

THE UNIVERSITY OF THE STATE OF NEW YORK
THE STATE EDUCATION DEPARTMENT

Office of Counsel

No. 245

Formal Opinion of Counsel

I have received your letter, in which you ask, on behalf of the Middle Country Central School District, whether the signatures of voters who complete affidavit ballots must be notarized. If so, you inquire whether a notary can require such voters to produce identification.

Education Law § 2019-a allows persons whose names are not in the registration poll ledgers to vote at a school district meeting or election if they present a court order or vote by affidavit (“affidavit ballot”).¹ The affidavit ballot procedure is derived from materially identical language in the Election Law.

The Election Law is administered by the State Board of Elections (“board”), which oversees “the administration of the election process.”² The board has, as required by law, adopted a form affidavit ballot that does not require notarization; it merely requires that voters swear or affirm, by their signature, that the representations therein are true.³

Given the board’s interpretation, I find that it would be anomalous to impose a notarization requirement for school board elections. As such, voters who complete affidavit ballots in a school election cannot be required to have their signatures notarized. Any Departmental guidance to the contrary should no longer be relied upon.

I acknowledge that this conclusion is not intuitive. Under New York law, an affidavit is defined as “any voluntary ... statement reduced to writing, signed by the party making [it], and sworn to or affirmed before some person authorized by law to administer an oath or affirmation.”⁴ Nevertheless, allowing voters to forego notarization under these circumstances generally promotes access to the polls. It also, as you note, avoids requiring registered voters to produce satisfactory evidence of identity they are not ordinarily required to provide.⁵

¹ Education Law § 2019-a (1) (b). The prospective voter must: (1) state that she “has duly registered to vote”; (2) identify the address in the election district in which she registered; (3) indicate that she “remains a duly qualified voter in such election district”; and (4) aver that her “registration poll record appears to be lost or misplaced” or that her “name has been incorrectly omitted from the list of registered voters.”

² Election Law § 3-102 (1).

³ Election Law § 8-302 (3) (e) (ii).

⁴ NY Jur 2d Acknowledgments § 35; see *People ex rel. Kenyon v. Sutherland*, 81 NY 1, 6 (1880); *Greystone Staffing, Inc. v. Vincenzi*, 7 Misc 3d 1024(A) (Sup Ct, Nassau County, 2005).

⁵ 19 NYCRR 182.5.

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Dated October 16, 2024
Eric Levine, Esq.