

Mt. Diablo USD

Board Bylaw

Filling Vacancies

BB 9223

Board Bylaws

A vacancy on the Governing Board 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)

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 and if filling a vacant seat that was elected by-trustee area, a person must also be a resident of that trustee area.

(cf. 9220 - Board of Trustees Elections)

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 enhance fairness and objectivity in appointing a person to fill a Board vacancy, the Board shall post notice of the vacancy or deferred resignation in at least three public places in the

district, and in appropriate news media, and invite the applications or nominations of any legally qualified citizen of the district who is interested in serving on the Board. All those named as possible candidates will receive a letter from the Board president with a candidate information sheet to be completed and returned to the Board by a specified date. Candidates will be encouraged to seek additional information about the time requirements and responsibilities of Board service. After names of candidates are announced, additional input will be accepted from any patron of the district either directly in writing to the president, or at a public meeting. Candidates will be evaluated on the basis of how well they represent the entire community and on their commitment to student welfare. The Board may request personal interviews with candidates at a regular or special Board meeting. All candidate information sheets will be screened by each Board member, with final selection made by majority vote of the Board members at a regular Board meeting or a special meeting called for the purposes.

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:

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
54950-54963 The Ralph M. Brown Act, especially:
54953 Meetings open and public; secret ballots
ATTORNEY GENERAL OPINIONS
58 Ops.Cal.Atty.Gen. 888 (1975)

Bylaw MT. DIABLO UNIFIED SCHOOL DISTRICT
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