

November 11, 2020

The Members of the Chicago Board of Education
Janice Jackson, Chief Executive Officer of Chicago Public Schools
Guillermo “Willy” Montes de Oca, Director of Local School Council Relations

Re: Local School Council Election Procedures

Dear Members of the Chicago Board of Education and Chicago Public Schools Leadership:

Thank you for your efforts to make the upcoming LSC elections more accessible to all voters, including extending the deadline for mail-in ballots. These and other changes to election procedure have raised additional questions from parents and community members alike. With only a week until the elections, we urge CPS to address these issues promptly to bolster transparency and public trust in a fair LSC election process, consistent with CPS’ constitutional obligations.

1. Offer Ways to Verify Mail-In Ballot Acceptance and Provide Due Process Before Ballot Rejection

We have heard from CPS parent and guardian voters with questions about how they will know whether their ballots have been received and counted. Some have expressed concerns that the requirement that voters write their name and address on the outside of the mail-in ballot envelope could invite possible retaliation or tampering with certain voters’ ballots.

To help address these concerns, CPS should offer parents and guardians a way to verify whether their mail-in ballot has been received by CPS and counted. Because CPS already plans to match mail-in ballot envelopes against the school’s master file to create a list of who voted by mail,¹ it should not be burdensome to create and publicize a way for parents and guardians to check whether their ballots are on the list -- and to proactively notify voters when their ballot is accepted. This will help to bolster public trust in the election procedures and reassure eligible voters that they can safely vote by mail, lessening the burden on in-person voting.

Creating a process for notifying voters when their ballot is accepted will also help CPS to meet its legal obligation to notify voters that their ballot may be rejected. CPS must provide notice and a hearing to a voter before rejecting their mail-in ballot. Voters are entitled to constitutional due process protections for mail-in ballots, including the requirement that they be notified and be given the opportunity to resolve any issues with their mail-in ballot before it is rejected.² If a

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<https://www.cps.edu/globalassets/cps-pages/about/local-school-councils-lscs/lsc-elections/faqs-2020-lsc-election.pdf>

² See, e.g., *Zessar v. Helander*, No. 05 C 1917, 2006 U.S. Dist. LEXIS 9830, at *15-16 (N.D. Ill. Mar. 13, 2006).

ballot is received but not counted, that voter must be informed of the issues with the ballot they submitted and should be given an opportunity to cure their ballot.

2. Offer Transparency and Integrity Measures for In-Person Voting

We have also received many questions about how CPS plans to ensure the integrity of in-person voting this year. We urge CPS to ensure that pollwatching credentials are distributed to candidates and civic organizations in a timely fashion, and to offer pollwatchers the same ability to observe the ballot box and voting as in previous elections. And if CPS plans to count in-person ballots on December 1, the same day as mail-in ballots, CPS must take specific precautions to ensure the security of these ballots to remove any potential for tampering.

3. Ensure Ballot-Counting Transparency and Integrity

Eligible voters have expressed concern about the lack of transparency surrounding when ballots will be counted and how the ballots will be handled before and during the counting process. In particular, we ask CPS to clarify whether it plans to count both in-person ballots and mail-in ballots on December 1, or whether in-person ballots will be counted on the in-person election day as in years past.

We have also received questions about the ballot instruction for voters to mark their preferences with an “X” rather than any other mark to indicate their choices. This concern is particularly relevant for mail-in ballots being completed at home, without Election Judges available to instruct voters on this formality. There have been reports in the past of ballots being over-zealously discarded for nonconforming markings made by a voter. In cases where a voter makes an honest effort to indicate their choice, a voter should not be disenfranchised by having their ballot discarded.

For more than a century, Illinois courts have held that if the voter’s intention can be fairly ascertained from the ballot markings, then the ballot must be counted even if the type of marking (such as a check mark or initials) does not strictly conform with the instructions.³ In order to ensure a free and equal election, we urge CPS to train and ensure that all LSC election judges will count all such ballots.

4. Extend Deadlines for Post-Election Challenges

CPS’ communications have given a deadline of December 3 for post-election challenges, which would be only 48 hours after votes are tallied. This is a far shorter deadline than previous elections, in which post-election challenges were due no later than 6 calendar days after the last election date. Given the limitations of COVID-19, we urge CPS to extend the deadline for post-election challenges to give at least a week for post-election challenges to be submitted.

³ *E.g.*, *Hester v. Kamykowski*, 13 Ill. 2d 481, 150 N.E.2d 196 (1958); *Gulino v. Cerny*, 13 Ill. 2d 244, 148 N.E.2d 724 (1958); *Slenker v. Engel*, 250 Ill. 499, 95 N.E. 618 (1911); *Parker v. Orr*, 158 Ill. 609, 615–16, 41 N.E. 1002, 1004 (1895).

5. Widely Publicize LSC Election Dates and Procedures

Many parent and guardian voters remain unaware of LSC election procedures, including the recent extension of the mail-in ballot deadline. This is, in part, because the printed mail-in ballots reflect the old deadline. We urge you to make use of CPS' resources to ensure that information pertinent to the election reaches as many voters as possible. This transparency is important to ensure that voters have trust in the election procedures.

We urge you to publicize the details of several aspects of the upcoming elections process. Specifically:

- The procedure for dropping off mail-in ballots, including acceptable dates, hours, and locations for drop-off;
- The extension of the mail-in ballot deadline;
- A central phone number for voters and others with questions or concerns about the election process to contact CPS;
- How those voting by mail can verify that their ballots have been received;
- How those voting by mail can verify that their ballots have been counted;
- How those voting by mail can cure a defective or spoiled ballot;
- Plans to ensure security, transparency and integrity of mail-in and in-person ballots; and
- Information regarding the ballot counting process.

It is also important to keep in mind that many families do not have access to the same sources of information. We urge CPS to disseminate this information through multiple channels, including:

- Emails to the CPS email list as well as to parents and guardians with active email addresses on file with the school;
- Robo-calls and texts to parents and guardians;
- Direct teacher and student communications;
- Mailers;
- Postings at the school;
- Electronic billboard;
- Updated blog posting and press release on the CPS website;
- Radio, television and other outreach methods.

If voters are informed and trust the process, they will be more likely to show up, mail-in, and otherwise participate.

Thank you for your receptiveness to the concerns of the CPS community. We request a response by Monday, November 16 regarding these issues.

Sincerely,

Chicago Lawyers' Committee for Civil Rights

Raise Your Hand for Illinois Public Education

Chicago United for Equity

Northside Action for Justice

Lugenia Burns Hope Center

Parents 4 Teachers

Illinois Families for Public Schools