



## **School Board Member Resignations and Other Vacancies**

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Whether because of outside obligations, illness, or other circumstances, board members may find themselves unable to complete their terms of office. This article answers the most frequent questions about board member resignations and filling board vacancies.

### **Resignation**

#### **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 board member may also deliver a written resignation to an appropriate district employee, such as the superintendent, at the district's "usual place for conducting official business." This constitutes delivery to the board. 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 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-0406 (1996).

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

Yes. If a resigning board member specifies a future effective date for the resignation, the replacement may not begin to serve until after that date.

## Other Vacancies

### 5. Other than resignation, how may vacancies be created?

- Death of a board member: If a board member dies, a vacancy occurs on the date of death. Tex. Elec. Code § 201.022.
- Declination of office: A newly elected board member may decline the office in the same way a sitting board member resigns. That is, the board member-elect submits a signed, written declination to the board. This must be done *before* the board member-elect qualifies for office by taking the oath of office. Tex. Elec. Code § 201.001. A vacancy occurs on the date the declination is delivered to the board. Tex. Elec. Code § 201.029.
- Acceptance of an incompatible office: If a board member accepts another office that cannot be held simultaneously with service on the school board, a vacancy occurs on the date the person qualifies for the second office. Tex. Elec. Code § 201.025.
- Removal from office: If a board member is removed from office by a court, a vacancy occurs on the date the judgment becomes final. See TASB Policy BBC(LEGAL) for information on removal from office.
- Automatic removal from office for qualifying criminal offense: A board member will be automatically removed from office if they are convicted of, plead guilty to, or receive deferred adjudication for a qualifying criminal offense. “Qualifying offenses” include: (1) bribery; (2) theft of public money, (3) perjury; (4) coercion of public servant or voter; (5) tampering with government records; (6) misuse of official information; (7) abuse of official capacity; or (8) conspiracy or attempt to commit any of these offenses. Tex. Loc. Gov’t. Code § 180.010. If a position is vacated due to commission of a qualified offense, the remaining board, at their next regularly scheduled meeting, must order an election or fill the vacancy in the manner provided by law, if an election is not required. Tex. Loc. Gov’t. Code § 180.010(c).
- Declaration of ineligibility: If a board member or board member-elect is declared ineligible by a court or an administrative authority, a vacancy occurs on the date the judgment becomes final or the declaration is made. Tex. Elec. Code § 201.026.
- Deceased or ineligible candidate receives required vote for election: If a deceased or ineligible candidate wins a seat, a vacancy occurs on the date the election is canvassed. Tex. Elec. Code § 201.025.
- No one runs for office: According to the Secretary of State Elections Division, if no one applied for a particular place on the ballot, the time to declare the official result—that no one filed and no one won—is at the canvass after election day. Even if the election was cancelled because of uncontested races, a vacancy in the office for which no one filed is declared at a meeting held after election day. The vacancy is then filled under the same vacancy-filling procedures. While two board members

constitute a quorum for canvassing the election, a regular quorum is required to fill a vacancy. See the Elections Division's most recent [post-election advisory](#) (e.g., [Election Advisory No. 2021-16](#) (Nov. 2, 2021)).

**6. 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 the board member's 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(a). See TASB policy BBC(LEGAL) for more information.

**Filling a Vacancy**

**7. How does the board fill a vacancy?**

When a vacancy occurs on the board and more than a year remains in the term of the position vacated, the remaining trustees have two options:

- fill the vacancy by appointment until the next trustee election, or
- order a special election to fill the vacancy for the unexpired term.

Tex. Educ. Code § 11.060.

However, if the position is vacated due to the commission of a qualifying criminal offense, the remaining trustees must exercise these options at their next regularly scheduled meeting, regardless of the remaining term length. Tex. Loc. Gov't. Code § 180.010(c).

**8. How long does the board have to fill the vacancy?**

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 date the vacancy occurs. Tex. Educ. Code § 11.060(d).

A board intending to fill a vacancy by special election must remain cognizant of the applicable deadlines to order a special election. The attorney general has concluded that Texas Election Code section 41.004(a) authorizes a board to hold a special election on the first 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-0102 (2016).

**9. When can the position be left vacant?**

Because the board has 180 days to fill a vacancy when more than a year remains in the term, by implication, the board may leave the position open until the next election if less than a year remains. The term will have expired at that point, and the full term will be on the ballot.

**10. If a new trustee is appointed to fill a vacancy, 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 conducts its trustee elections annually in May, the *next trustee election* is the May election following the appointment, regardless of whether the appointed trustee's 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).

**11. 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 in 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 another entity. 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 Texas Election Code requirements may apply to a special election, depending on when it is held.

**12. 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 the 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 it can be ordered as part of the district's general election if there is sufficient time for the general election filing period or as a separate 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 align="center"><b>Special Election</b></p>	<p><b>Calendar &amp; Deadlines</b></p> <ul style="list-style-type: none"> <li>• Separate calendar may apply only to election to fill unexpired term.</li> <li>• Some deadlines may occur later.</li> <li>• Remains an option even if deadlines for general election have passed.</li> </ul> <p><b>Ability to Cancel</b></p> <ul style="list-style-type: none"> <li>• 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.</li> </ul>	<p><b>Calendar &amp; Deadlines</b></p> <ul style="list-style-type: none"> <li>• Risk of confusion to district staff and election officials who must comply with two calendars and two sets of deadlines and requirements.</li> </ul>
<p align="center"><b>General Election</b> (only an option if there is adequate time for the general election filing period)</p>	<p><b>Calendar &amp; Deadlines</b></p> <ul style="list-style-type: none"> <li>• Same calendar applies to both the election to fill the unexpired term and the election to fill full terms.</li> <li>• Only one set of deadlines and requirements applies.</li> </ul>	<p><b>Calendar &amp; Deadlines</b></p> <ul style="list-style-type: none"> <li>• Risk of confusion to             <ul style="list-style-type: none"> <li>– candidates completing applications for place on the ballot;</li> <li>– officials preparing ballots as to whether the seat being filled is for an unexpired term or a full term; and</li> <li>– voters.</li> </ul> </li> </ul> <p><b>Ability to Cancel</b></p> <ul style="list-style-type: none"> <li>• 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.</li> </ul>

## **Other Issues**

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

After resigning, 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.

In contrast, a trustee who accepts an incompatible office or a trustee removed from office *does not* continue to hold over until a replacement is sworn in. *See* Tex. Att’y Gen. Op. No. KP-0125 (2017) (citing Tex. Att’y Gen. Op. No. GA-0015 (2003)) (concluding that a public officer who qualifies for an incompatible office does not hold over in the vacated office); *Willmann v. City of San Antonio*, 123 S.W.3d 469 (Tex. App.—San Antonio 2003, pet. denied) (citing *Manning v. Harlan*, 122 S.W.2d 704, 707 (Tex. Civ. App.—El Paso 1938, writ dism’d) (stating that “the right to holdover does not reside in one who has been removed from office”).

### **14. May a resigning board member participate in a board vote to appoint a 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-06259 (1945).

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

The Texas Open Meetings Act provides several exceptions to the rule that all board meetings 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.

### **16. May a school board remove one of its members?**

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 ch. 87. See TASB Policy BBC(LEGAL).

**17. 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, board members and school district officials may call TASB Legal Services at 800-580-5345.

*This document is provided for educational purposes and contains information to facilitate a general understanding of the law. References to judicial or other official proceedings are intended to be a fair and impartial account of public records, which may contain allegations that are not true. This publication is not an exhaustive treatment of the law, nor is it intended to substitute for the advice of an attorney. Consult your own attorney to apply these legal principles to specific fact situations.*

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