Information Sheet – 3/08/2022 - Board of Trustees Meeting

TO: Board of Trustees Item: 8.3

FR: Celli Coeville

DATE: March 4, 2022

RE: Revised BB 9223, Filling Vacancies, Consider for Adoption

Revised BB 9220, Filling Vacancies, has been updated to reflect current CSBA Board Bylaw, BB 9220, Filling Vacancies.

Recommended Action: Approved revised BB 9220, Filling Vacancies as presented

FILLING VACANCIES

A vacancy on the ~~Board of Trustees~~ Governing Board may occur for any of the following events: ~~specified in Government Code 1770 or by a failure to elect. (Education Code 5090) Removal by recall election shall also create a vacancy on the Board. (Elections Code 11384)~~

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)

CSBA 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

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

   CSBA 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

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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)

CSBA 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)

9. A Board member’s refusal or neglect to file his/her required oath wihin the time prescribed (Government Code 1770)

10. The decision of a competent tribunal declaring void a Board member's election or appointment (Government Code 1770)

11. 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)

CSBA 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.

12. A "failure to elect" in which no candidate or an insufficient number of candidates have

FILLING VACANCIES (continued)

filed to run for a Board seat(s) (Education Code 5090, 5326, 5328)

~~If a vacancy occurs less than four months before the end of a Board member's term, the Board shall take no action. (Education Code 5093)~~

~~If a vacancy occurs four or more 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 below. (Education Code 5091)~~

~~Mandated Special Election~~ 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)

CSBA 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)

3. ~~If~~ 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

CSBA 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.

FILLING VACANCIES (continued)

Provisional Appointments

CSBA 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 the special election described above is not required, the Board may make a provisional appointment. (Education Code 5091, 5093)

When authorized by law to make a provisional appointment to fill a vacancy on the Board ~~In order to draw from the largest possible number of candidates~~, 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. 9220 - Board of Trustees Elections)*~~
~~*(cf. 9323.2 - Actions by the Board)*~~

~~**Notice and Duration of Provisional Appointment**~~

Within 10 days after the appointment is made, the Board shall post notices of the actual vacancy, or the filing of a deferred ~~or~~ resignation, and the provisional appointment. The notice shall be published in the local newspaper pursuant to Government Code 6061 and posted in at least three public places within the district. (Education Code 5092)

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 of Schools within 30 days of the provisional appointment, it shall become an effective appointment

FILLING VACANCIES (continued)

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

CSBA 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 #12 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)

When an appointment is being made because of a failure to elect, the district shall publish a notice once in a newspaper of general circulation published in the district, or if no such newspaper exists, in a newspaper having general circulation within the district. This notice shall state that the Board intends to make an appointment and shall inform persons of the procedure available for applying for the appointment. (Education Code 5328.5)

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

Legal Reference:

EDUCATION CODE
5000-5033 Election of school board members
~~*5019-5019.5 Trustee areas*~~
5090- 5095 ~~Definition (vacancy)~~ Vacancies on the board
~~*5091 Special election or provisional appointment*~~
~~*5092 Public notice of vacancy and provisional appointment*~~
~~*5093 Re vacancies occurring near end of term and incumbent not reelected*~~
~~*5094 Power of president of county board of education when majority of offices vacant*~~
~~*5095 Powers of remaining board members and new electees or appointees*~~
5200-5208 ~~Districts governed by boards of education~~ Districts governed by boards of education
5300- 5304 Duties of the governing board General provisions (conduct of elections)
5320-5325~~9~~ ~~Publication of information regarding~~ Order and call of elections ~~districtelections~~
5420-5426 Cost of elections, ~~especially:~~
~~*5424 Expenses of conducting legal recall election*~~
35107 Eligibility
35178 Resignation with deferred effective date
ELECTIONS CODE
10603-10604 School district elections
11384 ~~Vacancy in office if majority vote for recall~~
GOVERNMENT CODE
1064 Absence from state
1770 Vacancies: definition

FILLING VACANCIES (continued)

Legal Reference (continued):

3060-3074 Removal other than by impeachment
6061 One time
54950-54962 The Ralph M. Brown Act, especially:
54953 Meetings open and public; secret ballots
ATTORNEY GENERAL OPINIONS
58 Ops.Cal.Atty.Gen. 888 (1975)