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FRESNO COUNTY BOARD OF EDUCATION**Board Bylaws**  
**FILLING VACANCIES OF COUNTY BOARD**Events Causing a Vacancy

A vacancy on the County Board may occur by a failure to elect or for any of the following events:

1. The death of an incumbent. (Government Code 1770.)
2. The adjudication pursuant to a quo warranto proceeding declaring that an 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 the office for the remainder of the term. (Government Code 1770.)
3. A County Board member's resignation. (Government Code 1770.)
4. A County Board member's removal from office, including recall. (Government Code 1770; Elections Code 11384.)
5. A County Board member's ceasing to inhabit the trustee area represented on the County Board. (Government Code 1770.)
6. A County Board member's absence from the State of California for more than 60 days, except in any of the following situations (Government Code 1064, 1770):
  - a. Upon County Board business 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. However, 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.
  - c. For federal military deployment, not to exceed an absence of a total of 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 reasonable expectation that the member will return within the second six-month period, and the County Board may appoint an interim member to serve during the absence. 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

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FRESNO COUNTY BOARD OF EDUCATION

Board member or beyond the next regularly scheduled election for that office, whichever occurs first.

7. A County Board member's ceasing to discharge the duties of the office for the period of three consecutive months, except when prevented by illness or when absent from the State of California with the permission required by law. (Government Code 1770.)
8. A County Board member's conviction of a felony or any offense involving a violation of official duties or conviction of a designated crime resulting in a forfeiture of office. (Government Code 1770, 3000-3003.)
9. A County Board member's refusal or neglect to file the required oath within the time prescribed. (Government Code 1770.)
10. The decision of a competent tribunal declaring void a County Board member's election or appointment. (Government Code 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 this event, the office shall not be deemed vacant until the order of commitment has become final. (Government Code 1770.)
12. A "failure to elect" in which no candidate or an insufficient number of candidates have filed to run for a County Board seat. (Education Code 5090, 5326, 5328.)

Timelines for Filling a Vacancy

When a vacancy occurs, the County Board shall take the following action, as appropriate (Education Code 1008):

1. When a vacancy occurs less than four months before the end of a County Board member's term, the County Board shall take no action. (Education Code 5093.)
2. When a vacancy occurs between six months to 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 so elected shall take office at the first regularly scheduled County Board meeting following the certification of the election and shall serve only until the end of the term of the position which the person was elected to fill. (Education Code 5093.)
3. When a vacancy occurs any time outside of the statutory time windows identified in Items #1 and #2 above, the County Board shall 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. If 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. (Education Code 5091, 5093)

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**FRESNO COUNTY BOARD OF EDUCATION**

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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 Education Code 1000 and 1006 and described in Board Bylaw 9220.

Provisional Appointments

When a special election, as described above, is not required, the County Board may make a provisional appointment to fill a vacancy on the County Board. (Education Code 5091, 5093.)

Before making a provisional appointment, the County Board shall post notice of the vacancy or deferred resignation in at least three public places in the County of Fresno and advertise in a local newspaper, and invite the application or nomination of eligible persons who are interested in being a member of the County Board. All applications and nominations shall be on the candidate application/nomination form required by the County Board. The candidate application/nomination form shall be completed and submitted to the County Board president or designee by the date specified in the notice in order for a candidate to be considered for appointment by the County Board. Candidates are encouraged to seek information about the time requirements and responsibilities of County Board service.

The candidate application/nomination form of all candidates shall be provided to the members of the County Board. At a public meeting of the County Board, the County Board shall consider the nominations and applications, which may, as determined by the County Board, include interviews of the candidates and comments from the public. Comments from the public may also be submitted in writing to the County Board president or designee before or during the public meeting.

Candidates will be evaluated by the County Board on the basis of how well they represent the community and on their commitment to education and student welfare. The County Board shall select the provisional appointee from among the candidates by a majority vote of those County Board members who are present at the public meeting. Any candidate who does not meet the eligibility requirements for appointment or election to be a member of the County Board and does not agree to become a member of the County Board will not be considered.

Within 10 days after the provisional appointment is made, the County Board shall post notice of the actual vacancy or the filing of a deferred resignation, and the provisional appointment in at least three public places in the County of Fresno and publish such notice in the local newspaper pursuant to Government Code section 6061, unless there is no newspaper of general circulation in the County of Fresno. (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 provisional appointee.
3. The date of appointment.

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**FRESNO COUNTY BOARD OF EDUCATION**

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4. A statement notifying the voters that unless a petition calling for a special election pursuant to Education Code section 5091 is filed with the County Superintendent 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 County Board members and shall be afforded all the powers and duties of a County Board member upon appointment. (Education Code 5091.)

**Appointment Due to Failure to Elect**

When a vacancy occurs because no candidate 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 shall appoint a qualified person to the office. This appointment shall be made at a meeting prior to the day fixed for the election and the appointee shall be seated at the organizational meeting as if elected at the election. (Education Code 5328.)

When an appointment is being made because of a failure to elect, the County Board shall publish a notice once in a newspaper of general circulation published in the County of Fresno, or if no such newspaper exists, in a newspaper having general circulation within the County of Fresno. This notice shall state that the County Board intends to make an appointment and shall inform persons of the procedure available for applying for the appointment. (Education Code 5328.5.)

The procedure for selecting and interviewing candidates shall be the same as the procedures specified above in the "Provisional Appointments" section.

Adopted: 04/20/1995

Amended: 10/20/2011, 11/15/2018, 09/21/2023

**Legal Reference****Education Code**

1000 Composition and trustee area, county board of education  
1006 Qualifications for holding office, county board of education  
1007 Elections  
5000-5033 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

FRESNO COUNTY BOARD OF EDUCATION

Government Code

1064 Absence from state  
1770 Vacancies: definition  
3060-3075 Removal other than by impeachment  
6061 One time publication  
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)  
105 Ops.Cal.Atty.Gen. 182 (2022)

**Management Resources**

CSBA Publications

Filling a Board Vacancy, rev. May 2012