

Board Office Use: Legislative File Info.	
File ID Number	23-0599
Introduction Date	3/22/2023
Enactment Number	FAILED
Enactment Date	



Board Cover Memorandum

To Board of Education

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

Meeting Date March 22, 2023

Subject Filling Board of Education Member Vacancy in District 5

Ask of the Board **Adoption by the Board of Education of either Resolution No. 2223-0047A - Filling Board of Education Member Vacancy in District 5 by Ordering an Election** or Resolution No. 2223-0047B - Filling Vacancy in District 5 by Appointment

Background Mike Hutchinson was elected as District 5 Director on the Board of Education (“Board”) in November 2020. Prior to the November 2022 election, he was redistricted out of District 5 and into District 4, thereby permitting him to run in the District 4 election in November 2022. He was recently certified as the winner of the District 4 November 2022 election. He has since resigned his position as the District 5 Director (and was simultaneously) sworn in as the District 4 Director.

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 5 to petition for an election to fill the vacancy after a provisional appointment is made. To do so, a certain number of signatures—specifically, 1.5% of the number of registered voters of the district at the time of the last regular election for governing board members—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, state law requires the Alameda County Superintendent of Schools to order an election to fill the vacancy.

If the Board opts to call an election or if the Board fails to make a provisional appointment within 60 days and the County Superintendent calls the election, the County Registrar will set the specific election date, although it would be expected to occur in Fall 2023.

Discussion

Resolution 2223-0047A - Filling Board of Education Member Vacancy in District 5 by Ordering an Election is provided if the Board wishes to order an election to fill the District 5 vacancy.

Resolution No. 2223-0047B - Filling Vacancy in District 5 by Appointment is provided if the Board wishes to fill the District 5 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. 2223-0047B is based on the process that the Board approved in 2022 when filling the District 6 vacancy created when Director Shanthi Gonzales resigned. 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.” The CSBA packet is attached to this item for reference and information.

Starting with the basic process from 2022, 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 2022. 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 2022.

As described in more detail in Exhibits A and B to Resolution No. 2223-0047B, the proposed process to fill the vacancy is:

- The application (which is included as Exhibit B to Resolution No. 2223-0047B) would be posted by Monday, March 27.
- Interested applicants would need to submit an application by Monday, April 10.
- The Registrar of Voters would then confirm the eligibility of each applicant by Monday, April 17.
- If there were more than three eligible applicants, the Board would hold a special meeting the week of April 17-21 to select up to three applicants to interview.
- The Board would interview those applicants at its regular meeting on April 26. The questions would be included in the 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 May 10. The Board would only be able appoint an individual who was interviewed by the Board.

Technically, the Board does not have to decide which method to fill the vacancy (election or appointment) at this meeting (on March 22). However, if the Board wants to make an appointment that includes an application and interviews, it needs to do so at this meeting in order to have sufficient time to include the steps prior to the expiration of the 60-day deadline, which cannot be waived or extended.

Fiscal Impact The City of Oakland has traditionally paid for the cost of OUSD School Board elections. The Alameda County Registrar of Voters has provided a cost estimate of \$483,000 to \$534,000 for a standalone special election (i.e., with polling locations) and a cost estimate of \$229,000 to \$280,000 for a vote by mail only election.

No significant costs are expected to be incurred if the Board initiates the process to make a provisional appointment.

Attachments

- Resolution No. 2223-0047A - Filling Board of Education Member Vacancy in District 5 by Ordering an Election
- Resolution No. 2223-0047B - Filling Vacancy in District 5 by Appointment (including Exhibits A and B)
- California School Boards Association: Filling A Board Vacancy
- Education Code Sections 5090-5095

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

Resolution No. 2223-0047A

Filling Board of Education Member Vacancy in District 5 by Ordering an Election

WHEREAS, Mike Hutchinson, the District 5 Director on the Board of Education (“Board”), resigned his position as a Member of the Board, 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 5 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 5 Board vacancy.

PASSED AND ADOPTED by the Board of Education of the Oakland Unified School District this ____ day of _____, 2023, by the following vote:

PREFERENTIAL AYE: None

PREFERENTIAL NOE: None

PREFERENTIAL ABSTENTION: None

PREFERENTIAL RECUSE: None

AYES: Benjamin "Sam" Davis, Vice President Clifford Thompson, President Mike Hutchinson

NOES: Jennifer Brouhard, VanCedric Williams, Valarie Bachelor

ABSTAINED: None

RECUSED: None

ABSENT: (Vacancy), Natalie Gallegos Chavez (Student Director), Linh Le (Student Director)

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 _____, 2023.

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OAKLAND UNIFIED SCHOOL DISTRICT

Mike Hutchinson
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. 2223-0047B

Filling Vacancy in District 5 by Appointment

WHEREAS, Mike Hutchinson, the District 5 Director on the Board of Education (“Board”), resigned his position as a Member of the Board, 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 5 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 5 vacancy, for the term ending in January 2025, 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 _____, 2023, 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

Mike Hutchinson
President, Board of Education

Kyla Johnson-Trammell
Superintendent and Secretary, Board of Education

Resolution 2223-0047B
Exhibit A: Decision Timeline and Details

Date	Meeting Type	Decision/Details
March 22, 2023	Regular	Board approves process to make the provisional appointment.
March 27, 2023	N/A	Application period opens. Details, including application, are posted on OUSD website. OUSD issues press release.
April 10, 2023	N/A	Application period closes at 5:00 p.m. Applications must be submitted via email to BOE5Vacancy@ousd.org . Late applications will not be accepted. Applicants may not submit additional documentation or information.
April 17, 2023	N/A	Registrar of Voters determinations eligibility of each applicant.
Week of April 17-21, 2023 Exact Date TBD by Board President	Special (if needed)	If there are more than three (3) eligible applicants, Board votes to select up to three (3) applicants to be interviewed. All applicant materials (with personal contact information redacted) are included in Board agenda packet for public review.
April 26, 2023	Regular	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.
May 10, 2023	Regular	Board votes to make a provisional appointment of an individual to serve out the term for the vacant District 5 seat. The Board may only appoint an individual who was interviewed by the Board.

Resolution 2223-0047B
Exhibit B: Application to Fill District 5 Board of Education Vacancy
for the Term Ending in January 2025

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 BOE5Vacancy@ousd.org.

All applications must be submitted via email to Edgar Rakestraw at BOE5Vacancy@ousd.org by 5:00 p.m. on April 10, 2023. 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. 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 5: _____

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 5. |
| <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."

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

Resolution No. 2223-0047B

Filling Vacancy in District 5 by Appointment

WHEREAS, Mike Hutchinson, the District 5 Director on the Board of Education (“Board”), resigned his position as a Member of the Board, 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 5 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 5 vacancy, for the term ending in January 2025, 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 _____, 2023, 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

Mike Hutchinson
President, Board of Education

Kyla Johnson-Trammell
Superintendent and Secretary, Board of Education

Resolution 2223-0047B
Exhibit A: Decision Timeline and Details

Date	Meeting Type	Decision/Details
March 22, 2023	Regular	Board approves process to make the provisional appointment.
March 27, 2023	N/A	Application period opens. Details, including application, are posted on OUSD website. OUSD issues press release.
April 10, 2023	N/A	Application period closes at 5:00 p.m. Applications must be submitted via email to BOE5Vacancy@ousd.org . Late applications will not be accepted. Applicants may not submit additional documentation or information.
April 17, 2023	N/A	Registrar of Voters determinations eligibility of each applicant.
Week of April 17-21, 2023 Exact Date TBD by Board President	Special (if needed)	If there are more than three-five (35) eligible applicants, Board votes to selects up to three-five (35) applicants to be interviewed. All applicant materials (with personal contact information redacted) are included in Board agenda packet for public review. <u>Board members are encouraged to submit their rankings of all applicants in time so that this information may be included in the agenda item.</u>
<u>Between above special meeting and before April 26, 2023</u>	<u>N/A</u>	<u>All applicants to be interviewed are expected to attend and participate in a student-led forum. The details and process of the forum would be determined by the student board members.</u>
April 26, 2023	Regular	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. Student board members, as part of their student board member report, shall provide the Board with their ranking of the (up to five) applicants to be interviewed.

<p><u>Week of May 1-5, 2023</u> <u>Exact Date TBD by Board President</u></p>	<p><u>Special (if needed)</u></p>	<p><u>Board interviews applicants in person unless safety or public health concerns dictate that the final three applicants should appear virtually. Each Board member, including both student board members, 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 question. The questions shall be included in the Board agenda packet. The interview for each applicant shall end after 30 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.</u></p>
<p>May 10, 2023</p>	<p>Regular</p>	<p><u>The following two items shall be added to the Board agenda: (i) a discussion item in which the Board can discuss the final applicants and (ii) an action item in which the Board would be able to vote on provisionally appointing one of the final applicants.</u> Board votes to make a provisional appointment of an individual to serve out the term for the vacant District 5 seat. The Board may only appoint an individual who was interviewed by the Board.</p>

Resolution 2223-0047B
Exhibit B: Application to Fill District 5 Board of Education Vacancy
for the Term Ending in January 2025

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 BOE5Vacancy@ousd.org.

All applications must be submitted via email to Edgar Rakestraw at BOE5Vacancy@ousd.org by 5:00 p.m. on April 10, 2023. 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. 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.
- 6-7. What have you done/actions have you taken to support public education?
- 7-8. 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 5: _____

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 5. |
| <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 his 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 his 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 his 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 his 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 his 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.”

Filling a Board Vacancy

Revised May 2012



FILLING A BOARD VACANCY

This packet will assist boards in openly and objectively filling board vacancies. It includes:

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5. Evaluating a Candidate	14
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CSBA Sample Board Bylaw

Board Bylaws

BB 9223(a)

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)

Note: The following paragraph is for use by districts that have established trustee areas.
--

A vacancy on the Board also occurs when a Board member ceases to inhabit the trustee area which he/she represents on the Board. (58 Ops.Cal.Atty.Gen. 888 (1975))

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

FILLING VACANCIES (continued)

- b. With the consent of the Board for an additional period not to exceed a total absence of 90 days

Note: AB 334 (Ch. 54, Statutes of 2011) amended Government Code 1064 to authorize the Governing Board to extend an out-of-state absence for an unlimited duration when the absence is due to illness or other urgent necessity.

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

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)

Note: Board members forfeit office and, in some cases, are disqualified from holding public office upon conviction of designated crimes as specified in the Constitution and various other state laws. Examples of crimes that result in forfeiture of office include, but are not limited to, convictions for felonies, offenses that involve a violation of official duties, bribery, selling appointments, intoxication in the discharge of official duties, misuse of public funds, conflict of interest violations, and a false claim of receipt of any military decoration or medal.

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)

FILLING VACANCIES (continued)

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)

Note: Pursuant to Education Code 5090, a vacancy is declared when there has been a "failure to elect," meaning that the County Registrar of Voters has determined that an election will not be held because either no candidate or an insufficient number of candidates have filed to run for a Board seat(s). Education Code 5328 authorizes the Board to make an appointment in such circumstances.

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)

Note: Pursuant to Education Code 5091, when a vacancy occurs or when a deferred resignation has been filed four or more months before the end of a Board member's term, the Board shall take action, as specified below. In the event that the Board fails to make a provisional appointment or order an election within 60 days, the County Superintendent of Schools must call an election to fill the vacancy.

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)

FILLING VACANCIES (continued)

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

Note: Persons applying or nominated for a Board position must meet the legal qualifications for Board members as detailed in Education Code 35107. Education Code 35107 also provides that a district employee appointed or elected to the Board must resign his/her employment before being sworn in or have his/her employment automatically terminated upon being sworn into office. See BB 9220 - Governing Board Elections.

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

Note: The Board is authorized to make a provisional appointment to fill a vacancy pursuant to item #2 in the section above entitled "Timelines for Filling a Vacancy." The law does not specify procedures for making provisional appointments for vacancies caused by reasons other than a failure to elect; however, such procedures must comply with the requirements of the Brown Act (Government Code 54950-54963). Secret ballots are prohibited by Government Code 54953.

The following **optional** paragraph should be modified to reflect district practice. See CSBA's publication *Filling a Board Vacancy* for additional information about provisional appointments, including sample questions for interviewing and evaluating candidates.

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.

FILLING VACANCIES (continued)

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)

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

Note: The following procedure applies when an appointment is being made because of a failure to elect pursuant to Education Code 5090, 5326, and 5328 (item #13 in section entitled "Events Causing a Vacancy" above).

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)

FILLING VACANCIES (continued)

The procedure for selecting and interviewing candidates shall be the same as the procedures for "Provisional Appointments," as specified above.

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

(11/04 11/08) 11/11

Policy Reference UPDATE Service

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SAMPLE LETTER

(from your school district governing board)

Date _____

Dear _____:

You have been named as a possible candidate to fill the vacancy on the Governing Board of the (name) School District created by the _____ of (Mr./Ms.). If you would like to be considered as one who would be interested and willing to serve, we would appreciate your completing the enclosed information sheet. We are asking each candidate to do this in order to make our selection as carefully and objectively as possible.

Regular board meetings are held the _____ of each month, with occasional special meetings called. Some personal time is **required** individually for study and growth, such as attending district, state, and/or national meetings. If you have any questions about what being a member of the school board might require of you in terms of additional time and responsibility, please contact me or any board member.

Please return the enclosed form to (address) by (date).

When all forms are submitted, the board will then review them. Individual interviews will take place following this process before a final selection is made.

Thank you very much for your interest.

Sincerely,

CANDIDATE INFORMATION SHEET
_____ **School District**

Please fill out and return by _____ to _____, or leave at the superintendent's office.

Date: _____

(Last Name) (First Name) (Initial)

Business Address: _____ Phone: _____

Home Address: _____ Phone: _____

E-mail: _____

Occupation and Employer: _____

No. of Years Residing in District: _____

Do you have children in the district's schools? Yes _____ No _____

If yes, what schools? _____

1. Do you have prior experience serving on a governing board, specifically a school district board? Please list such prior experience.

2. Have you worked on any school committees or participated in any school activities recently? Please list them.

3. Describe any other community or business activities in which you have participated. describe your role, and whether your work was volunteer or employment-related

4. Why do you want to be a school board member?

Candidate Information Sheet - Board Vacancy
Page Two

5. What do you see as the basic purpose of the public schools?

6. What is the role of the school board in the fulfillment of that purpose?

7. How does the board's role differ from that of the superintendent?

8. What should be the relationship between the board members and the administration in the handling of school concerns?

9. Briefly describe your commitment to public education and our local school district.

10. What do you see as the strengths of the school district?

11. What do you see as the area(s) most needing improvement in the school district?

SUGGESTED CANDIDATE INTERVIEW QUESTIONS

1. What do you see as the basic purpose of the public schools? What is the role of the board of trustees in the fulfillment of that purpose?
2. What are you proud of in this district? What would you like to accomplish as a board member? Which is your highest priority, and why?
3. As a trustee, what do you see as your primary purpose or primary role? How would you fulfill that role, both as an individual and as a member of the governing board?
4. Describe a good board meeting. What are the objectives of a good board meeting?
5. What would you do if you believed administrators had not provided you with accurate and complete information for making a decision?
6. Describe your response if a parent cornered you in the grocery store and asked for your support on a particularly hot issue.
7. How does an effective school board ensure opportunities for parents and community members to express their diverse range of views to inform board deliberations on important policy issues?
8. Please summarize the strengths you would bring as a member of the board.
9. What will you do to become more effective as a board member?
10. Identify a recent board decision that you felt strongly about, and describe how you would balance community concerns, student needs, state and federal law, staff considerations, and your personal value and beliefs to determine how to vote on the issue.
11. What questions do you have for the board to help you prepare to take on this commitment if chosen?

Note: Interviews or discussions of potential board members may not be held in closed session. The California Attorney General ruled that local office holders, whether elected or appointed, are excluded from the "personnel exception" (Government Code §54957) to the open meeting requirements of the Brown Act (Government Code §54950 et seq.) See also 59 Ops. Cal. Atty.Gen. 266 (1976)

EVALUATING THE CANDIDATE

Does the candidate:

- Know the political boundary and physical geography of the school district?
- Have the courage and ability to explain and enforce a role which might not be popular, but which is proper?
- Have a lay person's relationship to public education?
- Have personal interests that would be in conflict with his/her service to the board?
- Have a sense of humor?
- Make a habit of withholding judgment on critical issues until the facts are available?

Is the candidate:

- Seeking the position for personal prestige or political gain (personal agenda)?
- A leader in his/her own occupation or community group?
- A known quantity in the community?
- Able to think independently and objectively about a problem?
- Capable of recognizing and distinguishing the jurisdictional power and functions of the board and administration?
- Aware of the cross-currents of thinking pertaining to the basic concepts of public education?
- Able to carry on cheerfully when public appreciation of his/her efforts seem to be lacking?

Will the candidate:

- Remain loyal to his/her fellow trustees under stress?
- Work to develop unity among the members of the board, contributing to harmonious development of the program?
- Give the necessary time to this important position?

Has the candidate:

- An interest in the public schools, the community, and in every child?
- Arrived at a position of recognized leadership in the community?

Education Code § 5019

Establishment of trustee areas; common governing board

(a) Except in a school district governed by a board of education provided for in the charter of a city or city and county, in any school district or community college district, the county committee on school district organization may establish trustee areas, rearrange the boundaries of trustee areas, abolish trustee areas, and increase to seven or decrease to five the number of members of the governing board, or adopt one of the alternative methods of electing governing board members specified in Section 5030.

(b) The county committee on school district organization may establish or abolish a common governing board for a high school district and an elementary school district within the boundaries of the high school district. The resolution of the county committee on school district organization approving the establishment or abolition of a common governing board shall be presented to the electors of the school districts as specified in Section 5020.

(c) (1) A proposal to make the changes described in subdivision (a) or (b) may be initiated by the county committee on school district organization or made to the county committee on school district organization either by a petition signed by 5 percent or 50, whichever is less, of the qualified registered voters residing in a district in which there are 2,500 or fewer qualified registered voters, by 3 percent or 100, whichever is less, of the qualified registered voters residing in a district in which there are 2,501 to 10,000 qualified registered voters, by 1 percent or 250, whichever is less, of the qualified registered voters residing in a district in which there are 10,001 to 50,000 qualified registered voters, by 500 or more of the qualified registered voters residing in a district in which there are 50,001 to 100,000 qualified registered voters, by 750 or more of the qualified registered voters residing in a district in which there are 100,001 to 250,000 qualified registered voters, or by 1,000 or more of the qualified registered voters residing in a district in which there are 250,001 or more qualified registered voters or by resolution of the governing board of the district. For this purpose, the necessary signatures for a petition shall be obtained within a period of 180 days before the submission of the petition to the county committee on school district organization and the number of qualified registered voters in the district shall be determined pursuant to the most recent report submitted by the county elections official to the Secretary of State under Section 2187 of the Elections Code.

(2) When a proposal is made pursuant to paragraph (1), the county committee on school district organization shall call and conduct at least one hearing in the district on the matter. At the conclusion of the hearing, the county committee on school district organization shall approve or disapprove the proposal.

(d) If the county committee on school district organization approves pursuant to subdivision (a) the rearrangement of the boundaries of trustee areas for a particular

district, then the rearrangement of the trustee areas shall be effectuated for the next district election occurring at least 120 days after its approval, unless at least 5 percent of the registered voters of the district sign a petition requesting an election on the proposed rearrangement of trustee area boundaries. The petition for an election shall be submitted to the county elections official within 60 days of the proposal's adoption by the county committee on school district organization. If the qualified registered voters approve pursuant to subdivision (b) or (c) the rearrangement of the boundaries to the trustee areas for a particular district, the rearrangement of the trustee areas shall be effective for the next district election occurring at least 120 days after its approval by the voters.

(Amended by Stats. 2006, Ch. 126, Sec. 1)

Education Code § 5019.5

Adjustment of trustee areas after census data released

(a) Following each decennial federal census, and using population figures as validated by the Population Research Unit of the Department of Finance as a basis, the governing board of each school district or community college district in which trustee areas have been established, and in which each trustee is elected by the residents of the area he or she represents, shall adjust the boundaries of any or all of the trustee areas of the district so that one or both of the following conditions is satisfied:

(1) The population of each area is, as nearly as may be, the same proportion of the total population of the district as the ratio that the number of governing board members elected from the area bears to the total number of members of the governing board.

(2) The population of each area is, as nearly as may be, the same proportion of the total population of the district as each of the other areas.

(b) The boundaries of the trustee areas shall be adjusted by the governing board of each school district or community college district, in accordance with subdivision (a), before the first day of March of the year following the year in which the results of each decennial census are released. If the governing board fails to adjust the boundaries before the first day of March of the year following the year in which the results of each decennial census are released, the county committee on school district organization shall do so before the day of April of the same year.

The governing board of the school district or community college district shall reimburse all reasonable costs incurred by a county committee in adjusting the boundaries pursuant to this subdivision.

(c) Except to the extent that the adjustment of trustee area boundaries is necessary for the purposes set forth in this section, the authority to establish or abolish trustee areas, rearrange the boundaries of trustee areas, increase or decrease the number of members of the governing board, or adopt any method of electing governing board members may be exercised only as otherwise provided under this article.

(Amended by Stats. 1990, Ch. 648, Sec. 1.)

Education Code § 5090

Article 3. Vacancies

Vacancies on school district governing boards or community college district boards are caused by any of the events specified in Section 1770 of the Government Code, or by a failure to elect. 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 effective on that date. A written resignation, whether specifying a deferred effective date or otherwise, shall, upon being filed with the county superintendent of schools be irrevocable.

(Enacted by Stats. 1976, Ch. 1010, Sec. 2.)

Education Code § 5091

60 days to order election or make provisional appointment

(a) Whenever a vacancy occurs, or whenever a resignation has been filed with the county superintendent of schools containing a deferred effective date, the school district or community college district governing board shall, within 60 days of the vacancy or the filing of the deferred resignation, either order an election or make a provisional appointment to fill the vacancy. A governing board member may not defer the effective date of his or her resignation for more than 60 days after he or she files the resignation with the county superintendent of schools.

In the event that a governing board fails to make a provisional appointment or order an election within the prescribed 60-day period as required by this section, the county superintendent of schools shall order an election to fill the vacancy.

(b) When an election is ordered, it shall be held on the next established election date provided pursuant to Chapter 1 (commencing with Section 1000) of Division 1 of the Elections Code not less than 130 days after the order of the election.

(c) (1) If a provisional appointment is made within the 60-day period, the registered voters of the district may, within 30 days from the date of the appointment, petition for the conduct of a special election to fill the vacancy. A 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 11/2 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 less 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.

(2) The petition shall be submitted to the county superintendent of schools having jurisdiction who shall have 30 days to verify the signatures. If the petition is determined to be legally sufficient by the county superintendent of schools, 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. However, if an established election date, as defined in Section 1000 of the Elections Code, occurs between the 130th day and the 150th day following the order of the election, the county superintendent of schools may order the special election to be conducted on the regular election date.

(d) A provisional appointment made pursuant to subdivision (a) confers all powers and duties of a governing board member upon the appointee immediately following his or her appointment.

(e) A person appointed to fill a vacancy shall hold office only until the next regularly scheduled election for district governing board members, whereupon an election shall be held to fill the vacancy for the remainder of the unexpired term. A person elected at an election to fill the vacancy shall hold office for the remainder of the term in which the vacancy occurs or will occur.

(f) (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 estimate of the elections official 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 Sections 100 and 104 of the Elections Code.

(2) If any of the requirements of this subdivision are not met as to any petition calling for a special election, the county superintendent of schools shall not verify the signatures, nor shall any further action be taken with respect to the petition.

(3) No person shall permit the list of names on petitions prescribed by this section to be used for any purpose other than qualification of the petition for the purpose of holding an election pursuant to this section.

(4) The petition filed with the county superintendent of schools shall be subject to the restrictions in Section 6253.5 of the Government Code.

(g) Elections held pursuant to subdivisions (b) and (c) shall be conducted in as nearly the same manner as practicable as other governing board member elections.

(Amended by Stats. 2003, Ch. 811, Sec. 1.)

Education Code § 5092

Provisional appointment; notice

Whenever a provisional appointment is made to the governing board of a school district pursuant to Section 5091, the board shall, within 10 days of the provisional appointment of a person to fill a vacancy which occurs or will occur, post notices of both the actual vacancy or the filing of a deferred resignation and also the provisional appointment in three public places in the district and shall publish a notice pursuant to Section 6061 of the Government Code. If there is no newspaper of general circulation published in the district, notice need not be published.

The notice shall state the fact of the vacancy or resignation and the date of the occurrence of the vacancy or the date of the filing of, and the effective date of, the resignation. The notice shall also contain the full name of the provisional appointee to the board and the date of his appointment, and a statement that unless a petition calling for a special 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.

(Enacted by Stats. 1976, Ch. 1010, Sec. 2.)

Education Code § 5093

Vacancy within four months of end of term

- (a) There shall be no special election or appointment to fill a vacancy on a governing board if the vacancy occurs within four months of the end of the term of that position.
- (b) Section 5091 shall not apply to a vacancy on a governing board if the vacancy occurs, or a resignation specifying a deferred effective date is filed with the county superintendent of schools, during the period between six months and 130 days prior to a regularly scheduled governing board election and the position is not scheduled to be filled at such election. In such a case, the position shall be filled at a special election for that position to be consolidated with the regular election. A person elected to fill a position under this subdivision shall take office at the next regularly scheduled meeting of the governing board following the certification of the election and shall serve only until the end of the term of the position which he or she was elected to fill.
- (c) If a special election pursuant to Section 5091 could be consolidated with the next regular election for governing board members, and the vacant position is scheduled to be filled at such regular election, there shall be no special election.

(Amended by Stats. 1984, Ch. 32, Sec. 2.)

Education Code § 5094

Majority of offices vacant

If for any reason vacancies should occur in a majority of the offices on any school district or community college district governing board, the president of the county board of education having jurisdiction may appoint members of the county board of education to the district governing board until new members of the governing board are elected or appointed.

(Enacted by Stats. 1976, Ch. 1010, Sec. 2.)

Education Code § 5095

Vacant offices; remaining members have powers

Whenever any of the offices on any school district governing board or community college district governing board is vacant, the remaining governing board member or members, if any, and any governing board member or members elected or appointed to fill the vacancies, who have qualified, shall have all the powers and perform all the duties of the governing board.

(Enacted by Stats. 1976, Ch. 1010, Sec. 2.)

Education Code § 5200

Chapter 2. Boards of Education. Article 1. Districts Governed

Any unified school district that is coterminous with or includes within its boundaries a chartered city or city and county shall be governed by the board of education provided for in the charter of the city or city and county. Sections 5000, 5017, 5090, 5091, 35013, 35101, and 35105 shall not apply to such unified school districts, except as follows:

- (a) As provided in the charter of the city or city and county.
- (b) If the charter of the city or city and county fails to provide for a board of education or for any or all of the matters specified in Sections 5000, 5017, 5090, 5091, 5222, 35013, 35101, and 35105, those sections shall apply as to the matter not provided for in the charter.

(Amended by Stats. 2010, Ch. 89, Sec. 4.)

Education Code § 5304

Governing board duties

The duties of the governing board of any school district or community college district with respect to school district elections shall be:

- (a) To order elections as authorized by this code.
- (b) To resolve tie votes in governing board member elections.

(Enacted by Stats. 1976, Ch. 1010, Sec. 2.)

Education Code § 5325

Posting of notice of election

Any school district election or community college district election, except a bond measure election, ordered to be held in accordance with this code shall be called by the county superintendent of schools having jurisdiction of the election by doing both of the following:

- (a) Posting or publication of notices of election.
- (b) Delivery of a copy of the formal notice of election to the county elections official at least 120 days prior to the date of the election in the case of an election for governing board members.

(Amended by Stats. 2002, Ch. 221, Sec. 7.)

Education Code § 5326

Appointment when not enough candidates for election

If, by 5:00 p.m. on the 83rd day prior to the day fixed for the governing board member election, only one person has been nominated for any elective office to be filled at that election, or no one has been nominated for the office, or in the case of members to be elected from the district at large, the number of candidates for governing board member at large does not exceed the number of offices to be filled at that election, or in the case of members to be nominated by trustee area and elected at large, the number of candidates do not exceed the number required to be elected governing board member at large nominated by that trustee area, or in the case of members to be elected at large in accordance with Sections 5030.5, 5030.6, and 5030.7, no more than one person has been nominated for each membership position, and a petition signed by 10 percent of the voters or 50 voters, whichever is the smaller number, in the district or trustee area, if elected by trustee area, requesting that a school district election be held for the offices has not been presented to the officer conducting the election, appointment will be made as prescribed by Section 5328.

The provisions of this section and Section 5328 shall also apply to elections for membership on a county board of education.

(Amended by Stats. 1996, Ch. 48, Sec. 2.)

Education Code § 5328

Nominee seated at organizational meeting

If pursuant to Section 5326 a district election is not held, the qualified person or persons nominated shall be seated at the organizational meeting of the board, or if no person has been nominated or if an insufficient number is nominated, the governing board shall appoint a qualified person or persons, as the case may be, at a meeting prior to the day fixed for the election, and such appointee or appointees shall be seated at the organizational meeting of the board as if elected at a district election.

(Amended by Stats. 1978, Ch. 22, Sec. 1.)

Education Code § 5328.5

Notification of intent to make appointment

If no one has been nominated to an office, prior to making an appointment to that office pursuant to Section 5328, the governing board shall cause to be published a notice once in a newspaper of general circulation published in the district or, if no such newspaper is published in the district, in a newspaper having general circulation in the district, stating that the board intends to make an appointment and informing persons of the procedure available for applying for the office.

(Added by Stats. 1982, Ch. 428, Sec. 10.5.)

Education Code § 5420

Article 8. Cost of Elections

The cost of any school district or community college district election may include, but need not be limited to:

- (a) Compensation of precinct election officers.
- (b) Publication of notices.
- (c) The cost of printing official ballots, sample ballots, indexes, arguments, statements, official notices, and card notices.
- (d) Mailing charges for card notices, arguments, recommendations, statements, and sample ballots.

(e) Forms for rosters, tally sheets, certificates, envelopes, declaration of results forms, and legal forms required for bond elections.

(f) Precinct maps.

(g) The actual cost of supplies such as flags, ballot boxes, chairs and tables, booths, ink pads and stamps, and pencils; provided, that if any such can be borrowed from any state or county office, no charge for rental shall be included in the cost of elections.

(Enacted by Stats. 1976, Ch. 1010, Sec. 2.)

Education Code § 5421

Election costs; single district election

The cost of any election held within a single district shall be borne by the entire district, and shall be paid out of its funds. Election costs shall be determined by the county elections official and approved by the county board of supervisors.

(Amended by Stats. 2002, Ch. 221, Sec. 9.)

Education Code § 5422

Costs; consolidated elections

The cost of elections, including consolidated elections, held in territory common to two or more districts shall be borne by the districts concerned in equal shares and paid from district funds.

(Enacted by Stats. 1976, Ch. 1010, Sec. 2.)

Education Code § 5423

Costs; consolidated elections

The cost of consolidated governing board elections shall be paid by the county superintendent of schools having jurisdiction from the county school service fund, and the cost shall be prorated among the districts concerned to reimburse the fund.

(Enacted by Stats. 1976, Ch. 1010, Sec. 2.)

Education Code § 5424

Costs; recall elections

The cost of any recall election shall be borne by the district in which the recall election is held and paid from district funds.

(Enacted by Stats. 1976, Ch. 1010, Sec. 2.)

Education Code § 5425

Costs; formation of community college district

The cost of the election for the formation of a community college district shall be paid from the county general fund.

(Enacted by Stats. 1976, Ch. 1010, Sec. 2.)

Education Code § 5426

Costs; elections involving territory transfer

The cost of any election held under the provisions of Article 8 (commencing with Section 4400) of Chapter 2 of Part 3 of this division, or Article 7 (commencing with Section 35690) of Chapter 3 of Part 21 of Division 3 of Title 2, or Article 3 (commencing with Section 74630) of Chapter 5 of Part 46 of Division 7 of Title 3, where the election is being held for the assumption of bonded indebtedness of the district to which the territory is being transferred or where the county board of supervisors requires an election to be held in the whole district from which the territory would be transferred, shall be paid from the county general fund.

(Enacted by Stats. 1976, Ch. 1010, Sec. 2.)

Education Code § 35107

Eligibility for governing board members

(a) Any person, regardless of sex, who is 18 years of age or older, a citizen of the state, a resident of the school district, a registered voter, and who is not disqualified by the Constitution or laws of the state from holding a civil office, is eligible to be elected or appointed a member of a governing board of a school district without further qualifications.

(b) (1) 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. If the employee does not resign, the employment will automatically terminate upon being sworn into office.

(2) For any individual who is an employee of a school district and an elected or appointed member of that school district's governing board prior to January 1, 1992, this subdivision shall apply when he or she is reelected or reappointed, on or after January 1, 1992, as a member of the school district's governing board.

(c) Notwithstanding any other provision of law, the governing board of a school district may adopt or the residents of the school district may propose, by initiative, a proposal to limit or repeal a limit on the number of terms a member of the governing board of the school district may serve on the governing board of the school district. Any proposal to limit the number of terms a member of the governing board of the school district may serve on the governing board of the school district shall apply prospectively only and shall not become operative unless it is submitted to the electors of the school district at a regularly scheduled election and a majority of the votes cast on the question favor the adoption of the proposal.

(d) (1) An initiative measure proposed pursuant to subdivision (c) shall be subject to the procedures set forth in Chapter 4 (commencing with Section 9300) of Division 9 of the Elections Code.

(2) A proposal submitted to the electors by the governing board pursuant to subdivision (c) shall be subject to the procedures set forth in Chapter 6 (commencing with Section 9500) of Division 9 of the Elections Code.

(e) A member of the governing board of a school district shall abstain from voting on personnel matters that uniquely affect a relative of the member but may vote on collective bargaining agreements and personnel matters that affect a class of employees to which the relative belongs. For purposes of this section, "relative" means an adult who is related to the person by blood or affinity within the third degree, as determined by the common law, or an individual in an adoptive relationship within the third degree.

(Amended by Stats. 1995, Ch. 879, Sec. 6.)

Education Code § 35178

Member who has tendered a resignation

A member of the governing board of a school district who has tendered a resignation with a deferred effective date pursuant to Section 5090 shall, until the effective date of the resignation, continue to have the right to exercise all powers of a member of the governing board, except that such member shall not have the right to vote for his or her successor in an action taken by the board to make a provisional appointment pursuant to Section 5091.

(Added by Stats. 1978, Ch. 267, Sec. 1.)

Elections Code § 10603

School District Governing Board Elections; Names on Ballot

(a) In any school district or community college district governing board election the name of any person shall be placed on the ballot, subject to Sections 35107 and 72103 of the Education Code, if there is filed with the county elections official having jurisdiction, not more than 113 days nor less than 88 days prior to the election, a declaration of candidacy containing the appropriate information in the blank spaces and signed by the person whose name is thereby to be placed on the ballot.

(b) No candidate whose declaration of candidacy has been filed for any school district or community college district governing board election or county board of education election may withdraw as a candidate after the 88th day prior to the election.

(c) Notwithstanding any other provision of law, except as provided in subdivision (d), no person shall file nomination papers for more than one district office, including a county board of education office, at the same election.

(d) Notwithstanding any other provision of law, if a proposal to form a unified school district is on the same ballot as the election of governing board members of that district, any candidate for a position on the existing governing board may file nomination papers for that position pursuant to subdivision (a) and may, at the same election, also file nomination papers for a position on the governing board of the proposed unified school district.

(Added Stats. 1996, Ch. 1143, Sec. 54)

Elections Code § 10604

School District Governing Board Elections; Declaration of Candidacy

(a) Notwithstanding Section 10603, if a declaration of candidacy for an incumbent member of a school district or community college district governing board or of a county board of education is not filed by 5 p.m. on the 88th day before the election, any person, other than the person who was the incumbent on the 88th day, shall have until 5 p.m. on the 83rd day before an election to file a declaration of candidacy for the elective office.

(b) This section is not applicable where there is no incumbent eligible to be elected. If this section is applicable, notwithstanding Section 10603, a candidate whose declaration of candidacy has been filed for any school district or community college district governing board election or county board of education election may withdraw as a candidate until 5 p.m. on the 83rd day before the election.

(Renumbered from 10603 and amended by Stats. 1996, Ch. 1143, Sec. 53)

Elections Code § 11384

Recall Elections

If a majority of the votes on a recall proposal are "Yes", the officer sought to be recalled shall be removed from office upon the qualification of his successor.

(Added Stats. 1994, Ch. 920, Sec. 2)

Government Code § 1064

Absence from State; Military Service; School District Governing Board Vacancies

No member of the governing board of a school district shall be absent from the state for more than 60 days, except in any of the following situations:

- (a) Upon business of the school district with the approval of the board.
- (b) With the consent of the governing board of the school district for an additional period not to exceed a total absence of 90 days.
- (c) 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 governing board of the school district.

(d) 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 a member of the governing board of a school district pursuant to this subdivision exceeds six months, the governing 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 governing board may appoint an interim member to serve in his or her absence. If two or more members of the governing board of a school district are absent by reason of the circumstances described in this subdivision, and those absences result in the inability to establish a quorum at a regular meeting, the governing board may immediately appoint one or more interim members as necessary to enable the governing board to conduct business and discharge its responsibilities.

(e) The term of an interim member of a school district governing board appointed pursuant to subdivision (c) may not extend beyond the return of the absent member, nor may it extend beyond the next regularly scheduled election for that office.

(Amended by Stats. 2011, Ch. 54, Sec. 1. (AB 334))

Government Code § 1770

Vacancies; Public Offices

An office becomes vacant on the happening of any of the following events before the expiration of the term:

(a) The death of the incumbent.

(b) An adjudication pursuant to a quo warranto proceeding declaring that the 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 or her office for the remainder of his or her term. This subdivision shall not apply to offices created by the California Constitution nor to federal or state legislators.

(c) His or her resignation.

(d) His or her removal from office.

(e) His or her ceasing to be an inhabitant of the state, or if the office be local and one for which local residence is required by law, of the district, county, or city for which the officer was chosen or appointed, or within which the duties of his or her office are required to be discharged.

(f) His or her absence from the state without the permission required by law beyond the period allowed by law.

(g) His or her ceasing to discharge the duties of his or her 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.

(h) His or her conviction of a felony or of any offense involving a violation of his or her official duties. An officer shall be deemed to have been convicted under this subdivision when trial court judgment is entered. For purposes of this subdivision, "trial court judgment" means a judgment by the trial court either sentencing the officer or otherwise upholding and implementing the plea, verdict, or finding.

(i) His or her refusal or neglect to file his or her required oath or bond within the time prescribed.

(j) The decision of a competent tribunal declaring void his or her election or appointment.

(k) The making of an order vacating his or her office or declaring the office vacant when the officer fails to furnish an additional or supplemental bond.

(l) His or her commitment to a hospital or sanitarium by a court of competent jurisdiction as a drug addict, dipsomaniac, inebriate, or stimulant addict; but in that event the office shall not be deemed vacant until the order of commitment has become final.

(m) [not applicable to elective office.]

(Amended by Stats. 2011, Ch. 543, Sec. 2.)

Government Code § 3060

Public Officer; Removal from Office

An accusation in writing against any officer of a district, county, or city, including any member of the governing board or personnel commission of a school district or any humane officer, for willful or corrupt misconduct in office, may be presented by the grand jury of the county for or in which the officer accused is elected or appointed. An accusation may not be presented without the concurrence of at least 12 grand jurors, or at least eight grand jurors in a county in which the required number of members of the grand jury is 11.

(Amended by Stats. 1996, Ch. 105, Sec. 1.)

Government Code § 3061

Public Officer; Removal from Office

The accusation shall state the offense charged in ordinary and concise language, and without repetition.

(Enacted by Stats. 1943, Ch. 134.)

Government Code § 3062

Public Officer; Removal from Office

The accusation shall be delivered by the foreman of the grand jury to the district attorney of the county, unless he is the officer accused.

(Enacted by Stats. 1943, Ch. 134.)

Government Code § 3063

Public Officer; Removal from Office

The district attorney shall have a copy of the accusation served upon the defendant, and by notice in writing shall require the accused to appear before the superior court of the county, at a time stated in the notice, and answer the accusation. Appearance shall not be required in less than 10 days from the service of the notice. After service, the original accusation shall be filed with the clerk of the court.

(Enacted by Stats. 1943, Ch. 134.)

Government Code § 3064

Public Officer; Removal from Office

The defendant shall appear at the time stated in the notice and answer the accusation, unless for some sufficient cause the court assigns another day for that purpose. If he does not appear, the court may proceed to hear and determine the accusation in his absence.

(Enacted by Stats. 1943, Ch. 134.)

Government Code § 3065

Public Officer; Removal from Office

The defendant may answer the accusation either by objecting to its sufficiency or any article therein, or by denying the truth of the accusation.

(Enacted by Stats. 1943, Ch. 134.)

Government Code § 3066

Public Officer; Removal from Office

If he objects to the legal sufficiency of the accusation, the objection shall be in writing. The objection need not be in any specific form. It is sufficient if it presents intelligibly the grounds of the objection.

(Enacted by Stats. 1943, Ch. 134.)

Government Code § 3067

Public Officer; Removal from Office

If he denies the truth of the accusation, the denial may be oral and without oath. The denial shall be entered upon the minutes.

(Enacted by Stats. 1943, Ch. 134.)

Government Code § 3068

Public Officer; Removal from Office

If an objection to the sufficiency of the accusation is not sustained, the defendant shall answer thereto forthwith.

(Enacted by Stats. 1943, Ch. 134.)

Government Code § 3069

Public Officer; Removal from Office

If the defendant pleads guilty, or refuses to answer the accusation, the court shall render judgment of conviction against him. If he denies the matters charged, the court shall immediately, or at such time as it appoints, try the accusation.

(Enacted by Stats. 1943, Ch. 134.)

Government Code § 3070

Public Officer; Removal from Office

The trial shall be by a jury, and conducted in all respects in the same manner as the trial of an indictment.

(Enacted by Stats. 1943, Ch. 134.)

Government Code § 3071

Public Officer; Removal from Office

The district attorney and the defendant are each entitled to such process as necessary to enforce the attendance of witnesses as upon a trial of an indictment.

(Enacted by Stats. 1943, Ch. 134.)

Government Code § 3072

Public Officer; Removal from Office

Upon a conviction and at the time appointed by the court it shall pronounce judgment that the defendant be removed from office. To warrant a removal, the judgment shall be entered upon the minutes, and the causes of removal shall be assigned therein

(Enacted by Stats. 1943, Ch. 134.)

Government Code § 3073

Public Officer; Removal from Office

The same proceedings may be had on like grounds for the removal of a district attorney, except that the accusation shall be delivered by the foreman of the grand jury to the clerk, and by him to a judge of the superior court of the county. The judge shall appoint a person to act as prosecuting officer in the matter, or place the accusation in the hands of the district attorney of an adjoining county, and require him to conduct the proceedings.

(Enacted by Stats. 1943, Ch. 134.)

Government Code § 3074

Public Officer; Removal from Office

Any officer subject to removal pursuant to this article may be removed from office for willful or corrupt misconduct in office occurring at any time within the six years immediately preceding the presentation of an accusation by the grand jury.

(Added by Stats. 1971, Ch. 702.)

Government Code § 3075

Court of Appeal

In a proceeding under this article, appeal is to the court of appeal.

(Added by Stats. 1998, Ch. 931, Sec. 178.)

Government Code § 6061

Publications and Official Advertising; Manner of Publication

Publication of notice pursuant to this section shall be for one time.

(Added by Stats. 1949, Ch. 1587, Sec. 1.)


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EDUCATION CODE - EDC

TITLE 1 GENERAL EDUCATION CODE PROVISIONS [1. - 32500] (Title 1 enacted by Stats. 1976, Ch. 1010.)

DIVISION 1 GENERAL EDUCATION CODE PROVISIONS [1. - 32500] (Division 1 enacted by Stats. 1976, Ch. 1010.)

PART 4. ELECTIONS [5000 - 5442] (Part 4 enacted by Stats. 1976, Ch. 1010.)

CHAPTER 1. Election of School District Board Members [5000 - 5095] (Chapter 1 enacted by Stats. 1976, Ch. 1010.)

ARTICLE 3. Vacancies [5090 - 5095] (Article 3 enacted by Stats. 1976, Ch. 1010.)

5090. Vacancies on school district governing boards or community college district boards are caused by any of the events specified in Section 1770 of the Government Code, or by a failure to elect. 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 effective on that date. A written resignation, whether specifying a deferred effective date or otherwise, shall, upon being filed with the county superintendent of schools be irrevocable.

(Enacted by Stats. 1976, Ch. 1010.)

5091. (a) (1) If a vacancy occurs, or if a resignation has been filed with the county superintendent of schools containing a deferred effective date, the school district or community college district governing board shall, within 60 days of the vacancy or the filing of the deferred resignation, either order an election or make a provisional appointment to fill the vacancy. A governing board member may not defer the effective date of his or her resignation for more than 60 days after he or she files the resignation with the county superintendent of schools.

(2) In the event that a governing board fails to make a provisional appointment or order an election within the prescribed 60-day period as required by this section, the county superintendent of schools shall order an election to fill the vacancy.

(b) When an election is ordered, it shall be held on the next established election date provided pursuant to Chapter 1 (commencing with Section 1000) of Division 1 of the Elections Code not less than 130 days after the order of the election.

(c) (1) If a provisional appointment is made within the 60-day period, the registered voters of the district may, within 30 days from the date of the appointment, petition for the conduct of a special election to fill the vacancy. A 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 $1\frac{1}{2}$ 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 less than 2,000 registered voters, 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.

(2) The petition shall be submitted to the county superintendent of schools having jurisdiction who shall have 30 days to verify the signatures. If the petition is determined to be legally sufficient by the county superintendent of schools, 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. However, if an established election date, as defined in Section 1000 of the Elections Code, occurs between the 130th day and the 150th day following the order of the election, the county superintendent of schools may order the special election to be conducted on the established election date.

(3) For purposes of this section, "registered voters" means the following:

- (A) If the district uses the at-large method of election, as defined in subdivision (a) of Section 14026 of the Elections Code, registered voters of the entire school district or community college district.
- (B) If the district uses district-based elections, as defined in subdivision (b) of Section 14026 of the Elections Code, registered voters of the election district.
- (d) A provisional appointment made pursuant to subdivision (a) confers all powers and duties of a governing board member upon the appointee immediately following his or her appointment.
- (e) A person appointed to fill a vacancy shall hold office only until the next regularly scheduled election for district governing board members that is scheduled 130 or more days after the effective date of the vacancy, whereupon an election shall be held to fill the vacancy for the remainder of the unexpired term. A person elected at an election to fill the vacancy shall hold office for the remainder of the term in which the vacancy occurs or will occur.
- (f) (1) If a petition calling for a special election is circulated, the petition shall meet all of the following requirements:
- (A) The petition shall contain the estimate of the elections official 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 Sections 100 and 104 of the Elections Code.
- (2) If any of the requirements of this subdivision are not met as to any petition calling for a special election, the county superintendent of schools shall not verify the signatures, nor shall any further action be taken with respect to the petition.
- (3) No person shall permit the list of names on petitions prescribed by this section to be used for any purpose other than qualification of the petition for the purpose of holding an election pursuant to this section.
- (4) The petition filed with the county superintendent of schools shall be subject to the restrictions in Section 6253.5 of the Government Code.
- (g) Elections held pursuant to subdivisions (b) and (c) shall be conducted in as nearly the same manner as practicable as other governing board member elections.

(Amended by Stats. 2014, Ch. 909, Sec. 1. (AB 2562) Effective January 1, 2015. Superseded on January 1, 2023; see amendment by Stats. 2021, Ch. 615.)

- 5091.** (a) (1) If a vacancy occurs, or if a resignation has been filed with the county superintendent of schools containing a deferred effective date, the school district or community college district governing board shall, within 60 days of the vacancy or the filing of the deferred resignation, either order an election or make a provisional appointment to fill the vacancy. A governing board member may not defer the effective date of the member's resignation for more than 60 days after the member files the resignation with the county superintendent of schools.
- (2) In the event that a governing board fails to make a provisional appointment or order an election within the prescribed 60-day period as required by this section, the county superintendent of schools shall order an election to fill the vacancy.
- (b) When an election is ordered, it shall be held on the next established election date provided pursuant to Chapter 1 (commencing with Section 1000) of Division 1 of the Elections Code not less than 130 days after the order of the election.
- (c) (1) If a provisional appointment is made within the 60-day period, the registered voters of the district may, within 30 days from the date of the appointment, petition for the conduct of a special election to fill the vacancy. A 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 $1\frac{1}{2}$ 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 less than 2,000 registered voters, 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.
- (2) The petition shall be submitted to the county superintendent of schools having jurisdiction who shall have 30 days to verify the signatures. If the petition is determined to be legally sufficient by the county superintendent of schools, 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. However, if an established election

date, as defined in Section 1000 of the Elections Code, occurs between the 130th day and the 150th day following the order of the election, the county superintendent of schools may order the special election to be conducted on the established election date.

(3) For purposes of this section, "registered voters" means the following:

(A) If the district uses the at-large method of election, as defined in subdivision (a) of Section 14026 of the Elections Code, registered voters of the entire school district or community college district.

(B) If the district uses district-based elections, as defined in subdivision (b) of Section 14026 of the Elections Code, registered voters of the election district.

(d) A provisional appointment made pursuant to subdivision (a) confers all powers and duties of a governing board member upon the appointee immediately following that appointment.

(e) A person appointed to fill a vacancy shall hold office only until the next regularly scheduled election for district governing board members that is scheduled 130 or more days after the effective date of the vacancy, whereupon an election shall be held to fill the vacancy for the remainder of the unexpired term. A person elected at an election to fill the vacancy shall hold office for the remainder of the term in which the vacancy occurs or will occur.

(f) (1) If a petition calling for a special election is circulated, the petition shall meet all of the following requirements:

(A) The petition shall contain the estimate of the elections official 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 Sections 100 and 104 of the Elections Code.

(2) If any of the requirements of this subdivision are not met as to any petition calling for a special election, the county superintendent of schools shall not verify the signatures, nor shall any further action be taken with respect to the petition.

(3) No person shall permit the list of names on petitions prescribed by this section to be used for any purpose other than qualification of the petition for the purpose of holding an election pursuant to this section.

(4) The petition filed with the county superintendent of schools shall be subject to the restrictions in Article 2 (commencing with Section 7924.100) of Chapter 2 of Part 5 of Division 10 of Title 1 of the Government Code.

(g) Elections held pursuant to subdivisions (b) and (c) shall be conducted in as nearly the same manner as practicable as other governing board member elections.

(Amended by Stats. 2021, Ch. 615, Sec. 60. (AB 474) Effective January 1, 2022. Operative January 1, 2023, pursuant to Sec. 463 of Stats. 2021, Ch. 615.)

5092. Whenever a provisional appointment is made to the governing board of a school district pursuant to Section 5091, the board shall, within 10 days of the provisional appointment of a person to fill a vacancy which occurs or will occur, post notices of both the actual vacancy or the filing of a deferred resignation and also the provisional appointment in three public places in the district and shall publish a notice pursuant to Section 6061 of the Government Code. If there is no newspaper of general circulation published in the district, notice need not be published.

The notice shall state the fact of the vacancy or resignation and the date of the occurrence of the vacancy or the date of the filing of, and the effective date of, the resignation. The notice shall also contain the full name of the provisional appointee to the board and the date of his appointment, and a statement that unless a petition calling for a special 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.

(Enacted by Stats. 1976, Ch. 1010.)

5093. (a) There shall be no special election or appointment to fill a vacancy on a governing board if the vacancy occurs within four months of the end of the term of that position.

(b) Section 5091 shall not apply to a vacancy on a governing board if the vacancy occurs, or a resignation specifying a deferred effective date is filed with the county superintendent of schools, during the period between six months and 130 days prior to a regularly scheduled governing board election and the position is not scheduled to be filled at such election. In such a case, the position shall be filled at a special election for that position to be consolidated with the regular election. A person elected to fill a position under this subdivision shall take office at the

next regularly scheduled meeting of the governing board following the certification of the election and shall serve only until the end of the term of the position which he or she was elected to fill.

(c) If a special election pursuant to Section 5091 could be consolidated with the next regular election for governing board members, and the vacant position is scheduled to be filled at such regular election, there shall be no special election.

(Amended by Stats. 1984, Ch. 32, Sec. 2.)

5094. If for any reason vacancies should occur in a majority of the offices on any school district or community college district governing board, the president of the county board of education having jurisdiction may appoint members of the county board of education to the district governing board until new members of the governing board are elected or appointed.

(Enacted by Stats. 1976, Ch. 1010.)

5095. Whenever any of the offices on any school district governing board or community college district governing board is vacant, the remaining governing board member or members, if any, and any governing board member or members elected or appointed to fill the vacancies, who have qualified, shall have all the powers and perform all the duties of the governing board.

(Enacted by Stats. 1976, Ch. 1010.)