

CSBA Sample County Board Bylaw

Filling Vacancies

Bylaws of the Board BB 9223

A vacancy on the County Board of Education may arise for any of the following reasons:

Note: Pursuant to Government Code 1770, vacancy on the Board can arise as a result of events including the death, resignation or removal of the incumbent, or his/her ceasing to perform the duties of his/her office for three consecutive months. Matters pertaining to “resignation” will be addressed in a sample bylaw to be issued in the future.

- 1.The occurrence of any event specified in Government Code 1770.
- 2.Failure to elect. (Education Code 5090)
- 3.Removal by recall election. (Elections Code 11384)
- 4.When an incumbent Board member ceases to inhabit the trustee area he/she represents on the Board. (58 Ops.Cal.Atty.Gen. 888 (1975))

Note: Pursuant to Education Code 1005, a vacancy would not be deemed to have occurred when changes to the boundaries of a trustee area would affect the term of office of a Board member who has been elected and whose term of office has not expired.

Note: Education Code 1008 provides for the filling of a Board vacancy in the same manner as prescribed in Education Code 5090-5095 for district governing boards. When a vacancy occurs less than four months before the end of a Board member’s term, the Board has no power to fill the vacancy.

Pursuant to Education Code 5091, 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.

When a vacancy occurs at least four months before the end of a Board member’s term, the Board may fill the vacancy within 60 days by making a provisional appointment or ordering an election, except when a special election is mandated or prohibited. (Education Code 5091, 5093)

A special election is mandated when the vacancy occurs during the period between six months and 130 days prior to a regularly scheduled Board election, and the position vacated is not scheduled to be filled at that election. Such special election 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)

A special election ordered by the Board pursuant to Education Code 5091 is prohibited, if it could be consolidated with the next regular Board election at which the vacant position is scheduled to be filled.

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

Provisional Appointment Process

Note: The law does not provide specific procedures for making provisional appointments; options below may be revised as desired as long as they conform with the open meeting requirements of Government Code 54950-54962. Secret ballots are prohibited by Government Code 54953. CSBA advises that whatever option the Board selects, there should be consistency in the process. For example, candidates should be asked the same questions to eliminate the likelihood of bias.

OPTION 1:

In order to draw from the largest possible number of candidates, the Board shall advertise in the local media to solicit candidate applications or nominations. The Board may designate the County Superintendent, the legal counsel or a committee of less than a quorum of the Board to screen and ensure the eligibility of candidates for the vacant Board position. 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.

OPTION 2:

The Board shall accept applications and/or nominations for Board membership at a public meeting and shall select the provisional appointee from among these applicants and/or nominees by a majority vote.

Notice and Duration of Provisional Appointment

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

Note: Education Code 5092 expressly dispenses with the newspaper publication requirement if no newspaper of general circulation is published in the county.

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 provisional appointee and the date of the appointment; and

3.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)

Legal Reference:

EDUCATION CODE

1008 Vacancy on county board

5090 Definition (vacancy)

5091 Special election or provisional appointment

5092 Public notice of vacancy and provisional appointment

5093 Re vacancies occurring near end of term and incumbent not reelected

5094 Power of president of county board of education when majority of offices vacant

5095 Powers of remaining board members and new electees or appointees

ELECTIONS CODE

10603-10604 School district elections

11384 Vacancy in office if majority vote for recall

GOVERNMENT CODE

1064 Absence from state

1770 Vacancies: definition

3060-3074 Removal other than by impeachment

6061 Publications and official advertising: manner of publication

54950-54962 The Ralph M. Brown Act, especially:

54953 Meetings open and public; secret ballots

ATTORNEY GENERAL OPINIONS

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

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Policy Reference UPDATE Service