

**FILLING VACANCIES**

A vacancy on the Board of Trustees may occur for any of the 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)

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))

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**

If 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)

**Provisional Appointments**

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

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 vacancy or resignation and the provisional appointment. The notice shall be published in the local newspaper 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

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)

*Legal Reference: (see next page)*

## **FILLING VACANCIES (continued)**

### *Legal Reference:*

#### EDUCATION CODE

*5019-5019.5 Trustee areas*

*5090 Definition (vacancy)*

*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 Districts governed by boards of education*

*5304 Duties of the governing board (re school district elections)*

*5325 Publication of information regarding district elections*

*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*

*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)*