



Conducting 2020 Annual Elections and Special Elections by Absentee Ballot-Only

On April 2, 2020, Governor Doug Burgum issued Executive Order 2020-19, waiving the statutory requirement to designate one or more physical polling locations for school board elections to permit school boards to conduct their 2020 annual election via absentee ballot only. By Executive Order 2020-19.1, the Governor waived similar requirements for school district special elections held during the duration of the state of emergency.

For those boards who conduct their elections on their own (as opposed to in conjunction with the county for the statewide election in June), this will be a new experience. The purpose of this guidance is to provide answers to the expected questions that school boards, and their school district business managers in particular, will have when moving forward with this process. As information changes or additional questions arise, we will update this document.

NOTE: Newly-added questions and additional information in response to existing questions appear in “red” below.

When must the annual election take place?

- NDCC 15.1-09-22 requires the board of a school district to hold an election each year **between April 1st and June 30th** to fill all vacancies, including those caused by the expiration of terms of office.
- School boards are permitted to hold their annual election in conjunction with a county election. In that case, the election is conducted by the county election board in the same manner as the county or state election, and the election takes place on the second Tuesday of June (i.e., June 9, 2020). Neither the school board nor the school district business manager is required to complete any duties relative to the administration of the election held in conjunction with the county. This guidance and FAQs are focused on school district elections NOT held in conjunction with the county.
- School boards that choose NOT to hold their elections in conjunction with the county may schedule their annual election to occur at any time from April 1st to June 30th.





- North Dakota law requires that school board seats be staggered in such a manner as to ensure that at least one seat is up for reelection each year. If your board does not have at least one seat up for reelection each year, there has likely been an error in the staggering of seats.

What did Executive Order 2020-19 do with respect to method of voting in 2020 school district annual elections?

- Executive Order 2020-19 strongly encouraged all public school boards in North Dakota to approve and authorize all votes in the 2020 annual election to be cast by absentee ballot as permitted by NDCC 15.1-09-18.
- To accomplish absentee ballot-only elections, Executive Order 2020-19 suspended the following requirements:
 - The requirement under NDCC 15.1-09-13 for school boards to designate one or more precincts.
 - The requirement under NDCC 15.1-09-13 for school boards to designate one or more polling places for each precinct.
 - The requirement under NDCC 15.1-09-12 for school boards to establish hours of operation for polling locations on the date of election.
- **NOTE:** School boards who pull school board members from specified geographic areas and who restrict voting for those members to electors who reside within the specified geographic area(s), must ensure that the absentee voters receive the correct ballot corresponding to the appropriate geographic area within which the voter resides.
- Executive Order 2020-19.1 suspended the same requirements relating to precincts, polling places, and polling hours for school district special elections held during the period of the declared emergency. Once the period of emergency ends by declaration of the Governor, Executive Order 2020-19.1 will no longer be effective.
- Even if the period of emergency is declared over prior to the day of election, school elections will move forward as planned, including in those districts where the board has decided to hold the election via absentee ballot only.





Are public school boards required by Executive Order 2020-19 to hold their annual election in 2020 or any special election scheduled during the period of emergency by absentee ballot-only?

- **NO**, the decision whether to conduct your annual 2020 election or any special election held during the period of emergency by absentee ballot-only is a local decision.
- However, NDSBA ***strongly encourages*** school boards to hold their elections via absentee ballot-only as permitted by Executive 2020-19.
- Due to the mandated school, state facility, and business closures, it would be very difficult for boards to find an appropriate location to designate as a physical polling place and to exercise appropriate social distancing to ensure the safety of voters and election workers.
- The CDC and the North Dakota Department of Health have issued restrictive guidance that strongly recommend limiting events and gatherings to less than 10 people. Significant efforts have been made by all state agencies and offices, as well as North Dakota citizens, to exercise preventative measures to control the spread of COVID-19.
- Voting by absentee ballot enables eligible voters to exercise their fundamental right to vote, while practicing public health mitigating measures to control the spread of COVID-19 by community contact.
- Voters may be fearful to exercise their right to vote by casting their ballot in person at a physical polling place.
- Election workers may also refuse to participate at a physical polling place location. Indeed, other states have experienced a mass shortage of poll workers as a result of the COVID-19 pandemic due to this concern.

Does moving to an absentee ballot-only election require board action?

- **YES.** The board of a school district that wishes to hold their annual 2020 election via absentee ballot-only as strongly encouraged by the Governor, the ND Secretary of State, and NDSBA, requires specific action by the school board at a properly noticed public meeting.
- The decision to do so requires a motion, a second, and approval by a simple majority vote of members present and voting.





Can a school board reschedule its annual election to a *later* date in order to allow additional time to prepare for an absentee ballot-only election?

- **Possibly**; however, NDSBA strongly discourages boards from rescheduling the date of their annual election.
- At this point, school district business managers have been required to comply with various deadlines and take various actions (including providing notice of the election date to the public and receive candidate filings) based on the election date set by the board.
- Rescheduling the election date may cause confusion amongst the electorate and could potentially increase the risk of a claim of voter disenfranchisement.

If we move to an absentee ballot-only election, do we still appoint election judges and clerks?

- **YES.** Executive Order 2020-19 did not change the requirement in NDCC 15.1-09-13 to appoint election judges and election clerks.
- School boards must still appoint a minimum of two election judges and two election clerks.
- Judges and clerks must be qualified voters of the school district in which they are assigned to work unless the school board has exhausted all means to appoint election judges and clerks from precincts within the polling place according to NDCC § 16.1-05-01.
- An individual may not serve as a member of the election board or as a poll clerk if the individual:
 - Has anything of value bet or wagered on the result of an election;
 - Is a candidate in that election; or,
 - Is the husband, wife, father, mother, father-in-law, mother-in-law, son, daughter, son-in-law, daughter-in-law, brother, or sister, whether by birth or marriage, of the whole or the half-blood, of any candidate in that election.
- Executive Order 2020-19 suspended the requirement under NDCC 15.1-09-14 that any school board appointed election judges count and canvas the votes for each office





upon closing of the polls. This will allow election judges to open and process absentee ballots on the day before and the day of the election.

- **Tabulation of the ballots (or reporting of results) may not begin until 7 p.m. on election day.**

What are the duties of election judges and election clerks in regard to absentee ballots?

- In general, election clerks manage the pollbook, update incorrect pollbook information, and other ministerial duties assigned by the business manager.
- Election judges count and canvass the absentee ballots starting on the day before the election and continuing through the election day. NDCC 16.1-15-02 provides that the canvass by the election judges must continue without adjournment until completed and must be open to the public. The results can be released or published no earlier than 7 p.m. on election day.
- At any time beginning on the day before election day and through the day of the election, the election clerks must do the following:
 - Compare the signature on the application for the absentee ballot with the signature on the back of the absentee ballot envelope (the voter's affidavit) to ensure the signatures match.
 - If the applicant is a qualified elector of the district (or relevant geographic area) and has not voted in the election, the election clerk must open the absent voter's envelope in such a manner as not to destroy the affidavit printed on the envelope. The election clerk must take out the secrecy envelope with the ballot without unfolding or permitting the ballot to be opened or examined and indicate in the pollbook that the elector has voted.
 - Election clerks or workers not participating in the comparing of signatures and entering voters into the pollbook must remove the ballot from the secrecy envelope, unfold and initial the same, and deposit in the proper ballot box for tabulation.
- If the affidavit on the outer (return) envelope of a returned absentee ballot is found to be insufficient, the signatures on the application and affidavit do not match, or the



applicant is not a qualified elector of the district (or relevant geographic area), the vote may not be allowed. Without opening the absent voter's envelope, the election judge must mark across the face thereof "rejected as defective" or "rejected as not an elector", as the case may be. The death of an absentee voter after having voted by absentee ballot does not constitute grounds for rejecting such ballot.

- Rejected absentee ballots are to be handed over to the canvassing board (i.e., school board) for final determination of acceptance or rejection. (NDCC § 16.1-07-12).

Are school districts required to send out an absentee ballot application upon request from an eligible voter?

- **YES.** NDCC 16.1-07-05(1) provides that at any time in an election year, any qualified elector may apply to the school district business manager by personal delivery, facsimile, electronic mail or otherwise, for an official ballot to be voted at the annual or next occurring election.
- A voter may obtain an application form approved by the ND Secretary of State (SFN 51468) for an absent voter's ballot for a school election from the secretary of state, a county or city auditor, or a school district business manager.
- School districts should make absentee ballot applications and related instructions available to voters in multiple forums, including on the district's website, Facebook page, or Twitter account; at various locations throughout the community that are accessible by the public (e.g., grocery stores, convenience stores, etc.); and via email or mail upon request. Please make sure your district is using the most updated Absentee/Mail Ballot Application form (SFN 51468). The most recent version was updated in 2015 and is the form available on the ND Secretary of State's voter website (www.vote.nd.gov).
- NDCC 16.1-07-05 permits a voter to return a completed application to the school district business manager via personal delivery (i.e., drop box location outside of district office), facsimile, electronic mail, or otherwise.
- School districts are strongly encouraged to establish a drop box location outside of the school district office to accommodate personal delivery of absentee ballot





applications by voters. School districts should ensure that all such drop box location(s) are secure and monitored frequently to maintain security.

- Designated school district staff (i.e., the school district business manager) should access the drop box at frequent, regular times to remove applications to ensure prompt mailing of absentee ballots to voters.
- Upon receipt of an application for an official ballot properly filled out and duly signed, or as soon thereafter as the official ballot has been prepared, the school district business manager **must** send to the absent voter by mail, at the expense of the school district, **one official ballot**, along with a **secrecy envelope** and a **return envelope addressed to the school business manager with the voter's affidavit required on the reverse side of the return envelope**. The affidavit can be found in [NDCC § 16.1-07-08](#).
- Each individual requesting an absent voter's ballot must be provided a set of instructions, prescribed by the secretary of state, sufficient to describe the process of voting by absent voter's ballot. The voting instructions must contain a statement informing the individual that the individual is entitled to complete the absent voter's ballot in secrecy. The secrecy envelope provided along with the official ballot must be sufficient to ensure secrecy of the ballot when placed inside the envelope. It is recommended that the secrecy envelope be labeled "SECRECY ENVELOPE" so that the voter knows to place their completed ballot inside.
- North Dakota law requires that voters submit a completed application to the appropriate election official (i.e., the school district business manager) in a timely manner so as to allow the applicant to receive, complete, and mail the absent voter's ballot before the day of the election. NOTE: ND law does not permit the school district to set an arbitrary deadline for submission of completed applications.

Are county auditors required to forward to the appropriate school district copies of any absentee/mail ballot applications received by the auditors that have the "School Election" box checked?

- **YES.** Pursuant to order by the Governor, the ND Secretary of State's office will be sending absentee/mail ballot application forms, instructions, and a return envelope





to all individuals listed in the state's Central Voter File via U.S. Mail. The ND Secretary of State expects to complete this mailing complete by April 20th.

- The letter that accompanied the application and related documents from the ND Secretary of State instructed the voter that if the voter wished to also receive an absentee/mail ballot for the school election, they should check the "School District" box on the application.
- The applications sent out by the ND Secretary of State's office to voters instruct that the voter should return the application to their county auditor for processing.
- The ND Secretary of State's office has advised all county auditors that if a voter, on an application for an absentee/mail ballot, also checks "School District", the auditor should make a copy of that application and forward it to the voter's school district.
- It is highly recommended that school district business managers reach out to the county auditor(s) for the counties in which their district is located to coordinate how these applications will be timely forwarded to the school (e.g., electronic mail, facsimile, etc.).
- To be clear, school districts are not required to proactively send out applications for absentee/mail ballots to the qualified voters within in their district without request from such voters.

Must an absent voter use a valid North Dakota driver license to complete the absentee/mail ballot application?

- NDCC 16.1-01-04.1 provides that a qualified elector must provide a valid form of identification to the proper election official before receiving a ballot for voting. A valid form of identification is:
 - A driver's license or nondriver's identification card issued by the North Dakota department of transportation; or
 - An official form of identification issued by a tribal government to a tribal member residing in this state.
- When completing the Absentee/Mail Ballot Application (SFN 51468), the applicant must indicate under the Applicant Information section, the type of North Dakota ID





Type used. If the Driver's License box is checked, the applicant must provide the driver's license number.

- The Governor's emergency declaration waived the expiration dates for driver licenses from March 1, 2020 until the declared emergency has ended.
- The Absentee/Mail Ballot Application form does not require the applicant to provide an expiration date for the ID Type used. Therefore, the school district business manager will not know from the form if the driver's license of the applicant is valid or expired.
- **Voter address and vote center location information may be verified online at www.vote.nd.gov by entering the voter's Driver's license number and date of birth.**
- The absent voter is not required to provide further identification upon return of their completed ballot. Rather, NDCC 16.1-07-08(2) requires that the voter complete the voter's affidavit printed on the back side of the return envelope provided with the ballot, in substantially the following form:

Precinct _____
Name _____
Residential Address _____
City _____
ND Zip Code _____
Under penalty of possible criminal prosecution for making a false statement,
I swear that I reside at the residential address provided above, that I have
resided in my precinct for at least thirty days next preceding the election, and
this is the only ballot I will cast in this election.
Applicant's Signature _____
Date _____

When must official ballots be prepared?

- NDCC 15.1-09-11 provides that **at least 40 days before the election**, the business manager must prepare and cause to be printed, or otherwise uniformly reproduced, an official ballot containing the names of all individuals who have indicated their intent to be candidates by meeting the provisions of section 15.1-09-08.
- For school boards holding their annual election on June 9, 2020, the official ballot must be prepared and available **on or before April 30, 2020**.





- NDCC 16.1-07-04 also requires the school district business manager to prepare and have printed and available for distribution to the public **at least 40 days before the election date** a sufficient number of absent voter's ballots for the use of all voters likely to require such ballots for that election.

Must school boards who choose to conduct absentee ballot-only elections establish secure absentee ballot drop box locations in the district?

- Executive Order 2020-19 **strongly encourages** all school boards to identify and establish secure absentee ballot drop box locations in various locations throughout the district, in places located as conveniently as possible for voters.
- These drop box locations should be available and accessible from the date absentee ballots are mailed out or provided to district voters through the date of elections.
- Absentee voters will be allowed to return their completed ballot either by deposit in one of the secure drop box locations, or by mail.
- School districts should make efforts to ensure that these drop box locations are secure and should be monitored frequently to ensure security is maintained. Districts may also establish particular hours during which the drop box locations will be accessible for return of absent voter applications and completed ballots. For example, these hours could correspond with regular business hours. School districts have the discretion to determine what hours may be appropriate for their community while maintaining security for the contents of the drop box.
- Designated school district staff should establish a schedule to remove the deposited ballots from the drop box locations on a frequent basis.
- In addition, it is strongly recommended that school districts create **written chain of custody procedures** that your district will take to ensure the security of all ballots sent and received. Taking the time to write these procedures now could save you hours of stress later, particularly if there are any recounts.
- NDSBA has prepared *recommended Absentee Ballot Chain of Custody Procedures*, which can be found on NDSBA's COVID-19 Resources page at www.ndsba.org.

Does Executive Order 2020-19 or Executive Order 2020-19.1 make any changes to the process of handling the absentee ballots once received by the district?





- **NO**, once the ballots are returned to the school district business manager, the process of handling the absentee ballots remains the same.
- In other words, neither Executive Orders issued by the Governor relative to school district annual elections or special elections held during the period of emergency make any changes to the process of handling absentee ballots once returned by the voter to the school district business manager.

When is the deadline by which absent voters may return their absentee ballots?

- NDCC § 16.1-07-09 permits an absent voter to personally deliver the absentee voter's ballot to the appropriate officer's office (i.e., the school district business manager) at any time before 5 p.m. on the day before the election. Drop boxes are an alternative or supplement to personal delivery to the business manager's office during school building closures due to the COVID-19 pandemic. **All drop boxes should be removed and their use discontinued at 5 p.m. on the day before the election** in order to comply with this requirement. No absentee ballots should be accepted via personal delivery or drop box after 5 p.m. on the day before the election.
- If an envelope postmarked or otherwise officially marked by the United States postal service or other mail delivery system before the date of election and containing an absent voter's ballot is received by the business manager too late to be tabulated on election day, the ballot must be tallied by the school board of the school district at the time the returns are canvassed. Any envelope without a postmark or other official marking by the United States postal service or other mail delivery system or with an illegible postmark or other official marking and containing an absentee voter's ballot must be received by mail by the business manager prior to the meeting of the school board to canvass the votes.
- Any envelope containing an absent voter's ballot with a postmark or official date stamp on the day of election or thereafter may not be tallied or canvassed with the ballots timely submitted for the election. However, these are to be presented to the school board and kept with all of the other election materials for the 45 days required by NDCC § 16.1-15-13.





- NOTE: NDCC § 16.1-07-05(2) permits a county auditor or city clerk to accept an absentee ballot on election day from a voter who is prevented from voting in person on the day of election due to an emergency. Some county auditors or city clerks may rely on this subsection to accept absentee ballots from voters up until 4 p.m. on the day of election this June. **This subsection does not apply to school districts holding their elections independently and therefore, no absentee ballots should be accepted by school district business managers via personal delivery or drop box after 5 p.m. on the day before the election.**

Does Executive Order 2020-19 or Executive Order 2020-19.1 make any changes to the various deadlines set forth in NDCC chapter 15.1-09 regarding school district elections?

- **NO**, none of the school board election deadlines set forth in NDCC chapter 15.1-09 have changed.

Can school district business managers use the ballot tracking documentation/spreadsheet created pursuant to the recommended Absentee Ballot Chain of Custody Procedures in place of or as a substitute for the pollbook?

- **NO**. NDSBA and the ND Secretary of State's office have received numerous inquiries on this issue. Election officials must still maintain a pollbook just like in previous elections. There is nothing in existing ND law or the relevant Executive Orders issued by the Governor that suspends the requirement to create and maintain a pollbook.
- NDSBA has issued recommended Chain of Custody Procedures relating to the handling and processing of absentee voter applications and ballots. As part of those recommended procedures, NDSBA recommends school district business managers document the "life" of the absentee voter applications received and ballots issued and returned in order to show consistent control over the application and ballot until counted and canvassed by the school board.
- As a result of these recommendations, many school district business managers have created and are utilizing spreadsheets to document receipt of absentee voter applications and the issuance to and return of ballots by absentee voters.





- Several school district business managers have inquired with NDSBA and the ND Secretary of State's office about using their chain of custody documentation in place of or as part of their election pollbook.
- Generally speaking, NDSBA does not see any legal prohibition or issue with a business manager using their chain of custody documentation as part of their election pollbook or transferring information (e.g., voter name and address information) from their chain of custody documentation to their election pollbook to avoid duplication of efforts by election clerks. Because there is no form chain of custody documentation format used by business managers and because NDSBA is not specifically familiar with the documentation used by each business manager, NDSBA cannot provide assurance that the documentation maintained by a particular business manager is appropriate to incorporate into the election pollbook.
- However, it was not the intention of NDSBA that the documentation maintained as a result of the suggested Chain of Custody procedures *replace* the legal requirement to maintain a pollbook.

Does Executive Order 2020-19 or Executive Order 2020-19.1 make any changes to the vote canvassing process by the school board?

- **NO**, Executive Order 2020-19 did not change the vote canvassing process.
- Pursuant to NDCC 16.1-15-17, **on the sixth day following the election**, the school board shall meet and, after taking the oath of office, shall proceed to open and publicly canvass the returns.
- School boards must canvass votes in accordance with the requirements and procedures outlined in NDCC chapter 16.1-15.

We expect that additional questions and concerns will arise as school districts move forward with this process. NDSBA will continue to update this guidance with additional questions as they arise. In the meantime, NDSBA encourages school boards to contact their legal counsel for direct guidance on compliance with the annual election requirements and Executive Order 2020-19 or Executive Order 2020-19.1. For other guidance on school district operations during the COVID-19 pandemic, see NDSBA's website (www.ndsba.org).

