



**TO:** The Honorable the Members of the Board of Regents

**FROM:** Shannon L. Tahoe

**SUBJECT:** Proposed Addition of Part 122 to the Regulations of the Commissioner of Education Relating to Military Ballots for School District and School District Public Library Elections, Budget, and Referenda

**DATE:** April 23, 2020

**AUTHORIZATION(S):**  

## SUMMARY

### **Issue for Decision (Consent)**

Should the Board of Regents adopt the proposed addition of Part 122 to the Regulations of the Commissioner of Education relating to military ballots for school district and school district public library elections, budget, and referenda?

### **Reason for Consideration**

Required by State statute (Chapter 489 of the Laws of 2019).

### **Proposed Handling**

The proposed amendment will be presented to the Full Board for adoption as an emergency rule at its May 2020 meeting. A copy of the proposed rule and a statement of facts and circumstances justifying the emergency action are attached.

### **Procedural History**

The proposed amendment was presented to the P-12 Education Committee for recommendation and to the Full Board for adoption as an emergency action at its March 2020 meeting, effective March 3, 2020. A Notice of Emergency Adoption and Proposed Rule Making was published in the State Register on March 18, 2020. Since publication of the Notice of Emergency Adoption and Proposed Rule Making, the Department has received one comment on the proposed amendment. An Assessment of Public Comment is included

as Attachment C. The Department has made clarifying non-substantive revisions to the proposed rule in response to the public comment. Because the March emergency action will expire on May 31, 2020, a second emergency action is necessary to ensure that the emergency rule remains continuously in effect until it can be permanently adopted at the July 2020 Regents meeting and take effect as a permanent rule. Supporting materials are available upon request from the Secretary to the Board of Regents.

### **Background Information**

Chapter 489 of the Laws of 2019 (“Chapter 489”) added section 2018-d to the Education Law which provides military voters the opportunity to vote by military ballots for school district and school district public library elections, budget, and referenda. Previously, persons serving in the military, including spouses and dependents, could register as military voters in New York State entitling them to receive military ballots for all federal, State, and local elections. Chapter 489 extends such provisions to school district and school district public library elections, budget, and referenda.

At the request of the New York State School Boards Association to provide clarity to the field on Chapter 489, the proposed addition of Part 122 of the Commissioner’s regulations provides clarification on various provisions of such Chapter:

- Section 122.3 provides clarification on the transmission of military voter registration, ballot applications, and ballots, including methods of transmission (mail, fax, or e-mail) and time frames for transmission;
- Section 122.4 provides clarification regarding military voter registration, including what, at a minimum, must be included on personal registration application forms for school districts with a system for the personal registration of voters;
- Section 122.5 provides clarification regarding military ballot applications and the form of such ballot applications;
- Section 122.6 provides clarification on military ballots, including what shall be included on such ballots and the validity of such ballots. This section also requires school districts and school district public libraries, as applicable, to prepare a list of military voters to whom military ballots have been issued and requires such list to be made available for public inspection;
- Section 122.7 provides clarification on the procedures for voting by military ballot, including how to mark the ballot and how to secure the ballot and transmit it back to the school district or school district public library, as applicable;
- Section 122.8 provides the language for the military ballot voter affirmation; and
- Section 122.9 provides clarification on the canvassing of military ballots by school districts and school district public libraries, as applicable.

### **Revisions to the Proposed Amendment**

In response to public comment, the proposed amendment has been revised to clarify the notice requirements for school districts and school district public libraries. Sections 122.4(a)(3) and 122.5(a)(3) of the proposed amendment referred to “public notice of

elections.” The Department has revised the proposed regulation to clarify that the public notice of an election which the aforementioned regulatory sections refer to are the notice of annual meeting required by Education Law §§2003 and 2004 for school districts and the notice of special district meetings required by Education Law §260 for school district public libraries.

### **Related Regent’s Items**

[March 2020: Proposed Addition of Part 122 to the Regulations of the Commissioner of Education Relating to Military Ballots for School District and School District Public Library Elections, Budget, and Referenda](https://www.regents.nysed.gov/common/regents/files/320p12a5revised.pdf)

(<https://www.regents.nysed.gov/common/regents/files/320p12a5revised.pdf>)

### **Recommendation**

It is recommended that the Board of Regents take the following action:

VOTED: That Part 122 of the Regulations of the Commissioner of Education be added, as submitted, effective June 1, 2020, as an emergency action upon a finding by the Board of Regents that such action is necessary for the preservation of the general welfare to immediately conform the Regulations of the Commissioner of Education to the requirements of Chapter 489 of the Laws of 2019, which requires military ballots for school district and school district public library elections, budget, and referenda and to ensure that the emergency action taken at the March meeting remains in effect until the proposed rule can be permanently adopted.

### **Timetable for Implementation**

If adopted at the May 2020 Regents meeting, the emergency rule will become effective June 1, 2020. It is anticipated that the proposed rule will be presented to the Board of Regents for permanent adoption at the July 2020 Regents meeting, after publication of the proposed amendment in the State Register and expiration of the 60-day public comment period required under the State Administrative Procedure Act.

**Attachment A**

AMENDMENT OF THE COMMISSIONERS OF EDUCATION REGULATIONS

Pursuant to Education Law Sections 101, 207, 260, 260-a, 305, 2012, 2014, 2018-a, 2018-b, 2018-c, and 2018-d as added by Chapter 489 of the Laws of 2019

The Regulations of the Commissioner of Education are amended by adding a new Part 122 to read as follows:

Part 122. Military Ballots for School District and School District Public Library Elections, Budget, and Referenda

Section 122.1 Applicability.

(a) The provisions of this Part shall apply to all annual and special school district meetings and school district public library meetings conducted for the purpose of electing members of a board of education or school district public library trustees, or adopting school district or school district public library budgets and referenda.

(b) The provisions of this Part shall not apply to boards of cooperative educational services (BOCES).

Section 122.2 Definitions. As used in this Part:

(a) Appropriate school board of education means the board of education in whose jurisdiction the military voter, defined in subdivision (f) of this section, resides as a qualified voter.

(b) Election means the election of members of a school district board of education or trustees of a school district public library, and the adoption of school district and school

district public library budgets and referenda at either an annual or special school district or school district public library meeting.

(c) Military ballot means a ballot prepared, printed and supplied for use by a military voter, defined in subdivision (f) of this section, in connection with the election of members of a board of education and school district public library trustees, and the adoption of a school district or school district public library annual budget and referenda.

(d) Military address means the mailing address of a military voter other than his or her residence address in his or her school district.

(e) Military service means the military service of the state, or of the United States, including the army, navy, marine corps, air force, coast guard, merchant marine and all components thereof, and the coast and geodetic survey, the public health service, the national guard when in the service of the United States pursuant to call as provided by law, and the cadets or midshipmen of the United States Military Academy, United States Naval Academy, United States Air Force Academy and United States Coast Guard Academy.

(f) Military voter means:

(1) a qualified voter of the State of New York who:

(i) is in actual military service, as defined in subdivision (e) of this section and by reason of such military service is absent from the school district in which he or she is qualified to vote on the day of registration or election; or

(ii) is discharged from such military service within 30 days of an election; or

(2) a spouse, parent, child or dependent of a voter, described under paragraph (1) of this subdivision, accompanying or being with such voter, if a qualified voter of the State of New York and a resident of the same school district as such voter.

(g) Qualified voter means a military voter who meets the qualifications of voters set forth in Education Law §2012, including military personnel residing on a military base within a school district located in New York State for a period of thirty days next preceding the meeting or election at which he or she offers to vote pursuant to Education Law §2012(3).

Section 122.3 Transmission of Voter Registration, Military Ballot Applications, and Military Ballots.

(a) All communications to the military voter shall include the mailing address of the appropriate school board of education or school district public library trustees, as applicable.

(b) Transmission preference.

(1) A military voter may designate a preference to receive a military voter registration, military ballot application or military ballot by mail, facsimile transmission or electronic mail in their request for such registration, ballot application, or ballot.

(2) Such designation shall remain in effect until revoked or changed by the military voter. Military voters shall inform the appropriate school board of education or school district public library trustees, as applicable, of any change in the designated transmission address or military status.

(3) If a military voter does not designate a preference, the appropriate school board of education or school district public library trustees, as applicable, shall transmit the military voter registration, military ballot application, and/or military ballot by mail.

(4) If a military voter designates a preference for facsimile transmission or electronic mail but does not provide the necessary facsimile number or e-mail address, the appropriate school board of education or school district public library trustees, as applicable, shall transmit the military voter registration, military ballot application, and/or military ballot by mail and request the omitted information.

(5) Military voters who designate a preference for facsimile or e-mail transmission for a military ballot shall also receive with such transmission a form that includes the information normally appearing on the inner envelope used to return an absentee ballot pursuant to Education Law §§2018-a(5)(a) and 2018-b(6)(a). Such military voters shall permanently affix such form to an envelope secured by the military voter before returning the military ballot to the appropriate school board of education or school district public library trustees.

(c) Military voter registration application forms must be received in the office of the clerk of the school district no later than 5:00 p.m. on the day before:

(i) the school district's board of registration will meet to prepare the school district register; or

(ii) the last day for the transmission of military ballots provided in subdivision (e) of this section if the school district provides for the registration of voters during certain specified hours of the school day pursuant to Education Law §2014(2) and (6).

(d) In order for a military voter to be issued a military ballot, the school district of the appropriate school board of education or the school district public library trustees, as applicable, must have received in the office of the school district clerk or appropriate official designated by the school district public library, as applicable, a valid ballot

application no later than 5:00 pm of the day preceding the last day for the transmission of military ballots provided in subdivision (e) of this section.

(e) Ballots for military voters shall be mailed or otherwise distributed by the appropriate school board of education or school district public library trustees, as applicable, in accordance with the military voter's preferred method of transmission provided in subdivision (b) of this section, as soon as practicable, but not later than 25 days before the election, except that in city school districts with less than 125,000 inhabitants, military ballots shall be mailed or otherwise distributed no later than 14 days before the election.

(f) Irrespective of the preferred method of transmission designated by a military voter under subdivision (b) of this section, a military voter's original military ballot application and military ballot must be returned by mail or in person to the appropriate school board of education or school district public library trustees' address as provided under subdivision (a) of this section.

(g) Nothing contained in this Part shall prevent a military voter from requesting and obtaining a military voter registration application, military ballot application, or military ballot in person.

#### Section 122.4 Military Voter Registration.

(a) Personal registration application.

(1) School districts with a system for the personal registration of voters shall develop a personal registration application form for use by military voters, in accordance with the provisions of subdivision (b) of this section.

(2) A military voter who is not currently registered may request and obtain from his or her appropriate school board of education an application to register as a qualified voter of the school district if the appropriate school board of education has adopted a system for the personal registration of voters.

(3) A board of education that has adopted a system for the personal registration of voters shall include in its public notice of annual meeting required pursuant to sections 2003 and 2004 of the Education Law a statement that military voters who are not currently registered may apply to register as a qualified voter of the school district. The statement shall also include information regarding the time and manner for requesting and returning such application. Such statement shall also give notice that the military voter may indicate their preference for receiving the registration, as provided in section 122.3 of this Part.

(4) The school district register of qualified voters shall include the names of all military voters who submit a valid military voter registration application pursuant to this section.

(b) Personal registration applications forms.

(1) At a minimum, a personal registration application form for use by military voters shall provide:

(i) the military voter's name;

(ii) the military voter's residence address in the school district, including street and number, if any, or town and delivery route, if any;

(iii) the military voter's military address;

(iv) a statement that:

(a) the military voter is in military service and by reason of such military service will be absent on the day of registration or election, or the military voter will be discharged from such military service within 30 days of the election for which the military voter seeks registration; or

(b) the military voter is an eligible spouse, parent, child or dependent of a military voter pursuant to section 122.2(f)(2) of this Part; and

(v) The following affirmation:

I hereby declare that the foregoing is a true statement to the best of my knowledge and belief, and I understand that if I make any material false statement in the foregoing statement of application for personal registration, I shall be guilty of a misdemeanor.

Date.....Signature of Voter .....

Section 122.5 Military Ballot Applications.

(a) Generally.

(1) A military voter may request and obtain from his or her appropriate school board of education or school district public library trustees, as applicable, an application for a military ballot.

(2) (i) Military voters shall submit a separate military ballot application for each election at which they wish to cast a vote, except as provided in subparagraph (ii) of this paragraph.

(ii) An application for a military ballot for an election involving the adoption of a school district or school district public library annual budget shall be deemed to also constitute an application for such a ballot for any necessary budget revote.

(3) School districts shall include in the public notice of annual meeting required pursuant to sections 2003 and 2004 of the Education Law and school district public libraries shall include in the public notice of a special district meeting required pursuant to section 260 of the Education Law, as applicable, a statement that military voters who are qualified voters of the school district may apply for a military ballot, along with the time and manner for requesting and returning an application for such a ballot. Such statement shall also give notice that the military voter may indicate their preference for receiving the application, as provided in section 122.3 of this Part.

(4) The board of education and school district public library trustees, as applicable, shall process military ballot applications received in accordance with section 122.3(d) of this Part in the same manner as non-military ballot applications under Education Law §§2018-a and 2018-b.

(b) Military ballot application forms.

(1) School districts and school district public libraries, as applicable, shall develop and make available military ballot application forms for use by military voters.

(2) At a minimum, a military ballot application form for use by military voters shall provide:

(i) the military voter's name;

(ii) the military voter's residence address in the school district, including street and number, if any, or town and delivery route, if any;

(iii) the military voter's military address;

(iv) the military voter's preference for receiving military ballots either by mail, facsimile transmission, or electronic mail;

(v) a statement that:

(a) the military voter is in military service and by reason of such military service will be absent on the day of the election, or the military voter will be discharged from such military service within 30 days of the election; or

(b) the military voter is an eligible spouse, parent, child or dependent of a military voter pursuant to section 122.2(f)(2) of this Part; and

(vi) The following affirmation:

I hereby declare that the foregoing is a true statement to the best of my knowledge and belief, and I understand that if I make any material false statement in the foregoing statement of application for ballots, I shall be guilty of a misdemeanor.

Date.....Signature of Voter .....

Section 122.6 Military ballots.

(a) Military ballots shall include the names of all candidates nominated for election as a member of the appropriate school board of education or school district public library, as well as the amendments, referenda, propositions and questions to be voted for on such ballots.

(b) The appropriate school board of education or school district public library trustees, as applicable, shall ascertain such information contained in subdivision (a) of this section three days before the first day of the distribution of military ballots.

(c) A military ballot shall still be valid if the nomination of any candidate named on the ballot is found invalid at a later date because the nominee withdrew, died or otherwise

became ineligible after the date the ballot was transmitted pursuant to section 122.3(e) of this Part, even if the nomination period is reopened as a result thereof.

(d) When the nomination of any candidate named on a military ballot is found invalid subsequent to the transmission of the ballot, no vote cast for any such named candidate shall be counted during the canvassing of ballots at the election.

(e) The failure of the appropriate school board of education or school district public library trustees, as applicable, to include the name of any candidate or any proposition or question on the military ballot shall not affect the validity of the election with respect to the office for which the nomination was made or the validity of the military ballot as to any other matter.

(f) Military ballots shall be, as nearly as practicable, in the same form as an absentee ballot as prescribed in Education Law 2018-a(4) or 2018-b(5).

(g) School districts and school district public libraries, as applicable, shall prepare a list of military voters to whom military ballots have been issued and make such list available for public inspection, consistent with the requirements of Education Law §§2018-a(6) and 2018-b(7).

#### Section 122.7 Voting by military ballot.

(a) Upon receipt of a military ballot, military voters shall mark the ballot in the same manner that is applicable to the use of non-military ballots.

(b) After marking the military ballot, military voters shall:

(i) fold the ballot and enclose it in the inner affirmation envelope bearing the military affirmation on the outside of the envelope, or the envelope bearing the military affirmation

form permanently affixed to the outside of the envelope pursuant to section 122.3(b)(5) of this Part, and seal the envelope;

(ii) sign the affirmation, with the blanks properly filled in;

(iii) insert the envelope containing the military ballot in the outer envelope addressed to the appropriate school board of education or school district public library trustees, as applicable, which shall be mailed or personally delivered to the appropriate school board of education or school district public library trustees, as applicable, within the time limits provided in section 122.9 of this Part.

Section 122.8 Military ballot voter affirmation.

The following shall be printed on the inner envelope transmitted with the ballot by mail, or the additional form transmitted with the ballot by facsimile or e-mail to be permanently affixed to an envelope secured by the military voter as provided in section 122.3(b)(5) of this Part.

(a) On one side of the envelope shall be printed or permanently affixed:

OFFICIAL BALLOT, MILITARY VOTER

for

School District or School District Public Library Election, Budget Vote or Referenda

Name of Voter.....

District Residence (street and number, if any).....

City (or Town) of.....

County of.....

School District .....

School Election District (if applicable).....

The date of the election, budget vote or referenda and name of the school district or school district public library, as applicable, shall be printed and the name of the voter, residence, school election district (if applicable) shall be written in by the board of registration, in school districts that provide for personal registration of voters; the school district clerk, in school districts that do not provide for personal registration; or the appropriate official designated by school district public libraries, as applicable.

(b) On the reverse side of such envelope shall be printed or permanently affixed the following statement:

STATEMENT OF MILITARY VOTER

I do declare that I am a citizen of the United States, and will be at least eighteen years of age, on the date of the school district and/or school district public library election, budget vote or referenda for which I submit this military ballot; that I will have been a resident of this state and of the school district and school election district, if any, shown on the reverse side of this envelope for thirty days next preceding the said election, budget vote or referenda and that I am or on such a date will be, a qualified voter of said school district and/or school district public library; that I will be unable to appear personally on the day of said school district election, budget vote or referenda at the polling place of the said district in which I am or will be a qualified voter because of the reason stated on my application heretofore submitted; that I have not qualified, nor do I intend to vote, elsewhere than as set forth on the reverse side of this envelope; that I have not received or offered, do not expect to receive, have not paid, offered or promised to pay,

contributed, offered or promised to contribute to another to be paid or used, any money or other valuable thing, as a compensation or reward for the giving or withholding of a vote at this school district and/or school district public library election, budget vote or referenda, and have not made any promise to influence the giving or withholding of any such votes; that I have not made or become directly or indirectly interested in any bet or wager depending upon the result of this school district and/or school district public library election, budget vote or referenda; and that I have not been convicted of bribery or any infamous crime, or, if so convicted, that I have been pardoned or restored to all the rights of a citizen, without restriction as to the right of suffrage, or have received a certificate of relief from disabilities or a certificate of good conduct pursuant to article twenty-three of the correction law removing my disability to register and vote.

I hereby declare that the foregoing is a true statement to the best of my knowledge and belief, and I understand that if I make any material false statement in the foregoing statement of military voter, I shall be guilty of a misdemeanor.

Date.....Signature of Voter .....

Section 122.9. Canvassing of Military Ballots.

(a) The appropriate school board of education or the school district public library, as applicable, shall canvass all military ballots:

(1) received by it before the close of the polls on election day and showing a cancellation mark of the United States postal service or a foreign country's postal service,

or showing a dated endorsement of receipt by another agency of the United States government; or

(2) received by it not later than 5:00 p.m. on election day and signed and dated by the military voter and one witness thereto, with a date which is ascertained to be not later than the day before the election.

(b) Inspectors of election shall thereafter process military ballots in the same manner as provided in Education Law §§2018-a and 2018-b for the canvassing of non-military ballots.

STATEMENT OF FACTS AND CIRCUMSTANCES  
WHICH NECESSITATE EMERGENCY ACTION

The proposed addition of Part 122 to the Regulations of the Commissioner of Education is necessary to implement the provision of Chapter 489 of the Law of 2019 (Chapter 489) which amended the Education Law, effective November 11, 2019, providing military ballots for school district and school district public library elections, budget, and referenda.

The proposed addition of Part 122 to the Commissioner's regulations implements Chapter 489 and clarifies provisions relating to the transmission of military voter registration, ballot applications, and ballots; the form of such voter registration, ballot applications, and ballots; the procedures for voting by military ballot; language for the military ballot voter affirmation; and the canvassing of military ballots.

The proposed amendment was presented to the P-12 Education Committee for recommendation and to the Full Board for adoption as an emergency action at the March 2020 meeting of the Board of Regents, effective March 3, 2020. Since the Board of Regents meets at fixed intervals, the earliest the proposed amendment can be presented for permanent adoption, after expiration of the required 60-day comment period provided for in the State Administrative Procedure Act (SAPA) sections 201(1) and (5), would be the July 2020 Regents meeting. Furthermore, pursuant to SAPA 203(1), the earliest effective date of the proposed rule, if adopted at the July meeting would be July 29, 2020, the date the Notice of Adoption would be published in the State Register. However, the March emergency rule will expire on May 31, 2020.

Therefore, emergency action is necessary at the May 2020 meeting for the preservation of the general welfare in order to immediately conform the Regulations of the Commission of Education to Chapter 489, which became effective November 11, 2019 to ensure that procedures and standards are in place for military voters so that they are able to vote by military ballot in school district and school district public library elections, budgets, and referenda as they are entitled to under the provisions of such chapter and to ensure that the emergency action taken at the March 2020 meeting remains in effect until the proposed rule can be permanently adopted.

It is anticipated that the proposed rule will be presented to the Board of Regents for adoption as a permanent rule at the July 2020 meeting, which is the first scheduled meeting after expiration of the 60-day public comment period prescribed in SAPA For State agency rule makings.

8 NYCRR 122

ASSESSMENT OF PUBLIC COMMENT

Following publication of a Notice of Emergency Adoption and Proposed Rule Making in the State Register on March 18, 2020, the State Education Department received the following comment:

1. COMMENT:

A commenter asked what language they should add, if any, to the school district annual notice (6-day notice), as they begin making preparations for their 2020-2021 budget correspondence with their local newspapers and residents regarding the military ballot provision.

DEPARTMENT RESPONSE:

Sections 122.4(3) and 122.5(3) of the proposed rule state what should be included in the “public notice of elections.” Section 122.4(3) provides that a board of education that has adopted a system for the personal registration of voters shall include in its *public notice of elections* a statement that military voters who are not currently registered may apply to register as a qualified voter of the school district. Such section also provides that the statement shall also include information regarding the time and manner for requesting and returning such application and shall also give notice that the military voter may indicate their preference for receiving the registration by mail, facsimile transmission or electronic mail.

Similarly, section 122.5(3) provides that school districts and school district public libraries, as applicable, shall include in the *public notice of an election* a statement that

military voters who are qualified voters of the school district may apply for a military ballot, along with the time and manner for requesting and returning an application for such a ballot. Such section also provides that the statement shall also give notice that the military voter may indicate their preference for receiving the application by mail, facsimile transmission or electronic mail.

The Department has revised the proposed regulation to clarify that the public notice of an election which the aforementioned regulatory sections refer to are the notice of annual meeting required by Education Law §§2003 and 2004 for school districts and the notice of special district meetings required by Education Law §260 for school district public libraries. The 6-day notice required by Education Law §2022(2-a) which the commenter refers to does not need to include information regarding military ballots.