

# FILLING A BOARD VACANCY



*Revised December, 2009*

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# FILLING A BOARD VACANCY

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

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# CSBA Sample Board Bylaw

Bylaws of the Board

BB 9223(a)

## FILLING VACANCIES

### 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. (Education Code 5090, 5091)

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

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

Note: The following sentence is for use by districts that have established trustee areas.

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))

**FILLING VACANCIES** (continued)

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

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

- a. Upon business of the school district with the approval of the Board
- b. With the consent of the Board for an additional period not to exceed a total absence of 90 days
- c. For federal military deployment not to exceed six months as a member of the armed forces of the United States or the California National Guard

If the absence of the Board member for this purpose exceeds six months, the Board may approve an additional six-month absence upon a showing that there is a reasonable expectation that the member will return within the second six-month period, and the Board may appoint an interim member to serve in his/her absence. 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.

- 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.

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

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 sickness or when absent from the state with the permission required by law (Government Code 1770)

Note: Governing Board members forfeit office and, in some cases, are disqualified from holding 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, and conflict of interest violations.

**FILLING VACANCIES** (continued)

As added by SB 1482 (Ch. 118, Statutes of 2008), Government Code 3003 specifies that an elected official forfeits his/her office upon the conviction of a crime pursuant to the Stolen Valor Act which involves a false claim of receipt of any military decoration or medal.

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

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

**Timelines for Filling a Vacancy**

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

**FILLING VACANCIES** (continued)

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)

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 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. (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)

**Provisional Appointments**

Note: 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.

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.

**FILLING VACANCIES** (continued)

*(cf. 9130 - Board Committees)*  
*(cf. 9323.2 - Actions by the Board)*

Note: Persons applying or nominated for a 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 serve on the Board, a person must meet the eligibility requirements specified in Education Code 35107.

*(cf. 9220 - Governing Board Elections)*

Within 10 days after the appointment is made, the Board shall post notices of the actual vacancy, or the filing of a deferred resignation, and the provisional appointment. The notice shall be published in the local newspaper pursuant to Government Code 6061 and posted in at least three public places within the district. (Education Code 5092)

The notice shall contain: (Education Code 5092)

1. The date of the occurrence of the vacancy or the date of the filing of, and the effective date of, the resignation
2. The full name of the appointee
3. The date of appointment
4. A statement notifying the voters that unless a petition calling for a special election pursuant to Education Code 5091 is filed in the office of the County Superintendent within 30 days of the provisional appointment, it shall become an effective appointment

The person appointed shall hold office until the next regularly scheduled election for district Board members and shall be afforded all the powers and duties of a Board member upon appointment. (Education Code 5091)

**FILLING VACANCIES** (continued)

**Appointment Due to Failure to Elect**

Note: The following procedure applies when an appointment is being made because of a failure to elect pursuant to Education Code 5326 and 5328 (item #13 in section entitled "Events Causing a Vacancy" above).

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

*(cf. 9100 - Organization)*

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

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

*Legal Reference: (see next page)*

## FILLING VACANCIES (continued)

### *Legal Reference:*

#### EDUCATION CODE

5000-5033 Elections

5090-5095 Vacancies

5200-5208 Districts governed by boards of education

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

#### GOVERNMENT CODE

1064 Absence from state

1770 Vacancies: definition

3000-3003 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)

### *Management Resources:*

#### CSBA PUBLICATIONS

Filling a Board Vacancy, rev. January 2008

#### WEB SITES

CSBA: <http://www.csba.org>

California State Attorney General's Office, Quo Warranto Applications:

<http://caag.state.ca.us/opinions/quo.htm>

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### **Policy Reference UPDATE Service**

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## SAMPLE LETTER

(from your school district governing board)

Date \_\_\_\_\_

Dear \_\_\_\_\_:

You have been named as a possible candidate to fill the vacancy on the Governing Board of the ( name ) School District created by the \_\_\_\_\_ of ( Mr./Ms. ). If you would like to be considered as one who would be interested and willing to serve, we would appreciate your completing the enclosed information sheet. We are asking each candidate to do this in order to make our selection as carefully and objectively as possible.

Regular board meetings are held the \_\_\_\_\_ of each month, with occasional special meetings called. Some personal time is **required** individually for study and growth, such as attending district, state, and/or national meetings. If you have any questions about what being a member of the school board might require of you in terms of additional time and responsibility, please contact me or any board member.

Please return the enclosed form to \_\_\_\_\_ (address) \_\_\_\_\_ by \_\_\_\_\_ (date). **When all forms are submitted, the board will then review them.** Individual interviews will take place following this process before a final selection is made.

Thank you very much for your interest.

Sincerely,

**CANDIDATE INFORMATION SHEET**  
**\_\_\_\_\_ School District**

Please fill out and return by \_\_\_\_\_ to \_\_\_\_\_, or leave at the superintendent's office.

Date: \_\_\_\_\_

\_\_\_\_\_  
(Last Name) (First Name) (Initial)

Business Address: \_\_\_\_\_ Phone: \_\_\_\_\_

Home Address: \_\_\_\_\_ Phone: \_\_\_\_\_

E-mail: \_\_\_\_\_

Occupation and Employer: \_\_\_\_\_

No. of Years Residing in District: \_\_\_\_\_

Do you have children in the district's schools? Yes \_\_\_\_\_ No \_\_\_\_\_

If yes, what schools? \_\_\_\_\_

1. Do you have prior experience serving on a governing board, specifically a school district board? Please list such prior experience.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

2. Have you worked on any school committees or participated in any school activities recently? Please list them.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

3. Describe any other community or business activities 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 school board member?

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Candidate Information Sheet - Board Vacancy**  
**Page Two**

5. What do you see as the basic purpose of the public schools?

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

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

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8. What should be the relationship between the board members and the administration in the handling of school concerns?

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

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10. What do you see as the strengths of the school district?

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11. What do you see as the area(s) most needing improvement in the school district?

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## SUGGESTED CANDIDATE INTERVIEW QUESTIONS

1. What do you see as the basic purpose of the public schools? What is the role of the board of trustees in the fulfillment of that purpose?
2. What are you proud of in this district? What would you like to accomplish as a board member? Which is your highest priority, and why?
3. As a trustee, what do you see as your primary purpose or primary role? How would you fulfill that role, both as an individual and as a member of the governing board?
4. Describe a good board meeting. What are the objectives of a good board meeting?
5. What would you do if you believed administrators had not provided you with accurate and complete information for making a decision?
6. Describe your response if a parent cornered you in the grocery store and asked for your support on a particularly hot issue.
7. How does an effective school 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 more effective as a board member?
10. Identify a recent board decision that you felt strongly about, and describe how you would balance community concerns, student needs, state and federal law, staff considerations, and your personal value and beliefs to determine how to vote on the issue.
11. 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 the courage and ability to explain and enforce a role which might not be popular, but which is proper?
- Have a lay person's relationship to public education?
- Have personal interests that would be in conflict with his/her service to the board?
- Have a sense of humor?
- Make a habit of withholding judgment on critical issues until the facts are available?

Is the candidate:

- Seeking the position for personal prestige or political gain (personal agenda)?
- A leader in his/her own occupation or community group?
- A known quantity in 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?
- Aware of the cross-currents of thinking pertaining to the basic concepts of public education?
- Able to carry on cheerfully when public appreciation of his/her efforts seem to be lacking?

Will the candidate:

- Remain loyal to his/her fellow trustees under stress?
- Work to develop unity among the members of the board, contributing to harmonious development of the program?
- Give the necessary time to this important position?

Has the candidate:

- An interest in the public schools, the community, and in every child?
- Arrived at a position of recognized leadership in the community?

## **Education Code § 5019**

### **Establishment of trustee areas; common governing board**

(a) Except in a school district governed by a board of education provided for in the charter of a city or city and county, 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 or decrease 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.

(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 120 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 120 days after its approval by the voters.

(Amended by Stats. 2006, Ch. 126, Sec. 1)

## **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 Population 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 he or she 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 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. 1990, Ch. 648, Sec. 1.)

## **Education Code § 5090**

### **Article 3. Vacancies**

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.)

## **Education Code § 5091**

### **60 days to order election or make provisional appointment**

(a) Whenever a vacancy occurs, or whenever 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 his or her resignation for more than 60 days after he or she files the resignation with the county superintendent of schools.

In the event that a governing board fails to make a provisional appointment or order 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 registered voters of less than 2,000 persons, 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) 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 no later than the 130th day after the determination. However, if an established election date, as defined in Section 1000 of the Elections Code, occurs between the 130th day and the 150th day following the order of the election, the county superintendent of schools may order the special election to be conducted on the regular election date.

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

(e) A person appointed to fill a vacancy shall hold office only until the next regularly scheduled election for district governing board members, 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) Whenever a petition calling for a special election is circulated, the petition shall meet all of the following requirements:

(A) The petition shall contain the estimate of the elections official of the cost of conducting the special election.

(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 Section 6253.5 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.

(Amended by Stats. 2003, Ch. 811, Sec. 1.)

## **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.)

## **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.)

#### **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.)

## **Education Code § 5200**

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

Any unified school district which 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, 5050, 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, 5050, 5090, 5091, 5222, 35013, 35101, and 35105 shall apply as to the matter not provided for in the charter.

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

## **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.)

## **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.)

### **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.)

## **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.)

## **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.)

## **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.)

## **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.)

## **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.)

## **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.)

## **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) 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.

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 for an additional period not to exceed 30 days.

(d) 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. 2004, Ch. 558, Sec. 1.)

## **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) His or her resignation.
- (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 the 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.

(Amended by Stats. 2002, Ch. 784, Sec. 122.)

### **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.)