

Bylaw 9223: Filling Vacancies

Status: ADOPTED

Original Adopted Date: 05/10/2011 | **Last Revised Date:** 12/17/2014

Events Causing a Vacancy

A vacancy on the Governing Board may occur for arise from any of the following events:

1. The death of an incumbent (Government Code 1770)
2. The adjudication pursuant to a quo warranto proceeding declaring that an 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 the office for the remainder of his/her the term (Government Code 1770)
3. A Board member's resignation (Government Code 1770)

A vacancy resulting from resignation occurs when the written resignation is filed with the County Superintendent of Schools having jurisdiction over the district, except where a deferred effective date is specified in the resignation so filed, in which case the resignation shall become operative on that date. A Board member may not defer the an effective date of his/her resignation for more than 60 days after he/she files the date the resignation is filed with the County Superintendent. (Education Code 5090, 5091)

Upon being filed with the County Superintendent, a written resignation, whether specifying a deferred effective date or otherwise, shall be irrevocable. (Education Code 5090)

4. A Board member's removal from office, including by recall (Elections Code 11384 11000; Government Code 1770)
5. A Board member's ceasing to be an inhabitant of the state or resident of the district (Government Code 1770)

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))

6. A Board member's absence from the state beyond the period allowed by law without the permission required by law (Government Code 1770)

No Board member shall be absent from the state for more than 60 days, except in any of the following situations: (Government Code 1064, 1770)

- a. Upon business of the school district with the approval of the Board
- b. With the consent of the Board for an additional period not to exceed a total absence of 90 days

c. 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 board.

d. 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

If the absence of the Board member for this purpose exceeds six months, the Board may approve an additional six-month absence upon a showing that there is a reasonable expectation that the member will return within the second six-month period, and the Board may appoint an interim member to serve in his/her absence during the absence. If two or more members of the Board are absent by reason of these circumstances, and those absences result in the inability to establish a quorum at a regular meeting, the Board may immediately appoint one or more interim members as necessary to enable the Board to conduct business and discharge its responsibilities.

(cf. 9250 - Remuneration, Reimbursement and Other Benefits)

7. A Board member's ceasing to discharge the duties of his/her the 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 (Government Code 1770)

8. A Board member's conviction of a felony or any offense involving a violation of his/her the official duties or conviction of a designated crime resulting in a forfeiture of office (Government Code 1770, 3000-3003)

9. A Board member's refusal or neglect to file his/her the required oath within the time prescribed (Government Code 1770)

(cf. 9224 - Oath or Affirmation)

10. The decision of a competent tribunal declaring void a Board member's election or appointment (Government Code 1770)

~~11. The making of an order vacating a Board member's office or declaring the office vacant when the officer fails to furnish an additional or supplemental bond (Government Code 1770)~~

12. A Board member's commitment to a hospital or sanitarium as a drug addict, dipsomaniac, inebriate, or stimulant addict by a court of competent jurisdiction, in which case the office shall not be deemed vacant until the order of commitment has become final (Government Code 1770)

13. A failure to elect when either no candidate or an insufficient number of candidates have filed to run for a Board seat(s) (Education Code 5090, 5326, 5328)

Timelines for Filling a Vacancy

When a vacancy occurs, the Board shall take the following action, as appropriate:

1. When 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)

~~2. When 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 in item #3 below. When 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 the person was elected to fill. (Education Code 5093) (Education Code 5091, 5093)

3. When 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) When a vacancy occurs outside of the statutory time windows identified in Items #1 and #2 above, 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. (Education Code 5091, 5093)

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

Eligibility

In order to be appointed or elected to fill a vacancy on the Board, a person must meet the eligibility requirements specified in Education Code 35107, as described in BB 9220 – Governing Board Elections.

Provisional Appointments

When authorized by law to make a provisional appointment to fill a vacancy on the Board, 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. A committee consisting of less than a quorum of the Board shall ensure that applicants are eligible for Board membership and announce the names of the eligible candidates. The Board shall interview the candidates at a public meeting, accept oral or written public input, and select the provisional appointee by a majority vote.

(cf. 9130 - Board Committees)

(cf. 9323.2 - Actions by the Board)

In order to serve on the Board, a person must meet the eligibility requirements specified in Education Code 35107.

(cf. 9220 - Governing Board Elections)

Within 10 days after the appointment is made, the Board shall post notices of the actual vacancy, or the filing of a deferred resignation, and the provisional appointment. The notice shall be published in the local newspaper pursuant to Government Code 6061 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 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)

Appointment Due to Failure to Elect

When a vacancy occurs because no person or an insufficient number of candidates have been nominated (i.e., a failure to elect), and a district election will not be held, the Board shall appoint a qualified person to the office. This appointment shall be made at a meeting prior to the day fixed for the election and the appointee shall be seated at the organizational meeting as if elected at the district election. (Education Code 5328)

(cf. 9100 - Organization)

When an appointment is being made because of a failure to elect, the district shall publish a notice once in a newspaper of general circulation published in the district, or if no such newspaper exists, in a newspaper having general circulation within the district. This notice shall state that the Board intends to make an appointment and shall inform persons of the procedure available for applying for the appointment. (Education Code 5328.5)

The procedure for selecting and interviewing candidates shall be the same as the procedures for "Provisional Appointments," as specified above.

Policy Reference Disclaimer:

These references are not intended to be part of the policy itself, nor do they indicate the basis or authority for the board to enact this policy. Instead, they are provided as additional resources for those interested in the subject matter of the policy.

State	Description
Ed. Code 35107	School district employees
Ed. Code 35178	Resignation with deferred effective date
Ed. Code 5000-5033	Election of school district board members
Ed. Code 5090-5095	Vacancies on the board
Ed. Code 5200-5208	Districts governed by boards of education
Ed. Code 5300-5304	General provisions; conduct of elections

Ed. Code 5320-5329	Order and call of elections
Ed. Code 5340-5345	Consolidation of elections
Ed. Code 5360-5363	Election notice
Ed. Code 5420-5426	Cost of elections
Ed. Code 5440-5442	Miscellaneous provisions
Elec. Code 10600-10604	School district elections
Elec. Code 11000-11386	Candidates for recall
Gov. Code 1064	Absence from state
Gov. Code 1770	Vacancy of office
Gov. Code 3000-3003	Forfeiture of office
Gov. Code 3060-3075	Removal other than by impeachment
Gov. Code 54950-54963	The Ralph M. Brown Act
Gov. Code 6061	Manner of notice as prescribed in designated section
Pen. Code 88	Bribery; forfeiture from office

Federal

18 USC 704

Management Resources

Attorney General Opinion

Attorney General Opinion

CSBA Publication

Website

Website

Website

Description

Military medals or decorations

Description

105 Ops.Cal.Atty.Gen. 182 (2022)

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

Filling a Board Vacancy, rev. 2022

[CSBA District and County Office of Education Legal Services](#)

[California State Attorney General's Office, Quo Warranto Applications](#)

[CSBA](#)

Cross References

Code

1340

1340

9100

9110

9130

Description

[Access To District Records](#)

[Access To District Records](#)

[Organization](#)

[Terms Of Office](#)

[Board Committees](#)

9220	<u>Governing Board Elections</u>
9222	<u>Resignation</u>
9224	<u>Oath Or Affirmation</u>
9230	<u>Orientation</u>
9323.2	<u>Actions By The Board</u>
9323.2-E PDF(1)	<u>Actions By The Board</u>