



An Overview of School Board Member Resignations

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Every Texas school board will eventually face replacing a member who has resigned. Whether because of outside obligations, sickness, or other circumstances, board members can find themselves unable to complete their terms of office. In hopes of smoothing the transition from one officeholder to the next, this article answers a few of the most frequent questions about replacing a resigning board member.

1. How does a board member resign?

To be effective, a board member's resignation must be in writing, signed by the board member, and delivered to the board for action. The board may not refuse to accept the resignation. The resignation may be delivered to the board president or the board secretary. Tex. Elec. Code § 201.001(a)-(b). As a practical matter, a resignation may be delivered to an appropriate district employee, such as the superintendent, at the district's "usual place for conducting official business." Tex. Elec. Code § 1.007(a).

2. When does a vacancy occur for purposes of initiating the process to fill the vacancy?

Regardless of whether the resignation is effective immediately or at a future date (see question 4 below), a vacancy occurs on the earlier of the date the board accepts the resignation or on the eighth day after the date the board receives it. Tex. Elec. Code § 201.023.

3. May a board member withdraw a resignation?

A board member may withdraw a resignation before the earlier of the board's acceptance or the eighth day, but not after, even if a replacement has not been named. Tex. Att'y Gen. Op. No. DM-406 (1996).

4. May a board member submit a resignation to be effective at a later date?

Yes. If a board member who is resigning voluntarily specifies a future effective date for his or her resignation, the replacement may not begin to serve until after the date indicated in the resignation. In other words, a board member who ends his or her service by voluntary resignation retains the right to decide when he or she leaves (even

though the resigning board member cannot withdraw the resignation once it has been accepted by the board or eight days have passed). *See State ex rel. Angelini v. Hardberger*, 932 S.W.2d 489 (Tex. 1996) (denying a writ of *quo warranto* to remove a judge before his stated date of resignation).

5. What are a board's options for filling a vacancy?

If a vacancy occurs on the board, the remaining trustees have three options:

- fill the vacancy by appointment until the next trustee election,
- order a special election to fill the vacancy for the unexpired term, or
- under certain circumstances, leave the position vacant until the next general election.

Tex. Educ. Code § 11.060.

6. When can the position be left vacant?

If more than one year remains in the term of the position vacated, the vacancy must be filled not later than the 180th day after the vacancy occurs. Tex. Educ. Code § 11.060(d). By implication, if less than one year remains in the term of the position vacated, the board may leave the position unfilled until the next election, at which time the term will have expired and voters will elect a replacement to serve a new full term.

The attorney general has concluded that Texas Election Code section 41.004(a) authorizes a board to hold a special election on the first authorized uniform election date following the 180-day period if no uniform date falls within the 180-day period that would allow enough time to hold a special election in the manner required by law. Tex. Att'y Gen. Op. No. KP-102 (2016).

7. When may the board take action to fill a vacancy created by a resignation?

After the vacancy occurs (see question 2 above), the board may call a special election or appoint a replacement. Replacements may begin to serve once they have qualified for office (i.e., filed the [Statement of Officer](#) and taken the [Oath of Office](#)).

8. If a new trustee is appointed, does that trustee serve for the remainder of the term?

It depends on when the term is scheduled to expire. An appointed trustee serves until the *next trustee election*. Tex. Educ. Code § 11.060. For example, if the district regularly has trustee elections in May, the *next trustee election* is the May election following the appointment, regardless of whether the vacant position was scheduled to be on the

ballot in that election. If the appointed trustee's position expires at that election, the position is on the ballot for the full term. If the appointed trustee's position does not expire at the next regular election, the position is on the ballot for the unexpired term (the remainder of the term).

9. When may a board hold a special election to fill a vacancy? Does a special election have to be a joint election?

A special election to fill a vacancy may be held on either of the two uniform election dates—May or November. The law requiring joint elections does not apply to special elections; thus, if the only item on the ballot is a special election to fill a vacancy, that election does not have to be held jointly with a city or county. If a district chooses to hold a special election on the same date as its regular trustee election, however, that special election will be covered by the same requirements as the general trustee election. Other Election Code requirements may apply to a special election, depending on when it is held.

10. Is the election to fill an unexpired term *after appointment* conducted as a general election or a special election?

The statute that allows the board to “fill the vacancy by appointment *until the next trustee election*” is silent as to whether that election to fill an unexpired term must be conducted as a special election or a general election. Tex. Educ. Code § 11.060(a). This silence suggests that either type of election procedure may be used to fill the unexpired term *if* there is sufficient time for the general election filing period; otherwise, the board may only conduct it as a special election. Assuming there is sufficient time to exercise either option, the board should consider several factors in deciding which procedure to use.

Type of Election Process Used to Fill Unexpired Term after Appointment	PROS	CONS
<p style="text-align: center;">Special Election</p>	<p>Calendar & Deadlines</p> <ul style="list-style-type: none"> • Separate calendar applies only to election to fill unexpired term. • Some deadlines do not have to be met as early. • Remains an option even if deadlines for general election have passed. <p>Ability to Cancel</p> <ul style="list-style-type: none"> • If a candidate in a special election to fill unexpired term is unopposed, the board may cancel special election <i>even if</i> candidates in general election to fill full terms are opposed. 	<p>Calendar & Deadlines</p> <ul style="list-style-type: none"> • Risk of confusion to district staff and election officials who must comply with two calendars and two sets of deadlines and requirements.
<p style="text-align: center;">General Election (only an option if there is adequate time for the general election filing period)</p>	<p>Calendar & Deadlines</p> <ul style="list-style-type: none"> • Same calendar applies to both the election to fill the unexpired term and the election to fill regular, full terms. • Only one set of deadlines and requirements applies. 	<p>Calendar & Deadlines</p> <ul style="list-style-type: none"> • Risk of confusion to <ul style="list-style-type: none"> – candidates completing applications for place on the ballot; – officials preparing ballots as to whether the seat being filled is for an unexpired term or a full term; and – voters. <p>Ability to Cancel</p> <ul style="list-style-type: none"> • If election to fill unexpired term has multiple candidates, but election to fill full terms has unopposed candidates, then, generally speaking, no part of the election may be cancelled.

11. May a board member who has submitted a resignation continue to attend board meetings, deliberate, and vote?

A board member is entitled to serve until the effective date of the resignation unless he or she is ineligible to serve for some reason other than voluntary resignation (removal from office for incompetence, official misconduct, etc.). *State ex rel. Angelini v. Hardberger*, 932 S.W.2d 489 (Tex. 1996).

After the effective date of the resignation, a trustee continues to serve and have the duties and powers of office until the vacancy created by the resignation is filled. Tex. Const. art. XVI, § 17. Under this constitutional provision, known as the *holdover doctrine*, the resigning trustee *holds over* until a replacement qualifies for office by filing the Statement of Officer and taking the Oath of Office.

12. May a resigning board member participate in a board vote to appoint his or her successor?

Texas Education Code section 11.060 authorizes the *remaining* trustees to fill the vacancy by appointment. Generally, a resigning board member is not considered one of the remaining trustees and therefore does not participate in the board's vote to appoint a successor. Tex. Att'y Gen. Op. No. O-6259 (1945). In rare circumstances, however, a different interpretation and application of section 11.060 may be warranted; in such circumstances, a district should consult its school attorney for further guidance.

13. What if a board member is called to active military duty?

A board member who enters active duty in the armed forces as a result of being called to duty, drafted, or activated, does not vacate his or her office. The board may appoint a temporary replacement if the trustee will be on active duty for longer than 30 days. Tex. Const. art. XVI, § 72. See TASB policy BBC(LEGAL) for more information.

14. May a board meet in closed session to deliberate the appointment of a person to fill a vacancy on the board?

Yes. The Texas Open Meetings Act (Texas Government Code chapter 551) provides several exceptions to the rule that all meetings of governmental bodies must be held in public. One exception, commonly called the *personnel exception*, allows a school board to conduct a closed meeting to deliberate the appointment of a public officer. Tex. Gov't Code § 551.074. Thus, a board may choose to go into closed session to interview or discuss the merits of individual nominees for a vacant position before returning to open session to take the vote. The board may not, however, go into closed session to discuss the *process* to fill the vacancy.

15. May a school board remove one of its members against that board member's will?

No. Texas law does not provide for recall of trustees, and trustees themselves may not remove a fellow trustee from office. *Garcia v. Angelini*, 412 S.W.2d 949 (Tex. Civ. App.—Eastland 1967, no writ). A school board member may be removed from office in a *quo warranto* proceeding initiated by the county or district attorney. Tex. Civ. Prac. & Rem. Code §§ 66.001-.003 A board member may also be removed through a proceeding for removal initiated by a petition to the proper district court. Grounds for such removal include incompetency and official misconduct. Tex. Loc. Gov't Code chapter 87.

16. Where can I find more information?

See TASB policies BBA(LEGAL) and BBC(LEGAL). For more information on this topic or any other school law question, call TASB Legal Services at 800.580.5345.

This document is continually updated, and references to online resources are hyperlinked, at tasb.org/Services/Legal-Services/TASB-School-Law-eSource/Governance/documents/overview_of_sch_bd_member_resignations.aspx. For more information on this and other school law topics, visit TASB School Law eSource at schollawesource.tasb.org.

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