

FROM:

Dr. Jose Fierro
President/Superintendent

SUBJECT: Consideration of Process to Fill Board Trustee Area 3 Vacancy

ACTION

It is recommended that the Board of Trustees consider the process to fill the board vacancy caused by the resignation of John Paul Drayer (Trustee Area 3) effective April 11, 2017.

FISCAL IMPACT

An unknown cost would be incurred if the Board of Trustees wishes to conduct a special election to fill the vacancy.

REPORT SUMMARY

In an email dated March 7, 2017, John Paul Drayer (Trustee Area 3) submitted his resignation from the Board of Trustees effective April 11, 2017. In accordance with Education Code, Sections 5090 et seq., the Los Angeles County Superintendent of Schools acknowledged receipt of the resignation on March 27, 2017.

As stated in Board Policy 2110, within 60 days of the vacancy, the board shall either order an election or make a provisional appointment to fill the vacancy. If an election is ordered, it shall be held on the next regular election date not less than 130 days after the occurrence of the vacancy. The next regularly scheduled election is November 7, 2017.

A provisional appointment shall be subject to the conditions in Education Code, Section 5091. The person appointed to the position shall hold office only until the next regularly scheduled election for District Board members, when the election shall be held to fill the vacancy (in this case, November 6, 2018).

If the board approves to fill the vacancy by provisional appointment, a notice announcing the vacancy and inviting applicants to submit a letter of interest with statements of qualifications will be published following the effective date of resignation. A sample process to fill a board vacancy by appointment is attached.

NOTICING REQUIREMENTS

None is required beyond posting of this item on the agenda.

ATTACHMENT(S)

Sample Timeline and Process to Fill Board Vacancy by Appointment
Board Policy 2110
Administrative Procedure 2110
Education Code Excerpt – 5090 et seq.

Cerritos College
Sample Timeline and Process to Fill Board Vacancy by Appointment

The following sample process is based on the process utilized to fill the board vacancy that occurred in April 2011.

Consideration of Process to Fill Board Vacancy	Wednesday, April 5
Date of Resignation (60-day deadline to appoint from this date)	Tuesday, April 11
Advertise/Open window to accept letters of interest: Window open 28 days	Thursday, April 20
Close window to accept letters of interest: Letters will be distributed to board members for review and ranking Board members will rank applicants based on approved criteria	Thursday, May 18
Deadline for Board members to review and rank candidates	Thursday, May 25
Board officers review candidate rankings and determine interview questions Board officers will provide overall candidate rankings to the board Staff will notify at least three candidates of open interviews on May 30	Monday, May 29
Board to consider approval of nominee: Board will interview candidates in open session Board will nominate candidate(s) Discussion will follow and the vote will be taken All powers and duties of a Board member are effective upon appointment	Wednesday, June 7
60-day deadline to appoint:	Sunday, June 10
Oath of Office for new Board member	Wednesday, June 21

Board of Trustees

1 AP 2110 VACANCIES ON THE BOARD

2 References:

- 3 Education Code, Sections 5090 et seq.;
- 4 Government Code, Sections 1770 and 6061

5 When the Board of Trustees determines to fill the vacancy by appointment, the
6 President/Superintendent shall assure that there is ample publicity and information for
7 prospective candidates. Publicity shall include posting in three public places in the District
8 and publication in a newspaper of general circulation.

9 The posted notice of vacancy shall include directions regarding applications or
10 nominations of legally qualified candidates. Persons applying or nominated must meet
11 the qualifications required by law for members of the Board of Trustees.

12 Whenever a provisional appointment is made, the Board of Trustees shall, within 10 days
13 of the provisional appointment, post notices of both the actual vacancy or the filing of a
14 deferred resignation and the provisional appointment in three public places in the District.
15 It shall also publish a notice in a newspaper of general circulation.

16 The notice shall state the fact of the vacancy or resignation and the date of the occurrence
17 of the vacancy or the date of the filing of, and the effective date of, the resignation. It shall
18 also contain the full name of the provisional appointee to the Board of Trustees, the date
19 of appointment, and a statement that unless a petition calling for a special election,
20 containing a sufficient number of signatures, is filed in the office of county superintendent
21 of schools within 30 days of the date of the provisional appointment, it shall become an
22 effective appointment.

23 A provisional appointment confers all powers and duties of a Board member upon the
24 appointee immediately following his or her appointment.

25 A person appointed to fill a vacancy shall hold office only until the next regularly scheduled
26 election for Board members. An election shall be held to fill the vacancy for the remainder
27 of the unexpired term. A person elected at an election to fill the vacancy shall hold office
28 for the remainder of the term in which the vacancy occurs or will occur.

29 Office of Primary Responsibility: President/Superintendent

Board of Trustees

1 BP 2110 VACANCIES ON THE BOARD

2 References:

- 3 Education Code, Sections 5090 et seq.;
- 4 Government Code, Section 1770

5 Vacancies on the Board of Trustees may be caused by any of the events specified in
6 Government Code, Section 1770 or any applicable provision in the Elections Code, or by
7 a failure to elect. Resignations from the Board of Trustees shall be governed by
8 Education Code, Section 5090.

9 Within 60 days of the vacancy or filing of a deferred resignation, the Board of Trustees
10 shall either order an election or make a provisional appointment to fill the vacancy.

11 If an election is ordered, it shall be held on the next regular election date not less than
12 130 days after the occurrence of the vacancy.

13 If a provisional appointment is made, it shall be subject to the conditions in Education
14 Code, Section 5091. The person appointed to the position shall hold office only until the
15 next regularly scheduled election for District Board members, when the election shall be
16 held to fill the vacancy for the remainder of the unexpired term.

17 The provisional appointment will be made by a majority public vote of the Board members
18 at a public meeting.

19 The President/Superintendent shall establish administrative procedures to solicit
20 applications that assure ample publicity to and information for prospective candidates.
21 The Board of Trustees will determine the schedule and appointment process, which may
22 include interviews at a public meeting.

23 Office of Primary Responsibility: President/Superintendent

Date Adopted: December 12, 2007

(Replaces former Cerritos College Policy 1004.3)

EDUCATION CODE ARTICLE 3. Vacancies [5090 - 5095]

5090. 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.

5091. (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 $1\frac{1}{2}$ 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.

5092. 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.

5093. (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.

5094. If for any reason vacancies should occur in a majority of the offices on any school district or community college district governing board, the president of the county board of education having jurisdiction may appoint members of the county board of education to the district governing board until new members of the governing board are elected or appointed.

5095. Whenever any of the offices on any school district governing board or community college district governing board is vacant, the remaining governing board member or members, if any, and any governing board member or members elected or appointed to fill the vacancies, who have qualified, shall have all the powers and perform all the duties of the governing board.