Bylaw 9223: Filling Vacancies

Status: ADOPTED

Original Adopted Date: 06/24/2014

Events Causing a Vacancy

A vacancy on the Board of Trustees 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)

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 for more than 60 days, except in the following 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

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.

c. 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.

7. 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)

8. 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)

9. A Board member's refusal or neglect to file his/her required oath or bond 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 Board member 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" 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)

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

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.

(cf. 9220 - Governing Board Elections)

Provisional Appointments

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.

(cf. 9130 - Board Committees)

(cf. 9323.2 - Actions by the Board)

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 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)

(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 References	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	One time notice
Pen. Code 88	Bribery, forfeiture from office

Federal References	Description
18 USC 704	Military medals or decorations

Management Resources References	Description
Attorney General Opinion	58 Ops.Cal.Atty.Gen. 888 (1975)
CSBA Publication	Filling a Board Vacancy, rev. December 2010
Website	California State Attorney General's Office, Quo Warranto Applications - https://simbli.eboardsolutions.com/SU/plus0W6mhrGbhBsJI5dplus4ScSQ==
Website	CSBA - https://simbli.eboardsolutions.com/SU/W3QxkK2FPsDsQBnMIENxGg==

Cross References	Description
1340	Access To District Records - https://simbli.eboardsolutions.com/SU/SGyowiMSsplusW5BZ95plusXNrng==
1340	Access To District Records - https://simbli.eboardsolutions.com/SU/9zDcoko1ErasrAQ6JmcplusEg==
9100	Organization - https://simbli.eboardsolutions.com/SU/PE8NcDPCEplusYTX8xFX4z01g==
9110	Terms Of Office - https://simbli.eboardsolutions.com/SU/b7NLvslsh3oiN3LNf95plusaVdRQ==
9130	Board Committees - https://simbli.eboardsolutions.com/SU/jUreDuNRm8967FAS5dRE0w==
9220	Governing Board Elections - https://simbli.eboardsolutions.com/SU/ZwPA2X3IFRDzBDRhLvuUew==
9222	Resignation - https://simbli.eboardsolutions.com/SU/BEwitPplusQru9A27DHOjwZWA==
9224	Oath Or Affirmation - https://simbli.eboardsolutions.com/SU/XOgUe6LyPKJUDxAdCh4bww==
9230	Orientation - https://simbli.eboardsolutions.com/SU/dPQ8hx56wplusF2159oO6AAig==
9323.2	Actions By The Board - https://simbli.eboardsolutions.com/SU/gOQ5v8sWWnQ14QldNTckug==
9323.2-E(1)	Actions By The Board - https://simbli.eboardsolutions.com/SU/fdGhSKHEpD0UDt2n1rCuiw==