

School Law Briefing

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A Guide to Surviving The School Board Elections

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Even though we're still enjoying Chicagoland's "summer" weather, the time has come to begin preparing for the November 4, 1997 school elections. If you are a candidate, there are actions you must take NOW to run for office. If you are a secretary of a school board, your responsibilities as local election official will commence shortly. This article will remind candidates and board secretaries of their responsibilities related to the approaching elections. The first part of this article highlights the steps candidates must take to get on the ballot. The second part summarizes board secretaries' responsibilities related to the filing and ballot certification process.

I. WHAT ALL CANDIDATES NEED TO KNOW

Candidates must be careful to comply with all of the applicable laws related to the circulation and filing of nomination papers in order to have their names appear on the ballot. Often, a simple mistake can result in a candidate getting "knocked off the ballot" by an objector. A candidate must be keenly aware of many details including the following:

Who May Run

To qualify to run for office, a candidate must be a U.S. citizen; a resident of the district for at least one year; at least 18 years old; and a registered voter.

When to File

Nomination petitions must be filed **August 18 through August 25, 1997.**

Where to File

Nomination papers must be filed with the Board secretary during regular business hours. Candidates must also file a statement of economic interests with the County Clerk's Office, unless they have already done so for the same school district previously in 1997.

What to File

All candidates must file a statement of candidacy, circulated petition sheets and a receipt from the County Clerk's office indicating that they have filed a statement of economic interests. At the candidates' option, they may also file a loyalty oath and an affidavit that they will comply with the Fair Campaign Practices Act. When filing, be mindful that all nomination papers must be the same size and fastened together in book form. Further, candidates must file original nomination papers—not copies. Also note that nomination papers cannot be withdrawn, altered or supplemented after they have been filed.

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Statement of Candidacy

Candidates must include information about themselves and the offices they seek on the statement of candidacy. We recommend that the candidate information given on the statement of candidacy be identical to that given on the circulated petition sheets. In preparing a statement of candidacy, make sure that the candidate's name appears as it is to appear on the ballot and that the candidate's name does not include any titles or degrees such as "Dr., Rev.," etc. Candidates may use initials, or nicknames by which they are commonly known.

Petition Sheets

- Candidates running to be a member of a board of education must file petitions signed by 50 registered voters or 10% of the registered voters in the district, whichever is less.
- All the blanks on the heading of the petition must be filled in before the petition is circulated.
- The candidate's name must appear on the petition it is to appear on the ballot, and should also be consistent with the name indicated on the statement of candidacy and statement of economic interests.
- The addresses (including municipality) of the petition signers must be included next to their signatures.
- For purposes of convenience, candidates may preprint the county or municipality for petition signers' addresses if all the signers are from the same county or municipality.
- Only registered voters of the district can circulate the petition sheets.
- Only one circulator may circulate each sheet.
- The circulator must witness the affixation of each signature on the sheet.
- Only registered voters can sign the petition.
- Relatives cannot sign for other registered voters in their household.
- Circulators must sign the affidavits at the bottom of each sheet and their signatures must be notarized.

- The circulated sheets must be consecutively numbered before they are filed.

Statement of Economic Interests

All candidates who are running for office must file a statement of economic interests with the County Clerk. Upon filing, the County Clerk's office will issue a receipt which the candidate must file with the Board secretary between **August 18 and August 25, 1997**. Candidates should confirm that the name, office and district specified on the statement of economic interests are identical to those on the statement of candidacy and the petition sheets.

Loyalty Oath

At a candidate's option, he or she may file a loyalty oath attesting that the candidate does not support communism or the overthrow of the American government. Candidates opting to file such oaths should file them with the Board secretary along with the candidate's other nominating papers.

Code of Fair Campaign Practices

Candidates may also opt to file an affidavit attesting that they intend to govern their campaign in accordance with a "Code of Fair Campaign Practices." Such attestations should be filed with the County Clerk, not with the Board secretary.

A Special Note about Campaign Financial Disclosure Obligations

In addition to these filing requirements, candidates will have to comply with the Campaign Financing Act when their campaigns have accepted contributions, or expended sums, in excess of \$1,000.00 in total in any 12 month period. If you are approaching this threshold, we recommend that you contact a firm such as ours which is familiar with campaign financial disclosure requirements to advise you about the specific requirements of the Act.

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17 “Must-Have” School Board Policies

One of the easiest ways to lessen your district’s exposure to liability is to carefully review your board policies at least annually. This is essential not only to prevent unnecessary litigation, but also to provide a district’s administration, employees and students with a clear understanding of how the district works and the consequences of certain actions. To assist you in that endeavor, we have compiled a list of board policies that must be included in your manuals pursuant to state law.

Boards of education are empowered to adopt policies that (1) are specified in the *School Code* and its implementing regulations, (2) are otherwise consistent with the law, or (3) are required or proper for the maintenance, operation, or development of any school. Generally speaking, boards of education have the authority to adopt policies that touch on every area of school functioning.

More specifically, the *School Code* and Administrative Code set forth a number of policies that *must* be adopted by school boards. Importantly, Illinois law provides that boards of education must ensure that advice and suggestions are received from all groups affected by each policy (*i.e.* from teachers, students, *etc.*).

Following is a list of seventeen policies that all Illinois school boards are required by law to adopt along with a short description. You should consult with your legal counsel for more details about the listed policies and for sample draft policies.

1

Sex Equity/Sexual Harassment 23 Ill. Adm. Code 200.40

Boards of education must develop written policies on sex equity which provide that discrimination on the basis of sex in the provision of programs, activities, services, or benefits is not allowed. The policy must also guarantee that both sexes have equal access to all educational and extracurricular programs and activities. The policy must include a detailed written grievance procedure for those individuals who wish to file complaints.

Sexual harassment of students is prohibited by Title IX of the Education Amendments of 1972. School districts are required to have a policy in place that addresses how sexual harassment complaints will be handled. The U.S. Department of Education recently issued its *Sexual Harassment Guidance* to be used by school districts to investigate and resolve allegations of sexual harassment of students by employees, other students, or third parties. The *Guidance* states that school districts should strongly consider adopting sexual harassment policies, although they need not do so, as long as their general non-discrimination policies are designed to effectively address sexual harassment allegations.

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Board Policies, Cont'd.

2

Student Records **105 ILCS 10/1, et seq.;** **23 Ill.Adm.Code 375.100**

School boards are required to adopt detailed policies and procedures that are in compliance with the *Illinois School Student Records Act* and its implementing regulations. In addition, boards must develop policies that specifically address the rights of students receiving special education and related services, including the method by which information on such students will be collected, the confidential nature of that information, a statement that the information must be directly related to the provision of services to the child, how the information will be used, recorded and maintained, and whom the information will be made available to. Records policies relating to special education students may either be contained in the district's general record policy or in a separate policy, at the board's discretion.

3

Pupil Discipline **105 ILCS 5/10-20.14; 105 ILCS 5/24-24;** **23 Ill.Adm.Code 1.280**

School boards must establish parent-teacher advisory committees to assist with the development of board policy guidelines on student discipline, including school searches. The policy must be given to parents within 15 days after the beginning of each school year or 15 days after a student transfers to the school. This section of the *School Code* specifically encourages boards to annually review their pupil discipline policies, which is good advice given the constantly changing nature of this area of the law. Discipline policies must provide the following: (1) that school personnel may use reasonable force as needed to maintain safety in the schools (but that they may not slap, paddle, keep children in physically painful positions for long periods of time, or intentionally inflict bodily harm); (2) that a teacher may remove a student from class for disruptive

behavior; and (3) that students must be provided with due process protections which are described in detail.

4

Waiver of School Fees **105 ILCS 5/2-3.96; 105 ILCS 5/10-20.13;** **23 Ill.Adm.Code 1.245**

This policy must contain, at a minimum, the standards for determining eligibility for waiving all school fees, how parents can learn about obtaining fee waivers, and dispute resolution in the event there is some disagreement about how the policy is applied. If your school district does not charge any school fees, then your board must adopt a policy stating that fact.

5

Minority Recruitment **105 ILCS 5/10-20.7a**

This policy must provide for the recruitment and hiring of minority teachers, other certificated employees, and non-certificated employees such as custodians, lunch room staff and teacher aides.

6

Student Grades **105 ILCS 5/10-20.9a**

General grading policies must provide the procedure by which student grades may be changed, provided that no grade or evaluation can be changed without first notifying the teacher. School boards are also allowed (not required) to adopt policies on the promotion of students; for example, that students will not be promoted for merely social reasons.

7

Administration of Medication **105 ILCS 5/10-20.14b**

A policy must be developed regarding the administration of medication in school, including under what circumstances medication will be given.

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This policy must also be given to parents within 15 days after the beginning of each school year or after a student transfers to the school.

8

Infectious Disease

105 ILCS 5/10-21.11

This policy must be consistent with guidelines published by the State Board of Education and the Illinois Department of Public Health. It must include guidelines on the evaluation of students with chronic infectious diseases on a case-by-case basis, and *may* include different provisions relating to various age groups and classes of instruction, as the board finds appropriate.

9

Behavioral Interventions

105 ILCS 5/14-8.05

School boards must establish and maintain committees to develop policies on the use of behavioral interventions for students with disabilities. Boards of education were given until January 1, 1996, to develop such guidelines using the State Board of Education's Guidelines (adopted in 1994) as a reference.

10

Absenteeism and Truancy

105 ILCS 5/26-13;

23 Ill.Adm.Code 1.290

Absenteeism/truancy policies must be adopted by boards of education consistent with State Board of Education Rules. The policy must: (1) define valid reasons or causes for absences; (2) describe procedures to identify the causes of unexcused absences, including interviews with the student, parents, and school officials; and (3) identify appropriate supportive services and resources available to truants, including parent conferences, counseling, and community services that will assist the student.

11

Physical Education

105 ILCS 5/27-6;

23 Ill.Adm.Code 1.420(p)

The *Illinois School Code* allows boards of education to waive enrollment in physical education classes under certain circumstances. If boards of education decide to make such waivers, they must have a policy in place describing the procedures.

12

Teaching Assignments

23 Ill.Adm.Code 1.420(d)

Boards of education are required to adopt and implement policies that address how teaching assignments, study hall periods and extra duties are determined and assigned.

13

High School Credit

23 Ill.Adm.Code 1.450(c) and 1.460

School boards must adopt policies defining the board's position on awarding high school credit on the basis of proficiency, which can be measured by examination, independent study, or for work completed at another institution. Plans for earning credit outside of the public school classroom should be approved by the principal according to established policy. The policy must also contain information regarding institutions that provide correspondence courses and the number of credits that the district will apply toward graduation. The student's permanent records must show how the credits were earned and the examination papers (if any) should be kept in the student's file for three years.

14

Adult Education

23 Ill.Adm.Code 1.470

School districts must provide for the educational needs of adults under the age of 21 who wish to

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re-enter high school to acquire a diploma or equivalency certificate. School districts may offer credit through proficiency testing, correspondence courses, military experiences, life experiences and other non-formal educational endeavors, all of which must be set forth in a specific board policy.

15 **Revolving/Imprest Funds** **23 Ill. Adm. Code 110.125**

Boards of education may establish a Revolving or Imprest Fund upon board resolution. Once established, the board must develop a policy describing the amounts and types of payments that shall be made from the account.

16 **Transportation** **23 Ill. Adm. Code 275.100**

School boards must institute policies and practices which promote the safety and well-being of school bus passengers. These policies must outline activities that are prohibited on school buses and a provision giving the school board authority to suspend students for gross disobedience or

misconduct on a school bus, pursuant to section 5/10-22.6(b) of the *School Code*.

17 **Pagers on School Grounds** **105 ILCS 5/10-21.10**

School boards must develop written standards prohibiting the use of electronic paging devices on school property. However, the policy must also authorize the use or possession of pagers under limited circumstances. The policy may provide for sanctions against any student who violates the terms of the policy.

All too often boards of education discover that a policy is out-of-date only after a lawsuit is filed or the policy is otherwise questioned. An annual review of board policies is strongly recommended to help fine-tune language and ensure that the policies are amended in light of new statutes and cases. A comprehensive policy manual that offers clear guidance to board members, superintendents, principals, employees, and students alike is a time-honored way to foster communication within a district and help prevent the type of confusion that can result in litigation.

Elections, Cont'd.

II. **THE BOARD SECRETARY'S** **RESPONSIBILITIES AS** **LOCAL ELECTION OFFICIAL**

The board secretary serves as the local election official. As such, the secretary has certain obligations related to the approaching elections.

1. *Pre-Filing Responsibilities:* The board secretary may, but is not required to, have nomination papers available for distribution to candidates. The secretary may give notice of the petition filing period by publishing a notice in a newspaper of general circulation within the district before **August 8, 1997**.

2. *Accepting Petitions:* The secretary has the responsibility of accepting nomination papers for filing, unless the board has designated a different person to perform such function. Section 9-10 of the School Code requires the secretary to "receive and file" only those petitions which include a statement of candidacy, petition sheets with the required number of signatures bearing a notarized circulator's affidavit on each petition sheet and a receipt from the filing of a statement of economic interests. If the Board secretary is an incumbent school board member seeking reelection, a disinterested person must be a witness to the filing of his/her petition. Upon filing, we

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recommend that the Board secretary should indicate the date and time that each set of nomination papers was filed, and a receipt should be issued indicating what documentation was received. The board secretary must give the candidates a notice of their obligation under the Campaign Financing Act when they file their nomination papers. The secretary must mail the notice to candidates who did not file their nomination papers in person. The board secretary or the person designated to receive nomination papers must be available to receive nomination papers until **5:00 p.m. on August 25, 1997**.

3. *Post-Filing Notifications*: The secretary must inform each candidate of the candidate's obligations under the Campaign Financing Act. In addition, the secretary must provide each candidate with a written acceptance of his/her election petitions by **August 25, 1997**.

4. *Simultaneous-Filing Lottery*: The order in which candidates' names will appear on the ballot is determined by the order in which nomination papers are filed. If more than one candidate files petitions on the first day for filing at 8:00 a.m., the secretary must conduct a lottery to determine ballot position. Such lottery must be conducted no later than **September 3, 1997**, and must be open to the public. The secretary must post notice of the lottery and must give each candidate who will participate in the lottery seven days written notice of the lottery.

5. *Objections*: Nomination papers accepted by the board secretary are valid and the candidate's name will appear on the ballot unless a valid objection is filed and sustained. Any person seeking to file an objection to a candidate's petition must do so by filing an objector's petition with the board secretary, no later than **September 2, 1997**. As with candidate's petitions, the secretary should note the date and time of filing on the objector's petition.

Upon the receipt of an objector's petition, the secretary must notify the members of the educational officers electoral board (generally, the board president, secretary and member with the longest seniority, provided they are not candidates) to convene a hearing on the objector's petition. This is accomplished by sending the original nomination papers and objections to the educational officers electoral board chairperson by personal service with a receipt, or by registered mail. The nomination papers and objections must be forwarded to the chair of the electoral board by 12:00 noon of the second business day after receipt of the objection. As a matter of practicality, we suggest that the secretary also advise the county clerk of the candidates who are the subjects of objections.

6. *Certification*: The secretary's final obligation with respect to the elections is to certify the names of candidates to the county clerk by **September 4, 1997**, or by the date when objections are resolved.

Because of space limitations, we cannot address each of the various problems and situations that might arise during the course of an election season. Nevertheless, we hope that you will find this brief framework to be a helpful outline of your responsibilities as candidates or board secretaries. Because it is critical to follow all of the technical requirements of the School Code and the Election Code, we recommend that you consult with an attorney should you have any question regarding these procedures.

Profile: Keri-Lyn J. Krafthefer

KERI-LYN J. KRAFTHEFER concentrates her school law practice in labor and employment, tort defense and election law. In addition to representing school districts in employment discrimination matters, she has served as chief negotiator for several school districts during collective bargaining and has successfully represented districts in arbitration and mediation. Keri-Lyn has spoken before the Na-

tional Public Employer's Labor Relation Association on Chicago public school reform and on the next wave of legislation expected to affect Illinois public employers. Her article entitled, "Common Errors that Get Candidates Knocked off the Ballot" was published in the DuPage County Bar Association's *Brief*. Keri-Lyn is also active in community events in the Oak Brook area. In her spare time, she plays the piano professionally and tours with the Chicago Bar Association's bar show theatre troupe.

Firm News

Keri-Lyn J. Krafthefer was recently appointed to serve as the legislative liaison to the Chicago Bar Association's Election Law Committee. Part of her duties will include an analysis of the pending legislation which seeks to change the election dates for school elections.

Darcy L. Kriha was selected as the 1997-1998 Chairperson of the School Law Committee of the Chicago Bar Association's Young Lawyers Section.

Our office has been busy at the bargaining table lately. **Timothy E. Guare** recently wrapped up teachers' contracts for School Districts 209 and 144. **Keri-Lyn** kept pace by successfully concluding negotiations for contracts covering support staff in School District 144 and clerical employees in School District 201.

Alan M. Mullins and **Tim** are slated to be presenters at the IASB Joint Conference in November. They will be speaking on employee

screening and hiring procedures.

Stewart H. Diamond, Jeffrey D. Greenspan and **Darcy L. Proctor** of our office successfully defended one of our School District clients in a case before the Appellate Court. Stewart, Jeffrey and Darcy were successful in obtaining a dismissal of the case before the trial court, on the grounds that the Illinois Tort Immunity Act applied to a Superintendent who was in an accident on her way to an off-campus committee meeting of School Administrators. The Appellate Court affirmed, holding that the Superintendent's travel to the meeting was at least partly for the benefit of the employer and therefore was action within the scope of her employment at the time of the collision, thus triggering tort immunity.

On a similar note, **Thomas G. DiCianni** and **Jennifer Pritz** recently won a jury verdict in a case involving the applicability of the Tort Immunity Act to unintended uses of school property. In an unusual twist, the judge directed that the jury would have to decide whether or not the School intended a foot-beaten path to be used for pedestrian travel. The jury ruled in favor of the District, and therefore, the Tort Immunity Act barred any recovery by the plaintiff.

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