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## HOW TO FILL A VACANCY

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Pursuant to **Government Code Section § 1770** an office becomes vacant on the happening of any of the following events before the **expiration** of the term:

The death of the incumbent.

An adjudication pursuant to a quo warranto proceeding declaring that the incumbent is physically or mentally incapacitated due to disease, illness, or accident.

His or her resignation.

His or her removal from office.

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.

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

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.

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.

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

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

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.

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.

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## VACANCY IN OFFICE OF A SCHOOL DISTRICT

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School District office vacancies are caused by any of the events listed above, 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. A deferred effective date not to exceed **60 days** may be specified by the incumbent, in which case, the resignation becomes effective on that date. Upon being filed with the County Superintendent of Schools, the written resignation is **irrevocable**. **Educ. Code 5090, 5091(a)**

**ACTION REQUIRED BY SCHOOL DISTRICT** — The district has two options, which must be exercised within **60 days** of the date a vacancy occurs or the date of a deferred resignation is filed with the County Superintendent of Schools:

- Immediately order an election to fill the vacancy; or
- Make a provisional appointment pursuant to **Educ. Code 5091**

In the event that the 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** — 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. **Educ. Code 5091(b)**

The established election dates as defined by **Elections Code 1000** are:

The first Tuesday after the first Monday in March of each even-numbered year that is evenly divisible by four.  
The first Tuesday after the first Monday in March of each odd-numbered year.  
The second Tuesday of April in each even-numbered year.  
The first Tuesday after the first Monday in June in each even-numbered year that is not evenly divisible by four.  
The first Tuesday after the first Monday in November of each year.  
*(Amended by Stats. 2020, Ch. 111, Sec. 4. (SB 970) Effective January 1, 2021.)*

**APPOINTMENT** — If the governing board makes a provisional appointment, the appointee is immediately conferred with all powers and duties of a governing board member. **Educ. Code 5091(d)**

**PUBLIC NOTICE** — Within **10 days** of making the provisional appointment to fill a vacancy the school district governing board must:

- Post a notice in at least three public places in the district; and
- Publish the notice at least once in a newspaper of general circulation within the district. **Gov. Code 6061 and Educ. Code 5092**

The notice to be posted and published must state the following:

- 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, and;
- The full name of the provisional appointee to the board and the date of his/her 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 the County Superintendent of Schools within **30 days** of the date of the provisional appointment, it shall become an effective appointment. **Educ. Code 5092**

**PETITION CALLING FOR A SPECIAL ELECTION** — If a provisional appointment is made within a 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. **Educ. Code 5091 (c)**

#### **PETITION 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 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. **Educ. Code 5091 (f) (1) (D)**

The petition must be filed with the County Superintendent of Schools within the 30 day period following the making of the provisional appointment. The superintendent then has 30 calendar days to verify the signatures. The Superintendent forwards the petitions to the county elections official for checking voter signatures. The elections official will prepare a certificate of the results of the signature verification and forward it to the Superintendent. If the petition is determined to be legally sufficient by the Superintendent, the provisional appointment is terminated, and the 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.

**SIGNATURE REQUIREMENTS** — A petition shall be deemed to bear a sufficient number of signatures if signed by:

- a) 1½ percent of the number of registered voters of the district at the time of the last regular election for governing board members, or
- b) 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. **Educ. Code 5091(c) and (f)**

#### **TERM OF OFFICE**

- A person appointed to fill a vacancy shall hold office 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. **Educ. Code 5091(e)**
- A person elected at an election to fill the vacancy shall hold office for the remainder of the term. **Educ. Code 5091 (e)**
- A person elected at a regular biennial governing board member election shall hold office for a term of four years commencing on the second Friday in December next succeeding his or her election. **Educ. Code 5017**



Los Angeles County Registrar-Recorder/County Clerk



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.