

October 29, 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 October 21 notice about how voters can participate in the 2020 Local School Council (LSC) elections, including the new policies for mail-in ballots and other accommodations for election day. We appreciate the challenges CPS faces in conducting this election during a pandemic, but have serious concerns about whether these processes will meet CPS’ constitutional obligations to ensure a free and equal LSC election.

Parents and community members have a fundamental constitutional right to have an equal voice in electing LSC members.¹ Any scheme that denies or dilutes this right must meet a strict scrutiny standard, the highest and most rigorous form of judicial review.² To meet a standard of strict scrutiny, an election scheme must advance a compelling state interest, and use the least restrictive means necessary to achieve that goal.³

Below are four specific concerns about whether the 2020 LSC election procedure meets this high standard, along with concrete suggestions to rectify the situation and ensure free and fair elections on November 18 and 19.

1) **Address the Unrealistic and Unfair Timeline for Mail-In Ballots by Adopting the “Postmarked-By” Deadline Used in Other Illinois Elections**

The mail-in ballot timelines announced by CPS – which allow less than two weeks for ballots to travel by mail to voters and be returned – are likely to disenfranchise many voters. During a time of well-documented United States Postal Service (USPS) delays, this is an unacceptably tight turn-around for a free and fair election.

CPS has said it will only accept mail-in ballots received (not postmarked) by election day (November 18 or 19). USPS recommends that voters mail their ballots at least one week prior to the deadline.⁴ This would mean that voters should mail their ballots by November 11th for the Nov. 18th deadline. But because CPS will not send out these ballots and prepaid envelopes until the week starting Monday, November 2 (and ending November 6), even minor delays in mail delivery will mean that that many ballots will not reach voters until after November 11th – too late

¹ Fumarolo v. Chi. Bd. of Educ., 142 Ill. 2d 54, 72-74 (1990).

² *Id.*

³ *Id.* (citing Kramer v. Union Free School District No. 15, 395 U.S. 621, 626 (1969).)

⁴ See https://faq.usps.com/s/article/Voting-by-Mail#when_to_mail.

to return them in time to be counted by mail. Given current USPS delays, more than 1 out of 10 mail-in ballots could be delayed in this way.⁵

There is a simple solution to avoiding this widespread disenfranchisement of voters. Chicago Public Schools should follow the same rules for other elections in Illinois, requiring that mail-in ballots be **postmarked by election day** and received within 14 days after the election.⁶

2) Ensure Ballot Security and Integrity by Repurposing Existing Secure Drop-Boxes and Publishing Clear Ballot-Counting Guidance

Given that many parents and staff will receive their mail-in ballots less than a week before LSC election dates, it is critically important that CPS offer clear instructions about how these voters can securely drop off their ballots. Thus far, CPS' instructions state only that "voters can also drop their ballot off[f] at their school up to the date of the election." CPS must promptly distribute clear instructions about dates, times, and locations for dropping off mail-in ballots, as well as assurances for ensuring the safety and security of these ballots.

In addition to offering drop-off options at each school, one way to ensure that voters can securely drop off their ballots at a variety of locations and times would be to re-purpose the Chicago Board of Elections secure ballot drop-boxes. The Chicago Board of Elections has over sixty ballot drop-boxes that are currently being used across the city, but will no longer be in use after November 3rd. Using these boxes for the LSC elections would be a cost-effective and secure way to ensure the security of dropped-off ballots, while protecting the integrity of the election at-large.

We have also heard from numerous parents and community members with concerns about how mail-in and in-person votes will be counted this year, as well as how ballots will be secured prior to the count. We ask that CPS issue clear guidelines about how it plans to ensure transparency, security, and integrity in the ballot-counting process this year.

3) Address Unequal Access by Offering a Way to Request a Mail-In/Drop-Off Ballot

Current CPS procedures exclude many eligible voters from any way of voting via mail-in ballot, excluding not only community members but also parents and guardians who do not have an up-to-date or valid mailing address in the Aspen system. CPS procedures do not offer eligible voters a way to request or pick up a mail-in ballot, or even to notify CPS of an address change or issues with mail delivery.

⁵ See

<https://www.msn.com/en-us/money/news/amid-usps-delays-election-experts-and-campaigns-weigh-in-don-e2-80-99-t-mail-your-ballot/ar-BB1arwcs> (Nationally, only 85.6 percent of all first-class mail was delivered on time the week of Oct. 16; that's the 14th consecutive week the on-time rate sat below 90 percent for mail that should reach its destination within three days). See also

<https://www.forbes.com/sites/alisondurkee/2020/08/28/usps-mail-delays-still-persisting-workers-say-despite-dejoy-pausing-some-changes/#7629ae3236cd>.

⁶ For example, see detailed guidelines here: <https://chicagoelections.gov/en/vote-by-mail.html>.

This scheme will harm homeless families and those living “doubled up” or in other temporary living situations – who are disproportionately likely to be Black or Latinx. At last count, about 17,000 CPS students are homeless, and nearly all of these students are Black or Latinx.⁷ It also needlessly excludes community members who face obstacles to in-person voting from even being able to request a mail-in ballot before Election Day.

While we appreciate the logistical challenges that CPS faces, we urge CPS to use less restrictive means by providing a mechanism for all eligible voters to obtain a mail-in ballot with appropriate documentation before the election date.

4) Inform Voters by Improving Distribution of Candidate Information

We have heard concerns from many parents and community members about inconsistencies and confusion in CPS’ distribution of information about candidates. This has included confusion and lack of access to candidate forums, and more recently concerns about CPS giving candidates less than 48 hours’ notice to provide their flyers to principals for distribution.

CPS has a duty to publicize this information to voters as set forth under the Illinois School Code and the Board’s own rules and regulations.⁸ In the current remote learning environment, it is vitally important that CPS take the necessary steps to ensure broad distribution of information about candidates to all eligible voters. At a minimum, this should include extending the candidate flyer deadline to offer candidates a meaningful opportunity to provide the information that CPS is legally obligated to publicize.

Thank you for your consideration on these matters. Please provide us with a response by Monday, November 2 as to how CPS will address these concerns.

Sincerely,

Chicago Lawyers Committee for Civil Rights
Raise Your Hand for Illinois Public Education
Chicago United for Equity
Pilsen Alliance
Northside Action for Justice
Chicago Teachers Union
Lugenia Burns Hope Center
Blocks Together
Kenwood Oakland Community Organization

⁷ See, e.g., Nader Issa, Inside the life of a homeless Chicago student in the age of the coronavirus: Fear of failing — or not surviving, Chicago Sun-Times, April 12, 2020, <https://chicago.suntimes.com/coronavirus/2020/4/12/21214021/homeless-chicago-student-coronavirus-cps-mariah-bingham>.

⁸ 105 ILCS 5/34-2.1.