



HOW TO FILL A VACANCY FOR A SCHOOL DISTRICT OFFICE

THIS REFERENCE GUIDE HAS BEEN PREPARED IN AN EFFORT TO PROVIDE ANSWERS TO FREQUENTLY ASKED QUESTIONS CONCERNING VACANCIES IN LOCAL OFFICES. IT IS FOR GENERAL INFORMATION ONLY AND DOES NOT HAVE THE FORCE AND EFFECT OF LAW.

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SCHOOL DISTRICT OFFICE VACANCY FILLING PROCESS

Pursuant to **Government Code § 1770** 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) (1) His or her resignation, except as provided in paragraph (2).
(2) In the case of the office of city council member, upon the delivery of a letter of resignation by the resigning council member to the city clerk. The letter of resignation may specify a date on which the resignation will become effective.
- (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.

SCHOOL DISTRICT OFFICE VACANCY FILLING PROCESS (Cont.)

- (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.

VACANCY IN OFFICE OF A SCHOOL DISTRICT

Educ. Code § 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.

ACTION REQUIRED BY SCHOOL DISTRICT

Educ. Code § 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.

ELECTION ORDER

- (B) When an **election is ordered**, it shall be held on the next established election date provided pursuant to Chapter 1 (commencing with **Election Code § 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

ELECTION ORDER (Cont.)

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) (A) **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 not less than 88, nor more than 125, days following the order of the election.**

PUBLIC NOTICE

Educ. Code § 5092 and Gov. Code § 6061

- (a) If a provisional appointment is made to the governing board of a school district to fill a vacancy that occurs or will occur pursuant to **Gov. Code § 5091**, the board shall, **within 10 days** of the provisional appointment, **provide notice of both the actual vacancy or the filing of a deferred resignation** and also the provisional appointment by all of the following methods:

(1) Posting the notice in three public places in the school district.

(2) Publishing the notice pursuant to **Section 6061 of the Government Code (Publication of notice pursuant to this section shall be for one time)**. If there is no newspaper of general circulation published in the district, notice need not be published.

(3) Posting the notice on the school district's internet website.

- (b) The notice shall state all of the following:

(1) The fact of the vacancy or resignation.

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

(3) The full name of the provisional appointee to the board and the date of the provisional appointee's appointment.

PUBLIC NOTICE (Cont.)

- (4) 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.

ESTABLISHED ELECTION DATES

Elec. Code § 1000

- (a) The first Tuesday after the first Monday in March of each even-numbered year that is evenly divisible by four.
- (b) The first Tuesday after the first Monday in March of each odd-numbered year.
- (c) The second Tuesday of April in each even-numbered year.
- (d) The first Tuesday after the first Monday in June in each even-numbered year that is not evenly divisible by four.
- (e) The first Tuesday after the first Monday in November of each year.