

THE MEETING OF  
THE COMMISSIONERS OF ELECTIONS  
HELD ON TUESDAY, DECEMBER 6, 2011  
AT 1:30 P.M.

42 BROADWAY, 6<sup>th</sup> FLOOR, COMMISSIONERS' HEARING ROOM  
NEW YORK, NY 10004

---

PRESENT:       President Juan Carlos "J.C." Polanco  
                  Secretary Gregory C. Soumas

Commissioners Araujo, Barrera, Dent, Guastella, Schacher, Stupp, Umame

Dawn Sandow, Deputy Executive Director  
Pamela Perkins, Administrative Manager  
Steven H. Richman, General Counsel  
John Ward, Finance Officer  
Dorothy Delayo, Director, Personnel  
Valerie Vazquez, Director, Communications and Public Affairs  
Raphael Savino, Director, Campaign Finance Reporting Enforcement  
Steven Ferguson, Manager, MIS  
Daniel Lavelle, Supervisor, Phone Bank and Front Counters  
Giacomo Kmet, Temporary Attorney, OGC  
James Barron, Temporary Attorney, OGC  
Charles S. Webb, III, Counsel to the Commissioners  
Steven B. Denkberg, Counsel to the Commissioners

GUEST:       Kate Doran, LWV  
                  Jerome Koenig  
                  Henry T. Berger, Esq., for Dinkens  
                  Marjorie Shea, Women's City Club  
                  Liz Brown, for Council Member Gale Brewer  
                  Cathy Gray  
                  M. Aronson  
                  John D. Smith  
                  Teresa Hommel  
                  Kevin Maloney, Citizens Union  
                  Judd Ryan, ES&S  
                  A.B. Britton, KCL  
                  Chyann Sapp

President Polanco called the meeting to order at 1:34 P.M.

President Polanco announced that the Commissioners will conduct a Public Hearing concerning the Application of Henry T. Berger, Esq., on behalf of Dinkins II (1993), a political committee to terminate its operations and reporting obligations under Article 14 of the New York State Election Law. Mr. Richman distributed copies of a report concerning this matter to the Commissioners. He stated that pursuant to the Commissioners' direction, a public notice was issued two (2) weeks ago concerning this application. Mr. Richman reported that the Committee for David Dinkens II has been meeting its reporting obligations since it was created prior to the 1993 election and continuing in the 18 years since the election. On July 7, 2011 Mr. Berger, on behalf of the Committee, wrote to the City Board to inquire about terminating, but had an outstanding obligation to a corporate law firm and asked for guidance on how to terminate without creating an unlawful corporate contribution. In response to that letter, the Commissioners directed Mr. Richman to contact the State Board for guidance. He recalled that he sent a letter dated July 13, 2011 to the State

Board requesting for a formal opinion on the procedures under Article 14 of the NYS Election Law given the facts and circumstance of this case. The State Board declined to issue a formal opinion; however, a letter dated September 29, 2011 from the State Board's Enforcement Counsel provided the Board with guidance as to what a local board could make a determination as to ending a Committee to file and they outlined a series of questions. Mr. Berger submitted a response letter to the City Board dated November 16, 2011 explaining the specific facts and circumstances. Mr. Richman requested for Mr. Berger to speak on his request.

President Polanco noted that Commissioner Dent, Ms. Sandow and Ms. Perkins joined the meeting.

President Polanco recognized Henry Berger, the attorney for the Committee for David Dinkens II. Mr. Berger stated that all items were covered by Mr. Richman's report. He stated that it has been 18 years since the election and all of the debts outstanding are now uncollectible. There have been no efforts to collect these debts over the last 18 years. Mr. Berger stated that according to the State Board's guidance, the only debt that raises any problem is the corporate debt of the law firm. He asked for the Commissioners' assistance on this matter.

Commissioner Schacher asked Mr. Richman if the Board should have contacted the Attorney General for legal guidance on this matter, and inquired if this has ever happened in the past. Mr. Richman replied that it has never happened with the City Board, but it has with the State Board. Under the NYS Election Law, the State Board has the authority to make formal rules, regulations and determinations. The State Board gave the City Board guidance advising that it had the responsibility to make a decision since it is a local Committee.

President Polanco noted that Commissioner Barrera joined the meeting.

Mr. Richman stated that after the Committee pays all of the outstanding bank fees for maintaining the account, the remainder of the funds will be paid to the law firm which is outlined in Mr. Berger's letter. Commissioner Schacher believed that the candidate is responsible for this matter. Mr. Richman stated that the candidate is not liable under the NYS Election Law. Commissioner Schacher stated that the City Board should be better prepared to handle this matter. Mr. Richman recommended that based on the testimony received and the written submissions, for the full Board to determine that the plan of termination as

outlined in Mr. Berger's letter is acceptable and the Commissioners direct the staff of the Board not to commence any actions under Article 14 to require the continued filing of campaign financial statements after a termination statement is filed with the Board. Secretary Soumas moved to approve Mr. Richman's recommendation. Commissioner Dent seconded the motion, with Commissioner Schacher abstaining. The motion was adopted.

President Polanco moved to table the minutes of the November 29, 2011 meeting which was unanimously adopted.

Ms. Sandow reported on the New York Assembly Committees on Election Law, Election Day Operations and Voter Disenfranchisement Public Hearing which was held on December 1, 2011. A copy of the Board's Testimony is in the agenda. Ms. Sandow, Ms. Perkins and Mr. Richman testified on behalf of the Board. Other Board staff members were called upon to assist in answering questions following the Testimony. Ms. Sandow reported that they thanked those on the Committee for providing funding for the NYS Voting Access Improvement plan which is allowing the Board to make permanent accessibility improvements at NYC public schools that are used as poll sites. Board staff discussed the many

challenges the Board has faced as the result of the implementation of the Help America Vote Act (HAVA). One such challenge is the continued under funding of the Board that resulted in substantial budget shortfalls of the fiscal year beginning July 2011. Executive Management noted the many diligent actions that the Commissioners and Executive Staff have taken to reduce costs to increase the budget deficits, but made it clear that additional funding is a necessity especially in a year in which the Board may face a prospect of three (3) Primary Elections and a General Election in 2012. Executive Staff highlighted the previous recommended proposals to amend the NYS Election Law that was submitted to the Governor and Members of the NYS Legislature in April 2011 and June 2011. It was noted that the Board was an active participant in the development of the comprehensive proposals submitted by the NYS Election Commissioners' Association (ECA) in April 2011 which includes the recommendation that the Primary Election be moved from September to the last Tuesday in June. The Board's Testimony also discussed the recommended proposal that was submitted and approved by the Commissioners in November 2011 which increases the maximum number of voters in each ED not to exceed 4,000 from the current maximum which is 1,150. It was noted that the Board would likely form EDs with the maximum of 1,800 – 2,200 voters to ensure that it did not create long wait lines at the poll sites. Ms. Sandow

reported that the Assembly Committees inquired about the City Board's working relationship with the State Board. Executive Staff advised that the communication has increased and the State Board have been helpful. However, it was noted that the State Board has failed to report to the City Board about a settlement of a lawsuit regarding double-votes and the implementation of changes that would affect the way the City Board is required to conduct elections. Ms. Sandow stated that they discussed ways to improve operations at poll sites, the process of closing of poll sites, and Election Night Reporting (ENR). The Board provided information regarding the ENR Pilot Program in Queens County and the lessons learned. Ms. Sandow stated that the Committee seemed interested in the possibility of eliminating the requirement for a City run-off election or perhaps having voters selecting their first and second choice of candidates creating an instant run-off on Election Day. The Committee requested the total cost to conduct a run-off election. Ms. Sandow stated that the Committee Members discussed ways to potentially improve the current voting process in the State and City of New York. The main concern among the Board and Committee was protecting the rights of the voters and conducting efficient and accurate elections with increase voter participation and quicker Election Night Reporting. Ms. Perkins added that Assembly Member Brian Kavanagh asked the Board to provide him with

the cost of the 2009 Run-off Election. Board staff provided the information to his Chief of Staff. Hon. Kavanagh also asked for the City Board to review and give feedback concerning his two (2) Voter Friendly Ballot Bills. Ms. Perkins reported that the City Council has endorsed the bill which includes a 12.5 font size for the ballot. She stated that Hon. Kavanagh stressed for a short and long-term process for Election Night Reporting and for the Board to report findings back to him. Mr. Richman added that Chair Members Hon. Michael Cusick, Hon. David Weprin, and Hon. Tom Abinanti were also present during the Hearing. He stated that the Chair Members have great knowledge of the Board's operations and it was a productive dialogue. Mr. Richman stated that the Board communicated to the Committee that the Presidential Primary Election has been scheduled as the same day as the State Department of Education (DOE) statewide testing day. The City DOE has informed the Board that it can create problems such as increased security and problems relocating poll rooms within the poll sites. The City DOE promised that they will try to encourage the State DOE to change the dates of the tests since the dates of the Primary Election is set in statute. The Committee was receptive to the concerns about moving the date of the Primary Election, but to have an August Primary still makes the requirements of the Federal MOVE Act impossible. President Polanco noted that he attended the Public Hearing



and Board Staff did a great job testifying. He stated that the Board answered all of the Committee's questions. Commissioner Dent requested for Ms. Perkins to forward a copy of Hon. Kavanagh's Voter Friendly Ballot Bills to her so she can review it. Commissioner Guastella requested for a copy of the bills as well. Mr. Richman stated that Hon. Kavanagh would like a section-by-section critique of his bills.

President Polanco noted that Commissioner Umame joined the meeting.

Commissioner Stupp requested for more information about the potential August Primary Election in conjunction with the Federal MOVE Act. Mr. Richman stated that the ECA has reaffirmed that an August Primary Election would not work. If there is a close Primary Election in August and there is litigation it jeopardizes the ability to meet the requirements of mailing ballots forty-five (45) days before the election. It takes approximately twenty-eight (28) days to complete the canvass and lead time to prepare the ballots, so there is a need for a sixty-three (63) day window which an August deadline would not provide. Mr. Richman stated that the ECA's position has been very clear since it was adopted a year ago that a June date would work as a Primary Election. Commissioner

Umane stated that there is another school of thought on this matter and it is possible that there could be an August Primary Election. He stated that the Courts will inform the Board of the date that the Primary Election will be held. Secretary Soumas stated that Judge Sharpe will look at the legal aspects because the political objections are irrelevant for his purposes.

Mr. Ferguson presented the draft ED Redistricting Project Plan to the Commissioners. He distributed copies of his draft report to the Commissioners. President Polanco noted that Mr. Ferguson emailed this plan to the Commissioners last week. Mr. Ferguson summarized the planning issues and assumptions, project milestones, resources, the 2012 election schedule, and major critical path issues. (A copy of the draft report is attached.) He stated that it has been ten (10) years since the last ED redistricting project and the U.S. Census is completed. Mr. Ferguson stated that he met with the IT Sub-Committee last week and they reviewed the draft ED Redistricting Plan. There were some revisions made at the meeting which are incorporated in the report. Commissioner Umame stated that the Sub-Committee meeting discussed that the lines may not be set at the time some of the candidates are running. Mr. Richman explained that ten (10) years ago the Legislature enacted the districting lines for the Senate and Assembly in either the first or second week in May, and

Congressional District lines were a subject to a more intense debate. A Federal Court proceeding was conducted with a three (3) Judge panel and a Special Master was appointed. The Board Staff provided all of the relevant data they had to the panel. Secretary Soumas noted that he was present at the proceeding as Lead Counsel for the Plaintiff. Mr. Richman stated that before the Special Master could release the plan, there was an agreement in Albany on the lines, but they changed the petitioning period for the Congressional lines. The petitioning began two (2) weeks later and it was shortened it by two (2) weeks, and the signature requirements were reduced so it ended the same time. The Constitutional requirement in a redistricting year was that the candidate has to be a resident of the subdivision for the Senate and Assembly, or Party position that year. The candidate has to be a resident of any portion of that county including whatever the district was. Mr. Richman stated that the petitioning process can begin before the lines are actually done, but have to be in place subject to DOJ pre-clearance by the first day of petitioning. He stated that the Board staff may be required to do enormous amount of work in a short period of time. Commissioner Umame stated that Maptitude, the computer program used for redistricting, is excellent. He stated that it is very important that the appropriate staff members are trained on Maptitude. Commissioner Umame stated that he has been through the redistricting

process one (1) time in the past. He stated that it is an in-depth process and a lot of litigation ensues. Mr. Richman noted that litigation has already commenced. Commissioner Stupp asked if a candidate could still be Position 1 if the lines are not done for the Senate and Assembly and cross over into other boroughs. Mr. Richman replied yes, as long as the candidate is a resident of the county that is contained in the new district. Commissioner Dent thanked Mr. Ferguson for his detailed report, and Commissioner Umane and Mr. Richman for providing the history of ED redistricting. She also thanked Board Staff for thinking ahead and being prepared for this task. President Polanco asked Mr. Ward if the Board is fully funded for this ED redistricting procedure. Mr. Ward replied no. President Polanco stated that it is an enormous project that requires a lot of work and overtime. Mr. Ward added that the Maptitude computer program cost approximately \$50,000. President Polanco asked if the City Council is aware that the Board needs funding for this project. Mr. Ward stated that the Assembly was made aware at the Public Hearing. He stated that Board Staff is waiting to testify before the City Council concerning the November or January Plan. Mr. Ferguson stated that there has to be an establishment of the numbers of voters for the EDs and he will ask for a recommendation from the Commissioners as to what will guide the staff. Mr. Richman explained that under the current law, the ED

boundaries cannot contain more than 1,150 voters in active status. The Commissioners' adopted guidance ten (10) years ago was that the optimum size of the ED was 650 - 750 voters to allow some room for growth. Mr. Richman stated that based upon the staff's discussion, given the fact the scanners accommodate a much greater number of voters, and to minimize cost and create a maximum size, the target number of 1,000 - 1,100 would allow room for growth. Mr. Richman stated that Borough Staff have to be cognizant of the growth. Staff will have to research new developments in their county. Mr. Richman stated that the Board is constrained by what is given by the State Legislature. Commissioner Dent inquired if the Brooklyn Office Staff has to be aware of the new stadium and the new housing developments. Mr. Richman replied yes; it is easier to create a small ED in advance, if it is foreseeable, because it is easier to increase the ED rather than redrawing the lines. Mr. Richman noted that staff also has to be aware of natural boundaries and major construction developments to better serve the voters. Mr. Ferguson stated that he asked the Borough Chief Clerks and Deputy Chief Clerks to provide staff members who work on the GEO Maps. Commissioner Schacher asked if the NYC Department of City Planning (DCP) will assist the Board in this project. Mr. Ferguson stated that he

already met with the DCP and will ask the NYC Department of Buildings (DOB) for assistance as well.

President Polanco recognized Jerry Koenig, a member of the public, who asked if the ED redistricting lines are only based upon active voters. Mr. Richman replied yes.

Commissioner Stupp asked Mr. Ferguson if he feels confident with the Borough Staff that are scheduled to work on ED Redistricting Project. Mr. Ferguson replied yes. Secretary Soumas stated this plan is constructed on the assumption that the new AD lines will be published by the Legislature before December 31, 2011. He asked if there is a Plan B. Mr. Ferguson stated that Board Staff has to keep compressing as much as they can until they get the lines. Commissioner Umane moved to direct Board Staff to implement the ED Redistricting Project Plan as promptly as possible. Commissioner Barrera seconded the motion, which was unanimously adopted. Commissioner Umane stated that he hopes that some of the assumptions will be passed.

Mr. Ward presented the Vacancy Report dated December 6, 2011. A copy of the report is in the agenda.

President Polanco moved to convene an Executive Session to discuss personnel, investigations and litigation matters. Commissioner Barrera seconded the motion, which was adopted unanimously.

Following the Executive Session, the open public meeting resumed and President Polanco reported on the action taken in Executive Session:

- I. The Commissioners unanimously determined that all temporary employees will be terminated no later than December 30, 2011 at the close of business.

President Polanco moved to adjourn the meeting. Commissioner Schacher seconded the motion, which was adopted unanimously.

The next stated meeting of the Commissioners is scheduled for Tuesday, December 13, 2011 at 1:30 P.M.

**DRAFT**

# ED Redistricting Project

PROJECT PLAN



**DRAFT**

# Critical Path – Planning Issues and Assumptions

1. This plan is constructed on the assumption that the new AD lines will be published before **{December 31, 2011}**.
  - However from whatever date we receive the AD boundaries, the process for **Steps 6-9 and 11** on the schedule (see Chart 5) will take three months + a planned 60 days for DOJ approval. The DOJ effect might be reduces to 45 additional days by overlapping some of the process as shown.
  - **Steps 12-16** will be processed to extent possible with the DOJ review period.
2. The 2012 Primary will not be earlier than **August 2012** which will condense the availability of the Enrollment Books:
  1. 3.5 months prior to the primary date and 1.5 months prior to the petition submission date (assuming candidate process will move from July to June). These time periods are normally 5.0 and 3.0+ months respectively.
  2. **If Primary is moved to June** – We will not be able to print Enrollment Books in time for the petitions process even under this already accelerated schedule.
3. The procurement of the necessary Software Support and Training contracts is completed on schedule
4. Assignment of the required BOE HQ and Borough personnel resources by **{November 1, 2011}**. (Completed)
5. Review and approval by the Commissioners to be completed on or before **{March 15, 2012}**.
6. Expedited processing by City Planning to be completed on or before **{March 30, 2012}**.

**DRAFT**

# Project Milestones

1. ED Redistricting Project Plan Development & Approval
2. Commissioner's Determination of the ED Criteria
3. Purchase Required Software, Maintenance and Training Resources
4. Designate BOE Headquarters and Borough Resource (Personnel Assignments *Completed*)
5. Receipt of New NYS AD Boundaries
6. Personnel Training
7. Redistricting - ED Development
8. Commissioners & Political Review (Plan for Several Iterations (Tasks 7 & 8))
9. Commissioners Redistricting Approval
10. DOJ Approval
11. City Planning Finalizing Assignments
12. Reset Voter Data Files AVIS Information Notice
13. Update NYS Voter Files
14. Update S-Elect Domain Files (All Applications and Extensions) (Poll Site Updates)
15. Publish Enrollment Books
16. Publish Enrollment Books

**DRAFT**

# Resources

- Personnel
  - Borough and Central Office Personnel Resources have been Designated and Assigned
- Software
  - Maptitude (Product Support, Training & Extensions – (approximately \$50K)
- Hardware
  - 8 Workstations (In Inventory)
- Space
  - Commissioners Meeting Room

**DRAFT**

**Attachment 3**

**2012 Election Schedule (Events & Redistricting)**

Number	Task	Resource	Start	End	Duration	2011												2012									
						November	December	January	February	March	April	May	June	July	August	September	October	November									
1	Redistricting Plan Presentation/Approval	Executive Mgt Commissioners	11/1/2011	11/15/2011	11																						
2	ED Criteria Determination and Guidance	Commissioners	12/1/2011	12/15/2011	11																						
3	Purchase Software, Training Resources	MIS	11/1/2011	12/12/2011	30																						
4	Resource Requirements BOE Personal Assigned	Central Office & Boroughs	12/7/2011	12/7/2011	1																						
4.1	General Information Meeting for Assigned Personnel	Assigned Personnel & MIS	12/7/2011	12/7/2011	1																						
5	Receive New AD Boundaries -NYS	NYS Committee	12/15/2011	12/30/2011	12																						
6	Training BOE Assigned Personnel	Assigned Personnel & MIS & Trainer	1/4/2012	1/6/2012	3																						
7	New District Developed - Redistricting	Assigned Personnel & MIS	1/9/2012	2/15/2012	28																						
8	New District Review & Change Processing	Commissioners & Assigned Personnel & MIS	1/25/2012	3/5/2012	29																						
9	Commissioners Approval	Commissioners	3/5/2012	3/15/2012	9																						
10	DOJ Approval	BOE Submission	3/5/2012	5/25/2012	60																						
11	City Planning Finalize EDAD Assignments	City Planning	3/15/2012	3/30/2012	12																						
12	MIS Reset all Voter Data Files Including Borough Review	MIS	4/1/2012	4/15/2012	10																						
13	Information Notices Mailing		4/18/2012	5/1/2012	10																						
14	MIS NYS Voter Files Update	MIS	4/1/2012	4/15/2012	10																						
15	MIS S-Elect File Updates Including Poll Site Alignment	MIS	4/1/2012	4/15/2012	10																						
16	Publish Enrollment Books	MIS	4/15/2012	4/27/2012	10																						
17	2012 Presidential Primary		4/24/2012	4/24/2012	1																						
18	2012 Primary Election		8/15/2012	8/15/2012	1																						
19	2012 General Election		11/7/2012	11/7/2012	1																						

If Primary is Moved to June then Enrollment Books and Voter Information Notice become Critical Issues

**DRAFT**

# Plan Major Critical Path Issues

## Critical Path # 1

When will New York State  
Publish the AD Lines

## Critical Path # 2

The date for the 2012 Primary