results Reporting (Continued)

- Chapter 56 Part LL § 5 rennumbers current Education Law § 2038 to 2039 and adopts a new **§ 2038** that requires **school districts** transmit the publicly available information to the New York State voting and elections database as required by Election Law § 3-112 upon certification of the election and completion of voter history files (Educ. Law § 2038)).
- Chapter 56 Part LL § 6 adds a new subdivision to Education Law § 2553, applicable to city school districts with a population of **125,000 or more**, requiring that each school district that holds elections pursuant to Article 52, transmit the publicly available information to the New York State voting and elections database as required by Election Law § 3-112 upon certification of the election and completion of voter history files (Educ. Law § 2553(2-a)).

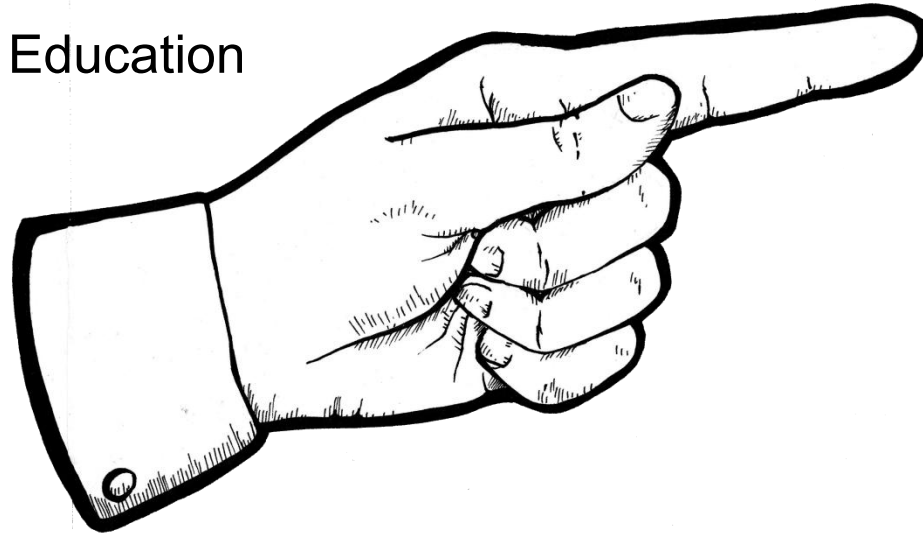
OPEN MEETINGS LAW

Open Meetings Law (“OML”)

- Public Officers Law §§ 100-111
 - **Legislative declaration** - *It is essential to the maintenance of a democratic society that the public business be performed in an open and public manner and that the citizens of the state be fully aware of and able to observe the performance of public officials and attend and listen to the deliberations and decisions that go into the making of public policy.*
 - *The people must be able to remain informed if they are to retain control over those who are their public servants. It is the only climate under which the commonwealth will prosper and enable the governmental process to operate for the benefit of those who created it.*
 - NY Public Officers Law Section 100.

What governments are subject to the law?

- Public bodies convened for the purpose of conducting public business
- Includes school districts
- Applies to the Board of Education



What constitutes a meeting?

- “Meeting” is defined as “the official convening of a public body for the purpose of conducting business.”
- These provisions have been read to require that a quorum (*i.e.*, a majority of the entire body) be present to constitute a meeting.
 - No quorum? No “meeting”
- The statute applies not only to formal or regular meetings, but to any gathering or meeting of a quorum during which public business is discussed, even if no formal action is taken.

What about committees?

- The Committee on Open Government has taken the position that when a committee consists solely of members of the board, its meetings are subject to the OML, **regardless of** whether or not a quorum is present: <https://docs.dos.ny.gov/coog/otext/o4057.htm> (“Second, when a committee consists solely of members of a public body, such as the school board, we believe that the Open Meetings Law is also applicable, for a committee composed of three school board members constitutes a "public body."”)
- On the other hand, committees that are advisory in nature only and do not consist wholly of members of the Board, are not public bodies subject to the OML, per the COG. See OML-AO-o2926 (1998) (<http://docs.dos.ny.gov/coog/otext/o2926.htm>).
- This NYSSBA article is helpful: <https://www.nyssba.org/news/2009/12/14/on-board-online-december-14-2009/are-my-board-committees-subject-to-the-open-meetings-law/>

True or False: Email exchanges between Board Members or the Superintendent and the Board violate the OML?

- Generally False – unless action is taken.
- The COG has opined that if a series of email communications among members of a board of education involves action taken by the board, a meeting would effectively have been held in contravention of the Open Meetings Law.
- It stated, however, that “there is a distinction between that situation and one in which the members, via email or telephone, exchange questions, information or points of view, so long as there is no virtual convening of a majority and “votes” are not collected or taken.”
- OML-AO-3787 (2004)

Practical Solutions/Implications

- Procedures/ground rules for Board member email communications including retention
- Treat all electronic communications as potentially subject to disclosure under FOIL.
- Keep public and personal communications separate.
- Remember that email related to district business/issues taking place on personal or business computers or via personal or business emails are subject to the same rules.
- Is email, text or other communication positively or negatively impacting the Board's work?

Notice of Meetings – Public Officers Law Section 104

- In accordance with Public Officer's Law Section 104:
 - **If scheduled one week in advance** – When the Board schedules a meeting on at least one week's notice, it will give or electronically transmit public notice of the time and place to the news media and conspicuously post the notice in one or more designated public locations at least 72 hours before the meeting.
 - **If scheduled less than one week in advance** - Notice of other meetings will be given or electronically transmitted, to the extent practicable, to the news media and conspicuously posted at one or more designated public locations at a reasonable time before the meeting.

Notice of Meetings – Public Officers Law Section 104 (continued)

- In accordance with Public Officer's Law Section 104:
 - When the Board has the ability to do so, it must conspicuously post the meeting notices on the District's website.
 - If a meeting is streamed live over the internet, the public notice must inform the public of the website's internet address.
 - The public notice for the meeting must inform the public that videoconferencing will be used, identify the locations for the meeting, and state that the public has the right to attend the meeting at any of the locations. (absent extraordinary circumstances)

Special Meetings of the Board

- Special meetings of the Board shall be held on call by any member of the Board.
- A reasonable and good faith effort shall be made to give every member of the Board 24 hours notice of the time, place and purpose of the meeting.
- In an emergency, the twenty-four (24) hour notice may be waived by having each Board member sign a waiver-of-notice form.
- Public notice of the time and place shall be given, to the extent practicable, to the news media and shall be conspicuously posted in 1 or more designated public locations at a reasonable time prior to the meeting.

What about other types of meetings?

- The statute particularly addresses meetings conducted via videoconference, stating a public body that uses videoconferencing to conduct its meeting shall provide notice and an opportunity for the public to attend, listen and observe at any site at which a member participates (absent extraordinary circumstances).
- There are only two ways in which a public body may validly conduct a meeting:
 - by means of a physical gathering or
 - a gathering by means of video-conference.
- Any other means of conducting a meeting, i.e., by telephone conference, by mail, or by e-mail, would be inconsistent with law.

Extraordinary Circumstances Exception

- On April 9, 2022, the governor signed Chapter 56 of the Laws of 2022. Included in the bill is an amendment to the OML to expand the use of videoconferencing by public bodies to conduct open meetings, under **extraordinary circumstances**, regardless of a declaration of emergency.
- This provision was extended in the 2024-2025 State Budget and will be in effect until **July 1, 2026** unless extended by the Legislature.
- Public Officers Law § 103-a(2)(c) defines “extraordinary circumstances” to include: “disability, illness, caregiving responsibilities, or any other significant or unexpected factor or event which precludes the member's physical attendance at such meeting.”
- Governing bodies of municipalities must adopt a **local law** to allow for extraordinary circumstances videoconferencing. Public bodies must establish **written procedures** and those procedures must be conspicuously posted on the public body’s website.

Extraordinary Circumstances Exception (continued)

- Section 103-a(2)(a): a minimum number of members must be present to fulfill the public body's quorum requirement in the **same physical location** or **locations** where the public can attend.
- Chapter 58 of the Laws of 2023 - In the spring of 2023, OML § 103-a(2)(c) was amended to add: Notwithstanding the in-person quorum requirements set forth in this subdivision, the public body may determine, through its written procedures governing member and public attendance established pursuant to and consistent with this section, **to allow for any member who has a disability as defined in section two hundred ninety-two of the executive law, where such disability renders such member unable to participate in person at any such meeting location where the public can attend, to be considered present for purposes of fulfilling the quorum requirements for such public body** at any meetings conducted through videoconferencing pursuant to this section, provided, however, that the remaining criteria set forth in this subdivision are otherwise met; and provided, further, that the public body maintains at least one physical location where the public can attend such meeting.

Quorum and Participation

- Who counts towards a quorum?
 - Members who are participating from a physical location that has been properly noticed and is open to in-person public attendance.
 - Members who are videoconferencing from a remote location that is not open to in-person public attendance **but only if they meet the disability criteria established by Chapter 58 of the Laws of 2023.**
- Who may **participate** in the meeting (including voting)?
 - Members who are participating from a physical location that has been properly noticed and is open to in-person public attendance.
 - Members who are videoconferencing from a remote location due to an extraordinary circumstance **but only if a quorum has otherwise been satisfied.**

- No.
- The OML *generally* requires all meetings of a public body to be open to the public regardless of the nature of its business – **EXCEPT**:
- **Exempt meetings (Section 108)**- 3 categories of meetings are excluded from the OML:
 - judicial or quasi-judicial proceedings (e.g., appeal of student suspension)
 - deliberations of political committees, conferences and caucuses.
 - any matter made confidential by federal or state law.
 - E.g., attorney-client privilege; FERPA
- **Executive sessions** - Properly convened executive sessions for a permissible purpose (Section 105)

Only Permissible Purposes for Executive Session

- Matters which will peril the public safety if disclosed
- Any matter which may disclose the identity of a law enforcement or informer
- Information relating to current or future investigation or prosecution of a criminal offense which would imperil effective law enforcement if disclosed
- Discussions regarding proposed, pending or current litigation
- Collective negotiations
- The medical, financial, credit or employment history of a particular person or corporation, or matters leading to the appointment, employment, promotion, demotion, discipline, suspension, dismissal, or removal of a particular person or corporation
- The preparation, grading or administration of examinations
- The proposed acquisition, sale or lease of real property, or the proposed acquisition of securities

May we have a standing executive session on each agenda?

- No.
- The Board must have at least one valid reason to enter executive session.
 - Tailor the motion and do not read the laundry list of reasons under the statute.
- The Board cannot schedule executive sessions in advance.

Matter of Lucas v. BOE of East Ramapo CSD

- The court held that the OML was violated because the motion to go into executive session did not sufficiently set forth the reasons for going into executive session.
- The Board must do more than just parrot the reasons set forth in the OML.
- “[B]y merely reciting to “litigation, personnel, real estate, and contracts” as the basis for entering into executive session, without describing with some detail the nature of the proposed discussions, the Board of Education has done exactly what the Open Meetings Law was designed to prevent.”
- **The Board’s actions were voided.**
- The court found the award of attorneys fees and costs to be appropriate.

What if the Board violates the OML?

- Courts have discretionary power to declare **void** any action taken in violation of the OML.
 - This can be exercised only “upon good cause shown” – the burden is on the complaining party to establish good cause to nullify action taken in violation of the OML.
 - For example, unintentional failure to fully comply with notice shall not alone be grounds for invalidating action.
- **There can be costs and associated expenses imposed, such as attorneys’ fees.

Records Scheduled to be Discussed

- On October 19, 2021, the Governor signed Chapter 481 of the Laws of 2021 which amends § 103(e) of the OML to require that records to be discussed at an open meeting be made available, to the extent practicable:
 - upon request **and**
 - posted online, at least 24-hours before the meeting if the agency maintains a regularly and routinely updated website and utilizes a high-speed internet connection.
 - The obligation to make records available to the public upon request “prior to or at the meeting” and to post the records on the agency or public body website “prior to the meeting” has been in effect since February 2012.
 - This amendment simply places a 24-hour minimum time frame for making those records available.

Records Scheduled to be Discussed (Continued)

- Proposed resolutions, laws, rules, regulations, policies or any amendment thereto
- Records, or portions thereof, that are public under FOIL
- Agency may, but not required to, spend additional moneys to
- implement this section
- Does not apply to records discussed in executive session

Meeting Minutes (Public Officers Law 106)

- Minutes shall be taken at all open meetings and must consist of a record or summary of all motions, proposals, resolutions and any other matter formally voted upon and the vote thereon.
- Minutes shall be taken at executive sessions of any action that is taken by formal vote which shall consist of a record or summary of the final determination of such action, and the date and vote thereon; provided, however, that such summary need not include any matter which is not required to be made public by FOIL.
- Minutes of meetings of all public bodies shall be available to the public in accordance with the provisions of FOIL within 2 weeks from the date of such meeting except executive session minutes shall be available to the public within 1 week from the date of the executive session.
- Minutes shall be posted on the website within 2 weeks from the date of such meeting except executive session minutes (redacted) shall be available to the public within 1 week from the date of the executive session.

TENURE AREAS AND SENIORITY RIGHTS

Probationary Appointments

- The Education Law and Regents Rules require that “**professional educators**” (i.e. certificated staff including teachers, administrators, teaching assistants etc.) be appointed by the board of education, upon the recommendation of the superintendent of schools, to serve a probationary period in a designated tenure area before being eligible for tenure.
- The purpose of the probationary period is to determine if an appointee is “competent, efficient and satisfactory for purposes of recommending tenure.”
Matter of McManus v. Board of Educ. Of Hempstead Union Free School Dist., 87 NY 2d 183 (1995).

No more APPR ratings as a factor...

- In addition to increasing the length of the probationary period to 4 years, the Education Transformation Act of 2015 (Ch. 56 of the Laws of 2015, Part EE) revised the rules for those appointed on or after July 1, 2015 to add new APPR requirements in order for classroom teachers to qualify for a reduction in the probationary period and for classroom teachers (and building principals) to be eligible to receive tenure at the end of the probationary period.
- Legislation enacted in 2024, effective June 28, 2024 eliminated the requirement for APPR ratings to be a factor in either the length of the probationary period and/or the granting of tenure (Ch. 143 L. 2024).

Evaluation Changes

- On June 28, 2024, the Governor signed into law Chapter 143 of the Laws of 2024, which provides a new teacher and principal evaluation system under Education Law Section 3012-e.
- Education Law § 3012-e will *eventually* supersede the evaluation systems for classroom teachers and building principals now in place under Education Law § 3012-d (a/k/a APPR)
- School districts and BOCES have until **June 30, 2032** to negotiate changes with the bargaining units representing their teachers and building administrators for their § 3012-e Standards-Based Educator Evaluation and Professional Support (“STEPS”) Plan.
- STEPS plans are subject to approval of the Commissioner of Education and must be submitted on a form prescribed by the Commissioner (which is housed in NYSED’s Application Business Portal).

Part 30 Tenure Areas

- **Elementary Tenure Area** - (Pre-K through Sixth Grade)
- **Middle Grades Tenure Area** - (applies when the instruction of seventh and eighth grades is not departmentalized by academic area)
- **Academic Tenure Areas** - (teachers at or above the seventh grade level where instruction is departmentalized are placed into the academic tenure areas of English, social studies, mathematics, science, and languages)

Part 30 Tenure Areas

- **Special Subject Tenure Areas** - (Traditionally, the special subject tenure areas, have encompassed 16 academic areas, 6 vocational education subject areas, 9 ancillary or supportive educational services, 8 BOCES instructional support services areas, and 1 teaching assistant area.)

But Wait!

- On October 7, 2025, the Board of Regents adopted changes to the regulations governing special subject tenure areas.
- Effective **October 22, 2025**, § 30-1.8 of the Commissioner's regulations is amended to:
 - Establish new tenure areas in agriculture (general), dance, theater and visual arts;
 - Rename certain existing tenure areas (business education, home economics, industrial arts, physical education, and school media specialist [library]) to match their current certificate titles;
 - Rename special education tenure areas to match current special education certificate titles and remove outdated language re: students with disabilities;
 - Update references to vocational education to reflect career and technical education (CTE);
 - Rename certain existing CTE tenure areas to match current certificate titles; and
 - Phase-out, after September 30, 2025, certain tenure areas (art, driver education, speech-remedial, school media specialist, and school media specialist (educational communications)).

Exception for Instructional Support Services

- Professional educators assigned to perform “instructional support services” must be assigned to a tenure area for which he/she holds the proper certification.
- **Instructional support services** include activities supporting instructional staff, such as professional learning, pedagogical support, technical assistance, consultation, training in best instructional practices in specific content areas; assisting instructional staff in analyzing student performance data and differentiating instruction to meet the needs of all students.
- Instructional support services **do not** include directly working with students.

What about administrators?

- Part 30 of the Board of Regents' regulations does not apply to administrators.
- School districts determine administrative tenures areas. They can be broad (e.g., principal or administrator) or narrow (e.g., middle school principal).
- Be careful and have legitimate business/educational reasons before abolishing an administrative role/restructuring.

What must be contained in the appointing resolution?

(8 N.Y.C.R.R. Section 30-1.3)

- When the District makes a new appointment, it must be sure each resolution includes the following information:
 - the name of the appointee;
 - the tenure area or areas in which the professional educator will devote a substantial portion of his time;
 - the date of commencement of probationary service or service on tenure in each such area;
 - the expiration date of the appointment, if made on a probationary basis (including any conditional tenure language required for those subject to APPR); and
 - the certification status of the appointee in reference to the position to which such individual is appointed.

Substantial Service in Multiple Tenure Areas

- The probationary appointment resolution must identify the tenure area in which the teacher will devote a “substantial portion” of the teacher’s time (defined as 40% or more) 8 NYCRR § 30-1.3.
- In the event a teacher’s assignment is divided (e.g. math and science) the teacher should receive a probationary appointment for each tenure area in which the teacher spends 40% or more of their time.
- In the absence of a probationary appointment, if a teacher spends more than 40% of their work time in a tenure area, the teacher will be deemed to have received an appointment in such tenure area, notwithstanding the lack of a formal probationary appointment.

Seniority Credit – Split Assignment

1.0 FTE Teacher has split appointment for five years:

50% - Science

50% - Math

Teacher has assignment solely to Math for 2 years.

Seniority Credit :

Math – 7 years

Science – 2 years

Avoid Tenure by Estoppel

- Tenure by estoppel occurs when a school board fails to take the action required by law to grant or deny tenure and “with full knowledge and consent” permits a teacher to continue to teach beyond the expiration of the teacher’s probationary term.
 - *Matter of Gould v. Board of Educ., Sewanhaka Cent. High School Dist.*, 81 NY2d 446 (1993).

Seniority Credit

- Seniority rights are those rights to job security and priority based upon appointment to a tenure area.
- Seniority credit is awarded based upon the actual paid, fulltime service in a specific tenure area.
- Seniority rights apply to both tenured and probationary teachers while tenure rights apply only to tenured teachers.

Seniority Credit

- Seniority is the sole criterion to be used in determining the order in which teachers are laid off in the event that teaching positions are abolished.
- Tenure status and/or performance may not be used as a factor in determining layoff order.
- Time spent working outside of a professional educator's tenure area cannot be counted towards seniority credit in the tenure area.

Seniority Credit

- Commissioner's Regulation 30-1.1(f)

Seniority “need not have been consecutive, but shall, during each term for which seniority credit is sought, have constituted a substantial portion of the time of the professional educator.”

Seniority Credit

- A teacher must be given seniority credit for regular substitute service rendered any time prior to a probationary appointment, even if the substitute service is:
 - longer than two years; or
 - less than the full semester required for *Jarema* credit

Seniority Credit - Ties

- Full-time service within a tenure area
- If equal, the teachers' appointment dates are to be used for determining seniority.
- If same appointment date, the one whose appointment occurred first is the most senior.
- If both were appointment in the same resolution, District may use any reasonable factors.

Seniority Credit - Implications of part-time service

- Generally, part time service does not qualify an individual for seniority rights.
- Exceptions:
 - PT kindergarten teachers
 - PT service rendered after a full-time probationary appointment if the district requests the change to PT.
 - Split 1.0 FTE assignment to multiple tenure areas if at least 40% in the area
- Years of regular full time substitute service count towards seniority, even if interrupted by part-time substitute service

Certification Requirements

- Teachers must be certified for the specific courses they teach. *Appeal of Dankleman*, 37 Ed. Dept. Rep. 415, Decision No. 13,892 (1998) (teacher certified only in physics and general science may not be assigned to biology).
- NYSED uses a “crosswalk” to map the 1,900 State-approved course codes to nearly 1,000 State certification titles contained in the NYSED TEACH database.
- See <https://www.nysed.gov/video/using-nysed-course-catalogand-school-courses-exchange-data-sced-certification-crosswalk>.

§ 80-5.3 Incidental teaching

- A superintendent of schools may assign a teacher to teach a subject **not** covered by such a teacher's certificate or license ... through the 2025-2026 school years for a period not to exceed **ten** classroom hours a week, when no certified or qualified teacher is available after extensive and documented recruitment, and provided that approval of the commissioner is obtained in accordance with the following requirements:
- Not later than **20 business days after such an assignment**, the superintendent of schools shall submit for approval an **application**, in a form satisfactory to the commissioner, containing the following information:
 - (1) evidence of extensive recruitment of a teacher certified in the appropriate area;
 - (2) the name and certification status of the teacher given such assignment;
 - (3) the subject which the teacher is being assigned to teach on an incidental basis and the total number of classes in such subject being taught on an incidental basis;
 - (4) the qualifications of the teacher to teach such subject on an incidental basis;
 - (5) the specific reasons why an incidental assignment is necessary;
 - (6) the anticipated duration of the incidental teaching assignment; and
 - (7) the number of applications, approved or pending, for authorization to make incidental teaching assignments in the same certification area for which the current authorization is being sought.

SOME RECENT COMMISSIONER DECISIONS

ACCESS TO SCHOOL PROPERTY

Appeal of W.W. (Copenhagen CSD), Decision No. 18,570 (June 16, 2025) (dismissed)

- Founder of non-profit organization appealed the Board's decision to place conditions on his access to school property.
- The individual was previously employed by an organization that offered afterschool childcare in the district's schools.
- In November 2024, he participated in an afterschool activity where students, despite instruction from their teacher, failed to put away gym equipment. On the following day, a 4th grade class was required to run a few laps as a "consequence."
- Sometime thereafter, the individual "confronted" the superintendent about this issue. The superintendent indicated he "was very disrespectful ... and raised his voice" during the conversation.
- Based on this interaction, the superintendent requested that the childcare provider not send the individual back to the district.

Appeal of W.W. (Copenhagen CSD), Decision No. 18,570 **(June 16, 2025) (dismissed) (continued)**

- On January 13, 2025, the superintendent learned the individual was on school grounds. The superintendent and the district's SRO located him near the cafeteria.
- The individual refused to leave and the SRO charged him with a trespass violation and escorted him from district property.
- In a letter to the individual dated January 15, 2025, the superintendent prohibited him from entering upon any district property without express prior written consent of the superintendent. He further indicated that, at the individual's request, this condition could be reviewed "**on an annual basis**".
- The individual claimed the property ban was arbitrary and capricious. He sought a declaration that he was not arrested; a declaration that he has the right to access district property for "lawful purposes" and "without undue restrictions"; and removal of the superintendent.

Appeal of W.W. (Copenhagen CSD), Decision No. 18,570 **(June 16, 2025) (dismissed) (continued)**

- The district submitted affidavits from 5 witnesses, including the superintendent and SRO, who recounted their observations from January 13, 2025. These witnesses captured the tone and tenor of the individual's interactions with the superintendent.
- The commissioner found the district reasonably determined that the individual must obtain prior approval before accessing school property.
- There was no evidence in the record that the individual has made such a request to the district. As such, the Commissioner said there is no basis to presume that such a request would be unreasonably denied.
- Moreover, the district indicated that this condition can be reviewed “**on an annual basis.**” This provides the individual with an opportunity to demonstrate that he has abided by the directive and understands the importance of comporting himself appropriately in interactions with school staff.

DENIAL OF PARENT-REQUESTED SPORTS TEAM MERGER

Appeal of Polacek (Chenango Forks CSD), Decision No. 18,569 (June 9, 2025) (dismissed)

- The Commissioner dismissed a parent's challenge of the district's decision not to merge with the Windsor CSD to offer a varsity hockey program.
- While the Commissioner agreed with the parent that combining sports teams "is often desirable" because it allows more greater student participation, she found the district offered a reasonable explanation for why it declined to do so in this instance.
- The district declined to merge with Windsor due, in part, to financial concerns. When this issue arose during the September 2024 board meeting, supporters of the merger offered "verbal assurances" that private donors, via a booster club, would support the program. Notes from the meeting indicated that such funding was "not guaranteed for future year[s]," and that "each family" who participated had been "asked to contribute \$1000 per player"
- Based on this information, board members expressed concern that the board could "be responsible for covering any financial shortfall for ... participants ... and incur additional transportation costs ... which [were] not approved in the 2024-2025 budget." Accordingly, the parent could not meet her burden of proof and the appeal was **dismissed**.

BOARD MEMBER REMOVAL

Appeal of Zamparelli (Carmel CSD), Decision No. 18,526 (November 25, 2024) (dismissed)

- In 2 separate applications, an individual sought removal of Jim Wise as a trustee of the Board of Education. The applications were denied.
- In his capacity as a private citizen, a board member participated in an event in support of a ceasefire in Gaza. At a board meeting on July 9, 2024, the board discussed, at length, his participation in this event, the war in Gaza, and antisemitism.
- The Commissioner noted that she may remove a school officer or member of a board of education from office when it is proven to the satisfaction of the Commissioner that the officer or board member has engaged in a **willful violation or neglect of duty** under the Education Law or has **willfully disobeyed** a decision, order, rule, or regulation of the Board of Regents or the Commissioner.
- The Commissioner determined the individual failed to demonstrate removal was warranted based on the board member's statements in public and at the July 2024 board meeting.

Appeal of Zamparelli (Carmel CSD), Decision No. 18,526 (November 25, 2024) (dismissed)

- There was no evidence the board member, by demonstrating in his capacity as a private citizen, willfully disobeyed any legal obligation as a board member. Moreover, any disruption to district operations was attributable to the board's decision to raise this issue during a public meeting.
- Board meetings are an inappropriate venue to air personal or political grievances; the Commissioner reminded the parties that “boards of education, when acting collectively or in their official capacity, should avoid statements and actions which may tend to politicize the educational system”.
- The Commissioner found the individual's remaining grounds for removal were without merit. First, it is well settled that a violation of a board's bylaws or policies alone, even if proven, is an insufficient basis for the removal of a member of the board in a proceeding pursuant to Education Law § 306. Second, the individual failed to provide any evidence or details concerning her claim that the district disclosed confidential information to 2 other trustees. As such, she failed to meet her burden of proof.

RESIDENCY / HOMELESSNESS

Appeal of Y.L. (Baldwin UFSD), Decision No. 18,605 **(July 21, 2025) (dismissed)**

- An aunt appealed the district's determination that her niece is not a resident.
- The student's father currently lives in Florida and her mother resides outside of the country in Jamaica.
- The Commissioner stated that the presumption that a child resides with his or her parent or legal guardian can be rebutted upon a determination that the parent or guardian has executed a **total**, and presumably **permanent**, transfer of custody and control of the child to a third party.
- Generally, if a child's parent or legal guardian continues to provide financial support for the child's room, board, clothing, and other necessities, the parent or guardian has not relinquished custody and control. Similarly, where parents or legal guardians retain decision-making authority over important matters such as medical care or education, a total transfer of custody and control has not occurred.

Appeal of Y.L. (Baldwin UFSD), Decision No. 18,605 **(July 21, 2025) (dismissed) (continued)**

- The Commissioner dismissed the appeal, determining that the aunt did not demonstrate a total transfer of custody and control.
- Affidavits completed by the aunt and the student's parents indicated that they intend for the aunt to maintain **guardianship** of the student until graduation or, alternatively, when the student's father is able to provide "adequate housing."
- The affidavits further indicated that the student's parents will continue to provide food, clothing, and other necessities for the student.
- The **temporary** and **conditional** nature of the transfer and the parents' continued support for the student rendered it ineffective.

Appeal of C.A. and C.L. (Le Roy CSD) Decision No. 18,592 (July 21, 2025) (dismissed)

- Parents appealed the district's determination that their children are not homeless. The Commissioner dismissed the appeal.
- The students previously resided within the district. They were forced to leave their home in August 2022 when their landlord elected not to renew their lease. They resided at 2 hotels since that time. The district permitted the students to attend its schools as homeless students during this time.
- In the Spring of 2024, the district's homeless liaison visited the out-of-district address and spoke with parent C.L. She informed the homeless liaison that parent C.A. decided that "unless the family [could] secure housing in Le Roy, they [would] be sta[y]ing at the hotel so that the children [could] remain in the Le Roy Schools." Parent C.L. indicated that "there was nothing that could be done" about parent C.A.'s decision.

Appeal of C.A. and C.L. (Le Roy CSD) Decision No. 18,592 (July 21, 2025) (dismissed) (continued)

- By letter dated September 5, 2024, the district advised the parents of its determination that the students were no longer homeless because they had **voluntarily elected** to reside at the hotel for over 2 years. This appeal ensued.
- The Commissioner determined the parents did not meet their burden of proving that their family is living in a hotel due to a lack of alternative adequate accommodations. Parent C.A. indicated that the family is residing at the hotel “so that the children can remain in the Le Roy Schools.” In March 2024, the homeless liaison provided the parents with information on in-district housing that was “less expensive than the hotel [] and [would] offer a better opportunity for the kids.”
- Additionally, the district indicated that the family had access to a home owned by the students’ grandparent, where they resided in summer 2024. The parents did not submit a reply or otherwise respond to these assertions. Thus, they did **not** meet their burden of proving that the students were residing in a hotel due to a **lack of** alternative adequate accommodations.

Appeal of A.A.T. (Hewlett-Woodmere Union Free School District) Decision No. 18,606 (July 21, 2025) (dismissed)

- A parent challenged the district's determination that her child is not eligible to attend the district's schools tuition-free or to receive transportation pursuant to McKinney-Vento.
- The child attended school in the district for several years. The district first investigated the student's residency during the 2022-2023 school year. During the course of surveillance, an investigator "observed [no] activity involving the family at their purported in-[d]istrict address." The investigator determined that the student lived outside of the district at a residence in Jamaica, New York. The district did not exclude the student from its district at that time.
- At the beginning of the 2024-2025 school year, the parent **admitted** to the district that she and the student lived at the out-of-district residence. She claimed they were homeless as they had been forced out of the in-district address due to foreclosure and were currently "doubled up" at the out-of-district address.

Appeal of A.A.T. (Hewlett-Woodmere Union Free School District) Decision No. 18,606 (July 21, 2025) (dismissed) (continued)

- Following an investigation, including a home visit, the district determined that the student was not homeless. It memorialized this determination in letters dated November 21, 2024, and December 2, 2024.
- The parent appealed contending the out-of-district address is inadequate due to overcrowding and sought a determination that the student is homeless.
- The Commissioner dismissed the appeal, stating that the parent failed to meet her burden of proving that the student is homeless.
- The record reflected that the out-of-district address has 4 bedrooms and 2.5 bathrooms. While the parent indicated that she and the student sleep on couches in the living room, she **failed** to prove this arrangement is **compelled** by the characteristics of the house or its number of inhabitants.

Appeal of A.A.T. (Hewlett-Woodmere Union Free School District) Decision No. 18,606 (July 21, 2025) (dismissed) (continued)

- In this respect, the parent indicated that she and the student resided with the student’s “stepfather”, as well as the parent’s mother, sister, and nephew. The Commissioner stated, however, that even if the parent’s mother, sister, and nephew each occupy a bedroom, the parent did not explain why she, the student, and the student’s stepfather could not reside in the fourth bedroom. As such, there was **insufficient information** in the record to deem the out-of-district address inadequate.
- Additionally, there was no indication that the out-of-district residence is temporary or transitional. The record reflected, as supported by the district’s **surveillance**, that the parent and the student resided at the out-of-district residence since 2023. It is owned by the parent’s mother, and the record contained no evidence that the parent or the student needed to vacate or that there was a fixed time limit as to how long the parent or the student could remain. Therefore, the parent **failed** to demonstrate that the student lacked **a fixed, regular, and adequate** nighttime residence.

Thank You

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