

***Riverside County Office of Education
Board Bylaw 9223 Filling Vacancies***

BYLAWS OF THE BOARD

SUBJECT: Filling Vacancies

A vacancy on the County Board of Education (County Board) may arise for any of the following reasons:

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 County Board member's resignation (Government Code 1770)
4. A County Board member's removal from office, including by recall (Elections Code 11384; Government Code 1770)
5. A County Board member's ceasing to inhabit the trustee area which he/she represents on the County Board (Government Code 1770)
6. A County Board member's absence from the state for more than 60 days, except in the following situations: (Government Code 1064, 1770)
 - a. Upon County Board business with the approval of the County Board
 - b. With the consent of the County Board for an additional period not to exceed a total absence of 90 days

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 County 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 County Board member for military deployment exceeds six months, the County 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 County Board may appoint an interim member to serve in his/her absence.

If two or more members of the County Board are absent by reason of military deployment, and those absences result in the inability to establish a quorum at a regular meeting, the County Board may immediately appoint one or more interim

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members as necessary to enable the County 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 County Board member or beyond the next regularly scheduled election for that office, whichever occurs first.

7. A County 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 without the permission required by law (Government Code 1770)
8. A County 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 County Board member's refusal or neglect to file his/her required oath within the time prescribed (Government Code 1770)
10. The decision of a competent tribunal declaring void a County Board member's election or appointment (Government Code 1770)
11. A County 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)
12. A "failure to elect" in which no candidate or an insufficient number of candidates have filed to run for a County Board seat(s) (Education Code 5090, 5326, 5328)

Timelines for Filling a Vacancy

When a vacancy occurs at least four months before the end of a County Board member's term, the County Board may fill the vacancy within 60 days of the date of the vacancy or the filing of the member's deferred resignation by making a provisional appointment or ordering an election, except when a special election is mandated or prohibited. (Education Code 5091, 5093)

A special election is mandated when the vacancy occurs during the period between six months and 130 days prior to a regularly scheduled County Board election, and the position vacated is not scheduled to be filled at that election. Such special election 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)

A special election ordered by the County Board pursuant to Education Code 5091 is prohibited if it could be consolidated with the next regular County Board election at which the vacant position is scheduled to be filled.

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

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Eligibility

In order to be appointed or elected to fill a vacancy on the County Board, a person must meet the eligibility requirements specified in Education Code 1000 and 1006 and described in Board Bylaw 9220.

When the boundaries of the trustee area represented by a County Board member have changed since the County Board member's term of office became effective, any special election to fill the seat vacated by the County Board member shall be held subject to the trustee area boundaries in effect when the County Board member was elected.

Provisional Appointment Process

When a special election is not required, the County Board is authorized by law to make a provisional appointment to fill a vacancy on the County Board. In order to draw from the largest possible number of candidates, the County Board shall advertise in the local media to solicit candidate applications or nominations. The County Board may designate the County Superintendent, the legal counsel or a committee of less than a quorum of the County Board to screen and ensure the eligibility of candidates for the vacant County Board position. The County Board shall interview the candidates at a public meeting, accept oral or written public input, and select the provisional appointee by a majority vote.

The person appointed shall be afforded all the powers and duties of a County Board member immediately upon appointment and shall hold office until the next regularly scheduled election for County Board members. (Education Code 5091)

Notice and Duration of Provisional Appointment

Within 10 days after the appointment is made, the County Board shall post notices of the vacancy or deferred 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 jurisdiction of the County Board, one of which must be within the vacated trustee area. (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; and
2. The full name of the provisional appointee and the date of the appointment; and
3. 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.

If within 30 days of the County Board's appointment, registered voters of the trustee area for which the appointment is made submit a petition for special election which the County Superintendent determines to be legally sufficient, the provisional appointment is immediately terminated, and a special election shall be held in accordance with Education Code 5091 to fill the vacancy. Any such petition for a special election shall contain the county election official's estimate of the cost of conducting the special election, expressed on a per-student basis.

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Appointment Due to Failure to Elect

When a vacancy occurs because no candidate or an insufficient number of candidates have been nominated (i.e., a failure to elect) and an election will not be held, the County 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 election. (Education Code 5328)

When an appointment is being made because of a failure to elect, the County Board shall publish a notice once in a newspaper of general circulation published in the county, or if no such newspaper exists, in a newspaper having general circulation within the county. This notice shall state that the County 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 specified above in the "Provisional Appointments" section.

Legal Reference:

EDUCATION CODE

1006-Qualifications for holding office; term limits; electoral approval

1008-Vacancy on county board

5000-5033 Elections

5090-5095 Vacancies

ELECTIONS CODE

10600-10604 School district elections

11381-11386 Candidates for recall

GOVERNMENT CODE

1064 Absence from state

1770 Vacancies: definition

3000-3002 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. January 2008

WEB SITES CSBA: <http://www.csba.org>

California State Attorney General's Office, Quo Warranto Applications:

<http://caag.state.ca.us/opinions/quo.htm>