

BOARD VACANCIES

A vacancy on the County Board may occur due to any of the following events:

1. The death of an incumbent. (Government Code 1770)
2. The adjudication pursuant to a legal 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. A resignation shall be effective upon its receipt in the County Superintendent's Office, except where a deferred effective date is specified in the resignation, 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. (Education Code 5090, 5091; Government Code 1770)

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 recall. (Elections Code 11384; Government Code 1770)
5. A Board member's ceasing to be a resident within the trustee area that he/she represents, except when trustee boundaries are changed and a member can remain until the end of the term. (Education Code 5021; 58 Ops.Cal.Atty.Gen. 888 (1975))
6. A Board member's absence from the state without the permission required by law beyond the period allowed 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)

- a. Upon business of the County Office 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

BOARD VACANCIES

c. For federal military deployment not to exceed six months as a member of the armed forces of the United States or the California National Guard

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. The Board may appoint an interim member to serve in his/her absence.

d. 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 for an additional period not to exceed 30 days.

7. A Board member's ceasing to discharge the duties of his/her office for the period of three consecutive months, except when presented 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 of 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 and 3000-3003)

Board members forfeit office and, in some cases, are disqualified from holding office upon conviction of designated crimes. 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 falsely claiming receipt of any military decoration or medal.

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

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 his/her office vacant when he/she fails to furnish an additional or supplemental bond. (Government Code 1770)

BOARD VACANCIES

12. A Board member's commitment to a hospital or sanitarium by a court of competent jurisdiction as a drug addict, dipsomaniac, inebriate or stimulant addict, 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 5328 authorizes the Board to make an appointment in such circumstances. (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. In the event that the Board fails to make a provisional appointment or order an election within 60 days, the County Superintendent must call an election to fill the vacancy. (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 special election is not required, the Board may make a provisional appointment. (Education Code 5091, 5093)

BOARD VACANCIES**Provisional Appointments**

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.

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

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 County Office. (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 Board members and shall be afforded all the powers and duties of a Board member upon appointment. (Education Code 5091)

BOARD VACANCIES**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 an 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. (Education Code 5328)

When an appointment is being made because of a failure to elect, the County Superintendent or designee shall publish a notice once in a newspaper(s) of general circulation published in the county. 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.

LEGAL REFERENCE:

EDUCATION CODE

5000-5033 Elections
 5090-5095 Vacancies
 5300-5304 Elections
 5320-5329 Order and call of election
 5340-5345 Consolidation of elections
 5360-5363 Election notice
 5420-5426 Cost of elections
 5440-5442 Miscellaneous provisions, elections
 35107 Eligibility of board members
 35178 Resignation with deferred effective date

ELECTIONS CODE

10600-10604 School district elections
 11381-11386 Candidates for recall

BOARD VACANCIES

GOVERNMENT CODE

1064 Absence from state

1770 Vacancies: definition

3000-3002 Forfeiture of office

3060-3075 Removal other than by impeachment

6061 One time notice

54950-54963 The Ralph M. Brown Act

PENAL CODE

88 Bribery, forfeiture from office

UNITED STATES CODE, TITLE 18

704 Military medals or decorations

ATTORNEY GENERAL OPINIONS

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

Reviewed: 8/87; 1996; 1999; 9/2002

Revised: 10/20/82; 1/20/93; 9/01/99; 10/07/09