

FILLING COUNTY BOARD VACANCIES

A vacancy on the Monterey County Board of Education (County Board) may occur due to any of the following events:

1. The death of an incumbent. [Government Code (GC) 1770]
2. The adjudication pursuant to a legal proceeding declaring that incumbent are physically or mentally incapacitated due to disease, illness, or accident and that there is reasonable cause to believe that the incumbents will not be able to perform the duties of their office for the remainder of their term. [GC 1770]
3. A County Board member's resignation.

A resignation is effective upon its receipt in the Monterey County Superintendent of Schools' (County Superintendent) Office, except where a deferred effective date is specified in the resignation, in which case the resignation shall become operative on that date. County Board members may not defer the effective date of their resignation for more than 60 days after they file their resignation with the County Superintendent. [Education Code (EC) 5090, 5091; GC 1770]

Upon being filed with the County Superintendent, a written resignation, whether specifying a deferred effective date or otherwise, is irrevocable. [EC 5090]

4. A County Board member's removal from office, including by recall. [Elections Code 11384; GC 1770]
5. County Board member ceasing to be a resident within the trustee area that they represent, except when trustee boundaries are changed and a member can remain until the end of the term. [EC 5021; 58 Ops.Cal.Atty.Gen. 888 (1975); GC 1770]
6. A County Board member's absence from the state without the permission required by law beyond the period allowed by law. [GC 1770]

No County Board member shall be absent from the state for more than 60 days, except in any of the following situations: [GC 1064]

- a. Upon business of the Monterey County Office of Education (MCOE) 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
- c. For federal military deployment, not to exceed 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 this purpose 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. The County Board may appoint an interim member to serve in the absence due to military deployment.

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 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.

- d. 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 for an additional period not to exceed 30 days.
7. County Board members ceasing to discharge the duties of their office for the period of three consecutive months, except when presented by sickness or when absent from the state with the permission required by law. [GC 1770]
8. County Board members conviction of a felony or of any offense involving a violation of their official duties, or conviction of a designated crime resulting in a forfeiture of office [GC 1770; 3000-3003]

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 falsely claiming receipt of any military decoration or medal.

9. County Board members refusal or neglect to file their required official oath or bond within the time prescribed. [GC 1770]
10. The decision of a competent tribunal declaring void a County Board member's election or appointment. [GC 1770]
11. A County Board member's commitment to a hospital or sanitarium by a court of competent jurisdiction as a drug addict, dipsomaniac, inebriate or stimulant addict, in which case the office shall not be deemed vacant until the order of commitment has become final. [GC 1770]
12. A "failure to elect" when either no candidate or an insufficient number of candidates have filed to run for a County Board seat(s). The County Board is authorized to make an appointment in such circumstances. [EC 5090, 5326, 5328]

Timelines for Filling a Vacancy

When a vacancy occurs, the County Board shall take the following action, as appropriate: [EC 1008]

1. When a vacancy occurs within four months of the end of a County Board member's term, the County Board will take no action. [EC 5093]
2. When a vacancy occurs four or more than four months before the end of a County Board member's term, the County Board should either order an election or make a provisional appointment within 60 days of the date of the vacancy or the filing of the member's deferred resignation unless a special election as described in item #3 below is required. [EC 5091, 5093] In the event that the County 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. [EC 5091, 5093]
3. When a vacancy occurs between six months and 130 days before a regularly scheduled County Board election but the vacant position is not scheduled to be filled during that election, a special election to fill the position shall be consolidated with the regular election. The person elected should take office at the first regularly scheduled County Board meeting following the certification of the election and may serve until the end of the term of the position which they were elected to fill. [EC 5093]

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 EC 1000 and 1006 and described in Board Bylaw 9220.

Education Code 1006 prohibits the County Superintendent or any member of their staff, or any employee of a school district that is within the jurisdiction of the County Board, from concurrently holding a position of County Board member.

Provisional Appointments

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. [EC 5091, 5093]

In order to draw from the largest possible number of candidates for the provisional appointment, the County Board should advertise in the local media to solicit candidate applications or nominations. A committee, appointed by the County Board President, consisting of less than a quorum of the County Board should ensure that applicants are eligible for County Board membership and announce the names of the eligible candidates. The County Board is required to 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 should be afforded all the powers and duties of a County Board member immediately upon appointment and may hold office until the next regularly scheduled election for County Board members. [EC 5091]

Within 10 days after the appointment is made, the County Board should post notices of the actual vacancy, or the filing of a deferred resignation, and the provisional appointment. The notice should be published in the local newspaper pursuant to GC 6061 and posted in at least three public places within the jurisdiction of the County Board. [EC 5092]

The notice should contain: [EC 5092]

1. The date the vacancy occurred or the date of the filing of, and the effective date of, the resignation
2. The full name of the provisional appointee
3. The date of appointment
4. A statement notifying the voters that unless a petition calling for a special election pursuant to EC 5091 is filed in the office of the County Superintendent within 30 days of the provisional appointment, it should become an effective appointment.

The person appointed should hold office until the next regularly scheduled election for County Board members and is required to be afforded all the powers and duties of a County Board member upon appointment. [EC 5091]

Appointment Due to Failure to Elect

When a vacancy occurs because no person 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 is required to appoint a qualified person to the office. This appointment should be made at a meeting prior to the day fixed for the election and the appointee should be seated at the organizational meeting as if elected. [EC 5328]

When an appointment is being made because of a failure to elect, the office of the County Superintendent must publish a notice once in a newspaper(s) of general circulation published in the county. This notice should state that the County Board intends to make an appointment and should inform persons of the procedure available for applying for the appointment. [EC 5328.5]

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

Legal reference:

EDUCATION CODE

1000 *Composition and trustee area, county board of education*
1006 *Qualifications for holding office, county board of education*
1007 *Elections*
1008 *Vacancies, procedures for filling*
5000-5033 *General provisions (conduct of elections)*
5090-5095 *Vacancies*
5300-5304 *Elections*
5320-5329 *Order and call of election*
5340-5345 *Consolidation of elections*
5360-5363 *Election notice*
5420-5426 *Cost of elections*
5440-5442 *Miscellaneous provisions, elections*

ELECTIONS CODE

10600-10604 *School district elections*
11381-11386 *Candidates for recall*

GOVERNMENT CODE

1064 *Absence from state*
1770 *Vacancies: definition*
3000-3003 *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)*
81 *Ops.Cal.Atty.Gen. 98 (1998)*

Revised: 10/20/82; 1/20/93; 9/01/99; 10/07/09; 06/05/19