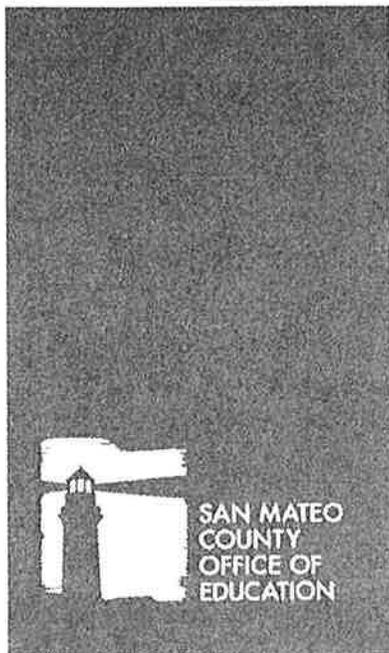


# San Mateo County Office of Education

## Filling Vacancies on San Mateo County School District Governing Boards



**Disclaimer:** This guide was developed in an effort to provide answers to questions concerning filling vacancies on local school district governing boards. In case of conflict, the law, regulation or rule will apply. Persons using this guide must bear full responsibility to make their own determinations as to all legal standards and duties. This guide does not provide legal advice, does not have the force and effect of law and is not to be a substitute for legal counsel. It is the user's responsibility to obtain the most current information available.

## Vacancies - Definition

An office becomes vacant when any of the following events occur before the expiration of the term:

- a) The death of the incumbent.
- b) An adjudication pursuant to a quo warranto proceeding declaring that the 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 or her office for the remainder of his or her term. This subdivision shall not apply to offices created by the California Constitution or to federal or state legislators.
- c) His or her resignation.
- d) His or her removal from office.
- e) His or her ceasing to be an inhabitant of the state, or if the office be local and one for which local residence is required by law, of the district, county or city for which the officer was chosen or appointed, or within which the duties of this or her office are required to be discharged.
- f) His or her ceasing to be an inhabitant of the district for which he or she was elected or appointed to serve.
- g) His or her absence from the state without the permission required by law beyond the period allowed by law.
- h) His or her ceasing to discharge the duties of his or her office for the period of three consecutive months, except when prevented by sickness, or when absent from the state with the permission required by law.
- i) His or her conviction of a felony or of any offense involving a violation of his or her official duties. An officer shall be deemed to have been convicted under this subdivision when trial court judgment is entered. For the purposes of this subdivision, "trial court judgment" means a judgment by the trial court either sentencing the officer or otherwise upholding and implementing the plea, verdict, or finding.
- j) His or her refusal or neglect to file his or her required oath or bond within the time prescribed.
- k) The decision of a competent tribunal declaring void his or her election or appointment.
- l) The making of an order vacating his or her office or declaring the office vacant when the officer fails to furnish an additional or supplemental bond.
- m) His or her commitment to a hospital or sanitarium by a court of competent jurisdiction as a drug addict, dipsomaniac, inebriate, or stimulant addict; but in that event the office shall not be deemed vacant until the order of commitment has become final.

(Government Code §1770)

## What Causes a Vacancy?

Vacancies on school district governing boards or community college district boards are caused by any of the events specified in Section 1770 of the Government Code (see Vacancies – Definition), or by a failure to elect. A vacancy resulting from resignation occurs when the written resignation is filed with the County Superintendent of Schools having jurisdiction over the district. A deferred effective date not to exceed 60 days may be specified by the incumbent, in which case, the resignation becomes effective on that date. Upon being filed with the County Superintendent of Schools, the written resignation is irrevocable.

(Education Code § 5090(a))



## Action Required by the Governing Board

Whenever a vacancy occurs, the school district or community college district governing board has one of two options available. Either option must be exercised within 60 days of the date a vacancy occurs or the date a deferred resignation is filed with County Superintendent of Schools:

1. Call an election to fill the vacancy; or
2. Make a provisional appointment pursuant to §5091 of the Education Code.

In the event that the governing board fails to make a provisional appointment or order an election within the prescribed 60-day period as required by this section, the County Superintendent of Schools shall call an election to fill the vacancy.

(Education Code § 5091(a))

Although not required by law, as a matter of practice, a copy of the resignation, and copies of any notices, appointments, resolutions calling election, etc. should be sent to the San Mateo County Registration & Elections Division as soon as possible.

## Election Ordered

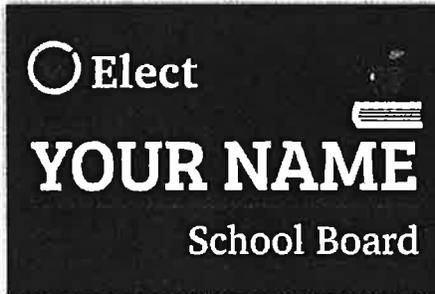
When an election is ordered, it shall be held on the next established election date(s) not less than 130 days after the occurrence of the vacancy or after the written resignation is filed with the County Superintendent of Schools.

(Education Code § 5091(b))

An established election as defined by Elections Code §1000 is:

- (a) The second Tuesday of April in each even-numbered year. *too soon*
- (b) The first Tuesday after the first Monday in March of each odd-numbered year.
- (c) The first Tuesday in March in each even-numbered year. *too soon*
- (d) The first Tuesday after the first Monday in June of each odd-numbered year.
- (e) The first Tuesday after the first Monday in November of each year. ✓

Vacancy elections shall be conducted in as nearly the same manner as practicable as other governing board member elections.



## Provisional Appointment

If the Governing Board makes a provisional appointment, the appointed board member is immediately conferred with all powers and duties of a governing board member.

(Education Code §5091(d))

## Public Notice

Within 10 days of making the provisional appointment to fill a vacancy the school district governing board must:

1. Post a notice described below in at least three public places in the district; and
2. Publish the notice at least once in a newspaper of general circulation published within the district (Gov. Code §6061). If there is no newspaper of general circulation published in the district, notice need not be published.

(Education Code § 5092)

A copy of the notice should be sent to the San Mateo County Registration & Elections Division.



## Contents of Public Notice

The notice to be posted and published must state the following:

1. 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, and
2. The full name of the provisional appointee to the board and the date of his/her appointment, and
3. 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.

(Education Code §5092)

# Petition Calling for a Special Election



If a provisional appointment is made within the 60-day period, the registered voters of the district may, within 30 days from the date of the appointment, petition for the conduct of a special election to fill the vacancy.

**Signature Requirements:** A petition shall be deemed to bear a sufficient number of signatures if signed by whichever means below results in a greater number of registered voters:

- 1 ½ percent of the number of registered voters of the district at the time of the last regular election for governing board members, or
- 25 registered voters

However, in districts with registered voters of less than 2,000 persons, a petition shall be deemed to bear a sufficient number of signatures if signed by at least 5 percent of the number of registered voters of the district at the time of the last regular election for governing board members.

(Education Code § 5091(c))

**Petition Requirements:** Whenever a petition calling for a special election is circulated, the petition shall meet all of the following requirements:

- A. The petition shall contain the estimate of the elections official of the cost of conducting the special election.
- B. The name and residence address of at least one, but not more than five, of the proponents of the petition shall appear on the petition, each of which proponents shall be a registered voter of the school district or community college district, as applicable.
- C. None of the text or other language of the petition shall appear in less than six-point type.
- D. The petition shall be prepared and circulated in conformity with Sections 100 and 104 of the Elections Code.

(Education Code §5091(f))



**Who Can Sign Petition:** Only a person who is an eligible registered voter at the time of signing the petition is entitled to sign it. Each signer shall at the time of signing the petition personally affix his or her signature, printed name, and place of residence, giving street and number, and if no street or number exists, then a designation of the place of residence which will enable the

## Petition Calling for a Special Election - *continued*



location to be readily ascertained. A space at least one inch wide shall be left blank after each name for the use of the elections official in verifying the petition or paper. The part of a petition for the voters' signatures, printed names, and residence addresses and for the blank spaces for verification purposes shall be numbered consecutively commencing with the number one and continuing

through the number of signature spaces allotted to each section.

(Elections Code §100)

**Petition Circulator:** Each section of the petition or paper shall have attached to it a declaration signed by the circulator of the petition or paper, setting forth, in the circulator's own hand, the following:

1. The printed name of the circulator.
2. The residence addresses of the circulator, giving street and number, or if no street or number exists, adequate designation of residence so that the location may be readily ascertained.
3. The dates between which all the signatures to the petition or paper were obtained.

Each declaration submitted pursuant to this section shall also set forth the following:

1. That the circulator circulated that section and witnessed the appended signatures being written.
2. That according to the best information and belief of the circulator, each signature is the genuine signature of the person whose name it purports to be.

The circulator shall certify to the content of the declaration as to its truth and correctness, under penalty of perjury under the laws of the State of California, with the signature of his or her name at length, including given name, middle name or initial, or initial and middle name.

The circulator shall state the date and the place of execution on the declaration immediately preceding his or her signature.

(Elections Code § 104)

## Filing the Petition

The petition must be filed with the County Superintendent of Schools within the 30-day period following the making of the provisional appointment.

The County Superintendent of Schools then has 30 days to determine the legal sufficiency of the petition and to verify signatures. (Since there is no mention of excluding weekend days and holidays, the 30-day reference is 30 calendar days).

As a matter of practice, the Superintendent forwards the petitions to the San Mateo County Registration & Elections Division for checking signatures. The Superintendent may decide if the petition is to be checked using a random sampling in accordance with Elections Code §9115 or to check 100 percent of the signatures. A certificate of the results of the petition checking will be forwarded to the County Superintendent of Schools.

If the petition is determined to be legally sufficient by the County Superintendent of Schools, the provisional appointment is terminated, and the County Superintendent of Schools shall call a special election to be conducted no later than the 120th day after the determination. However, if a regular election date, as defined in Section 1000 of the Elections Code, occurs between the 120th day and the 150th day following the determination, the County Superintendent of Schools may call the special election to be conducted on the regular election date.

If any of the legal requirements are not met as to any petition calling for a special election, the County Superintendent of Schools shall not verify the signatures, nor shall any further action be taken with respect to the petition.

No person shall permit the list of names on a petition prescribed by this section to be used for any purpose other than qualification of the petition for the purpose of holding an election pursuant to this section.

# Sample – Notice of Board Vacancy

## SAMPLE NOTICE OF SCHOOL DISTRICT VACANCY PUBLIC NOTICE OF VACANCY AND PROVISIONAL APPOINTMENT California Education Code §5092

A vacancy on the <District> Governing Board has occurred because of the <resignation or other reason> of <Member Name, if resignation> effective <date>. <Member Name> filed the resignation in the San Mateo County Superintendent of Schools office on <date>.

The Governing Board appointed <Appointee> on <date> to fill the above named vacancy.

To challenge the appointment and order a special election, proponents must file a petition in the office of the San Mateo County Superintendent of Schools within 30 days from the date of the provisional appointment.

The petition must contain:

- valid signatures of at least 1.5 (.015) percent of the number of registered voters of the district at the time of the last regular election for governing board members held within the <District>, or 25 registered voters of the district, whichever is greater; or
- valid signatures of at least 5 percent of registered voters of the district at the time of the last regular election for governing board members in districts with less than 2,000 registered voters.

Governing Board of the < District >

\_\_\_\_\_  
Governing Board Secretary/Clerk

\_\_\_\_\_  
Date



# Sample – Petition for Special Election

## SAMPLE PETITION FOR SPECIAL ELECTION TO FILL VACANCY ON THE GOVERNING BOARD OF THE < NAME OF THE SCHOOL DISTRICT HERE > California Education Code §100 (c)

The proponents of this petition as named herewith are registered voters of the aforementioned school district.

- s/ Voter 1, residence address
- s/ Voter 2, residence address
- s/ Voter 3, residence address
- s/ Voter 4, residence address
- s/ Voter 5, residence address

← Name and address of at least one and not more than five proponents.

Education Code §5091(f)

Pursuant to the Education Code (EDC), we the undersigned, who are registered voters of the <name of the school district>, in San Mateo County, California, hereby petition the San Mateo County Superintendent of Schools to call a special election for the purpose of filling the vacancy on the governing board of said school district. If an election is called pursuant to this petition, the provisional appointment heretofore made by the governing board of said school district to fill the vacancy shall be terminated.

The San Mateo County Registrar of Voters has estimated the cost of conducting the special election called pursuant to this petition to be approximately <\$ insert estimated cost here.>

←	→		Official Use Only
One Inch			
1	Print Name	Residence Address ONLY	
	Signature	City, State ZIP	
2	Print Name	Residence Address ONLY	
	Signature	City, State ZIP	
			One Inch
			←
			→

### DECLARATION OF PERSON CIRCULATING SECTION OF A PETITION FOR A SPECIAL ELECTION (MUST BE IN CIRCULATOR'S OWN HANDWRITING)

I, \_\_\_\_\_, declare:  
(print name)

1. My residence address is \_\_\_\_\_ in San Mateo County, California, and I am a voter or qualified to vote in (insert electoral jurisdiction);
2. I personally circulated the attached petition for signing;
3. I witnessed each of the appended signatures being written on the petition and to my best information and belief, each signature is the genuine signature of the person whose name it purports to be; and
4. I obtained the appended signatures between the dates of \_\_\_\_\_ and \_\_\_\_\_ inclusive.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on \_\_\_\_\_ at \_\_\_\_\_, California.  
(date) (city)

\_\_\_\_\_  
(signature)

We recommend that you leave a 1" margin at the top, and a 1/2" margin on the left, right, and bottom.

