

## **PROCEDURES FOR PROVISIONAL APPOINTMENT TO THE FSD BOARD**

When a board vacancy occurs or a resignation with a deferred effective date<sup>1</sup> has been filed with the county superintendent of schools, the board may either order an election or make a provisional appointment to fill the vacancy within 60 days of the vacancy or filing of the deferred resignation.<sup>2</sup>

A vacancy occurs upon the death of a board member, upon submittal of an unconditional written resignation with the county superintendent or upon the deferred effective date of resignation, which may not be more than 60 days after filing of a written resignation with the county superintendent's office, when the board member ceases to reside in the trustee area which he/she represents<sup>3</sup>, and as specified in Government Code section 1770.

If the board does not act in a timely manner to order an election or appoint, the county superintendent of schools must order an election.

The procedures for the provisional appointment of a board member are outlined below.

1. Publish notice of the open board position one time in a newspaper of general circulation in the district stating that board intends to make an appointment and informing the public of the procedure for applying. The notice can also be published in district newsletters that are circulated to parents and/or other members of the community. (Ed. Code §5092)
2. Distribute applications as requested. (See Attachment 1)
3. Continue to receive applications until stated deadline (March 2<sup>nd</sup> @ 4:00 p.m.).
4. Forward copies of each completed application to current board members.
5. Develop interview questions and structure interview format.
6. Board conducts individual interviews of applicants in open session at a special or regular meeting. (Board may request, but not require, applicants to come into Board meeting one at a time.) Appointment to vacant position must occur within 60 days of the date the former member filed a letter of resignation with the county superintendent of schools.
7. The vote takes place at the same or subsequent meeting after all interviews have been completed. Either way, discussion and voting occurs in open session and timelines in paragraph 6 must be observed.

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<sup>1</sup> A board member may not defer the effective date of his/her resignation more than 60 days after filing the resignation with the county superintendent of schools. (Ed. Code §5091(a))

<sup>2</sup> The appointment procedures do not apply (a) if the vacancy occurs within **4 months of the end of the term of the position**; (b) if the **vacancy occurs or the resignation specifying a deferred effective date is filed during the period between six months and 130 days prior to a regularly scheduled election**. In such case, the position is filled at a special election to be consolidated with the regular election. The person so elected serves only until the end of the term of the position he/she was elected to fill (Ed. Code §5093(a) and (b))

<sup>3</sup> Education Code sections 5019.5 and 5030; 79 Ops.Cal.Atty.Gen.243,245 (1966); 75 Ops.Cal..Atty.Gen. 287, 288 (1992)

8. Voting process continues until an applicant receives the vote of a majority of seats on the Board including any vacant seats.
9. Board president announces the provisional appointment.
10. **Powers of Appointed Member.** A provisional appointment confers all of the powers and duties of a governing board member immediately following the appointment. (Ed. Code §5091(d))
11. **Term of Appointed Member.** The new board member serves until the next regularly scheduled election that is scheduled 130 or more days after the effective date of the vacancy, unless a valid petition for special election is filed within 30 days of the provisional appointment. A board member elected at an election to fill the vacancy shall hold office for the remainder of the term. (Ed. Code §5091(c)-(e))
12. **Notice of Right to Petition for Election.** Within 10 days after the provisional appointment, post notices of the actual vacancy or deferred resignation and the provisional appointment in three public places in the district and publish notice one time in a newspaper of general circulation in the district stating: the date the vacancy occurred or date of filing and effective date of the resignation, the full name of the provisional appointee, and a statement that, unless a petition calling for a special election, containing a sufficient number of signatures is filed in the county superintendent's office, the provisional appointment shall become an effective appointment.

FRESHWATER SCHOOL DISTRICT  
BOARD OF TRUSTEES

Application Form

Name \_\_\_\_\_

Address \_\_\_\_\_

Telephone Number \_\_\_\_\_(Home) \_\_\_\_\_(Work)

Biographical Information

1. Occupation \_\_\_\_\_

2. Education \_\_\_\_\_

\_\_\_\_\_

3. Public School-Related Experience \_\_\_\_\_

\_\_\_\_\_

4. Community Involvement \_\_\_\_\_

\_\_\_\_\_

5. Years of Residence in our school district \_\_\_\_\_

Explain why you are interested in serving on the Board of Trustees and describe the experience that you will bring to the Freshwater School Board of Trustees.

*(Please type response on a separate sheet of paper)*

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Please Note: Upon receipt by the District this Form will be a matter of public record.  
DUE: March 2, 2022, @ 4:00 p.m.



## EDUCATION CODE – 2017

### Education Code § 5090. Definition

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, 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, except where a deferred effective date is specified in the resignation so filed, in which case the resignation shall become effective on that date. A written resignation, whether specifying a deferred effective date or otherwise, shall, upon being filed with the county superintendent of schools be irrevocable.

### Education Code § 5091. Provisional appointment or special election; petition; requirements

(a) (1) If a vacancy occurs, or if a resignation has been filed with the county superintendent of schools containing a deferred effective date, the school district or community college district 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. A governing board member may not defer the effective date of his or her resignation for more than 60 days after he or she files the resignation with the county superintendent of schools.

(2) In the event that a 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 order an election to fill the vacancy.

(b) When an election is ordered, it shall be held on the next established election date provided pursuant to Chapter 1 (commencing with Section 1000) of Division 1 of the Elections Code not less than 130 days after the order of the election.

(c)(1) 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. A petition shall be deemed to bear a sufficient number of signatures if signed by at least the number of registered voters of the district equal to 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, whichever is greater. However, in districts with less than 2,000 registered voters, 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.

(2) The petition shall be submitted to the county superintendent of schools having jurisdiction who shall have 30 days to verify the signatures. 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 order a special election to be conducted no later than the 130th day after the determination. However, if an established election date, as defined in Section 1000 of the Elections Code, occurs between the 130th day and the 150th day following the order of the election, the county superintendent of schools may order the special election to be conducted on the established election date.

(3) For purposes of this section, “registered voters” means the following:

(A) If the district uses the at-large method of election, as defined in subdivision (a) of Section 14026 of the Elections Code, registered voters of the entire school district or community college

district.

(B) If the district uses district-based elections, as defined in subdivision (b) of Section 14026 of the Elections Code, registered voters of the election district.

(d) A provisional appointment made pursuant to subdivision (a) confers all powers and duties of a governing board member upon the appointee immediately following his or her appointment.

(e) A person appointed to fill a vacancy shall hold office only until the next regularly scheduled election for district governing board members that is scheduled 130 or more days after the effective date of the vacancy, whereupon an election shall be held to fill the vacancy for the remainder of the unexpired term. A person elected at an election to fill the vacancy shall hold office for the remainder of the term in which the vacancy occurs or will occur.

(f)(1) If 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.

(2) If any of the requirements of this subdivision 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.

(3) No person shall permit the list of names on petitions 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.

(4) The petition filed with the county superintendent of schools shall be subject to the restrictions in Section 6253.5 of the Government Code.

(g) Elections held pursuant to subdivisions (b) and (c) shall be conducted in as nearly the same manner as practicable as other governing board member elections.

### **Education Code § 5092. Public notice of vacancy and provisional appointment**

Whenever a provisional appointment is made to the governing board of a school district pursuant to Section 5091, 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. If there is no newspaper of general circulation published in the district, notice need not be published.

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.

### **Education Code § 5093. Special election consolidated with regularly scheduled election**

- (a) There shall be no special election or appointment to fill a vacancy on a governing board if the vacancy occurs within four months of the end of the term of that position.
- (b) Section 5091 shall not apply to a vacancy on a governing board if the vacancy occurs, or a resignation specifying a deferred effective date is filed with the county superintendent of schools, during the period between six months and 130 days prior to a regularly scheduled governing board election and the position is not scheduled to be filled at such election. In such a case, the position shall be filled at a special election for that position to be consolidated with the regular election. A person elected to fill a position under this subdivision shall take office at the next regularly scheduled meeting of the governing board following the certification of the election and shall serve only until the end of the term of the position which he or she was elected to fill.
- (c) If a special election pursuant to Section 5091 could be consolidated with the next regular election for governing board members, and the vacant position is scheduled to be filled at such regular election, there shall be no special election.

### **Education Code § 5328. Appointment of governing board member**

If pursuant to Section 5326 a district election is not held, the qualified person or persons nominated shall be seated at the organizational meeting of the board, or if no person has been nominated or if an insufficient number is nominated, the governing board shall appoint a qualified person or persons, as the case may be, at a meeting prior to the day fixed for the election, and such appointee or appointees shall be seated at the organizational meeting of the board as if elected at a district election.

### **Education Code § 5328.5. No nominations for office; appointments; notice**

If no one has been nominated to an office, prior to making an appointment to that office pursuant to Section 5328, the governing board shall cause to be published a notice once in a newspaper of general circulation published in the district or, if no such newspaper is published in the district, in a newspaper having general circulation in the district, stating that the board intends to make an appointment and informing persons of the procedure available for applying for the office.