

**PROCEDURES FOR FILLING A SCHOOL DISTRICT
GOVERNING BOARD MEMBER VACANCY
SAN YSIDRO SCHOOL DISTRICT**

A governing board position becomes vacant on the occurrence of any of the events specified in Government Code section 1770 or as required under Government Code section 1099(b).

Pursuant to Education Code section 5090 et seq., within 60 days of a vacancy or the filing of a deferred resignation 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 order an election to fill the vacancy.

An amended copy of the Statement of Facts, Roster of Public Agencies Filing must be filed with the Office of the Secretary of State and the Assessor/Recorder/County Clerk within ten days of the effective date of the vacancy. A copy of the form and mailing instructions are enclosed.

Election

If the board determines to order 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 election. 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.
3. A provisional appointment confers all powers and duties upon the appointee immediately following the appointment and the administration of the Oath of Office.
 - 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 by Education Code section 60 to administer the Oath of Office.
 - b. The original, signed Oath of Office form must be mailed to the San Diego County Clerk, The yellow copy should be retained by the clerk of the governing board. A copy of the form and mailing instructions are enclosed.
4. 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.

County Counsel has prepared a template of a Notice of Provisional Appointment for district use. A copy of the template and posting instructions are enclosed. A copy of the notice should be mailed to Legal Services, San Diego County Office of Education.

- b. An amended copy of the Statement of Facts, Roster of Public Agencies Filing must be filed with the Office of the Secretary of State and the Assessor/Recorder/County Clerk. A copy of the form and mailing instructions are enclosed.
5. Unless a petition calling for a special election is filed with the County Superintendent of Schools within 30 days after the date of the provisional appointment, it shall become an effective appointment.
6. The appointee shall hold office until the regularly scheduled governing board member election on November 8, 2016; however, pursuant to Government Code section 1302, said appointee shall continue to discharge the duties of his or her office until a successor has qualified.

Petition Calling for a Special Election

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 election official's estimate 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 the requirements of Elections Code sections 100 and 104.
2. The 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 1½ 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 fewer 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.

The last regular governing board member election was held on November 4, 2014, at which time the number of registered voters in the San Ysidro School District was 12,763; therefore, the petition for a special election shall be signed by at least 192 registered voters.

3. The petition shall be submitted to the County Superintendent of Schools, who shall have 30 days to verify the signatures. If the petition is determined to be legally sufficient, 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.
4. If any of the requirements for the petition are not met, the County Superintendent of Schools shall not verify the signatures, nor shall any further action be taken with respect to the petition.
5. The list of names on a petition calling for a special election shall not be used for any purpose other than qualification of the petition for the purpose of holding an election pursuant to this code section.
6. The petition filed with the County Superintendent of Schools shall be subject to the restrictions in Government Code section 6253.5.

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SAN YSIDRO SCHOOL DISTRICT

**TIMELINE FOR GOVERNING BOARD APPOINTMENT
2015**

November 17	Letter of resignation filed with County Superintendent of Schools
November 19	Special Meeting of Governing Board <ul style="list-style-type: none">• Board Action Item: Approve process and procedures for filling governing board vacancy• If appointment, discussion of timeline and process for making appointment
November 20	Recruitment and Applications <ul style="list-style-type: none">• Application packet available at district office, on district website• Press release announcing vacancy• Announcements posted on website and at district office and school sites
December 4	Applications due in District Office by 5:00 p.m.
December 10	Regular Board Meeting (open session) <ul style="list-style-type: none">• Board Action Item: Appoint Candidate to Fill Vacancy on Governing Board• Applicant interviews• Board discussion and voting on appointment• Appointee is administered oath of office
January 18, 2016	60th day: 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)]

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Interview Process and Procedures for Appointment to Board Vacancy

San Ysidro School District

1. Interview candidates*

- Candidate presentation/introduction (up to 5 minutes) and
- Interview questions by Board members (up to 5 minutes)
- Note: Time limits are meant only as a guide, Board reserves the right to shorten or extend the time for candidate interviews
- Confidential interview questions to be developed by 2 Board Members and/or Superintendent

2. Open discussion by Board about candidates

3. Motion to nominate a candidate for appointment to vacancy

- If candidate receives three or more votes, that candidate will be appointed to fill the vacancy
- If the candidate does not receive at least three votes, the motion fails and a board member may make a new motion to nominate a candidate for appointment to the vacancy

*All interviews, discussion and board action will be conducted in open session

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San Ysidro School District

Application for Governing Board Appointment*
THIS APPLICATION IS A PUBLIC RECORD

The appointee will hold office until the next governing board member election, which occurs at the next Statewide General Election on November 8, 2016. [EC § 5091(e)]

QUALIFICATIONS:

Applicant must be a registered voter and a resident of the San Ysidro School District. 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. [EC § 35107]

Certification of qualifications on page 5 must be signed by the applicant.

APPLICATION DEADLINE:

This application must be received no later than **December 4, 2015 at 5:00 p.m.** Applications may be mailed, faxed, or hand-delivered to:

Julio Fonseca Ed.D., Superintendent
San Ysidro School District Office
4350 Otay Mesa Road
San Ysidro, CA 92173-1685
Phone: (619) 428-4476, ext. 3021
Fax: (619) 428-1505

(Please type or print):

Name _____

Address _____

City, State & Zip Code _____

Telephone No. Home () _____ Business () _____

Email _____

Years of Residence in the San Ysidro School District _____

*This application was approved by the San Ysidro School District Board on _____

**San Ysidro School District
Application for Board Appointment**

3. What skills, abilities, and experience would you bring to the Board to assist in carrying out its responsibilities?

4. List your involvement in activities that demonstrate your understanding and support for public education, such as membership on committees/organizations, offices held, volunteer work, and community service.

**San Ysidro School District
Application for Board Appointment**

5. List, in order of importance, the major issues confronting public education and, specifically, the San Ysidro School District.

6. Explain the mission of the San Ysidro School District.

**San Ysidro School District
Application for Board Appointment**

CERTIFICATION OF QUALIFICATIONS:

I understand that this application is a public document and may be requested under provisions of the Public Records Act and/or be available to the public on the San Ysidro School District website.

I understand that upon appointment I would be required to file a Conflict of Interest Statement and take an Oath of Office.

I certify I am not disqualified to hold this office because of a conviction of any of the crimes on the attached list and further certify I am not otherwise disqualified under the California Constitution or statutes from holding public office.

I certify that I reside within the San Ysidro School District boundaries that I am a registered voter in the San Ysidro School District.

I attest the foregoing information is true to the best of my knowledge.

Signature of Applicant

Date

Information contained on this application may be subject to verification.

The following is a list of crimes, conviction of which precludes a person from holding public office in the State of California. Conviction of these crimes renders a person “forever disqualified from holding any office in this state.”

- *Bribing executive officer (Penal Code § 67)*
- *Officer asking or receiving bribes (Penal Code §§ 68, 88)*
- *Receiving gratuity for appointment to office (Penal Code § 74)*
- *Judicial Officer who has asked for or received emoluments, gratuities, rewards, or the fee of a stenographer (Penal Code § 94)*
- *Giving or offering bribe to Councilman or Supervisor (Penal Code § 165)*
- *Misappropriation of public funds (Penal Code § 424)*
- *Interference with work or discipline of, or giving certain articles to prisoners (Penal Code § 2772)*
- *Interference with or giving certain articles to convicts (Penal Code § 2790)*
- *Officer making contracts in which he or she is interested (Government Code § 1097)*
- *Members of the Legislature convicted of any crime (Government Code § 9055)*
- *Corrupting the voting process (Elections Code § 18501)*
- *Convicted of a felony involving accepting, giving, or offering of any bribe, embezzlement or theft of public funds, extortion, perjury, or conspiracy to commit any such crime, except if a pardon has been granted in accordance with law (Elections Code § 20)*

Please note that in addition to the above restrictions, Government Code § 1126 prohibits any local agency official from engaging “in any employment, activity, or enterprise for compensation which is inconsistent, incompatible, in conflict with, or inimical to his or her duties as a local agency officer or employee or with the duties, functions, or responsibilities of his or her appointing power or the agency by which he or she is employed.”

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. Upon being filed with the County Superintendent, a written resignation, whether specifying a deferred effective date or otherwise, shall be irrevocable. (Education Code 5090, 5091)

4. A Board member's removal from office, including by recall (Elections Code 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 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, the time limited for absence from the state may be extended by the 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

FILLING VACANCIES (continued)

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.

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

FILLING VACANCIES (continued)

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 longer than four 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)

Eligibility

In order to be appointed or elected to fill a vacancy on the Board, a person must meet the eligibility requirements specified in Education Code 35107.

(cf. 9220 - Governing Board Elections)

Provisional Appointments

When authorized by law to make a provisional appointment to fill a vacancy on the Board, 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.

(cf. 9130 - Board Committees)

(cf. 9323.2 - Actions by the Board)

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)

FILLING VACANCIES (continued)

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)

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 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. December 2010

WEB SITES

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

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

http://ag.ca.gov/opinions/quo_warranto.php

**SAN YSIDRO SCHOOL DISTRICT
BOARD OF EDUCATION**

RESOLUTION NO. 15/16-0005

**RESOLUTION AUTHORIZING THE SAN YSIDRO DISTRICT
TO DECLARE A LOCAL STATE OF EMERGENCY TO ADDRESS
THE IMMEDIATE NEEDS OF THE DISTRICT'S HOMELESS YOUTH**

WHEREAS, on November 16, 2015, the City Council of San Diego declared a local state of emergency regarding anticipated El Niño weather conditions through the winter of 2015/2016 (Resolution 2016-249) pursuant to Government Code section 8630; and

WHEREAS, these El Niño conditions make unusually heavy rains and potential flooding likely in San Ysidro and highly likely this winter; and

WHEREAS, impending El Niño rains threaten extreme peril to life and property within the City; and

WHEREAS, the San Ysidro School District provides education and other social services to a disproportionate number of disenfranchised students which include, but is not limited to, approximately 1,550 identified homeless students; and

WHEREAS, due to anticipated El Niño weather conditions, it is likely the San Ysidro School District children and their families will need to access shelters and homeless services; and

WHEREAS, even without El Niño weather conditions, identified homeless children in the San Ysidro School District experience living in substandard, overcrowded, or other precarious situations, placing such students at heightened risk of illness, serious injury, hunger, mental and physical abuse, neglect, educational delay, and increased risk of dropping out of school altogether; and

WHEREAS, many San Ysidro School District homeless unaccompanied youth avoid current existing shelters and other services because they fear being removed from their parent/guardian and taken into the foster care system; and

WHEREAS, during the 2015-2016 school year, the Superintendent of Schools of the San Ysidro School District initiated a "call to action" to begin to address the needs of the District's homeless and other disenfranchised children through the implementation of "Project Dream;" and

WHEREAS, the San Ysidro School District Board of Education is committed to supporting all students, especially those in need; and

WHEREAS, communities across the country are finding that pairing antipoverty strategies with schools result in positive student outcomes as well as improve the delivery of public benefits; and

WHEREAS, schools can play a pivotal role in providing the important economic services that stabilize families—services that can also eliminate some of the challenges that undermine student academic achievement; and

WHEREAS, school-based antipoverty initiatives in places such as New York City, Michigan, San Diego, and New Mexico highlight the success students can realize, not only in the classroom but also as it concerns their overall sense of well-being, when the traditional role of the school is expanded to include services targeting poverty; and

WHEREAS, the San Ysidro School District acknowledges the fundamental right of children to adequate housing and that the dangers of not having safe and adequate housing are detrimental to children’s health and welfare, which is ultimately a significant barrier to learning; and

WHEREAS, California Government Code section 8550 empowers governing bodies of political subdivisions, such as school districts, of this State, the emergency powers to ensure preparations within the state to deal with such emergencies; and

NOW, THEREFORE, BE IT RESOLVED as follows:

1. Resolved that the San Ysidro School District Board of Education declares a “local state of emergency” and calls for immediate action to ensure that all of the District’s students have access to adequate shelter and that programs that address the housing needs of low-income families should be developed and implemented through a collaborative effort of community agencies and stakeholders during the local state of emergency; and
2. Resolved that whenever it is in the student’s best interest, children should be housed with their families; and
3. Resolved that during the 2015-2016 school year, designated District property be used to serve as temporary relief shelter for the District’s homeless children, especially during inclement weather months; and
4. Resolved that the San Ysidro School District Board of Education directs the Superintendent of Schools to develop a three-to-five-year plan of action to designate all schools in the District as Full-Service Community Schools in order to remove the barriers of poverty, and allow students to be fully prepared and engaged to the education provided by the District.

BE IT FURTHER RESOLVED that the District requests that the California State Governor proclaim a state of emergency for the San Ysidro School District for the reasons set forth above.

BE IT FURTHER RESOLVED that the Board of Education directs the Superintendent to forward a copy of this Resolution to the Governor with the request that he proclaim the San Ysidro School District to be in a local state of emergency.

PASSED AND ADOPTED THIS 19TH day of November, 2015 at a special meeting of the Board of Education.

Antonio Martinez, President

Marcos A. Diaz, Vice-President

Rodolfo Linares, Clerk

Steven Kinney, Member

Julio Fonseca Ed.D., Superintendent