

# **Mandatory Instructions to Boards of Elections Regarding New York Accessible Electronic Absentee Ballot Application Processing**

## **I. Introduction**

On August 19, 2020, Judge Liman issued an Order in the case of *Hernandez v New York State Board of Elections* (1:20-cv-4003 United States District Court, Southern District of New York) mandating a process for making absentee voting accessible for the November 3, 2020 election. The Order is attached.

The provisions of this order are binding on, and mandatory for, all boards of elections, as are the mandatory instructions that provide for the implementation of the program. If there is something contained in the Order or these directions that your board has an issue with or a question on, please contact us immediately. Otherwise it is expected that this directive will be followed in its entirety, without modification pursuant to the Court's order.

It is critical that ALL staff that may possibly answer the phone or email, know about the accessibility program and be aware of the process and/or the person to put the voter in touch with should the voter have any questions. Any temporary employees that may be hired and complete these tasks MUST also be made aware of the same. The most frequent complaint we heard during the primary election was that when a voter called a board, the person answering the phone neither knew about the program nor who to put the voter in contact with to answer their questions. This is an easily remedied complaint, so PLEASE make sure to advise your staff accordingly.

## **II. Application for Accessible PDF Ballot**

A fully accessible version of the New York Accessible Electronic Absentee Ballot Application is available on NYSBOE's website. This form may be used by someone who is visually impaired or otherwise disabled and that such disability prevents such person from being able to independently cast a paper absentee ballot, without travelling to a Board of Elections and using a ballot marking device during this unprecedented time of COVID-19. Each board of elections must

provide a link to this form on your own web site or post the application itself on your web site. It would be most convenient for the voter for you to post the form itself conspicuously on your county board web site. You may also direct voters to the NYSBOE absentee ballot application portal. This must be done by September 2, 2020.

Upon such request, the board of elections must email the voter an accessible version of their proper ballot.

A. Form of Application

The updated application form link and portal link will be provided as soon as possible.

B. Means of Delivery of Applications to Board

An application for an accessible ballot may be delivered to the board by any means permissible under existing law and Executive Order 202-58, issued August, 24, 2020 just as any other absentee application – including email, fax, U.S. Postal mail, phone and in-person delivery. A board of elections that used an html webform for accessible PDF ballot requests in the June primary may also do the same for the November general election. NYSBOE will also provide a portal application process.

C. Deadline for Submission

Any application for an accessible ballot that is submitted on or before October 27, 2020 must be processed for the November 3, 2020 election. This is the same time frame for regular absentee voters to make requests by mail.

D. Prepared to Process Applications

Each absentee ballot style must be made accessible as soon as practicable after the certification of the ballots, regardless of whether a voter makes a request for that ballot style. For purposes of this directive a “ballot style” is each unique configuration of offices/political subdivisions that creates a unique ballot.

#### E. Requests By Phone

A voter who requests an accessible ballot by phone should be assisted to find the accessible form on the web or should be immediately emailed a form (as needed) so the applicant can complete the necessary attestation of need, fill out the application and return it to the board.

#### F. Signature on Application Form

The accessible PDF ballot application may be signed by means of a text-typed or electronic signature. However, a “wet “signature will be required on the returned oath envelope, or the envelope can bear a mark in accordance with the Election Law. See IV B below.

### III. Issuing Ballot Pursuant to Accessible Application

#### A. Overview

The board will email the remediated accessible pdf ballot along with a return envelope template, oath envelope templates and completion instructions to the voter. At the same time, the board will mail the voter an oath envelope and **postage paid return envelope**. Mail the postage paid return envelope at the time you verify the eligibility of the voter to receive a ballot, to help ensure it arrives to the voter as soon as possible. The postage paid return envelope can simply bear pre-affixed stamps. It does not need to be a business reply envelope, but it may be.

#### B. Timing

As with any application for an absentee ballot, once a voter’s entitlement to the ballot is established, the ballot must be sent to the voter as soon as practicable. If the application is submitted prior to ballot certification or before the receipt of the remediated ballot by the board, the ballot should be emailed to the voter within 48 hours of receiving the ballot back from the accessibility vendor.

## C. The Accessible PDF Ballot

As directed by the Court, all ballot styles shall be made into accessible pdfs within as soon as practicable. The Court's Order requires the ballots to be remediated be sent to the remediation vendor within two days after they are created by your EMS. Each ballot must be a screen readable ballot which can be read by common assistive technology. The ballot must include tags and fillable objects that allow the ballot to be completed independently and privately by the requesting voter by means of a screen reader. The accessible absentee ballot shall meet WCAG 2.00 AA standards for a PDF and must be functional with common assistive technology such as JAWS software, Apple Voiceover and Android Talkback.

Any board that used an html webform to provide the accessible ballot via an RAVBM vendor for the June Primary may continue to do so for the general election.

### 1. Remediation Vendors

The board of elections MUST use an outside vendor to put the PDF into the required accessible form.

NYSBOE will provide a list of vendors it has examined for ability to do the work required by this directive. NYSBOE has spoken to the vendors on the list and has explained what needs to be done to remediate the ballot in such a way as to satisfy the court order and make the voting experience for the voter as seamless as possible.

Inclusion of a vendor on the list does not come with any endorsement or abrogation of the board of elections obligation to do due diligence required of any professional service arrangement.

Finally, if you have a vendor that you want NYSBOE to add to the list, NYSBOE will contact them, explain what is needed and if appropriate authorize the vendor(s) for use.

It is the State Board position that the costs for remediation of these ballots can be reimbursed via your CARES grant allocation.

#### D. Emailing Ballot and Related Materials to Voter

The email to the voter must include the Accessible PDF ballot, the Absentee Return Envelope (attached hereto); Absentee Oath Envelope (attached hereto) and Instructions (Attached hereto). In addition to sending the instructions to the voter in a PDF attachment, it is recommended that the instructions be repeated in the body of the email. This can be accomplished by copying and pasting the accessible instructions into the email.

##### 1. NYSBOE Ballot Templates

On the NYSBOE return ballot template, you must fill in the name and address of your county board of elections where indicated. In addition, board must personalize the Oath envelope with the voter's information prior to it being emailed to the voter

#### E. Mailing Ballot Envelopes

The board must also mail the voter a postage paid envelope and oath envelope that the voter can use to return their ballot in lieu of using the emailed envelope templates. As stated above, it is recommended that the postage paid envelope and oath envelope be sent as soon as possible after the application is made.

### IV. Return and Canvass of the Accessible Ballot

#### A. Accessible Ballots To Be Processed The Same As Regular Absentee Ballots

The accessible PDF ballot must be printed and returned by the voter in like manner to any other absentee ballot – by mail (timely postmarked or delivered) or other timely physical delivery to the board of elections. The accessible PDF ballot, like all others, cannot be emailed back to the board of elections or otherwise electronically delivered.

#### B. Signature on Ballot Envelope

On the oath envelope -- whether on the envelope created by the voter from the emailed template or on the oath envelope provided by the board via

mail – the voter must sign or make their mark recognized under the provisions of the Election Law for absentee voters. The signature may appear anywhere on the oath envelope (not necessarily on the signature line) and shall be deemed a signature to the statement on the envelope.

C. Canvass of Ballots

Accessible ballots returned to the board of elections pursuant to these directives shall be cast and canvassed as provided for in the normal course by the Election Law.

**V. Assistance**

The board of elections will provide all reasonable assistance to a voter navigating the accessible ballot process.

**VI. Reporting**

Within 7 days after the *certification* of the November 3, 2020 elections, each board of elections will provide to NYSBOE the following information:

(a) number of applications for an accessible absentee ballot received and their disposition

(b) number of individuals who were provided an accessible absentee ballot, and

(c) number of voters who returned an accessible absentee ballot

(d) descriptions of any complaints or feedback received from voters with disabilities regarding accessible absentee ballots and descriptions of how any complaints were resolved.

Please make sure you take all necessary steps required to ensure that this information is collected throughout this process, to ensure that you can provide us with the information when it is due as we are required to provide it to the Court immediately thereafter. Thank you for your cooperation.