

BYLAWS OF THE BOARD

Filling Vacancies

A vacancy on the Board of Trustees may occur for any of the events specified in Government Code 1770 or by a failure to elect. (Education Code 5090) Removal by recall election shall also create a vacancy on the Board. (Elections Code 11384)

A vacancy on the Board also occurs when a Board member ceases to inhabit the trustee area which he/she represents on the Board. (58 Ops.Cal.Atty.Gen. 888 (1975))

If a vacancy occurs less than four months before the end of a Board member's term, the Board shall take no action. (Education Code 5093)

If a vacancy occurs four or more months before the end of a Board member's term, the Board shall, within 60 days of the date of the vacancy or the filing of the member's deferred resignation, either order an election or make a provisional appointment, unless a special election is mandated as described below. (Education Code 5091)

Mandated Special Election

If a vacancy occurs from six months to 130 days before a regularly scheduled Board election at which the position is not scheduled to be filled, a special election to fill the position shall be consolidated with the regular election. The person so elected shall take office at the first regularly scheduled Board meeting following the certification of the election and shall serve only until the end of the term of the position which he/she was elected to fill. (Education Code 5093)

Provisional Appointments

When the special election described above is not required, the Board may make a provisional appointment. (Education Code 5091, 5093)

In order to draw from the largest possible number of candidates, the Board shall advertise in the local media to solicit candidate applications or nominations. The Board, at their discretion, may establish an advisory committee whose membership will be made up of members of the school community. If an advisory committee is established, the Board will also be responsible for setting the procedures, tasks, and timelines for this ad hoc committee. The Superintendent shall ensure that all applicants are eligible for board membership by certifying that each candidate is a registered voter and lives within the district boundaries. The Board shall publicly announce the names of eligible candidates. If an advisory committee is appointed, all of their meetings shall be posted in advance and conducted in public. All of the Boards interviews and any oral comments from the public shall be conducted in public meetings.

The Board will make their final selection of a provisional appointee by a majority vote in a public meeting. The Board's appointment of a provisional appointee will be for a term not longer than the next regular election of board members.

(cf. 9130 - Board Committees, 9220 - Governing Board Elections & 9323.2 - Actions by the Board)

Notice and Duration of Provisional Appointment

Within 10 days after the appointment is made, the Board shall post notices of the vacancy or resignation and the provisional appointment. The notice shall be published in the local newspaper and posted in at least three public places within the district. (Education Code 5092)

The notice shall contain: (Education Code 5092)

1. The date of the occurrence of the vacancy or the date of the filing of, and the effective date of, the resignation.
2. The full name of the appointee.
3. The date of appointment.
4. A statement notifying the voters that unless a petition calling for a special election pursuant to Education Code 5091 is filed in the office of the County Superintendent of Schools within 30 days of the provisional appointment, it shall become an effective appointment.

The person appointed shall hold office until the next regularly scheduled election for district Board members and shall be afforded all the powers and duties of a Board member upon appointment. (Education Code 5091)

Legal Reference: Education Code
 5019-5019.5 Trustee areas
 5090 Definition (vacancy)
 5091 Special election or provisional appointment
 5092 Public notice of vacancy and provisional appointment
 5093 Re vacancies occurring near end of term and incumbent not
 reelected
 5094 Power of president of county board of education when majority of
 offices vacant
 5095 Powers of remaining board members and new electees or appointees
 5200 Districts governed by boards of education
 5304 Duties of the governing board (re school district elections)
 5325 Publication of information regarding district elections
 5420-5426 Cost of elections, especially:
 5424 Expenses of conducting legal recall election
 35107 Eligibility
 35178 Resignation with deferred effective date

Elections Code
 10603-10604 School district elections
 11384 Vacancy in office if majority vote for recall

Government Code
 1064 Absence from state

1770 Vacancies: definition
3060-3074 Removal other than by impeachment
6061 One time
54950-54962 The Ralph M. Brown Act, especially
54953 Meetings open and public; secret ballots

Attorney General Opinion

58 Ops.Cal.Atty.Gen. 888 (1975)

Policy Adopted: May 15, 2001
Revised Policy Adopted: March 6, 2007

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EXHIBIT

Events causing vacancy before expiration of term (Government Code 1770)

An office becomes vacant on the happening of any of the following events before the expiration of the term:

- a. The death of the incumbent.
- b. The adjudication pursuant to a quo warrant proceeding declaring that the incumbent is physically or mentally incapacitated due to disease, illness or accident and that there is reasonable cause to believe that the incumbent will not be able to perform the duties of his/her office for the remainder of his/her term.
- c. His/her resignation.
- d. His/her removal from office.
- e. His/her ceasing to be an inhabitant of the district for which the officer was chosen or appointed or within which the duties of his/her office are required to be discharged.
- f. His/her absence from the state without the permission required by law beyond the period allowed by law.
- g. His/her ceasing to discharge the duties of his/her office for the period of three consecutive months, except when prevented by sickness or when absent from the state with the permission required by law.
- h. His/her conviction of a felony or any offense involving a violation of his/her official duties. An officer shall be deemed to have been convicted under this subdivision when trial court judgment is entered. For the purposes of this subdivision, "trial court judgment" means a judgment by the trial court either sentencing the officer or otherwise upholding and implementing the plea, verdict or finding.
- i. His/her refusal or neglect to file his/her required oath or bond within the time prescribed.
- j. The decision of a competent tribunal declaring void his/her election or appointment.
- k. The making of an order vacating his/her office or declaring the office vacant when the officer fails to furnish an additional or supplemental bond.
- l. His/her commitment to a hospital or sanitarium by a court of competent jurisdiction as a drug addict, dipsomaniac, inebriate or stimulant addict; in this

event, the office shall not be deemed vacant until the order of commitment has become final.

Absence from state; members of Board of Trustees of school districts; conditions (Government Code 1064)

No member of the governing board of a school district shall be absent from the state for more than 60 days, except in any of the following situations:

- a. Upon business of the school district with the approval of the board.
- b. With the consent of the governing board of the school district for an additional period not to exceed a total absence of 90 days.
- c. For federal military deployment not to exceed six months as a member of the armed forces of the United States or the California National Guard.

In the case of illness or other urgent necessity, and upon a proper showing thereof, the time limited for absence from the state may be extended by the governing board of the school district for an additional period not to exceed 30 days.