

FILLING VACANCIES

A vacancy on the Board of Trustees may occur for any of the events specified in Government Code section 1770, or by failure to elect. The Board of Trustees shall, within 60 days of the date of the vacancy or the filing of the deferred resignation, either order an election for the next established election day (but not less than 130 days after the occurrence of the vacancy or filed written resignation) or make a provisional appointment to fill the vacancy. (Education Code 5091) There shall be no election and no appointment if the vacancy occurs within four months of the end of the term of that position and the incumbent is not re-elected to fill the position (Education Code 5093(a))

After the provisional appointment is made, the Board shall, within ten days after the appointment, post notices of the provisional appointment in at least three public places in the district, and publish a notice pursuant to Government Code Section 6061, unless there is no newspaper of general circulation in the district. The posted and published notices shall contain the full name of the appointee, the date of the appointment, and a statement that unless a petition calling for a public 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. (Education Code 5092)

The process for filling a vacancy on the Board of Trustees will follow the requirements set forth in the California Government Code and the Education Code.

Announcement of the receipt of notification of vacancy will take place at a special or regular Board Meeting. Within 60 days of vacancy or notification of vacancy, the Board of Trustees will announce the filling of the vacancy by special election or by provisional appointment. The appointment of a Board member must be completed within that 60-day period.

Provisional Appointment Process

If the Board has chosen to fill the vacancy with a provisional appointment the Board of Trustees may adhere to the following process.

1. Notification of the filling of the vacancy will be sent to the Santa Clara County Superintendent of Schools and posted for the public within the district's boundaries (i.e. in a local publication, at district sites, on the district website, etc.).
2. The President of the Board will appoint an ad hoc committee to produce the application and interview questions based on individual input from members of the Board of Trustees. The results will be provided to the President for review and approval.
3. An application period will be announced to the community and applications made available on the district website and at the district office. All applicants must meet the requirements of a registered voter within the district boundaries and cannot be a district employee. Applications will be verified through the Santa Clara County Registrar of Voters.

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4. Candidates will be notified of the date, time, and location that interviews will be held during an Open Session of a special or regular Board Meeting.
5. At the Board Meeting, candidates will be invited to be interviewed by the Board of Trustees and the selection process will include:
 - a. Each candidate will undergo an initial 5-minute interview after which the Board of Trustees will identify three candidates to move on to a second 20-minute interview.
 - b. Candidates who have not yet been interviewed will be asked to wait in another room. Once a candidate has been interviewed he/she may remain in the Board Room.
 - c. The order of interviews will be determined randomly. All candidates' names will be put in a "hat" and drawn by the Clerk to determine order.
 - d. In the first round each candidate will have up to 5 minutes to answer the first round of questions.
 - e. Board members will be taking notes and will have the ability to ask clarifying questions as needed but will keep in mind the candidate's 5 minute time limit.
 - f. Once all candidates have been interviewed in the initial round, each Board member, without discussion, will record in writing his/her top three candidates. The three candidates receiving the largest number of votes will move on to the second interview round.

Should there be a tie between candidates, the Board will vote on the tied candidates for individual interview positions.

Should a tie ensue, opportunity for a Board member to change his/her vote will be given and another vote will be taken.

Should a tie persist, district Board Bylaw 9513 will be enacted and a name shall be drawn from a "hat."
 - g. Second round candidates will then return to another room and the Board will initiate its second round of interviews utilizing the same order as in the first round.
 - h. During the second round, candidates will have 20 minutes. A timekeeper will announce time at 10 minutes at 5 minutes and at 2 minutes remaining.

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- i. At the conclusion of the second round, the Board will take a short break to individually review their notes and reflect on the candidates. The President will reconvene the meeting and poll each Board member as to the qualities and characteristics he/she feels would be of most strength to the Board.
- j. Each Board member, without discussion, will record in writing his/her top candidate.
- k. *If there is consensus*, the President will ask for a nomination and a vote will be taken. The process would continue at Step n.

If there is not consensus, the President will call for a final consensus-building question. Candidates will return to another room and be called and questioned in the same order as they have been interviewed.

- l. The President will then poll Board members again, giving each board member the opportunity to revisit his/her notes; clarify the qualities or characteristics he/she feels important; and state the name of the candidate he/she feels best fits this criteria.
- m. *If after the consensus-building question there is consensus*, the President will ask for a motion to appoint and a vote will be taken. The process would continue at Step n.

If after the consensus-building question there is no consensus but a Split (2-1-1)

- (1) If there is no consensus but a *split* (i.e. 2-1-1), a vote will be taken to allow one of the “1-1” candidates to move on to a vote between him/herself and the “2”.
- (2) If a tie ensues as a result of a vote to address a split, opportunity for a Board member to change his/her vote will be given and another vote will be taken.
- (3) Should a tie persist, district Board Bylaw 9513 will be enacted and a name shall be drawn from a “hat.”

The Board will now vote between this candidate and the candidate receiving the 2 votes. Should a tie occur at this point, opportunity for a Board member to change his/her vote will be given and another vote will be taken.

FILLING VACANCIES (continued)

Should a tie persist, candidates will be asked if they wish to concede. If not, district Board Bylaw 9513 will be enacted and a name shall be drawn from a “hat.”

If after the consensus-building question there is no consensus but a Tie (2-2)

- (1) If there is no consensus but a *tie* (i.e. 2-2), opportunity for a Board member to change his/her vote will be given and another vote will be taken.
 - (2) Should a tie persist, candidates will be asked if they wish to concede. If not, district Board Bylaw 9513 will be enacted and a name shall be drawn from a “hat.”
- n. The name of the appointee will then be announced and the Clerk will swear in the appointee as of the effective date.
6. Notification of the provisional appointment will be sent to the Santa Clara County Superintendent of Schools and posted for the public within the district’s boundaries (i.e. in a local publication, at district sites, on the district website, etc.).
 7. If a petition calling for a special election containing the valid signatures of at least 1.5% of the number of registered voters of the district at the time of the last regular election for Board members held within the district is filed in the Office of the Santa Clara County Superintendent of Schools within 30 days from the date of the provisional appointment, the district will be required to hold a special election.

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)*