

FAQs - Resignation and Appointment of School Board Member

1. May a school board member resign from his/her office?

Yes. Government Code section 1770, subdivision (c) provides that “[a]n office becomes vacant . . . [upon the incumbent’s] resignation.”

2. How does a school board member resign?

Education Code section 5090 provides that “a vacancy resulting from resignation occurs when the written resignation is filed with the county superintendent of schools . . .”

3. Is it necessary for the school board to take action to accept a member’s resignation?

No. As noted above the resignation is effective upon the county superintendent of schools’ receipt of the written resignation. Some governing board meetings do have public agenda items to “accept” a member’s resignation. This is usually done for purposes of creating an occasion to honor a departing board member and is purely ceremonial with no legal significance.

4. May a board member defer the effective date of a resignation?

Yes. Education Code section 5090 provides that a board member’s written resignation may indicate a “deferred effective date.” Section 5091 provides further that the resignation may not be deferred “for more than 60 days after he or she files the resignation with the county superintendent of schools.”

5. Are there any limits on the role of a board member who files with the county superintendent a written resignation with a deferred effective date?

Yes. Education Code section 35178 provides as follows (emphasis added):

A member of the governing board of a school district who has tendered a resignation with a deferred effective date pursuant to Section 5090 shall, until the effective date of the resignation, continue to have the right to exercise all powers of a member of the governing board, *except that such member shall not have the right to vote for his or her successor in an action taken by the board to make a provisional appointment pursuant to Section 5091.*

Note: This prohibition applies only to the actual vote and does not appear to preclude the member whose resignation is pending from participating in the selection process or board discussion of who to appoint.

6. What does a school board need to do after learning of a resignation from one of its members?

Education Code section 5091 provides that the 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.”

7. May the board meet in closed session to develop questions or interview candidates?

No. Under the Brown Act, all aspects of making a provisional appointment must be done in public session, except where the board appoints an advisory ad hoc committee of less than a quorum of board members and no other members. If an advisory ad hoc committee is appointed it may assist in screening or evaluating applications and preparing interview questions, but may not make any final decisions for the board. (See Government Code section 54952, subdivision (b).) The provisional appointment must be put on the public session agenda and the Board must take action to approve the appointment.

8. Once the board makes a provisional appointment to fill a vacancy, what happens next?

Education Code section 5092 provides as follows:

...the board shall, within 10 days of the provisional appointment of a person to fill a vacancy which occurs or will occur, post notices of both the actual vacancy or the filing of a deferred resignation and also the provisional appointment in three public places in the district and shall publish a notice pursuant to Section 6061 of the Government Code. The notice shall state 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. The notice shall also contain the full name of the provisional appointee to the board and the date of his 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 county

superintendent of schools within 30 days of the date of the provisional appointment, it shall become an effective appointment.