



Absentee Ballot Chain of Custody Procedure

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.

NDSBA promptly issued guidance to our members with the answers to anticipated questions regarding how to administer an absentee ballot-only election. In its guidance, NDSBA echoed the Governor's Executive Order 2020-19 in strongly encouraging all school boards to establish secure absentee ballot drop box locations in various locations throughout their districts, in places located as conveniently as possible for voters. NDSBA further 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.

Since our guidance was issued, NDSBA has received numerous requests for recommended chain of custody procedures. After consultation with the North Dakota Secretary of State's office, NDSBA recommends the following chain of custody procedure (or similar procedure) for handling absentee ballots deposited in drop box locations as encouraged by our Election guidance:

Recommended Drop Box and Chain of Custody Procedure:

- At a minimum, drop box locations should be available and accessible from the date absentee ballots are mailed out or provided to district voters. Drop box locations may also be used to drop off absentee ballot applications.
- School districts should make efforts to ensure that these drop box locations are secure and should be regularly monitored to ensure security is maintained.
- Written instructions should be placed on or near each drop box location reminding voters that their ballot must be enclosed in the secrecy envelope that was provided along with the ballot, sealed in the return envelope that





was also provided with the ballot, and the affidavit on the back of the envelope completed and signed before depositing into the drop box. The instructions should make it clear that these steps must be completed as directed in order for the voter's ballot to be counted.

- Designated school district staff should establish a schedule to remove the deposited ballots from the drop box locations. NDSBA recommends that at least 2 staff members pick up the ballots together. The contents of the drop box(es) should be picked up at least once daily. Once picked up, the contents should be immediately transferred to the school district business manager's office.
- Upon receipt at the school district business manager's office, the return envelopes containing the ballots should be date-stamped and then counted separately by at least 2 individuals to confirm the number of ballots received. This information should be recorded and documented as the ballots are received and counted. Once counted, the ballots should be handled and stored in the same manner as those absentee ballots that arrive by mail.
- 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.

The above chain of custody procedure is a *recommended* procedure and is not intended as legal advice. The key to the chain of custody procedure (whether you use the above procedure or something similar) is to exercise and demonstrate total control of the absentee ballots from the time the ballots are deposited in the drop box locations through the time they are canvassed and on through the 45-day retention period. NDSBA strongly encourages school boards to consult with 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).

