

Filling a Board Vacancy

Revised September 2022



FILLING A BOARD VACANCY

This packet will assist boards in openly and objectively filling board vacancies. It includes:

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Pertinent Laws

Education Code §§ 5019, 5019.5, 5090-5095, 5200,
5304, 5325-5326, 5328-5328.5, 5420-5426, 35107, 35178

Elections Code §§ 10603-10604, 11384

Government Code §§ 1064, 1770, 3060-3075, 6061

CSBA Sample Bylaw 9223

INTRODUCTION

Board vacancies can occur in a number of ways, for example by resignation or by a board member moving out of the district or their trustee area. When a board vacancy arises, depending on the timing, boards may fill the vacancy either by election or by provisional appointment. Boards typically make provisional appointments but in instances where they must either make an appointment or call an election, failure to act within 60 days of the vacancy or the date of the deferred resignation will result in the County Superintendent calling an election. Making a provisional appointment is a useful option for boards for two reasons: (1) the board selects the candidate who will serve until the next regular election for board members; and (2) instead of waiting for an election to fill the seat, the appointment may be made within 60 days. This Handbook is intended to assist board members with the provisional appointment process to fill vacancies that occur on the board.

Included within this Handbook are a number of tools to assist boards with filling vacancies, beginning with CSBA's Sample Board Bylaw 9223, which provides the process for filling vacancies. Also included are documents to assist the board with interviewing and selecting the candidate for appointment and providing required notice of the appointment to the public. Finally, this Handbook provides the relevant statutes that boards must follow when making an appointment.

This handbook is for information, only, and is not a substitute for legal advice. CSBA's District and County Office of Education Legal Services can provide legal assistance to LEAs. Please contact Legalservices@csba.org for additional information.

GUIDE TO FILING A BOARD VACANCY

The following is a summary of the several steps required for filing a board vacancy. Please note that if the vacancy occurs within four months of the end of a board member's term, which by law occurs in December. Any vacancy that either occurs in August after the filing deadline or in September through December may be filled by the board after the current term expires.

Creation of Vacancy

A board seat may become vacant upon any of the following:

1. Death of a board member (Gov. Code § 1770, subd. (a).)
2. Adjudication of a quo warranto proceeding declaring a board member physically or mentally incapacitated due to disease, illness, or accident and there is reasonable cause to believe the incumbent board member will not be able to perform the duties of office (Gov. Code § 1770, subd. (b).)
3. Filing of a written resignation with the county superintendent of schools (Ed. Code, § 5090; Gov. Code § 1770, subd. (c).)
 - Where the resignation has a deferred date specified, which may be no later than 60 days after the filing of the resignation, the resignation becomes effective on the specified date (Ed. Code, §§ 5090, 5091)
 - Resignations filed with the county superintendent of schools are irrevocable (Ed. Code, §§ 5090, 5091¹.)
4. Removal of board member from office by recall (Gov. Code § 1770, subd. (d).)
5. A Board member ceasing to be a resident of the district (Gov. Code § 1770, subd. (e).) In districts with trustee areas, Board member ceases to inhabit the trustee area they represent on the board. (58 Ops.Cal.Atty.Gen 888 (1975).)
6. Board member's absence from the state for more than 60 days, except:
 - a. Upon district business with approval from 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 necessity
 - d. For federal military deployment or deployment with California National Guard, not to exceed six months, unless additional six-month period is approved by the board. (Gov. Code §§1064 and 1770, subd. (f).)
7. Board member's ceasing to discharge the duties of their office for the period of three consecutive months, except in case of illness or when absent from the state with permission

¹ On September 29, 2022, Governor Newsom signed Senate Bill 1061, which amended Education Code section 5091 and is operative January 1, 2023. Citations to and information about Education Code section 5091 in this document are based on SB 1061 and the amended version of section 5091.

(see 7., above) (Gov. Code § 1770, subd. (g).)

8. Board member's conviction for a felony or offense involving violation of their official duties or conviction of crime resulting in forfeiture of office (Gov. Code § 1770, subd. (h).)
9. Board member's refusal or neglect to file required oath of office within the time period required (Gov. Code § 1770, subd. (i).)
10. Decision declaring board member's election or appointment void (Gov. Code § 1770, subd. (j).)
11. Board member's commitment to hospital or sanitarium as a drug addict, dipsomaniac, inebriate, or stimulant addict by court of competent jurisdiction (with vacancy declared upon the commitment order becoming final) (Gov. Code § 1770, subd. (l).)
12. Failure to elect, in which no candidate or an insufficient number of candidates have filed to run for a board seat or seats. (Ed. Code §§ 5090, 5326, 5328.)

A vacancy may also result if a board member assumes an incompatible office thus forfeiting membership on the board. (Gov. Code § 1099, subd. (b).)

Process for Filling Vacancies

Methods for Filling Vacancies

When and how board vacancies are filled depends on the timing of the creation of the vacancy.² There are four relevant time periods that dictate how the seat may be filled, as follows:

1. **Between taking office and six months prior to an election for other board seats:** Board may make a provisional appointment or order an election. (Ed. Code, § 5091.) An appointed member will serve until the next election for board seats, an elected member will serve until the end of the term originally filled by the member who created the vacancy.
2. **Between six months and 130 days prior to an election for other board seats:** The vacancy will be filled at a special election consolidated with next regular election. The elected member will serve until the end of the term originally filled by the member who created the vacancy. (Ed. Code, § 5093.)
3. **Between 130 days prior to an election for other board seats and the last four months of the term:** Board may make a provisional appointment or order a special election. (Ed. Code, § 5091.) The appointed member will serve until the end of the term originally filled by the member who created the vacancy.
4. **During the last four months of the term:** Board may not appoint a new member

² A vacancy occurs either on the date of one of the events noted above or on the resignation date, which can be deferred up to 60 days.

or call a special election. Rather, the seat will be filled after the upcoming election. (Ed. Code, § 5093.)

Examples

1. *Board member Jose was elected to a 2020-2024 term. Jose is appointed to the city council on April 10, 2021. Upon assuming his seat on the City Council, Jose resigns his seat on the board. The board may either provisionally appoint a new member or order an election. A member appointed by the board would serve until the November 2022 election, with the remaining two years to be filled by election at that time. If the board calls a special election, the individual elected would fill the remainder of Jose's term.*
2. *Board member Jane's seat is up for election on November 8, 2022. Jane submits a written resignation to the county superintendent on August 30, 2022, which states that the resignation is deferred 60 days with an effective date of October 29, 2022. Because of the deferral, the vacancy is effective fewer than four months before the end of term on (December 9, 2022), so the board takes no action. Without a deferred date, the vacancy could be filled by provisional appointment.*
3. *Board member Janet's seat is not up for election until November 2024. However, Janet moves and ceases to be a resident of the district (or trustee area) on June 26, 2022, 128 days before the regular election on November 1, 2022, thus vacating her seat by operation of Government Code section 1770, subdivision (e). The vacancy will be filled at a special election consolidated with the regular election on November 1, 2022. This is because: (1) Janet vacated the seat between six months and 130 days before the next regular election; and (2) because the seat was **not** up for reelection at the next regular election on November 1, 2022. The person elected to the vacant seat will serve until November 2024 when Janet's seat comes up for election.*
4. *Board member Joe's seat is up for election in November 2022. Joe resigns effective June 26, 2022. The board may either provisionally appoint a new member or order an election because Joe's seat is up for reelection at the next election, and he resigned more than four months before the end of his term.*

Process for Provisional Appointment – 60 Days

If the timing of the vacancy fits the circumstances described in numbers 1 and 4 above, the board may opt to make a provisional appointment or order a special election (Ed. Code, § 5091, subd. (a)(1).)

The Education Code does not specify the method for making an appointment, but boards should follow their Board Bylaws for the procedure for making a provisional appointment. The appointment process may consist of:

- Placing advertisements in the local media and notices on the district's website and

social media platform to solicit candidate applications The application should contain a request for information that will help the board screen candidates. (See Letter to Applicants and Applicant Information Sheet below.)

- The board may opt to select an “ad hoc” committee of less than a quorum of members to provide recommendations to the full board regarding the vacancy. This committee will not be subject to the Brown Act unless the board has designated it as an ongoing standing committee for this purpose.
- Screening for candidates must include a determination as to whether a candidate is eligible for service as a board member. Eligibility requires the candidate be (1) 18 years of age or older; (2) a citizen of the state; (3) a resident of the school district and trustee area, if applicable; (4) a registered voter; and (5) not disqualified by the Constitution or laws of the state from holding a civil office. (Ed. Code, § 35107.)
- An interview process, either by a committee or the full board. The interview process shall take place in open session (unless the interview is by a committee not subject to the Brown Act). If the board opts to utilize an ad hoc committee, the committee should make recommendations on the candidates the full board will interview. (See Suggested Interview Questions below.)
- Deliberation and a vote by the full board to provisionally appoint, in open session. (See Evaluating the Candidate, below.) The public will have the opportunity to provide input to the board regarding the applicants during the public comment period on the agenda item for the provisional appointment, the same agenda item at which the interview will take place.

(Note: if the vacancy is created by a resignation that is deferred, the member resigning may continue to participate on board matters but may not vote on the provisional appointment. (Ed. Code, § 35178.))

Following the provisional appointment, and after taking the oath of office, the provisional appointment confers all powers and duties of the governing board on the appointee. (Ed. Code, § 5091, subd. (d).) The appointee holds office, unless a special election is ordered upon petition by the public as described below, but only until the next regularly scheduled election for governing board members that is 130 days after the effective date of the vacancy. A person elected at such an election shall hold the office for the remainder of the term, in which the vacancy occurred. (Ed. Code, § 5091, subd. (e).)

Public Notice of Vacancy and Provisional Appointment – 10 Days

Within 10 days of making the provisional appointment, the board must provide notice to the public of both the vacancy and the provisional appointment. This requires the board to post notice of the vacancy (or filing of a deferred resignation) and the provisional appointment in three public places in the district. The board must also publish the notice in the newspaper. This notice needs be published only one time. (Ed. Code, § 5092.)

The notice must contain the following:

- A statement of the fact of the vacancy or resignation;
- The date of the occurrence of the vacancy or the date of the filing of, the effective date of, resignation;
- The full name of the provisional appointee;
- The date of the appointment of the provisional appointee; and
- A statement that, unless a petition is filed with the county superintendent within 30 days of the appointment calling for a special election (see below for the petition requirements), the appointment will become effective. (Ed. Code, §§ 5091, 5092.)

Public Right to Petition for a Special Election

If the board makes a provisional appointment, registered voters of the district may petition to conduct a special election to fill the vacancy, and thus terminate the provisional appointment. The petition must be filed 30 days from the date the board makes the provisional appointment and must be signed by one and a half percent (1½%) of the registered voters in the district at the time of the last regular election for governing board members, or 25 registered voters, whichever is greater. However, in a district of fewer than 2,000 registered voters, the petition must be signed by at least the number of registered voters equal to five percent (5%) of the registered voters in the district at the time of the last regular election for governing board members. If the district uses the at-large method of election, “registered voters” means registered voters of the entire district. If the district uses trustee areas, “registered voters” means registered voters of that trustee area. (Ed. Code, § 5091, subd. (c).)

The petition must be submitted to the county superintendent and must contain: (1) the estimate of the elections official of the cost of the special election and those estimated costs expressed on a per-pupil or per-student basis; and (2) the name and residence address of at least one, but not more than five, of the proponents of the petition, each of which must be a registered voter in the district at the time of the last regular election for governing board members. Each proponent must be a registered voter of the district (or trustee area, as applicable) (Ed. Code, § 5091, subd. (c), (f).)

Upon submission of the petition, the county superintendent has 30 days to verify the signatures and that the petition contained the required information. If the petition is legally sufficient, then the provisional appointment made by the board is terminated. The county superintendent must order a special election to be conducted not less than 88, nor more than 125 days following the order of the election. However, the election may be conducted within 180 days of the issuance of the order so that the election may be consolidated with a regularly scheduled election. (Ed. Code, § 5091, subd. (c).)

Appointment Due to Failure to Elect

When no candidate or an insufficient number of candidates have been nominated (i.e., a failure to elect) and an election will not be held or when one is held but not for every open seat, the Board must appoint a qualified person to the vacant seat(s). (Ed. Code §§ 5090, 5326, 5328.) The Board must make this appointment at a meeting prior to the day fixed for the election. The appointee shall be seated at the organizational meeting as if elected at the district election and shall serve a full term. (Ed. Code, § 5328)

When an appointment is being made because of a failure to elect, the district must 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 must state that the Board intends to make an appointment and shall inform persons of the procedure available for applying for the appointment. (Ed. Code, § Code 5328.5)

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

SAMPLE LETTER TO APPLICANT

(from your school district governing board)

Date _____

Dear _____:

You have applied as a candidate to fill the vacancy [optional language for boards that elect by trustee area: in Trustee Area _____] on the Governing Board of the (name) School District/County Board of Education. If you would like to be considered for appointment to the vacancy, please complete the enclosed information sheet. We are asking each applicant to do this in order to assist the Board in the selection process.

Regular board meetings are held the _____ of each month, with occasional special meetings called as well. In addition to preparing for and attending board meetings, some personal time will also be necessary for individual study and growth, such as attending regional meetings, trainings, and conferences. Board members may also attend social events, such as graduations, holiday celebrations, and ribbon cuttings in their role as a board member.

Please return the enclosed form to (address) or by email to (email address) by (date). I have enclosed a copy of Board Bylaw ____ (or Board Policy) which describes the Board's selection and interview process. If you have any questions about the process, please contact _____ (Executive Assistant) at (email address).

Thank you very much for your interest.

Sincerely,

Board President

CANDIDATE INFORMATION SHEET

School District/County Board of Education

Please fill out and return this form by _____ to
the superintendent's office at _____, or email it to _____.

Please note that your answers to Questions 1- may be disclosed to the public.

Date: _____

(Last Name) (First Name) (Initial)

Business Address: _____ Phone: _____

Home Address: _____ Phone: _____

E-mail: _____

Occupation and Employer: _____

No. of Years Residing in District or County: _____

Do you have children or grandchildren in the district's or county office's schools? Yes ___No ___
If yes, what schools? _____

1. Do you have prior experience serving on a governing board, specifically a school district/county board of education? Please list your prior experience.

2. Have you worked on any school committees (e.g., PTA, school site council) or participated in any school activities recently? Please list your involvement.

3. Describe any other community or business activities (e.g., employment, business ownership) in which you have participated. Describe your role, and whether your work was volunteer or employment-related.

4. Why do you want to be a governing board member?

Candidate Information Sheet - Board Vacancy
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5. What do you see as the basic purpose of the public schools?

6. What is the role of the governing board in the fulfillment of that purpose?

7. How does the board's role differ from that of the superintendent?

8. What should be the relationship between the board members and the administration in the handling of school district (or county office) concerns?

9. Briefly describe your commitment to public education and our local school district.

SUGGESTED CANDIDATE INTERVIEW QUESTIONS

1. What do you see as the basic purpose of the public schools? What is the role of the governing board in the fulfillment of that purpose?
2. What do you see as the strengths of the school district (county office of education)?
3. What do you see as the primary role of a trustee? How would you fulfill that role, both individually and as a member of the governing board?
4. What would you like to accomplish as a board member? Which of those accomplishments is your highest priority, and why?
5. What do you see as the areas most needing improvement in the school district (county office of education)?
6. Describe your response if a parent cornered you in the grocery store and asked for your support on a particularly hot issue. What if the issue was one you had not heard about yet but that had been reported or discussed on social media?
7. How does an effective governing board ensure opportunities for parents and community members to express their diverse range of views to inform board deliberations on important policy issues?
8. Please summarize the strengths you would bring as a member of the board.
9. What will you do to become an effective board member?
10. Describe how you would balance the following when deciding how to vote on a matter before the board: community concerns, student needs, state and federal law, staff recommendations, and your personal value and beliefs.
11. As a board member, how would you ensure you stay up-to-date on issues affecting the district/county office, specifically, or public K-12 education, generally?
12. What questions do you have for the board to help you prepare to take on this commitment if chosen?

Note: Interviews or discussions of potential board members may not be held in closed session. The California Attorney General ruled that local office holders, whether elected or appointed, are excluded from the “personnel exception” (Government Code §54957) to the open meeting requirements of the Brown Act (Government Code §54950 et seq.) See also 59 Ops. Cal. Atty.Gen. 266 (1976)

EVALUATING THE CANDIDATE

Does the candidate:

- Know the political boundary and physical geography of the school district?
- Have a lay person's understanding of public education? Or more?
- Have personal interests that would be in conflict with their service on the board?
- Have an interest in the public schools, the community, and in every child?

Is the candidate:

- Seeking the position for personal prestige or political gain (personal agenda)?
- A leader in their own occupation or community group?
- A known and respected member of the community?
- Able to think independently and objectively about a problem?
- Capable of recognizing and distinguishing the jurisdictional power and functions of the board and administration?
- Able to effectively communicate their position on issues?

Will the candidate:

- Work to develop unity among the members of the board, contributing to harmonious development of programs?
- Give the necessary time to the position?

SAMPLE NOTICE OF VACANCY AND PROVISIONAL APPOINTMENT

Notice of Vacancy on Board of [name of district] School District and Provisional Appointment of Board Member

A vacancy has occurred on the Governing Board of the [name of district] School District by reason of the [reason for leaving board, e.g., resignation, relocation] of [name of departing board member], effective [date]. [If departure is due to resignation] The resignation was filed in the office of the [name of county] County Superintendent of Schools on [date]. [If applicable] [Name of departing board member] represented Trustee Area [number]. On [date of appointment], the Board of Education provisionally appointed [name of provisionally appointed member] to fill the vacant appointment, effective [date]. [Name of provisionally appointed member] has taken the oath of office and provisionally assumed all of the duties of a member of the Board of Education as of that effective date.

To challenge the provisional appointment, a petition calling for a special election, containing the valid signatures of at least 1½% of registered voters in the District at the time of the last election or 25 registered voters³ of the district, whichever is greater⁴, must be filed in the office of the County Superintendent of Schools within **30 days** of the date of the provisional appointment ([date]). If no such petition is filed or the petition does not have sufficient valid signatures of registered voters, the provisional appointment of Mr. Smith shall become final.

School District

Board of Education of the [name of district]

Board Secretary/Clerk

Date: _____

[Note: This notice must be provided no less than 10 days of making the provisional appointment to fill the vacancy]

³ If the district uses the at-large method of election, “registered voters” means registered voters of the entire district. If the district uses trustee areas, “registered voters” means registered voters of that trustee area.

⁴ In a district of fewer than 2,000 registered voters, the petition must be signed by at least the number of registered voters equal five percent (5%) of the registered voters in the district at the time of the last regular election for governing board members.

ATTACHMENT 1 – RELEVANT STATUTES AS OF AUGUST 1, 2022

Education Code § 5019

Establishment of trustee areas; common governing board

(a)(1) In any school district or community college district, the county committee on school district organization may establish trustee areas, rearrange the boundaries of trustee areas, abolish trustee areas, and increase to seven from five, or decrease from seven to five, the number of members of the governing board, or adopt one of the alternative methods of electing governing board members specified in Section 5030.

(2) For any school district whose average daily attendance during the preceding year was less than 300, the county committee on school district organization may decrease from five to three the number of members of the governing board, or adopt one of the alternative methods of electing governing board members specified in Section 5030.

(3) Notwithstanding paragraph (1), the county committee on school district organization shall not rearrange trustee area boundaries in a school district or community college district that has established a hybrid or independent redistricting commission for this purpose pursuant to Section 23003 of the Elections Code, the charter of a city or city and county, or a legal settlement.

(b) The county committee on school district organization may establish or abolish a common governing board for a high school district and an elementary school district within the boundaries of the high school district. The resolution of the county committee on school district organization approving the establishment or abolition of a common governing board shall be presented to the electors of the school districts as specified in Section 5020.

(c)(1) A proposal to make the changes described in subdivision (a) or (b) may be initiated by the county committee on school district organization or made to the county committee on school district organization either by a petition signed by 5 percent or 50, whichever is less, of the qualified registered voters residing in a district in which there are 2,500 or fewer qualified registered voters, by 3 percent or 100, whichever is less, of the qualified registered voters residing in a district in which there are 2,501 to 10,000 qualified registered voters, by 1 percent or 250, whichever is less, of the qualified registered voters residing in a district in which there are 10,001 to 50,000 qualified registered voters, by 500 or more of the qualified registered voters residing in a district in which there are 50,001 to 100,000 qualified registered voters, by 750 or more of the qualified registered voters residing in a district in which there are 100,001 to 250,000 qualified registered voters, or by 1,000 or more of the qualified registered voters residing in a district in which there are 250,001 or more qualified registered voters or by resolution of the governing board of the district. For this purpose, the necessary signatures for a petition shall be obtained within a period of 180 days before the submission of the petition to the county committee on school district organization, and the number of qualified registered voters in the district shall be determined pursuant to

the most recent report submitted by the county elections official to the Secretary of State under Section 2187 of the Elections Code.

(2) When a proposal is made pursuant to paragraph (1), the county committee on school district organization shall call and conduct at least one hearing in the district on the matter. At the conclusion of the hearing, the county committee on school district organization shall approve or disapprove the proposal.

(d) If the county committee on school district organization approves pursuant to subdivision (a) the rearrangement of the boundaries of trustee areas for a particular district, then the rearrangement of the trustee areas shall be effectuated for the next district election occurring at least 125 days after its approval, unless at least 5 percent of the registered voters of the district sign a petition requesting an election on the proposed rearrangement of trustee area boundaries. The petition for an election shall be submitted to the county elections official within 60 days of the proposal's adoption by the county committee on school district organization. If the qualified registered voters approve pursuant to subdivision (b) or (c) the rearrangement of the boundaries to the trustee areas for a particular district, the rearrangement of the trustee areas shall be effective for the next district election occurring at least 125 days after its approval by the voters.

(Amended by Stats.2021, c. 139 (S.B.442), § 2, eff. Jan. 1, 2022.)

Education Code § 5019.5

Adjustment of trustee areas after census data released

(a) Following each decennial federal census, and using population figures as validated by the Demographic Research Unit of the Department of Finance as a basis, the governing board of each school district or community college district in which trustee areas have been established, and in which each trustee is elected by the residents of the area the trustee represents, shall adjust the boundaries of any or all of the trustee areas of the district so that one or both of the following conditions is satisfied:

(1) The population of each area is, as nearly as may be, the same proportion of the total population of the district as the ratio that the number of governing board members elected from the area bears to the total number of members of the governing board.

(2) The population of each area is, as nearly as may be, the same proportion of the total population of the district as each of the other areas.

(b) The boundaries of the trustee areas shall be adjusted by the governing board of each school district or community college district, in accordance with subdivision (a), before the first day of March of the year following the year in which the results of each decennial census are released. If the governing board fails to adjust the boundaries before the first day of March of the year following the year in which the results of each decennial census are released, the county committee on school district organization shall do so before the 30th day of April of the same year.

The governing board of the school district or community college district shall reimburse all reasonable costs incurred by a county committee in adjusting the boundaries pursuant to this subdivision.

(c) Except to the extent that the adjustment of trustee area boundaries is necessary for the purposes set forth in this section, the authority to establish or abolish trustee areas, rearrange the boundaries of trustee areas, increase or decrease the number of members of the governing board, or adopt any method of electing governing board members may be exercised only as otherwise provided under this article.

(Amended by Stats.2019, c. 29 (S.B.82), § 75, eff. June 27, 2019.)

Education Code § 5090

Definition

Vacancies on school district governing boards or community college district boards are caused by any of the events specified in Section 1770 of the Government Code, or by a failure to elect. 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 effective on that date. A written resignation, whether specifying a deferred effective date or otherwise, shall, upon being filed with the county superintendent of schools be irrevocable.

(Enacted by Stats. 1976, Ch. 1010, Sec. 2.)

Education Code § 5091⁵

Education Code § 5091

60 days to order election or make provisional appointment

(a) (1) If a vacancy occurs, or if a resignation has been filed with the county superintendent of schools containing a deferred effective date, the school district or community college district governing board shall, within 60 days of the vacancy or the filing of the deferred resignation, either order an election or make a provisional appointment to fill the vacancy. A governing board member may not defer the effective date of the member's resignation for more than 60 days after the member files the resignation with the county superintendent of schools.

(2) In the event that a governing board fails to make a provisional appointment or order

⁵ Please note that as described in footnote 1, on September 29, 2022, Governor Newsom signed Senate Bill 1061 which amended Education Code section 5091. At the time this document was published, Education Code section 5091 was not updated to reflect the amended language on the California Legislative Information website or other legal resources. Included here is the amended language of section 5091 from SB 1061, which is operative on January 1, 2023.

an election within the prescribed 60-day period as required by this section, the county superintendent of schools shall order an election to fill the vacancy.

(b) When an election is ordered, it shall be held on the next established election date provided pursuant to Chapter 1 (commencing with Section 1000) of Division 1 of the Elections Code not less than 130 days after the order of the election.

(c) (1) If a provisional appointment is made within the 60-day period, the registered voters of the district may, within 30 days from the date of the appointment, petition for the conduct of a special election to fill the vacancy. A petition shall be deemed to bear a sufficient number of signatures if signed by at least the number of registered voters of the district equal to 11/2 percent of the number of registered voters of the district at the time of the last regular election for governing board members, or 25 registered voters, whichever is greater. However, in districts with less than 2,000 registered voters, a petition shall be deemed to bear a sufficient number of signatures if signed by at least 5 percent of the number of registered voters of the district at the time of the last regular election for governing board members.

(2) (A) The petition shall be submitted to the county superintendent of schools having jurisdiction who shall have 30 days to verify the signatures. If the petition is determined to be legally sufficient by the county superintendent of schools, the provisional appointment is terminated, and the county superintendent of schools shall order a special election to be conducted not less than 88, nor more than 125, days following the order of the election.

(B) Notwithstanding subparagraph (A), the election may be conducted within 180 days after the issuance of the order so that the election may be consolidated with a regularly scheduled election.

(3) For purposes of this section, “registered voters” means the following:

(A) If the district uses the at-large method of election, as defined in subdivision (a) of Section 14026 of the Elections Code, registered voters of the entire school district or community college district.

(B) If the district uses district-based elections, as defined in subdivision (b) of Section 14026 of the Elections Code, registered voters of the election district.

(d) A provisional appointment made pursuant to subdivision (a) confers all powers and duties of a governing board member upon the appointee immediately following that appointment.

(e) A person appointed to fill a vacancy shall hold office only until the next regularly scheduled election for district governing board members that is scheduled 130 or more days after the effective date of the vacancy, whereupon an election shall be held to fill the vacancy for the remainder of the unexpired term. A person elected at an election to fill the vacancy shall hold office for the remainder of the term in which the vacancy

occurs or will occur.

(f) (1) If a petition calling for a special election is circulated, the petition shall meet all of the following requirements:

(A) The petition shall contain the election official's estimate of the cost of conducting the special election and those estimated costs expressed on a per-pupil or per-student basis.

(B) The name and residence address of at least one, but not more than five, of the proponents of the petition shall appear on the petition, each of which proponents shall be a registered voter of the school district or community college district, as applicable.

(C) None of the text or other language of the petition shall appear in less than six-point type.

(D) The petition shall be prepared and circulated in conformity with Sections 100 and 104 of the Elections Code.

(2) If any of the requirements of this subdivision are not met as to any petition calling for a special election, the county superintendent of schools shall not verify the signatures, nor shall any further action be taken with respect to the petition.

(3) No person shall permit the list of names on petitions prescribed by this section to be used for any purpose other than qualification of the petition for the purpose of holding an election pursuant to this section.

(4) The petition filed with the county superintendent of schools shall be subject to the restrictions in Article 2 (commencing with Section 7924.100) of Chapter 2 of Part 5 of Division 10 of Title 1 of the Government Code.

(g) Elections held pursuant to subdivisions (b) and (c) shall be conducted in as nearly the same manner as practicable as other governing board member elections.

Education Code § 5092

Provisional appointment; notice

Whenever a provisional appointment is made to the governing board of a school district pursuant to Section 5091, the board shall, within 10 days of the provisional appointment of a person to fill a vacancy which occurs or will occur, post notices of both the actual vacancy or the filing of a deferred resignation and also the provisional appointment in three public places in the district and shall publish a notice pursuant to Section 6061 of the Government Code. If there is no newspaper of general circulation published in the district, notice need not be published.

The notice shall state the fact of the vacancy or resignation and the date of the occurrence

of the vacancy or the date of the filing of, and the effective date of, the resignation. The notice shall also contain the full name of the provisional appointee to the board and the date of his appointment, and a statement that unless a petition calling for a special election, containing a sufficient number of signatures, is filed in the office of county superintendent of schools within 30 days of the date of the provisional appointment, it shall become an effective appointment.

(Enacted by Stats. 1976, Ch. 1010, Sec. 2.)

Education Code § 5093

Vacancy within four months of end of term

(a) There shall be no special election or appointment to fill a vacancy on a governing board if the vacancy occurs within four months of the end of the term of that position.

(b) Section 5091 shall not apply to a vacancy on a governing board if the vacancy occurs, or a resignation specifying a deferred effective date is filed with the county superintendent of schools, during the period between six months and 130 days prior to a regularly scheduled governing board election and the position is not scheduled to be filled at such election. In such a case, the position shall be filled at a special election for that position to be consolidated with the regular election. A person elected to fill a position under this subdivision shall take office at the next regularly scheduled meeting of the governing board following the certification of the election and shall serve only until the end of the term of the position which he or she was elected to fill.

(c) If a special election pursuant to Section 5091 could be consolidated with the next regular election for governing board members, and the vacant position is scheduled to be filled at such regular election, there shall be no special election.

(Amended by Stats. 1984, Ch. 32, Sec. 2.)

Education Code § 5094

Majority of offices vacant

If for any reason vacancies should occur in a majority of the offices on any school district or community college district governing board, the president of the county board of education having jurisdiction may appoint members of the county board of education to the district governing board until new members of the governing board are elected or appointed.

(Enacted by Stats. 1976, Ch. 1010, Sec. 2.)

Education Code § 5095

Vacant offices; remaining members have powers

Whenever any of the offices on any school district governing board or community college district governing board is vacant, the remaining governing board member or members, if any, and any governing board member or members elected or appointed to fill the vacancies, who have qualified, shall have all the powers and perform all the duties of the governing board.

(Enacted by Stats. 1976, Ch. 1010, Sec. 2.)

Education Code § 5200

Chapter 2. Boards of Education. Article 1. Districts Governed

Any unified school district that is coterminous with or includes within its boundaries a chartered city or city and county shall be governed by the board of education provided for in the charter of the city or city and county. Sections 5000, 5017, 5090, 5091, 35013, 35101, and 35105 shall not apply to such unified school districts, except as follows:

- (a) As provided in the charter of the city or city and county.
- (b) If the charter of the city or city and county fails to provide for a board of education or for any or all of the matters specified in Sections 5000, 5017, 5090, 5091, 5222, 35013, 35101, and 35105, those sections shall apply as to the matter not provided for in the charter.

(Amended by Stats. 2010, Ch. 89, Sec. 4.)

Education Code § 5304

Governing board duties

The duties of the governing board of any school district or community college district with respect to school district elections shall be:

- (a) To order elections as authorized by this code.
- (b) To resolve tie votes in governing board member elections.

(Enacted by Stats. 1976, Ch. 1010, Sec. 2.)

Education Code § 5325

Posting of notice of election

Any school district election or community college district election, except a bond measure election, ordered to be held in accordance with this code shall be called by the county superintendent of schools having jurisdiction of the election by doing both of the following:

- (a) Posting or publication of notices of election.
- (b) Delivery of a copy of the formal notice of election to the county elections official at least 120 days prior to the date of the election in the case of an election for governing board members.

(Amended by Stats. 2002, Ch. 221, Sec. 7.)

Education Code § 5326

Appointment when not enough candidates for election

If, by 5:00 p.m. on the 83rd day prior to the day fixed for the governing board member election, only one person has been nominated for any elective office to be filled at that election, or no one has been nominated for the office, or in the case of members to be elected from the district at large, the number of candidates for governing board member at large does not exceed the number of offices to be filled at that election, or in the case of members to be nominated by trustee area and elected at large, the number of candidates do not exceed the number required to be elected governing board member at large nominated by that trustee area, or in the case of members to be elected at large in accordance with Sections 5030.5, 5030.6, and 5030.7, no more than one person has been nominated for each membership position, and a petition signed by 10 percent of the voters or 50 voters, whichever is the smaller number, in the district or trustee area, if elected by trustee area, requesting that a school district election be held for the offices has not been presented to the officer conducting the election, appointment will be made as prescribed by Section 5328.

The provisions of this section and Section 5328 shall also apply to elections for membership on a county board of education.

(Amended by Stats. 1996, Ch. 48, Sec. 2.)

Education Code § 5328

Nominee seated at organizational meeting

If pursuant to Section 5326 a district election is not held, the qualified person or persons nominated shall be seated at the organizational meeting of the board, or if no person has been nominated or if an insufficient number is nominated, the governing board shall

appoint a qualified person or persons, as the case may be, at a meeting prior to the day fixed for the election, and such appointee or appointees shall be seated at the organizational meeting of the board as if elected at a district election.

(Amended by Stats. 1978, Ch. 22, Sec. 1.)

Education Code § 5328.5

Notification of intent to make appointment

If no one has been nominated to an office, prior to making an appointment to that office pursuant to Section 5328, the governing board shall cause to be published a notice once in a newspaper of general circulation published in the district or, if no such newspaper is published in the district, in a newspaper having general circulation in the district, stating that the board intends to make an appointment and informing persons of the procedure available for applying for the office.

(Added by Stats. 1982, Ch. 428, Sec. 10.5.)

Education Code § 5420

Article 8. Cost of Elections

The cost of any school district or community college district election may include, but need not be limited to:

- (a) Compensation of precinct election officers.
- (b) Publication of notices.
- (c) The cost of printing official ballots, sample ballots, indexes, arguments, statements, official notices, and card notices.
- (d) Mailing charges for card notices, arguments, recommendations, statements, and sample ballots.
- (e) Forms for rosters, tally sheets, certificates, envelopes, declaration of results forms, and legal forms required for bond elections.
- (f) Precinct maps.
- (g) The actual cost of supplies such as flags, ballot boxes, chairs and tables, booths, ink pads and stamps, and pencils; provided, that if any such can be borrowed from any state or county office, no charge for rental shall be included in the cost of elections.

(Enacted by Stats. 1976, Ch. 1010, Sec. 2.)

Education Code § 5421

Election costs; single district election

The cost of any election held within a single district shall be borne by the entire district, and shall be paid out of its funds. Election costs shall be determined by the county elections official and approved by the county board of supervisors.

(Amended by Stats. 2002, Ch. 221, Sec. 9.)

Education Code § 5422

Costs; consolidated elections

The cost of elections, including consolidated elections, held in territory common to two or more districts shall be borne by the districts concerned in equal shares and paid from district funds.

(Enacted by Stats. 1976, Ch. 1010, Sec. 2.)

Education Code § 5423

Costs; consolidated elections

The cost of consolidated governing board elections shall be paid by the county superintendent of schools having jurisdiction from the county school service fund, and the cost shall be prorated among the districts concerned to reimburse the fund.

(Enacted by Stats. 1976, Ch. 1010, Sec. 2.)

Education Code § 5424

Costs; recall elections

The cost of any recall election shall be borne by the district in which the recall election is held and paid from district funds.

(Enacted by Stats. 1976, Ch. 1010, Sec. 2.)

Education Code § 5425

Costs; formation of community college district

The cost of the election for the formation of a community college district shall be paid from the county general fund.

(Enacted by Stats. 1976, Ch. 1010, Sec. 2.)

Education Code § 5426

Costs; elections involving territory transfer

The cost of any election held under the provisions of Article 8 (commencing with Section 4400) of Chapter 2 of Part 3 of this division, or Article 7 (commencing with Section 35690) of Chapter 3 of Part 21 of Division 3 of Title 2, or Article 3 (commencing with Section 74630) of Chapter 5 of Part 46 of Division 7 of Title 3, where the election is being held for the assumption of bonded indebtedness of the district to which the territory is being transferred or where the county board of supervisors requires an election to be held in the whole district from which the territory would be transferred, shall be paid from the county general fund.

(Enacted by Stats. 1976, Ch. 1010, Sec. 2.)

Education Code § 35107

Eligibility for governing board members

(a) Any person, regardless of sex, who is 18 years of age or older, a citizen of the state, a resident of the school district, a registered voter, and who is not disqualified by the Constitution or laws of the state from holding a civil office, is eligible to be elected or appointed a member of a governing board of a school district without further qualifications.

(b) (1) An employee of a school district may not be sworn into office as an elected or appointed member of that school district's governing board unless and until he or she resigns as an employee. If the employee does not resign, the employment will automatically terminate upon being sworn into office.

(2) For any individual who is an employee of a school district and an elected or appointed member of that school district's governing board prior to January 1, 1992, this subdivision shall apply when he or she is reelected or reappointed, on or after January 1, 1992, as a member of the school district's governing board.

(c) Notwithstanding any other provision of law, the governing board of a school district may adopt or the residents of the school district may propose, by initiative, a proposal to limit or repeal a limit on the number of terms a member of the governing board of the school district may serve on the governing board of the school district. Any proposal to limit the number of terms a member of the governing board of the school district may serve on the governing board of the school district shall apply prospectively only and shall not become operative unless it is submitted to the electors of the school district at a regularly scheduled election and a majority of the votes cast on the question favor the adoption of the proposal.

(d) (1) An initiative measure proposed pursuant to subdivision (c) shall be subject to the procedures set forth in Chapter 4 (commencing with Section 9300) of Division 9 of the Elections Code.

(2) A proposal submitted to the electors by the governing board pursuant to subdivision (c) shall be subject to the procedures set forth in Chapter 6 (commencing with Section 9500) of Division 9 of the Elections Code.

(e) A member of the governing board of a school district shall abstain from voting on personnel matters that uniquely affect a relative of the member but may vote on collective bargaining agreements and personnel matters that affect a class of employees to which the relative belongs. For purposes of this section, "relative" means an adult who is related to the person by blood or affinity within the third degree, as determined by the common law, or an individual in an adoptive relationship within the third degree.

(Amended by Stats. 1995, Ch. 879, Sec. 6.)

Education Code § 35178

Member who has tendered a resignation

A member of the governing board of a school district who has tendered a resignation with a deferred effective date pursuant to Section 5090 shall, until the effective date of the resignation, continue to have the right to exercise all powers of a member of the governing board, except that such member shall not have the right to vote for his or her successor in an action taken by the board to make a provisional appointment pursuant to Section 5091.

(Added by Stats. 1978, Ch. 267, Sec. 1.)

Elections Code § 10603

School District Governing Board Elections; Names on Ballot

(a) In any school district or community college district governing board election the name

of any person shall be placed on the ballot, subject to Sections 35107 and 72103 of the Education Code, if there is filed with the county elections official having jurisdiction, not more than 113 days nor less than 88 days prior to the election, a declaration of candidacy containing the appropriate information in the blank spaces and signed by the person whose name is thereby to be placed on the ballot.

(b) No candidate whose declaration of candidacy has been filed for any school district or community college district governing board election or county board of education election may withdraw as a candidate after the 88th day prior to the election.

(c) Notwithstanding any other provision of law, except as provided in subdivision (d), no person shall file nomination papers for more than one district office, including a county board of education office, at the same election.

(d) Notwithstanding any other provision of law, if a proposal to form a unified school district is on the same ballot as the election of governing board members of that district, any candidate for a position on the existing governing board may file nomination papers for that position pursuant to subdivision (a) and may, at the same election, also file nomination papers for a position on the governing board of the proposed unified school district.

(Added Stats. 1996, Ch. 1143, Sec. 54)

Elections Code § 10604

School District Governing Board Elections; Declaration of Candidacy

(a) Notwithstanding Section 10603, if a declaration of candidacy for an incumbent member of a school district or community college district governing board or of a county board of education is not filed by 5 p.m. on the 88th day before the election, any person, other than the person who was the incumbent on the 88th day, shall have until 5 p.m. on the 83rd day before an election to file a declaration of candidacy for the elective office.

(b) This section is not applicable where there is no incumbent eligible to be elected. If this section is applicable, notwithstanding Section 10603, a candidate whose declaration of candidacy has been filed for any school district or community college district governing board election or county board of education election may withdraw as a candidate until 5 p.m. on the 83rd day before the election.

(Renumbered from 10603 and amended by Stats. 1996, Ch. 1143, Sec. 53)

Elections Code § 11384

Recall Elections

If a majority of the votes on a recall proposal are "Yes", the officer sought to be recalled shall be removed from office upon the qualification of his successor.

(Added Stats. 1994, Ch. 920, Sec. 2)

Government Code § 1064

Absence from State; Military Service; School District Governing Board Vacancies

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) 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.
- (d) For federal military deployment, not to exceed an absence of a total of six months, as a member of the Armed Forces of the United States or the California National Guard. If the absence of a member of the governing board of a school district pursuant to this subdivision exceeds six months, the governing 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 governing board may appoint an interim member to serve in his or her absence. If two or more members of the governing board of a school district are absent by reason of the circumstances described in this subdivision, and those absences result in the inability to establish a quorum at a regular meeting, the governing board may immediately appoint one or more interim members as necessary to enable the governing board to conduct business and discharge its responsibilities.
- (e) The term of an interim member of a school district governing board appointed pursuant to subdivision (c) may not extend beyond the return of the absent member, nor may it extend beyond the next regularly scheduled election for that office.

(Amended by Stats. 2011, Ch. 54, Sec. 1. (AB 334))

Government Code § 1770

Vacancies; Public Offices

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) An adjudication pursuant to a quo warranto 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 or her office for the remainder of his or her term. This subdivision shall not apply to offices created by the California Constitution nor to federal or state legislators.
- (c)(1) His or her resignation, except as provided in paragraph (2).
- (2) In the case of the office of city council member, upon the delivery of a letter of resignation by the resigning council member to the city clerk. The letter of resignation may specify a date on which the resignation will become effective.
- (d) His or her removal from office.
- (e) His or her ceasing to be an inhabitant of the state, or if the office be local and one for which local residence is required by law, of the district, county, or city for which the officer was chosen or appointed, or within which the duties of his or her office are required to be discharged.
- (f) His or her absence from the state without the permission required by law beyond the period allowed by law.
- (g) His or her ceasing to discharge the duties of his or 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 or her conviction of a felony or of any offense involving a violation of his or her official duties. An officer shall be deemed to have been convicted under this subdivision when trial court judgment is entered. For 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 or her refusal or neglect to file his or her required oath or bond within the time prescribed.
- (j) The decision of a competent tribunal declaring void his or her election or appointment.

(k) The making of an order vacating his or her office or declaring the office vacant when the officer fails to furnish an additional or supplemental bond.

(l) His or her commitment to a hospital or sanitarium by a court of competent jurisdiction as a drug addict, dipsomaniac, inebriate, or stimulant addict; but in that event the office shall not be deemed vacant until the order of commitment has become final.

(m)(1) The incumbent is listed in the Excluded Parties List System and all of the following subparagraphs apply:

(A) The office is one that the incumbent holds ex officio, by virtue of holding another office, or as an appointee.

(B) The appointed or ex officio office is on the governing board of a local agency that is, or may reasonably be expected to be, a participant or principal in a covered transaction, pursuant to federal law.

(C) A federal agency head or designee has not granted the incumbent an exception, in writing, permitting the incumbent to participate in a particular covered transaction in which the local agency is, or may reasonably be expected to be, a participant or principal.

(2) For purposes of this subdivision, the following terms have the following meanings:

(A) "Excluded Parties List System" means the list maintained and disseminated by the federal General Services Administration containing names of, and other information about, persons who are debarred, suspended, disqualified, or otherwise excluded from participating in a covered transaction, pursuant to federal law.

(B) "Local agency" includes, but is not limited to, a county, whether general law or chartered, city, whether general law or chartered, city and county, school district, municipal corporation, district, political subdivision, or any board, commission, or agency of one of these entities.

(C) "Federal law" includes, but is not limited to, federal regulations adopted pursuant to Section 2455 of Public Law 103-355 (108 Stat. 3327), Executive Order No. 11738, Executive Order No. 12549, and Executive Order No. 12689.

(3) This subdivision shall not apply to an elective office.

(Amended by Stats.2014, c. 725 (A.B.1795), § 1, eff. Jan. 1, 2015.)

Government Code § 3060

Public Officer; Removal from Office

An accusation in writing against any officer of a district, county, or city, including any member of the governing board or personnel commission of a school district or any humane officer, for willful or corrupt misconduct in office, may be presented by the grand jury of the county for or in which the officer accused is elected or appointed. An

accusation may not be presented without the concurrence of at least 12 grand jurors, or at least eight grand jurors in a county in which the required number of members of the grand jury is 11.

(Amended by Stats. 1996, Ch. 105, Sec. 1.)

Government Code § 3061

Public Officer; Removal from Office

The accusation shall state the offense charged in ordinary and concise language, and without repetition.

(Enacted by Stats. 1943, Ch. 134.)

Government Code § 3062

Public Officer; Removal from Office

The accusation shall be delivered by the foreman of the grand jury to the district attorney of the county, unless he is the officer accused.

(Enacted by Stats. 1943, Ch. 134.)

Government Code § 3063

Public Officer; Removal from Office

The district attorney shall have a copy of the accusation served upon the defendant, and by notice in writing shall require the accused to appear before the superior court of the county, at a time stated in the notice, and answer the accusation. Appearance shall not be required in less than 10 days from the service of the notice. After service, the original accusation shall be filed with the clerk of the court.

(Enacted by Stats. 1943, Ch. 134.)

Government Code § 3064

Public Officer; Removal from Office

The defendant shall appear at the time stated in the notice and answer the accusation, unless for some sufficient cause the court assigns another day for that purpose. If he does not appear, the court may proceed to hear and determine the accusation in his absence.

(Enacted by Stats. 1943, Ch. 134.)

Government Code § 3065

Public Officer; Removal from Office

The defendant may answer the accusation either by objecting to its sufficiency or any article therein, or by denying the truth of the accusation.

(Enacted by Stats. 1943, Ch. 134.)

Government Code § 3066

Public Officer; Removal from Office

If he objects to the legal sufficiency of the accusation, the objection shall be in writing. The objection need not be in any specific form. It is sufficient if it presents intelligibly the grounds of the objection.

(Enacted by Stats. 1943, Ch. 134.)

Government Code § 3067

Public Officer; Removal from Office

If he denies the truth of the accusation, the denial may be oral and without oath. The denial shall be entered upon the minutes.

(Enacted by Stats. 1943, Ch. 134.)

Government Code § 3068

Public Officer; Removal from Office

If an objection to the sufficiency of the accusation is not sustained, the defendant shall answer thereto forthwith.

(Enacted by Stats. 1943, Ch. 134.)

Government Code § 3069

Public Officer; Removal from Office

If the defendant pleads guilty, or refuses to answer the accusation, the court shall render judgment of conviction against him. If he denies the matters charged, the court shall immediately, or at such time as it appoints, try the accusation.

(Enacted by Stats. 1943, Ch. 134.)

Government Code § 3070

Public Officer; Removal from Office

The trial shall be by a jury, and conducted in all respects in the same manner as the trial of an indictment.

(Enacted by Stats. 1943, Ch. 134.)

Government Code § 3071

Public Officer; Removal from Office

The district attorney and the defendant are each entitled to such process as necessary to enforce the attendance of witnesses as upon a trial of an indictment.

(Enacted by Stats. 1943, Ch. 134.)

Government Code § 3072

Public Officer; Removal from Office

Upon a conviction and at the time appointed by the court it shall pronounce judgment that the defendant be removed from office. To warrant a removal, the judgment shall be entered upon the minutes, and the causes of removal shall be assigned therein

(Enacted by Stats. 1943, Ch. 134.)

Government Code § 3073

Public Officer; Removal from Office

The same proceedings may be had on like grounds for the removal of a district attorney, except that the accusation shall be delivered by the foreman of the grand jury to the clerk, and by him to a judge of the superior court of the county. The judge shall appoint a person to act as prosecuting officer in the matter, or place the accusation in the hands of the district attorney of an adjoining county, and require him to conduct the proceedings.

(Enacted by Stats. 1943, Ch. 134.)

Government Code § 3074

Public Officer; Removal from Office

Any officer subject to removal pursuant to this article may be removed from office for willful or corrupt misconduct in office occurring at any time within the six years immediately preceding the presentation of an accusation by the grand jury.

(Added by Stats. 1971, Ch. 702.)

Government Code § 3075

Court of Appeal

In a proceeding under this article, appeal is to the court of appeal.

(Added by Stats. 1998, Ch. 931, Sec. 178.)

Government Code § 6061

Publications and Official Advertising; Manner of Publication

Publication of notice pursuant to this section shall be for one time.

(Added by Stats. 1949, Ch. 1587, Sec. 1.)

CSBA Sample Board Bylaw

Board Bylaws

BB 9223

FILLING VACANCIES⁶

Events Causing a Vacancy

A vacancy on the Governing Board may occur for 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 office for the remainder of his/her 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 effective date of his/her resignation for more than 60 days after he/she files the resignation with the County Superintendent. Upon being filed with the County Superintendent, a written resignation, whether specifying a deferred effective date or otherwise, shall be irrevocable. (Education Code 5090, 5091)

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

CSBA NOTE: The following paragraph is for use by districts that have established trustee areas.

6. 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))
7. A Board member's absence from the state for more than 60 days, except in the following

⁶ This sample bylaw will be updated to incorporate the amendments to Education Code section 5091 included in Senate Bill 1061.

situations: (Government Code 1064, 1770)

- a. Upon district business 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

CSBA NOTE: AB 334 (Ch. 54, Statutes of 2011) amended Government Code 1064 to authorize the Governing Board to extend an out-of-state absence for an unlimited duration when the absence is due to illness or other urgent necessity.

- 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 an absence of a total of 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. 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. The term of an interim member appointed in these circumstances shall not extend beyond the return of the absent Board member or beyond the next regularly scheduled election for that office, whichever occurs first.

8. A Board member's ceasing to discharge the duties of his/her office for the period of three consecutive months, except when prevented by illness or when absent from the state with the permission required by law (Government Code 1770)

CSBA NOTE: Board members forfeit office and, in some cases, are disqualified from holding public office upon conviction of designated crimes as specified in the Constitution and various other state laws. Examples of crimes that result in forfeiture of office include, but are not limited to, convictions for felonies, offenses that involve a violation of official duties, bribery, selling appointments, intoxication in the discharge of official duties, misuse of public funds, conflict of interest violations, and a false claim of receipt of any military decoration or medal.

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

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

11. The decision of a competent tribunal declaring void a Board member's election or appointment (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)

CSBA NOTE: Pursuant to Education Code 5090, a vacancy is declared when there has been a "failure to elect," meaning that the County Registrar of Voters has determined that an election will not be held because either no candidate or an insufficient number of candidates have filed to run for a Board seat(s). Education Code 5328 authorizes the Board to make an appointment in such circumstances.

13. A "failure to elect" in which 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 within four months of the end of a Board member's term, the Board shall take no action. (Education Code 5093)

CSBA NOTE: Pursuant to Education Code 5091, when a vacancy occurs or when a deferred resignation has been filed four or more months before the end of a Board member's term, the Board shall take action, as specified below. In the event that the Board fails to make a provisional appointment or order an election within 60 days, the County Superintendent of Schools must call an election to fill the vacancy.

2. When a vacancy occurs longer than four 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. (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)

Eligibility

CSBA NOTE: Persons applying or nominated for a Board position must meet the legal qualifications for Board members as detailed in Education Code 35107. Education Code 35107

also provides that a district employee appointed or elected to the Board must resign his/her employment before being sworn in or have his/her employment automatically terminated upon being sworn into office. See BB 9220 - Governing Board Elections.

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.

Provisional Appointments

CSBA NOTE: The Board is authorized to make a provisional appointment to fill a vacancy pursuant to item #2 in the section above entitled "Timelines for Filling a Vacancy." The law does not specify procedures for making provisional appointments for vacancies caused by reasons other than a failure to elect; however, such procedures must comply with the requirements of the Brown Act (Government Code 54950-54963). Secret ballots are prohibited by Government Code 54953.

The following optional paragraph should be modified to reflect district practice. See CSBA's publication Filling a Board Vacancy for additional information about provisional appointments, including sample questions for interviewing and evaluating candidates.

When authorized by law to make a provisional appointment to fill a vacancy on the Board, 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.

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

CSBA NOTE: The following procedure applies when an appointment is being made because of a failure to elect pursuant to Education Code 5090, 5326, and 5328 (item #12 in section entitled "Events Causing a Vacancy" above).

When a vacancy occurs because no candidate 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)

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 11381-11386	Candidates for recall
Gov. Code 1064	Absence from state
Gov. Code 1770	Vacancy on the board
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	Description
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18 USC 704 Military medals or decorations

Management Resources

Attorney General Opinion

CSBA Publication

Website

Website

Description

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

Filling a Board Vacancy, rev. December 2010

California State Attorney General's Office, Quo Warranto Applications

CSBA

Cross References

Code

1340

1340

9100

9110

9130

9220

9222

9224

9230

9323.2

9323.2-E PDF(1)

9323.2-E PDF(2)

Description

Access To District Records

Access To District Records

Organization

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Actions By The Board

Actions By The Board

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