

Board Office Use: Legislative File Info.	
File ID Number	22-1288
Introduction Date	May 11, 2022
Enactment Number	
Enactment Date	



**OAKLAND UNIFIED
SCHOOL DISTRICT**
Community Schools, Thriving Students

AMENDMENT, REDLINED COPY
(PDF Pages 8-9)

Board Cover Memorandum

To Board of Education

From Kyla Johnson-Trammell, Superintendent
Joshua R. Daniels, Chief Governance Officer

Meeting Date May 11, 2022

Subject Filling Board of Education Member Vacancy in District 6

Ask of the Board Adoption by the Board of Education of either Resolution No. 2122-0084A - Filling Board of Education Member Vacancy in District 6 by Ordering an Election or Resolution No. 2122-0084B - Filling Vacancy in District 6 by Appointment

Background Shanthi Gonzales, the District 6 Director on the Board of Education (“Board”), resigned her position as a Member of the Board, effective May 2, 2022, thereby creating a vacancy.

Section 404 of the Charter of the City of Oakland (“Charter”) states, in relevant part, that “[t]he provisions of the Education Code of the State of California shall apply as to matters not provided for in this Charter” and the Charter does not specify the methods by which a School Board vacancy is filled.” Under Education Code section 5091 (“Section 5091”), the governing board of a school district “shall, within 60 days of the vacancy . . . , either order an election or make a provisional appointment to fill the vacancy.”

If an election is ordered, Section 5091 dictates that “it shall be held on the next established election date . . . not less than 130 days after the order of the election” and the person elected to fill the vacancy “shall hold office for the remainder of the term in which the vacancy occurs or will occur.”

If the Board elects to make a provisional appointment, the person appointed shall hold office for the remainder of the term (in this situation). However, Section 5091 allows the registered voters of District 6 to petition for an election to fill the vacancy after a provisional appointment is made. To do so, a certain number of signatures need to be collected within 30 days of the

provisional appointment. If that occurs, the provisional appointment is immediately terminated and the Alameda County Superintendent would call a special election to fill the vacancy.

If the Board fails to call an election or make a provisional appointment within 60 days (i.e., by July 1, 2022), the Alameda County Superintendent of Schools shall order an election to fill the vacancy.

Discussion

Resolution 2122-0084A - Filling Board of Education Member Vacancy in District 6 by Ordering an Election is provided if the Board wishes to order an election to fill the District 6 vacancy. As soon as the vacancy was known, staff reached out to the City Clerk of the City of Oakland as well as the Alameda County Registrar of Voters to determine the likely timeline, details, and estimated cost of ordering such an election. As of posting, no response has been provided. Staff will attempt to get this information in time for the May 11, 2022 meeting.

Resolution No. 2122-0084B - Filling Vacancy in District 6 by Appointment is provided if the Board wishes to fill the District 6 vacancy by making a provision appointment. Neither the Education Code, including Section 5091, nor OUSD Board Policies dictate the process by which the Board shall make a provisional appointment. It is only through resolution adopted by the Board that the process is determined.

The process set forth in Resolution No. 2122-0084B is based on the process that the Board approved in 2013 when filling the District 4 vacancy created when Director Gary Yee stepped down to become the Interim Superintendent. The basic steps then were: application; verification of eligibility; interview; and selection. That process is similar to the one recommended by the California School Boards Association ("CSBA") in a packet it published in 2012 titled "Filling A Board Vacancy." Both the 2013 resolution and the CSBA packet are attached to this item for reference and information.

Starting with the basic process from 2013, staff made some adjustments for clarity, efficiency, and fairness. For instance, the questions in the proposed application are similar but not exactly the same as the list of questions from 2013. There is also an added step to narrow the list of applicants to interview to only three individuals rather than interview all eligible applicants as was done in 2013.

As described in more detail in Exhibits A and B to Resolution No. 2122-0084B, the proposed process to fill the vacancy is:

- The application (which is included as Exhibit B to Resolution No. 2122-0084B) would be posted by May 16.
- Interested applicants would need to submit an application by June 1.
- The Registrar of Voters would then confirm the eligibility of each applicant by June 8.
- If there were more than three eligible applicants, the Board would hold a special meeting the week of June 13-17 to select up to three applicants to interview.
- The Board would interview those applicants at its regular meeting on June 22. The questions would be included in the Board agenda packet and the interview for each applicant would have a time limit of 20 minutes.
- The Board would vote on who to appoint at its regular meeting on June 29. The Board would only be able to appoint an individual who was interviewed by the Board.

While the Board does not have to decide which method to fill the vacancy (election or appointment) at this meeting (on May 11), it is strongly recommended to do so (particularly if the Board wants to appoint) as the 60-day timeline to either order an election or make a provision appointment cannot be waived or extended.

Fiscal Impact Staff has requested a cost estimate of an election but has not received it as of the posting deadline. (For reference, however, the estimated cost of the District 4 election in 2013 was between \$250,000 and \$430,000 depending on the type of election and the number of voters.)

No significant costs are expected to be incurred if the Board initiates the process to make a provisional appointment unless the voters of District 6 successfully petition for a special election.

Attachments

- Resolution No. 2122-0084A - Filling Board of Education Member Vacancy in District 6 by Ordering an Election
- Resolution No. 2122-0084B - Filling Vacancy in District 6 by Appointment (including Exhibits A and B)
- 13-0706 District 4 Vacancy on Board of Education (documents from last process in 2013 to fill Board vacancy)
- California School Boards Association: Filling A Board Vacancy
- Education Code section 5090-5095

**RESOLUTION OF THE
BOARD OF EDUCATION OF THE
OAKLAND UNIFIED SCHOOL DISTRICT**

Resolution No. 2122-0084A

Filling Board of Education Member Vacancy in District 6 by Ordering an Election

WHEREAS, Shanthi Gonzales, the District 6 Director on the Board of Education (“Board”), resigned her position as a Member of the Board, effective May 2, 2022, thereby creating a vacancy;

WHEREAS, Section 404 of the Charter of the City of Oakland (“Charter”) states, in relevant part, that “[t]he provisions of the Education Code of the State of California shall apply as to matters not provided for in this Charter” and the Charter does not specify the methods by which a School Board vacancy is filled;

WHEREAS, under Education Code section 5091 (“Section 5091”), the governing board of a school district “shall, within 60 days of the vacancy . . . , either order an election or make a provisional appointment to fill the vacancy”; and

WHEREAS, if an election is ordered, Section 5091 dictates that “it shall be held on the next established election date . . . not less than 130 days after the order of the election” and the person elected to fill the vacancy “shall hold office for the remainder of the term in which the vacancy occurs or will occur”.

NOW, THEREFORE, BE IT RESOLVED, the Board hereby orders an election to fill the District 6 Board vacancy; and

BE IT FURTHER RESOLVED, the Board hereby directs the Superintendent or designee to take all necessary steps to effectuate the Board’s order of an election to fill the District 6 Board vacancy.

PASSED AND ADOPTED by the Board of Education of the Oakland Unified School District this ____ day of _____, 2022, by the following vote:

PREFERENTIAL AYE:

PREFERENTIAL NOE:

PREFERENTIAL ABSTENTION:

PREFERENTIAL RECUSE:

AYES:

NOES:

ABSTAINED:

RECUSED:

ABSENT:

CERTIFICATION

We hereby certify that the foregoing is a full, true and correct copy of a Resolution passed at the Meeting of the Board of Education of the Oakland Unified School District held on _____, 2022.

Legislative File	
File ID Number:	22-1288
Introduction Date:	May 11, 2022
Enactment Number:	
Enactment Date:	
By:	

OAKLAND UNIFIED SCHOOL DISTRICT

Gary Yee
President, Board of Education

Kyla Johnson-Trammell
Superintendent and Secretary, Board of Education

**RESOLUTION OF THE
BOARD OF EDUCATION OF THE
OAKLAND UNIFIED SCHOOL DISTRICT**

Resolution No. 2122-0084B

Filling Vacancy in District 6 by Appointment

WHEREAS, Shanthi Gonzales, the District 6 Director on the Board of Education (“Board”), resigned her position as a Member of the Board, effective May 2, 2022, thereby creating a vacancy;

WHEREAS, the Section 404 of the Charter of the City of Oakland (“Charter”) states, in relevant part, that “[t]he provisions of the Education Code of the State of California shall apply as to matters not provided for in this Charter” and the Charter does not specify the methods by which a School Board vacancy is filled;

WHEREAS, under Education Code section 5091 (“Section 5091”), the governing board of a school district “shall, within 60 days of the vacancy . . . , either order an election or make a provisional appointment to fill the vacancy”;

WHEREAS, neither the Education Code, including Section 5091, nor OUSD Board Policies dictate the process by which the Board shall make a provisional appointment;

WHEREAS, if the Board elects to make a provisional appointment, the person appointed shall hold office for the remainder of the term except that the registered voters of District 6 may, within 30 days from the date of the appointment, petition for an election to fill the vacancy and, if the number of petition signatures are certified legally sufficient, the provisional appointment would be terminated and the Alameda County Superintendent shall call a special election to fill the vacancy; and

WHEREAS, alternately, if the Board fails to make a provisional appointment or call an election within 60 days, the Alameda County Superintendent of Schools shall order an election to fill the vacancy.

NOW, THEREFORE, BE IT RESOLVED, the Board hereby declares and determines that the District 6 vacancy, for the term ending January 2, 2023, shall be filled by provisional appointment;

BE IT FURTHER RESOLVED, the Board hereby establishes the process to make the provisional appointment as provided for in Exhibit A (Decision Timeline and Details) and Exhibit B (Application); and

BE IT FURTHER RESOLVED, the Board hereby directs the Superintendent or designee to take all necessary steps to enable, support, and execute the process provided for in Exhibit A (Decision Timeline and Details) and Exhibit B (Application), including (but not limited to) translation the application into the necessary language and posting the notices required under Education Code section 5092.

PASSED AND ADOPTED by the Board of Education of the Oakland Unified School District this ____ day of _____, 2022, by the following vote:

PREFERENTIAL AYE:

PREFERENTIAL NOE:

PREFERENTIAL ABSTENTION:

PREFERENTIAL RECUSE:

AYES:

NOES:

ABSTAINED:

RECUSED:

ABSENT:

CERTIFICATION

We hereby certify that the foregoing is a full, true and correct copy of a Resolution passed at the Meeting of the Board of Education of the Oakland Unified School District held on _____, 2022.

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OAKLAND UNIFIED SCHOOL DISTRICT

 Gary Yee
 President, Board of Education

 Kyla Johnson-Trammell
 Superintendent and Secretary, Board of Education

Resolution 2122-0084B
Exhibit A: Decision Timeline and Details

Date	Meeting Type	Decision/Details
May 11, 2022	Regular	Board approves process to make the provisional appointment.
May 16, 2022	N/A	Application period opens. Details, including application, are posted on OUSD website. OUSD issues press release.
June 1, 2022	N/A	Application period closes at 5:00 p.m. Applications must be submitted via email to BOE6Vacancy@ousd.org . Late applications will not be accepted. Applicants may not submit additional documentation or information.
June 8, 2022	N/A	Registrar of Voters determinations eligibility of each applicant.
Week of June 13-17, 2022 Exact Date TBD by Board President	Special (if needed)	If there are more than three (3) eligible applicants, Board votes to selects up to three (3) <u>select</u> applicants to be interviewed. All applicant materials (with personal contact information redacted) are included in Board agenda packet for public review.
June 22, 2022 <u>or special meeting</u>	Regular/ <u>Special</u>	Board interviews final three applicants in person unless safety or public health concerns dictate that the final three applicants should appear virtually. Each Board member shall be permitted to ask up to two questions. The Board will not be permitted to ask follow-up or clarifying questions. Each Board member shall work with the Chief Governance Officer to develop appropriate questions and to ensure that Board members do not ask the same questions. The questions shall be included in the Board agenda packet. The interview for each applicant shall end after 20 minutes regardless of whether the applicant has responded to all questions. Except where an applicant is unable to respond verbally to the interview questions, all applicants are prohibited from submitting written responses or other documentation.
June 29, 2022 <u>June 29, 2022 or special meeting between June 27-30, 2022 with exact date TBD by Board President</u>	Regular/ <u>Special</u>	Board votes to make a provisional appointment of an individual to serve out the term for the vacant District 6 seat. The Board may only appoint an individual who was interviewed by the Board.

Resolution 2122-0084B
Exhibit B: Application to Fill District 6 Board of Education Vacancy
for the Term Ending January 2, 2023

This application contains three parts. Applicants are required to complete Part I (Basic Information and Questions) and Part III (Eligibility, Affirmations, and Signature). Part II (Personal & Professional Information and Language Competencies) is optional. Please direct all questions to Edgar Rakestraw at BOE6Vacancy@ousd.org.

All applications must be submitted via email to Edgar Rakestraw at BOE6Vacancy@ousd.org by 5:00 p.m. on June 1, 2022. Late applications or applications without responses to all required parts completed will not be accepted.

PART I. BASIC INFORMATION AND QUESTIONS (REQUIRED)

A. Basic Information

Legal Name: _____

Home Street Address: _____

Personal Email: _____ Phone: _____

B. Questions

On a separate document, please respond to the following questions. At the end of each response, please include the total word count for that response. The word count limit for each response is 250 words. Any response beyond 250 words will not be considered. Failure to respond to all questions will result in the disqualification of the applicant.

1. Why do you want to be a Board Member?
2. What are the areas of knowledge or expertise that you would bring to the Board-?
3. What do you see as the major responsibilities of a Board Member?
4. How does the Board's role differ from that of the Superintendent?
5. Identify the most significant issues confronting the District and include your position. Please include the ways you feel the District should respond to this issue.
6. Identify any District or school committees/commissions/entities on which you currently serve or have served in the past five years. Describe your role(s) and responsibilities.
7. Please add anything else you feel is relevant to your interest in serving as a Board Member-.

PART II. PERSONAL & PROFESSIONAL INFORMATION AND LANGUAGE COMPETENCIES (OPTIONAL)

A. Personal & Professional Information

Number of Years Residing in Oakland: _____ Number of Years Residing in District 6: _____

Are you the legal guardian of students currently enrolled in OUSD?

Yes. Which school(s): _____

No.

Current Occupation & Employer: _____

List any positions you hold or have held as an OUSD employee, former employee, or consultant:

Position, Role, or Title	For What Year(s)?

List your educational background information:

Name of Institution	State	Degree/ Units	Month/Year of Graduation	Major(s)/ Minor(s)

B. Language Competencies

Please list any language competencies (other than English) and the level of your competency:

PART III. ELIGIBILITY, AFFIRMATIONS, AND SIGNATURE (REQUIRED)

A. Eligibility Information

Please select "Yes" or "No" for each of the following. If the answer is "No" to any of the following questions, you are not eligible to serve as a Board Member.

- | <u>Yes</u> | <u>No</u> | |
|--------------------------|--------------------------|---|
| <input type="checkbox"/> | <input type="checkbox"/> | I am 18 years of age or older. |
| <input type="checkbox"/> | <input type="checkbox"/> | I am a resident of the City of Oakland. |
| <input type="checkbox"/> | <input type="checkbox"/> | I reside in District 6. |
| <input type="checkbox"/> | <input type="checkbox"/> | I am a registered voter. |

B. Affirmations

Please initial on each of the following to affirm you each of the following statements:

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

_____ I have read Board Bylaw 9270 - Conflict of Interest and Board Bylaw 10000 - Conflict of Interest Code.

_____ I certify I am not disqualified to hold this office because of a conviction of any disqualifying crime and further certify I am not otherwise disqualified under the California Constitution or state law from holding public office. (A partial list of disqualifying crimes begins on the next page.)

_____ I understand a Board Member's responsibility requires attendance at: (1) twice monthly regular Board meetings; (2) frequent special meetings; and (3) numerous school and other public events. I understand that I will be required to read my Board packet and be prepared to make decisions on complex educational issues.

_____ I understand that my application (and all responses contained herein) will become public information in accordance with state law (e.g., Brown Act, Public Records Act).

C. Signature

I certify that all the information included in this application is true and correct under penalty of perjury (electronic signatures are acceptable).

Signature: _____

Date: _____

The following is a list of at least some crimes the conviction of which disqualifies a person from holding public office in the State of California. It is not necessarily an exhaustive list.

- *California Constitution, Article VII, Section 8*: Giving or offering a bribe to procure personal election or appointment
- *California Constitution, Article VII, Section 8*: Bribery, perjury, forgery, malfeasance in office, or other high crimes
- *Penal Code section 67*: Giving or offering a bribe to any executive officer in the state to influence any decision made by that officer in his or her official capacity
- *Penal Code section 68*: While an executive or ministerial officer, employee, or appointee of the state, a county, a city, or another political subdivision of the state, asking for, receiving, or agreeing to receive any bribe to influence any decision made by that person in his or her official capacity
- *Penal Code section 74*: As a public officer, for gratuity or reward, appointing another person to public office, or permitting another person to exercise or discharge the duties of his or her office
- *Penal Code section 88*: While a member of the Legislature or of a legislative body of a city, county, city and county, school district, or other special district, committing any of various crimes against the Legislative power, including bribery and logrolling
- *Penal Code section 94*: While a Judicial Officer, asking for or receiving any emolument, gratuity, or reward, or any promise thereof, except such as may be authorized by law, for doing any official act
- *Penal Code section 98*: While an officer, committing any of various bribery and corruption crimes against the public justice, including bribing or threatening judges or jurors
- *Penal Code section 165*: Giving or offering a bribe to a member of a city council or a board of supervisors to influence any decision made by that member in his or her official capacity
- *Penal Code section 424*: While an officer of the state or of any county, city, town, or district of the state, or while otherwise charged with the receipt, safekeeping, transfer, or disbursement of public moneys, appropriating such moneys for personal use, or refusing to pay any public moneys as required by law
- *Penal Code section 2772*: Interfering with the work of prisoners employed at a road camp, or giving or attempting to give such prisoners any controlled substances, intoxicating liquors, firearms, weapons, or explosives of any kind
- *Penal Code section 2790*: Interrupting the work of prisoners employed at a public park or camp, or giving or attempting to give such prisoners any controlled substances, intoxicating liquors, firearms, weapons, or explosives of any kind
- *Government Code section 1021*: Provides a person is disqualified from holding public office upon conviction of designated crimes as specified in the Constitution and laws of the State
- *Government Code section 1097*: While a public official, being financially interested in a contract made in his or her official capacity, or by any body or board of which he or she is

a member

- *Government Code section 9055*: While a member of the Legislature or of a legislative body of a city, county, city and county, school district, or other special district, committing any of various crimes against the Legislative power, including bribery and logrolling
- *Government Code section 9412*: While a member of the Legislature, refusing to appear before the Senate, Assembly, or any committee of the Legislature after being summoned to testify, or while appearing before the Senate, Assembly, or any committee, refusing to be sworn or to answer any material and proper question, or refusing to produce, upon reasonable notice, any material and proper books, papers, or documents in his or her possession and under his or her control
- *Election Code section 20*: Committing a felony involving accepting or giving, or offering to give, any bribe, the embezzlement of public money, extortion or theft of public money, perjury, or conspiracy to commit any of those crimes
- *Elections Code section 18501*: While a public official, aiding the illegal casting of a vote at an election or otherwise facilitating the perpetration of election fraud

Please note that, in addition to the above restrictions, Government Code section 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.”