



New Jersey School Boards Association

FREQUENTLY ASKED QUESTIONS CONCERNING BOARD OF EDUCATION ORGANIZATION 2017-18

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1. When does the board of education organize after the 2017 annual school board election?

The organization meeting is an annual event for every board of education. The date for organization differs depending not only on the type of board that is organizing, but also on whether the school board election takes place in April or in November.

P.L. 2011 c. 202, codified at N.J.S.A. 19:60-1.1 et seq. allows school board member elections in Type II districts to take place in November simultaneously with the general election (first Tuesday after the first Monday in November), while eliminating the vote on a district's proposed budget that is at or below the tax levy cap. For the 2017 school elections, only 15 of New Jersey's Type II school districts will have school board elections in April; 528 Type II school districts will have their school board election in November.

Type I: On May 16 or on the following day if May 16 is a Sunday. For 2017, May 16 is a Tuesday. N.J.S.A. 18A:10-3(a). If the annual organization meeting cannot take place on this date for lack of a quorum, or any other reason, the rescheduled organization meeting must be properly advertised and held within 3 days of the original organization meeting date, no later than May 19, 2017.

Type II, April Annual School Election: On any day during the first or second week following the annual school election. For 2017, organization must take place between Monday, May 1, 2017 and Sunday, May 14, 2017. N.J.S.A. 18A:10-3(b). Since the election results are not certified until the Monday afternoon following the election (May 1), boards should wait until the election results are certified to hold organization. N.J.S.A. 19:19-1. If the organization meeting cannot take place on the scheduled date for lack of a quorum, or any other reason, the organization meeting must be properly advertised and held within three days of the original organization meeting date.

NJSBA received an inquiry in 2015 regarding the propriety of initially scheduling the organization meeting four days after the final day permitted under the statutory two week period, when it was determined that a quorum could not be obtained on any date during the two week period. NJSBA is unaware of any definitive case law on point.

Regional, April Annual School Election: Regional districts qualify as Type II districts (N.J.S.A. 18A:9-3) so the organization meeting can be held on any day of the first or second week following the April 2017 annual school election, between Monday, May 1, 2017 and Sunday, May 14, 2017. N.J.S.A. 18A:10-3(b). Since the election results are not certified until the Monday afternoon following the election (May 1), boards should wait until the election results are certified to hold organization. N.J.S.A. 19:19-1. If any regional board fails to organize within that time period, the executive county superintendent(s) shall appoint a president and vice-president from among the members of the board who will serve until the organization meeting following the next annual election. N.J.S.A. 18A:13-12.

Type II, November Annual School Election: On any day of the first week in January, 2018. N.J.S.A. 18A:10-3(c). The Department of Education has indicated that it interprets that

provision to mean that for boards with a November 2017 annual school election, organization must take place between Monday, January 1, 2018 and Sunday, January 7, 2018. If the organization meeting cannot take place on the scheduled date for lack of a quorum, or any other reason, the organization meeting must be properly advertised and held within three days of the original organization meeting date.

Regional, November Election: Regional districts qualify as Type II districts (N.J.S.A. 18A:9-3) so the organization meeting can be held on any day of the first week in January, 2018. N.J.S.A. 18A:10-3(c). The Department of Education has indicated that it interprets that provision to mean that for boards with a November 2017 annual school election, organization must take place between Monday, January 1, 2018 and Sunday, January 7, 2018. If any regional board fails to organize within that time period, the executive county superintendent(s) shall appoint a president and vice-president from among the members of the board who will serve until the organization meeting following the next annual election. N.J.S.A. 18A:13-12.

Vo-Tech: On November 1 of each year, or on the following day if November 1 is a Sunday. N.J.S.A. 18A:54-18. In 2017, November 1 falls on a Wednesday, so organization takes place on that day. If the organization meeting cannot take place on this date for lack of a quorum, or any other reason, the organization meeting must be properly advertised and held within three days of that date; by November 4, 2017.

Educational Services Commission: During the first week of June. N.J.S.A. 18A:6-54. For 2017 that time would be from Thursday, June 1 through Wednesday, June 7.

County Special Services District: During the first two weeks of July, excluding Sundays. N.J.S.A. 18A:46-37. For 2017, that time would be from Saturday, July 1 through Thursday, July 14, not including July 2 and 9.

Charter Schools: There is no statutory requirement for charter schools to organize at any particular time. Charter Board of Trustees members should check their charters, bylaws and policies for organization requirements, if any.

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2. Must this meeting be advertised? Who schedules the meeting?

Yes. The secretary of the board of education must give notice that this is the first regular meeting of the board of education. This meeting shall constitute a regular meeting for the purpose of transacting business. N.J.S.A. 18A:10-4, N.J.S.A. 18A:10-5.

Because of the above requirement, the outgoing board has the responsibility to advertise and schedule the organization meeting. This can be done either through the annual meeting notice or a special meeting notice, if needed. N.J.S.A. 10:4-9, N.J.S.A. 10:4-8(d), N.J.S.A. 10:4-18.

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If the organization meeting were not scheduled as part of the annual meeting notice, N.J.A.C. 6A:32-3.1 addresses the scheduling of a special meeting. The board secretary shall call a special meeting of the board of education whenever requested by the board president, when requested by the chief school administrator when the board of education fails to meet within two months

during the period in which schools are in session, and when presented with a petition signed by a majority of the full membership of the board of education requesting a special meeting.

3. What time must the organization meeting take place?

The organization meeting must commence no later than 8:00 p.m. but if no quorum is present at the time the meeting is called, the meeting may be recessed until 9:00 p.m. If a quorum is not present by 9:00 p.m., the members present may adjourn the meeting to reconvene no later than 8:00 p.m. of another day, but not later than 3 days after the originally scheduled meeting. NJSBA recommends that a rescheduled meeting be re-advertised in accordance with the Open Public Meetings Act, N.J.S.A. 10:4-8, 4-9; N.J.S.A. 18A:10-3; N.J.S.A. 18A:10-6.

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4. What actions may the outgoing board take between the election and organization?

A board of education is a non-continuous body whose life lasts only from organization to organization. A board may bind a successor board only when authorized by statute, such as where the Legislature specifically permits boards to enter into multi-year public contracts, collective bargaining agreements and superintendent contracts that span the lives of several boards.

After the voters have elected a new board, the permitted activities of the outgoing, “lame duck” board during the short period between the April annual school election (April 25, 2017) and organization (May 1 – May 14, 2017) are limited. However, occasionally there are matters that the outgoing board must address during this short lame duck period between the school election and the organization of the succeeding board. Routine actions, such as the approval of purchase orders for goods and services or the approval of the use of facilities, are examples of matters that may properly be handled by the outgoing board. Other more significant matters, including the approval of individual contracts, the awarding of salary increases or increments for the next succeeding school year, may be inappropriate. See, Nowak v. Bd. of Educ. of Manville, 1976 S.L.D. 43. Boards are urged to consult with their board attorney to make sure that the outgoing board’s actions do not improperly usurp the authority of the successor board.

For school districts that have November annual school elections (November 7, 2017), organization does not take place until nearly two months after the election (January 1 – January 13, 2018), compared with the week or two between election and organization for school districts with April annual school elections. Given the longer period between election and the organization in districts with November elections, the “lame duck” concerns over usurping the authority of the successor board that are present for boards with April annual school elections would not seem to apply, except perhaps for significant decisions made immediately prior to the January organization meeting. Boards of education should, with the advice and consultation of their attorney, take their lead from their municipal counterparts which have navigated this two month lame duck period for many years. The closer the action falls within the time period prescribed by Nowak v. Bd. of Ed. of Manville, the more likely it will be called into question. Boards are urged to consult with their board attorney to make sure that the outgoing board’s actions do not improperly usurp the authority of the successor board.

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5. When does a new board member take office?

New members take office at the organization meeting. N.J.S.A. 18A:10-3. The organization meeting constitutes a regular meeting of the board for the transaction of business. N.J.S.A. 18A:10-5.

6. If the April 2017 annual school election were moved to November 2017 prior to the enactment of P.L. 2016 c. 27, do the board officers, president and vice president, continue as officers until the organization meeting in January?

A: While formal guidance has been issued by the state ([here](#)), that guidance does not address board officers, therefore it would appear that the officers hold over until January. N.J.S.A. 18A:15-1 states,

At its first regular meeting each board shall organize by electing one of its members as president and another as vice president, who shall serve for one year and until their respective successors are elected and shall qualify, but if the board shall fail to hold said meeting or to elect said officers, as prescribed by this law, the county superintendent shall appoint from among the members of the board a president and vice president.

Given the hold-over language, “and until their respective successors are elected and shall qualify” it appears that the terms of existing officers would carry over until the January organization meeting. This would also be consistent with the language of the new election provisions, P.L. 2011 c. 202, section 45, that require the carry-over of the board member terms until the January organization meeting. N.J.S.A. 18A:12-15.1 states, in relevant part,

In the case of a school district in which the annual school election has been moved to November ... an elected member of a board of education, or a member of a board of education appointed to serve the unexpired term of an elected member, or an appointed member of a board of education other than a member in a district in a city of the first class, who is holding office on the effective date of P.L.2011, c.202 (C.19:60-1.1 et al.) shall continue in office until the day in January next following the year in which his term was originally set to expire when his successor takes office.

In *Caltabiano v. Gill*, No. A-2805-16T4 (App. Div. March 25, 2017) (slip op.), following a referendum to reduce the board of chosen freeholders from seven to five members, the county clerk placed all five positions on the ballot for the November 2016 election. The Appellate Division determined that the freeholders had been elected to staggered three-year terms and reversed the clerk's decision because it prematurely terminated the terms of existing freeholders. This case stands for the proposition that it is improper to reduce an elected official's term of office.

7. Must a newly elected board member be sworn in at the formal organization meeting?

No. There is no statute or regulation requiring the presence of a newly elected board member at organization in order for the member to be sworn in. If the organization meeting is missed, a newly elected board member can be sworn in at the next meeting or by a duly authorized person in the interim.

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8. Can a newly elected board member be sworn in prior to organization?

No. An individual board member's authority flows from the board's authority as a collective body. The outgoing board has authority for the district until the new board is sworn into office. Only the newly organized board has the authority to swear in its members. Thus, it is technically impossible for a newly elected board member to take office prior to organization.

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9. What happens if a newly elected board member cannot attend the organization meeting?

The oath of office may be given by persons authorized to give oaths where the person is presently located. The oath should be accompanied by a certificate with the official designation of the person administering the oath. The oath should also be accompanied by whatever certifications are required by the jurisdiction within which the oath is administered. N.J.S.A. 41:2-17.

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10. Can a board refuse to seat a newly elected board member who has a potentially disqualifying conflict of interest?

No. The board must seat duly elected board members. The Commissioner has determined that refusing to swear in a newly elected member of the board would act as an impermissible removal of that board member. See Brown v. Newark Bd. of Ed., 1984 S.L.D. 671, aff'd St. Bd. 1984 S.L.D. 684 and Wall Twp. Bd. of Ed. v. Margadonna, Commr., 2003: June 2.

Typically, board members can only be removed by the Commissioner of Education if they have a contract with, or claim against, the board of education or pursuant to notification from the Commissioner if they are convicted of a disqualifying crime or offense listed in N.J.S.A. 18A:12-1; or by the School Ethics Commission for a violation of the School Ethics Act. See, N.J.S.A. 18A:12-1.2; N.J.S.A. 18A:12-2 to 12-3 and N.J.S.A. 18A:12-24 et seq.

NJSBA is aware of two situations where a former employee who was receiving unused sick leave payments from the board was deemed to have a conflict which disqualified him from board membership in one instance and board candidacy in another. In Saxton v. Luthman, Commissioner 3/14/08, the candidate had to relinquish his contractual rights for unused sick leave reimbursement, which extended through July 2009, or be disqualified from candidacy. In Bd. of Ed. of Kearny v. Lowry, Commissioner 12/21/12, the board member-elect's receipt of unused sick leave compensation payments precluded her from taking office.

In a recent Appellate Division decision, Stargell v. Snyder, decided March 7, 2016, a newly elected board member, who was a former employee eligible to receive unused sick leave payments from the board, was deemed not to have a conflict when she assigned the payment for unused sick leave to her independent adult daughter five days prior to taking the oath of office. Relinquishing her contractual rights to her daughter cured the N.J.S.A. 18A:12-2 conflict.

In a parallel proceeding before the Commissioner of Education, Chester v. Snyder, decided May 6, 2016, the Commissioner determined that once payment to the daughter was made, the conflict was mooted.

In addition to the receipt of unused sick leave payments by a former employee, now duly elected board member, potentially disqualifying conflicts of interest include a pending Workers Compensation claim by a former employee, see In the Matter of Tullo, 1999 S.L.D. April 26, dual elected office holding and personal lawsuits against the board of education that involve monetary gain to the newly elected board member, see Sea Isle City v. Kennedy, 196 N.J. 1 (2008). Generally, absent a prior determination by the Commissioner, boards of education have sworn in the elected board member and proceeded with addressing the conflict issue, often with a declaratory judgment action before the Commissioner of Education.

The only time a board may remove one of its own members is when the member has missed three consecutive meetings without good cause. The board member to be removed must be given the opportunity to have a board hearing prior to removal. N.J.S.A. 18A:12-3. See, e.g., Shamong Bd. of Ed. v. Chwastek, 1985 S.L.D. (July 8). Berg v. Black Horse Pike Regional, 1981 S.L.D. March 3. Smith v. Hazlet, 1999 S.L.D. March 7

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11. Can a newly elected board member be sworn in if she has not completed her criminal background check?

No. The New Jersey Department of Education's Criminal History Review Unit has indicated that board members – elect may not be sworn into office while the results of the criminal record checks are pending. Local school board organization meetings in districts with 2016 November elections took place during the first week of January; January 2 – January 7, 2017. For the April 2017 school election, that time period is April 26 – May 8, 2017. For the November 2017 school election, the time period is January 2 – January 8, 2018.

Members who have not submitted fingerprints to the Commissioner should be reminded of their statutory obligation to do so. Board members may begin the fingerprint process once election results have been certified. My 1, for the April election and November 13 for the November election. However, because N.J.S.A. 18A:10-3 requires that boards that conduct April elections reorganize and admit new officers during the first of second week following the election, board members are strongly encouraged to begin the fingerprint process upon certification of the election results in order to ensure statutory compliance.

N.J.S.A. 18A:12-1.2, enacted in 2011, requires newly-elected or newly-appointed board members and charter school trustees to complete criminal background checks within 30 days of election or appointment. Anyone who has a current or past conviction for any of the crimes that, under existing law, would disqualify a person from working in a public school is also disqualified from serving on a school board.

Incumbent school board members, who were re-elected on November 3, 2015 did not have to undergo criminal background checks, awarding to NJDOE officials. School board members who

have had a break in service or who have undergone a criminal background check for employment after February 21, 2003 have their fingerprints on file and must undergo an abbreviated background check process.

It depends on whether the election takes place in April or November.

Appointed Board Member (Type I)

As noted above, N.J.S.A. 18A:12-1.2 requires every board member to undergo a criminal history background check within 30 days of election or appointment to the board . The purpose of the criminal history check is to ensure that the board member has not been convicted of any of the disqualifying crimes listed in N.J.S.A. 18A:12-1. A board member appointed by the mayor of the local municipality is obligated to complete the background check by submitting his or her fingerprints through the New Jersey State Police and the Federal Bureau of Investigation. Board members in cities other than the first class are appointed by the Mayor between April 1 and April 15 and take office on May 16 next succeeding. Board members in cities of the first class are appointed during the month of June and take office on July 1, next succeeding. N.J.S.A. 18A:12-8. Appointed board members should make sure that the criminal history background check process is complete before accepting the oath of office.

Elected Board Member (Type II)

April Election

N.J.S.A. 18A:10-3 requires that any school district with an April election conduct its annual organization on any day of the first or second week following the school election. The statute also requires that new board members take office at that organization meeting, Monday May 1, 2017 – Sunday May 14, 2017 for the 2017 April annual school election. Because the certification of election results cannot take place until the Monday following the election, May 1 for the April 25, 2017 annual school election, boards cannot swear in new members until the election results have been certified, leaving only one week for the board member-elect to complete the criminal history review.

Accordingly, the New Jersey Department of Education's Criminal History review Unit has determined that board members-elect from the April election have 30 days from the date the election results are certified to complete the criminal history review. Board members may begin the fingerprint process once election results have been certified. May 1, for the April election and November 13 for the November election. However, because N.J.S.A. 18A:10-3 requires that boards that conduct April elections reorganize and admit new officers during the first or second week following the election, board members are strongly encouraged to begin the fingerprint process immediately upon certification of the election results in order to ensure statutory compliance. Board members who fail to timely complete the process may be denied admission to the board.

November Election

Board members elected in the November general election have 30 days to complete the fingerprint review process. Because the election results are certified on the Monday following

the general election, November 13, 2017 for the November 7, 2017 November annual school election, board members elected in the general election have approximately six weeks to complete the process. Again, board members are strongly encouraged to begin the process as soon as possible to ensure timely completion of the entire process and avoid any delay to accepting the oath of office at the annual organization meeting.

12. Can new board members have access to confidential materials prior to being sworn in?

Generally not. Since a newly elected person is not yet a member of the board of education until taking the oath, the successful candidate's access to information should be limited to publicly available information, until after the candidate is sworn into office. N.J.S.A. 10:4-12(a). If the outgoing board believes it necessary to share closed session information with newly elected board members, it is recommended that the consent of the persons that are the subject of the closed session information be obtained as it is their privacy interests that are implicated. Boards are urged to consult with their board attorney on this issue.

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13. Who may give the oath of office for board members?

Oaths may be given by State and municipal judges, mayors, surrogates, county clerks, municipal clerks and clerks of the boards of chosen freeholders, sheriffs, members of the boards of chosen freeholders, clerks of all courts, notaries public, commissioners of deeds, members of the State Legislature, attorneys of New Jersey and certified court reporters. N.J.S.A. 41:2-1. Board secretaries may also administer the oath as it relates directly to matters involving the district in which they are employed. N.J.S.A. 18A:17-11.

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14. What is required for the oath of office?

There are three elements of the oath of office. Newly elected members must swear or affirm that they:

- a. Will support the Constitution of the United States and the Constitution of the State of New Jersey, and will bear true faith and allegiance to the same and to the Governments established in the United States and in this State, under the authority of the people. N.J.S.A. 41:1-1.*
- b. Will faithfully, impartially, and justly perform all the duties of the office of board member according to the best of their ability. N.J.S.A. 41:1-3.*
- c. Possess the qualifications of membership prescribed by law, including a specific declaration that they are not disqualified as a voter, and a specific declaration that they are not disqualified due to conviction of a crime or offense listed in N.J.S.18A:12-1, and also that they will faithfully discharge the duties of the office. N.J.S.A. 18A:12-2.1.

The declaration that the member is not disqualified due to conviction of a crime or offense is newly required under P.L. 2011 c. 72, a law adopted in May, 2011. It established criminal background check requirements for all board of education members and charter school trustees

and would disqualify members who have been convicted of certain crimes or offenses listed in the law, similar to those disqualifying crimes or offenses for employees.

*Please note that these statutes also require the person to say, “So help me God.” However, for persons who have conscientious scruples with such language, the language may be omitted and the board members need only solemnly, sincerely, and truly declare and affirm the remaining parts of the oath. N.J.S.A. 41:1-6.

In a Type I district, a written, notarized copy of the oath is filed with the clerk of the municipality. In all other districts, a written, notarized copy of the oath is filed with the secretary of the board of education. N.J.S.A. 18A:12-2.1; N.J.S.A. 41:1-1, 41:1-3, 41:1-6.

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15. Must the oath of office be taken in public?

It depends. The swearing-in of new board members is generally considered part of the organization meeting, and when done so, must be held in public as required by the Open Public Meetings Act, N.J.S.A. 10:4-6 et seq. A newly elected board member may have the oath administered in private after the date of the organization meeting as long as a majority of the board is not present and the newly elected board member has the oath administered by an authorized person. See, N.J.S.A. 18A:17-11 and N.J.S.A. 41:2-17.

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16. Who runs the organization meeting?

Typically, the business administrator or board secretary opens and runs the meeting as a temporary chairperson until such time as a president or vice-president is elected. The board may designate a temporary chairperson from among its members if it finds that more desirable. However, there is no specific statutory or regulatory guidance on this issue. If your board has adopted Robert’s Rules of Order, it may provide helpful information on this issue. Boards of education are urged to review their policy manuals concerning the specific practices in their districts.

NJSBA’s Legal and Policy Services Department maintains a clearinghouse of sample policies. Click [here](#) to ask an NJSBA Policy Consultant for sample policies on the conduct of school board organization meetings.

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17. What happens if a majority of the board of education are newly elected members and the board does not have an incumbent quorum?

While there is no case on point, the following procedure has been accepted by a number of boards of education. The board secretary opens the organization meeting. The newly elected board members are sworn into office, creating a quorum for the organization meeting. The meeting then proceeds with the election of officers.

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18. Must a board of education elect a president and vice-president at the organization meeting?

Yes. A board must elect one of its members as a president and another as vice-president at the organization meeting. The president and vice-president shall serve for one year and until their respective successors are elected. [N.J.S.A. 18A:15-1](#).

Some boards of education have policies that establish criteria for serving as president or vice president; for example, a one-year service requirement, or a requirement that officers serve on a rotating basis. Neither statute nor code addresses the validity of these criteria, and board counsel should be consulted prior to implementation of these or other conditions.

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19. Does it matter which officer is elected first?

No. A board should follow whatever procedures it has in policy for the election of officers. If a board is deadlocked on a president, it may move to the election of the vice-president and return later to the election of the president, or vice-versa. Boards should review their organization policies/practices prior to the organization meeting.

NJSBA's Legal and Policy Services Department maintains a clearinghouse of sample policies. Click [here](#) to ask an NJSBA Policy Consultant for sample policies on the conduct of school board organization meetings.

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20. Does a member have to be at organization in order to be elected to an office?

No. There is no statutory or regulatory requirement that a member be present at the organization meeting in order to be elected president or vice-president.

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21. What happens if the board of education cannot decide on a president or vice-president?

Under [N.J.S.A. 18A:15-1](#), the executive county superintendent will appoint a president and/or vice-president from among the members of the board if the board fails to hold the organization meeting or elect a president or vice president at that meeting.

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22. What process is used if the executive county superintendent needs to appoint an officer?

The executive county superintendent has discretion to use an appropriate process. Typically, the executive county superintendent will consult the local board and choose from among those members that want to be officers. Contact your executive county superintendent for details.

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23. What voting procedures should the board use for election of officers?

The education statutes are silent on the voting process that must be used to elect the president and the vice-president. [N.J.S.A. 10:4-14](#) requires that the public be able to ascertain how each board member voted and the minutes of the meeting must reflect such votes. When taking a vote, two popular methods have emerged. In the first method, the board secretary will ask the individual board members to indicate through a raising of a hands or some other direct method their votes in favor of, or opposition to, a particular candidate. The second method requires each member to record his/her vote on a piece of paper with his/her signature and then give it to the

board secretary who will read names of each board member and how that board member voted, into the record.

Boards should have a policy in place addressing what occurs if there are multiple individual candidates for president or vice-president. Each individual officer candidate may be voted on one at a time, in which case the majority vote controls. The board may wish to vote on all candidates for a particular office at the same time. In this latter instance, a plurality vote may be used to elect officers. A plurality occurs when a particular candidate may gather the greatest number of votes, but fails to obtain a majority. See question 24. Consult your board policies and board attorney for details.

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24. Can a secret ballot be employed in the election of officers?

No. N.J.S.A. 10:4-14 requires that the public be able to ascertain how each board member voted and the minutes of the meeting must reflect their votes. Votes for president and vice-president must be taken in public. Board members may use signed paper ballots, and may opt to do so in order to avoid members' influencing each others' votes. Generally, if paper ballots are used, the board secretary will read aloud the board member's name and how the member voted. Boards are urged to consult their policies and their board attorneys on this practice.

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25. What kind of vote is required for the election of officers?

It depends. The statutes concerning the election of the president and the vice-president are silent as to the vote needed to elect officers, so that the general common law rule applies to require only a majority vote of those present and voting. Case law also permits officers to be elected through a plurality vote, where more than two candidates are seeking one seat. A plurality occurs when a particular candidate may gather the greatest number of votes, but fails to obtain a majority. See, Martello v. Bd. of Ed. of Willingboro, 1975 S.L.D. 1025, dismissed St. Bd. 76: April 7. In Martello, the Commissioner determined that a candidate who received the most votes, but fewer than a majority, was entitled to be seated where three candidates ran for the office of vice-president. Be sure to have your voting procedures in place prior to the election of the president and vice-president, as board policy will control. See, N.J.S.A. 18A:15-1. Boards of education are urged to consult with their board attorney on these issues.

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26. May the board adjourn the meeting and elect officers at a later date?

N.J.S.A. 18A:15-1 requires that the election of officers be completed at organization. An adjournment or recess of the organization meeting to a different date is problematic because reconvening the organization meeting may be viewed as holding an additional separate meeting

and thereby failing to comply with the requirement that the officers be elected at organization. Boards are urged to consult their attorneys if an adjournment or recess needs to be taken. If a board fails to elect its officers at the organization meeting, the executive county superintendent would then appoint the officers.

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27. What happens if the election for officers results in a tie vote?

The general common law rule is that the vote necessary to elect is a majority of those present and voting. Therefore, a tie vote is treated as a failure to elect. If the board cannot break the tie and make a decision at the organization meeting, the executive county superintendent would then appoint the officers.

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28. Can officers be discussed in closed session with only the formal vote taken in public?

There is conflicting case law concerning whether board members may assert the personnel exception to the Open Public Meetings Act in order to discuss the individual merits of candidates for president/vice-president in closed session. In MacKenzie v. Princeton Reg. Bd. of Ed., No. L-35698-76 (Law Div., Sept. 23, 1977), the court ruled that discussions regarding qualifications of a current board member for the office of president or vice-president were an evaluation of a current public officer and could be discussed in closed session under the personnel exception. However, in Manahan v. Montville Twp. Bd. of Ed., No. 153936 (Law Div., October 18, 1979), the court ruled that a private discussion of nominees for president and vice-president violated the Act.

Given the contradictory results in MacKenzie and Manahan, boards are urged to consult with their board attorneys before holding a closed session discussion of the qualification of officers. In any case, it is clear that the election of such officers must take place in open session.

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29. What other business occurs at the organization meeting?

Along with the swearing in of new members and the appointment of officers, there are several duties that, while not specifically required to take place at this meeting, a board generally carries out at organization. Some of these duties may include:

- Adopting its policy manual;
- Designating the official bank depository;
- Determining the official newspapers in which future meeting announcements will appear, if not already part of the policy manual;
- Appointing various personnel including an auditor, attorney, and school physician. For these appointments of professionals, be aware that they must submit to the board at least 10 days prior to the board taking action, a disclosure form indicating the political contributions that they have made during the twelve month period preceding their appointment, unless the contract is awarded pursuant to a “fair and open” process (which includes formal bidding). Other resources on the political disclosure issue can be [found here](#).

Recent accountability regulations, N.J.A.C. 6A:23A-5.2, require that professional services contracts be issued in a deliberative and efficient manner that ensures the school district receive the highest quality services at a fair and competitive price, or through a shared service arrangement. Professional services contracts that meet these criteria would include, but not be limited to, issuance of contracts through an RFP based on cost and other specified factors or other comparable process. See N.J.S.A. 19:44A-20.26 (P.L. 2005, c. 271.) The Department of Community Affairs, Division of Local Government Services, has also provided guidance that states that contracts awarded under a “fair and open” process meet the criteria of the accountability regulations. (See Local Finance Notice 2010-03, Section J, (1/15/2010)). Also, accountability regulations prohibit a board from voting on or awarding a contract of \$17,500 or greater to any business entity which, during the preceding one-year period, made a reportable campaign contribution to a board member. N.J.A.C. 6A:23A-6.3. A board violating the regulation could potentially lose state aid.

- Appointing the board’s NJSBA delegate from among its members;
- Appointing members to various committees of the board (if not a board of the whole)

There are very few actions which are required to take place at the board organization meeting. For those boards with November elections and January organization meetings, consideration should be given to whether the item relates to the board’s governance year (election of officers, appointment of committees, publication notice of meetings notice) or the school or fiscal year (adoption of curriculum, award of professional services contracts, etc.). While the new board in January may want to make certain changes, caution should be given as to whether it makes sense to make these changes in the middle of the school or fiscal year. See Question 33.

Also, a portion of the organization meeting must be set aside for public comment. Recent amendments to the Open Public Meetings Act, P.L. 2008, c. 14, require boards of education to set aside a portion of every public meeting for public comment on any school district issue that a member of the public feels may be of concern to the residents of the school district. The board of education may determine the duration of the public comment portion, and the point during the meeting at which the public comment portion will take place.

NJSBA has obtained, and expresses appreciation to former Monmouth and Union County Executive County Superintendent and School Business Administrator Joseph Passiment, Jr., for providing, a template of items to be considered at a board’s organization meeting. That document is attached to this FAQ as Appendix A. See also, question 33.

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30. How is membership on the committees determined?

Generally, there are two ways that committee membership is determined. First, many boards, pursuant to policy, authorize the president of the board to choose the membership of the committees, including the chairpersons. Some boards of education use a survey to determine board member interest and/or expertise in committee areas. Second, a board may have some sort

of nomination or voting process for committee membership. Boards should consult their policies and their board attorney for specific details.

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31. If the election results have been challenged, is the apparent winner seated?

Yes. Certified election results are valid unless overturned. The actions of the board during the challenge period will still be valid regardless of the final determination that is made on the challenge or recount. For instance, in Egan v. Brady, 1970 S.L.D. 153, the Commissioner of Education upheld the actions of the board as valid, even though a board member lost his seat as a result of an election recount. Boards are urged to consult with their board attorney for advice should this situation arise.

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32. In a sending-receiving relationship, when should the sending board organize?

If possible, the sending board should organize first, so that the sending representative can be chosen prior to the organization of the receiving board. In this way, it is very clear who the sending representative will be. N.J.S.A. 18A:38-8.2 requires that the sending representative be chosen at a meeting that is closest in time to the organizational meeting of the receiving board.

Consider the following scenarios involving school districts with November elections:

- For a sending board with an April election that sends to a receiving board with a November election, the sending representative should be chosen at the sending board's December meeting (meeting closest in time to the organizational meeting of the receiving board).
- For a sending board with a November election that sends to a receiving board with an April election, the sending representative should be chosen at the sending board's April meeting (meeting closest in time to the organizational meeting of the receiving board).

If the sending board organizes after the receiving board, it is uncertain which sending representative, if any, would have standing to participate at the incoming receiving board's organization. No reported case law exists concerning this particular issue. Boards are urged to consult with their board attorneys. The issue is most pronounced when the sending and receiving board have their annual school election in different months (one in April, the other in November).

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33. Can the sending representative vote for the receiving board officers?

Probably not, in light of the New Jersey Superior Court Appellate Division's ruling in Evans v. Atlantic City Bd. of Ed., 404 N.J. Super. 87 (App. Div. 2008). In that matter, the court ruled that a board member did not have the authority to vote on the choice of a board solicitor, because that item was not one of the four itemized voting areas listed in N.J.S.A. 18A:38-8.1. The court emphasized that the sending representative is a member of the receiving board with limited

voting rights enumerated in N.J.S.A. 18A:38-8.1. The court stated that receiving districts possess no discretion to broaden the voting rights listed in that statute, even though they may have done so in the past.

The Evans ruling can be read to suggest that customary practices permitted by the Commissioner of Education in the past, are no longer authorized. For example, the Commissioner of Education had determined that a sending representative could vote on matters of procedure such as the election of officers and other matters related to board operations. See, Lincoln Park Bd. of Ed. v. Boonton Bd. of Ed., 1997 S.L.D. (May 30); Little Ferry Bd. of Ed. v. Ridgefield Park Bd. of Ed., 1997 S.L.D. (July 24); Green Twp. Bd. of Ed. v. Newton Bd. of Ed., 1997 S.L.D. (August 5); Bloomington Bd. of Ed. v. Butler Bd. of Ed., 2004 S.L.D. (June 17). Note that in Evans, the Appellate Division in a footnote stated with respect to these cases, “We reject Ventnor's argument that this alleged custom has relevance to our interpretation of the statute in this case. The scope of the statute cannot be expanded through a receiving district's past or present lax attitude toward the legislative mandate. We are not guided by past unauthorized practices but by the Legislature's literal mandate.”

Boards are advised to obtain the advice of their board attorney with regard to the application of these rulings to their district voting practices.

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34. Can boards be sanctioned for failing to organize?

Yes. According to NJQSAC Statement of Assurance in the area of Governance, #3, the board must be able to demonstrate compliance with all of the requirements for the annual organization meeting. N.J.S.A. 18A:10-3, et seq.; N.J.S.A. 18A:15-1, et seq. A failure to demonstrate compliance may result in a loss of accreditation points under NJQSAC.

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35. If the annual school election moves to November, does a board still need to hold an organization meeting in April/May in addition to the January organization meeting?

For school districts with an annual school election that has been moved to November, there is no statutory obligation to hold an organization meeting in April or May in addition to the January organization meeting that must be held on any day of the first week in January. N.J.S.A. 18A:10-3(c). While an organization meeting in April/May is not required of a board that has its election moved to November, the board will likely need to address a number of items prior to the start of the next school year and certainly prior to its January organization meeting.

Governance issues A board of education is a non-continuous body whose life lasts from organization to organization. Thus, it would appear that, for a board that moved its April 2017 election to November 2017, the governance structure of the May 2017 board would continue in effect until the board organizes again in January 2017, and no additional vote would be required for items such as the designation of board committees, chairs and assignments, the adoption of Roberts Rules of Order as the board's official parliamentary procedure manual, designation of the board's official newspaper, and other aspects of board governance structure. It would also appear that the resolution adopting the board's policy manual would continue in effect until the new board's organization.

However, as the language of the original adoption of these items may have been specifically linked to the 2016-2017 school year or some other date certain, and absent direction from the state, a board may wish to consult with counsel as to whether it is desirable for the board to reaffirm that these items remain in effect until the January organization meeting.

Contracts There may be contractual items that expire at the end of June which have been historically addressed at the April/May organization meeting. Some contracts are permitted to be extended for an additional number of months under certain conditions, and a board may wish to extend these so that they would expire in time for the board organizing in January to address them. Other contracts might be best kept on a school year or fiscal year basis.

Other contracts, such as professional services contracts of the board attorney and auditor, are by law for a fixed contractual term that under statute may not exceed a year, and may not be extended. N.J.S.A. 18A:18A-42. For professional services contracts expiring at the end of June or during the summer, one approach would be for the board to renew those contracts for a term that is shorter than a year (6 months or so) so that they would expire in time for the board organizing in January to make decisions about them. Another approach would be to keep these contracts on a school year or fiscal year basis.

It would appear that contractual items that are administratively aligned with the budgetary, fiscal or academic year would be best established with a July 1 to June 30 timeframe. Items that are more aligned with board governance would be best set with a time frame aligned to the organizational year of the board, be it April/May to April/May, or January to January. Even then, the administrative ease of aligning with the fiscal year, especially when there are budgetary concerns, may take precedence. Again, a board may wish to consult with board counsel as to the best way to approach its contractual obligations.

Other business

While an organization meeting in April/May is not required, the board will need to meet to address numerous other items of business that must be addressed annually or by a date fixed in law that predates the January organization meeting. For example, the board secretary's term is for one year beginning on July 1 (N.J.S.A. 18A:13-13) and a treasurer of school monies' term expires on June 30 in a district other than a regional school district (N.J.S.A. 18A:13-14). There are staff appointments and other staffing decisions that must be made, the adoption of a new schedule of meetings for the time period up and through the January organization meeting, and the establishment by board resolution of a maximum travel expenditure amount for the budget year, to name a few.

APPENDIX.....Annual Board Resolutions and Adoption of the Budget

Click on the attached documents for a sample template of items to be considered at a board's organization meeting. NJSBA expresses its appreciation to Monmouth County Executive County Superintendent Joseph Passiment, Jr., for preparing and agreeing to share these documents.

Annual Reorganization Meeting Agenda Items – Sample

<http://www.njsba.org/wp-content/uploads/2016/02/legal-annual-reorg-mtg-agenda-sample.doc>

Annual Board Resolutions and Adoption of the Budget

<http://www.njsba.org/wp-content/uploads/2016/02/legal-annual-board-resolutions-budget-adoption.doc>