

## **PROCEDURES FOR FILLING A SCHOOL OR COMMUNITY COLLEGE DISTRICT GOVERNING BOARD MEMBER VACANCY**

A governing board position becomes vacant on the occurrence of any of the events specified in Government Code section 1770 [Ed. Code (EC) § 5090] or as required by Government Code section 1099(b). If any of these circumstances occur, notify Legal Services, San Diego County Office of Education, at [legal@sdcoe.net](mailto:legal@sdcoe.net).

The resignation of a governing board member is not effective until a signed resignation is filed with the County Superintendent of Schools. [EC § 5090] Letters of resignation should be addressed to Gloria Ciriza, Ed.D., San Diego County Superintendent of Schools, 6401 Linda Vista Road, San Diego, CA 92111-7399.

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. [EC § 5091(a)]

Within 60 days of the date a vacancy occurs, or a resignation is filed with the County Superintendent of Schools, a school or community college district governing board shall either order an election or make a provisional appointment to fill the vacancy. If the board takes no action within the 60-day period, the County Superintendent of Schools shall call an election to fill the vacancy. [EC § 5091(a)]

Within ten days of the effective date of the vacancy, an amended Statement of Facts, Roster of Public Agencies Filing must be filed with the Office of the Secretary of State and the County Clerk.

### **Election**

If the board determines to call an election to fill the vacancy, it shall be held on the next established election date provided pursuant to Elections Code section 1000 not less than 130 days after the order of the election. [EC § 5091(b)] To determine the next qualified election date and to obtain a form for a Board resolution ordering the election, contact Legal Services, San Diego County Office of Education.

### **Provisional Appointment**

1. The board determines its own procedures for advertising the vacancy, evaluating candidates, and making a provisional appointment.
2. The board may not discuss or act upon the appointment in closed session. [Gov. Code § 54950 et seq.]
3. A governing board member who has submitted a resignation with a deferred effective date shall not have the right to vote for his or her successor in an action taken by the board to make a provisional appointment. [EC § 35178]
4. A provisional appointment confers all powers and duties upon the appointee immediately following the appointment and the administration of the Oath of Office. [EC § 5091(d)]

- a. A member of a governing board of a school district, a district superintendent, and a principal of a school are among those persons authorized to administer the Oath of Office. [EC § 60]
  - b. The signed, original Oath of Office form should be emailed to the County Clerk. A copy should be retained by the clerk of the governing board.
5. Within ten days after the board appoints a person to fill the vacancy:
  - a. A notice of such appointment shall be posted in three public places and shall be published once in a newspaper of general circulation published in the district. If there is no newspaper of general circulation published in the district, notice need not be published. [EC § 5092]

Legal Services has prepared a template of a Notice of Provisional Appointment. The form to be used depends on when the term of the vacancy expires. Copies of both forms can be found on the SDCOE Legal Services website.

  - b. An amended copy of the Statement of Facts, Registry of Public Agencies Filing must be filed with the Office of the Secretary of State and the County Clerk. [Gov. Code § 53051]. The form is available at <https://bpd.cdn.sos.ca.gov/sf/forms/sf-405.pdf>. A copy of this document should also be sent to the Legal Services department.
6. Unless a petition calling for a special election is filed with the County Superintendent of Schools within thirty days from the date of the provisional appointment, it shall become an effective appointment. [EC § 5091(c)(1)]
7. The appointee shall hold office only until the next regularly scheduled governing board member election. [EC § 5091(e)] However, said appointee shall continue to discharge the duties of his or her office until a successor has qualified. [EC § 5017; GC 1302] Contact Legal Services, San Diego County Office of Education, for the date of the next regularly scheduled governing board member election.
8. If a vacancy occurs during specified “window periods” prior to the end of the term of that position or prior to a regularly scheduled governing board election, the requirements of Education Code section 5093 shall apply. [EC § 5093] If there is a question regarding whether Education Code section 5093 is applicable, contact Legal Services, San Diego County Office of Education.