

<b>TITLE: Filling Vacancies</b>	
Approved by: _____ <div style="text-align: center; margin-left: 100px;"> <i>On File</i>  <i>Desiree Hastey, Board President</i> </div>	Series: <b>Board Bylaws</b> Version: <b>3</b> Effective Date: <b>July 14, 2021</b> Previous Policy <b>September 11,</b> Date: <b>2002</b> Revised By: <b>Policy</b> <b>Committee</b> Policy Number: <b>BB 9223</b>

Events Causing a Vacancy

A vacancy on the County Board of Education 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 County Board member's resignation (Government Code 1770)
4. A County Board member's removal from office, including by recall (Elections Code 11384; Government Code 1770)
5. A County Board member's ceasing to inhabit the trustee area which he/she represents on the County Board (Government Code 1770)
6. A County Board member's absence from the state for more than 60 days, except in the following situations: (Government Code 1064, 1770)
  - a. Upon County Board business with the approval of the County Board
  - b. With the consent of the County 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 County 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 County Board member for military deployment exceeds six months, the County 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 County Board may appoint an interim member to serve in his/her absence.

If two or more members of the County Board are absent by reason of military deployment, and those absences result in the inability to establish a quorum at a regular meeting, the County Board may immediately appoint one or more interim members as necessary to enable the County 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 County Board member or beyond the next regularly scheduled election for that office, whichever occurs first.

7. A County 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 without the permission required by law (Government Code 1770)
8. A County 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 County Board member's refusal or neglect to file his/her required oath within the time prescribed (Government Code 1770)
10. The decision of a competent tribunal declaring void a County Board member's election or appointment (Government Code 1770)
11. A County 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)
12. A "failure to elect" in which no candidate or an insufficient number of candidates have filed to run for a County Board seat(s) (Education Code 5090, 5326, 5328)

#### Timelines for Filling a Vacancy

When a vacancy occurs, the County Board shall take the following action, as appropriate: (Education Code 1008)

1. When a vacancy occurs within four months of the end of a County Board member's term, the County Board shall take no action. (Education Code 5093)
2. When a vacancy occurs more than four months before the end of a County Board member's term, the County Board shall either order an election or make a provisional

appointment within 60 days of the date of the vacancy or the filing of the member's deferred resignation unless a special election as described in item #3 below is required. (Education Code 5091, 5093)

3. When a vacancy occurs between six months and 130 days before a regularly scheduled County Board election, but the vacant position is not scheduled to be filled during that election, a special election to fill the position shall be consolidated with the regular election. The person elected shall take office at the first regularly scheduled County Board meeting following the certification of the election and shall serve 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 County Board, a person must meet the eligibility requirements specified in Education Code 1000 and 1006 and described in Board Bylaw 9220.

#### Provisional Appointments

When a special election is not required, the County Board is authorized by law to make a provisional appointment to fill a vacancy on the County Board. Before making a provisional appointment, the County Board shall advertise in the local media to solicit candidate applications or nominations. The County Board shall ensure that applicants are eligible for County Board membership, interview the candidates at a public meeting, accept oral or written public input, and select the provisional appointee by a majority vote.

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

Within 10 days after the appointment is made, the County 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 jurisdiction of the County Board. (Education Code 5092)

The notice shall contain: (Education Code 5092)

1. The date that the vacancy occurred or the date of the filing of, and the effective date of, the resignation
2. The full name of the provisional 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, the appointment shall become effective

#### 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 an election will not be held, the County 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 election. (Education Code 5328)

When an appointment is being made because of a failure to elect, the County Board shall publish a notice once in a newspaper of general circulation published in the county, or if no such newspaper exists, in a newspaper having general circulation within the county. This notice shall state that the County 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 specified above in the "Provisional Appointments" section.

#### Legal Reference:

##### EDUCATION CODE

1000 Composition and trustee area, county board of education

1006 Qualifications for holding office, county board of education

1007 Elections

5090-5095 Vacancies

5300-5304 General provisions (conduct of elections)

5320-5329 Order and call of election

5340-5345 Consolidation of elections

##### 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)

81 Ops.Cal.Atty.Gen. 98 (1998)

Management Resources:

CSBA PUBLICATIONS

Filling a Board Vacancy, rev. May 2012

WEB SITES

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

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

[http://ag.ca.gov/opinions/quo\\_warranto.php](http://ag.ca.gov/opinions/quo_warranto.php)