

## Privacy Concerns over the Casting of Absentee Ballots

The reason for sending this Legal Alert is twofold. First, it has come to our attention that some school districts have been receiving questions from voters in receipt of an absentee ballot regarding concerns over the privacy of their vote and others finding out how they voted. More specifically, they think that because the absentee ballot envelopes contain the name of each voter, others could link the individual voter to the vote. In their view, if the election inspector opens Jane Doe's ballot envelope and removes and counts the ballot, he or she will know how Jane Doe voted.

Such a view, however, reflects a misunderstanding of how absentee ballots are actually counted, and NYSSBA recommends that school districts consider providing to their respective communities information about the absentee ballot counting process. It further recommends that districts sending out any such information consult with their school attorney to ensure it is legally accurate and easy to understand.

Essentially, the Education Law provides that an envelope containing a returned absentee ballot is not to be opened until a determination is made that there is no reason for rejecting the ballot, which could happen if, for example, the voter fails to provide the signature required by law to appear on the envelope containing the ballot. Once such a determination is made and the envelope opened, the ballot is withdrawn **without unfolding** and deposited into the proper ballot box. As a result, at the time of counting, the ballots will not be linked to the envelope in which they were returned.

Second, regarding the requirement that the ballot be withdrawn from the envelope without unfolding, NYSSBA also wants to correct a contrary suggestion found in the answer to question 17:32 in its School Law 37<sup>th</sup> Edition publication, and which some might be relying on. That question asks "How are absentee ballots counted? The answer states that "[a]bsent any grounds for rejecting such ballot, the election inspectors will open the envelope containing the absentee ballot, withdraw the ballot and deposit it unfolded in the proper ballot box..." Pursuant to the express language of the Education Law, **absentee ballots must remain folded until they are actually counted**. It certainly was not our intention to create any confusion.