

Liberty Union High School District

Board Policy

Classification: Bylaws of the Board

Policy No. BP 9223

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Effective 6/18/86

Revised 9/11/24

Subject: Filling Vacancies

Events Causing a Vacancy

A vacancy on the Governing Board may arise from 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 the office for the remainder of the term (Government Code [1770](#))
3. A Board member's resignation in accordance with Board Bylaw 9222 – Resignation (Government Code [1770](#))
4. A Board member's removal from office by recall (Elections Code 11000 - [11384](#); Government Code [1770](#))
5. A Board member's ceasing to be a resident of the district (Government Code 1770)
6. A Board member's ceasing to inhabit the trustee area represented by the Board member. (Government Code [1770](#))
7. A Board member's absence from the state for more than 60 days, except in the following situations: (Government Code [1064](#), [1770](#))
 - a. Upon district business 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. In the case of illness or other urgent necessity, and upon a proper showing thereof, for more than 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 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. The term of an interim member appointed in these circumstances shall not extend beyond the return of the absent Board member or beyond the next regularly scheduled election for that office, whichever occurs first.
8. A Board member's ceasing to discharge the duties of the 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](#))

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9. A Board member's conviction of a felony or any offense involving a violation of official duties or conviction of a designated crime resulting in a forfeiture of office (Government Code [1770](#), [3000](#)-3003)

10. A Board member's refusal or neglect to file the required oath within the time prescribed (Government Code [1770](#))

11. The decision of a competent tribunal declaring void a Board member's election or appointment (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](#))

13. A "failure to elect" in which 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:

1. When a vacancy occurs within four months of the end of a Board member's term, the Board shall take no action. (Education Code [5093](#))

2. When a vacancy occurs between six months to 130 days before a regularly scheduled Board election at which the position is not scheduled to be filled, the vacancy shall be filled by a special election consolidated with the regular election. The person 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 the person was elected to fill. (Education Code [5093](#))

3. When a vacancy occurs any time outside of the statutory time windows identified in Items #1 and #2 above, the 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, whichever is sooner. (Education Code 5091, 5093)

Eligibility for Appointments

In order to be appointed to fill a vacancy on the Board, a person must meet the eligibility requirements specified in law and Board Bylaw 9220 – Governing Board Elections.

Provisional Appointments

When as authorized by law, the Board has opted to make a provisional appointment to fill a vacancy, the Board, by resolution, may approve the procedures for selecting the person to be provisionally appointed to fill the vacancy. These procedures may, but are not required to, include the following:

1. Advertising in the local media to solicit candidate applications

2. Establishing a committee consisting of less than a quorum of the Board to ensure that applicants are eligible for Board membership and announce the names of the eligible candidates

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3. Interviewing the candidates at a public meeting

Within 10 days after the Board makes a provisional appointment to fill a Board vacancy, the Superintendent or designee, on behalf of the Board, shall post a notice of the actual vacancy, or the filing of a deferred resignation, and the provisional appointment. The Superintendent or designee shall post the notice as follows: (Education Code [5092](#))

1. In three public places in the district or, if applicable, trustee area

2. On the district's website

3. In a newspaper of general circulation published in the district, if such a newspaper exists

The notice shall contain: (Education Code 5092)

1. The fact of the vacancy or resignation

2. The date of the occurrence of the vacancy or the date of the filing of, and the effective date of, the resignation

3. The full name of the provisional appointee to the Board and the date of the provisional appointee's 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.

The person appointed shall only hold office until the next regularly scheduled election for district Board members.

If within 30 days of the Board's appointment, registered voters of the district or, where elections are by trustee area, of the trustee area, submit a petition for special election that the County Superintendent determines to be legally sufficient, the provisional appointment is terminated, and a special election shall be held in accordance with Education Code 5091 to fill the vacancy.

Appointment Due to Failure to Elect

When a vacancy occurs because no candidate or an insufficient number of candidates have been nominated 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](#))

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](#))

When, as authorized by law, the Board seeks to make an appointment because of a failure to elect, the Board by resolution, may approve any additional the procedures for selecting the person to be appointed to fill the vacancy.

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State References

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Ed. Code 35107	School district employees
Ed. Code 35178	Resignation with deferred effective date
Ed. Code 5000-5033	Election of school district board members
Ed. Code 5090-5095	Vacancies on the board
Ed. Code 5200-5208	Districts governed by boards of education
Ed. Code 5300-5304	General provisions; conduct of elections
Ed. Code 5320-5329	Order and call of elections
Ed. Code 5340-5345	Consolidation of elections
Ed. Code 5360-5363	Election notice
Ed. Code 5420-5426	Cost of elections
Ed. Code 5440-5442	Miscellaneous provisions
Elec. Code 10600-10604	School district elections
Elec. Code 11000-11386	Candidates for recall
Gov. Code 1064	Absence from state
Gov. Code 1770	Vacancy of office
Gov. Code 3000-3003	Forfeiture of office
Gov. Code 3060-3075	Removal other than by impeachment
Gov. Code 54950-54963	The Ralph M. Brown Act
Gov. Code 6061	Manner of notice as prescribed in designated section

State References

Description

Pen. Code 88	Crimes against legislative power
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Federal References

Description

18 USC 704	Military medals or decorations
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Management Resources References

Description

Attorney General Opinion	105 Ops.Cal.Atty.Gen. 182 (2022)
Attorney General Opinion	58 Ops.Cal.Atty.Gen. 888 (1975)
CSBA Publication	Filling a Board Vacancy, rev. 2022
Website	CSBA District and County Office of Education Legal Services
Website	California State Attorney General's Office, Quo Warranto Applications
Website	CSBA

Cross References

Description

1113	District And School Websites
1113	District And School Websites
1113-E(1)	District And School Websites
1340	Access To District Records
1340	Access To District Records
9100	Organization
9110	Terms Of Office
9130	Board Committees
9220	Governing Board Elections
9220-E(1)	Governing Board Elections
9222	Resignation
9224	Oath Or Affirmation
9230	Orientation
9323.2	Actions By The Board
9323.2-E(1)	Actions By The Board