



FAQ's ON BOARD APPOINTMENT AND ELECTIONS

(1) HOW ARE TRUSTEES SEATED ON SCHOOL DISTRICT GOVERNING BOARDS?

Generally, school board members are elected for four-year terms. These elections are staggered so that as nearly as practicable one half of the members are elected at each election held every two years. (Ed. Code § 35012) If a board seat becomes vacant during a board member's term, the board initially has the option of making a provisional appointment or ordering a special election. (This process is discussed in Question 2 below).

(2) HOW DID MR. ENNEY BECOME A MEMBER OF THE BOARD?

When Trustee Bausch resigned from the Board on August 25, 2022, a vacancy was created. That seat was not up for election in 2022 and, given the timing under the law, could not be included on the regular election ballot. The Board had the option of ordering a special election or provisionally appointing a District resident to fill the seat. (Ed. Code, § 5091.) Considering the costs of a special election, on October 11, 2022, after following the legally required process, including providing notice to the community of its intent to provisionally appoint, the Board provisionally appointed Kenneth Enney to the vacant position.

Once a provisional appointment is made, the District is required to publish notice of that appointment and members of the public, if they choose, have 30 days to petition for the conduct of a special election (Ed. Code, §§ 5091; 5092.) The provisional appointment only turns into an effective appointment if a petition calling for a special election, containing a sufficient number of signatures ... within 30 days of the date of the provisional appointment" is not filed with the County Superintendent of Schools. (Ed. Code, § 5092.)

On November 10, 2022, the County Superintendent received a petition to conduct a special election ("Petition") for that seat. The County Superintendent reviewed the Petition pursuant to the requirements of the Education Code and the Elections Code and sought and received the assistance of the San Luis Obispo County Elections Office ("County Clerk") in validating the signatures included in the Petition and determining whether sufficient valid signatures were received. The County Clerk certified that 512 valid signatures were included in the Petition. Based on the requirements of Education Code section 5091, 512 valid signatures are sufficient to meet the signature threshold for this Petition. Because a valid petition was submitted, there was not an effective appointment, and the provisional appointment was terminated on December 9, 2023. Mr. Enney is no longer currently on the Board but may choose to run in the special election which will be held to fill the seat.

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(3) HOW DID MR. PETERSON BECOME A MEMBER OF THE BOARD?

For the 2022 regular election, there were four board seats up for election including three trustee area seats and one at-large seat. Mr. Peterson filed to run in Trustee Area 2. If “only one person has been nominated for any elective office to be filled at that election” no election is to be held for that seat and the qualified person that was nominated “shall be seated at the organizational meeting.” (Ed. Code §§ 5326, 5328). While there were multiple candidates for all of the other seats, Mr. Peterson was the only candidate in Trustee Area 2 so his name did not appear on the ballot, and he will be seated at tonight’s organizational meeting. This provision is specific to the Education Code and applies to school board elections, which is why in some other County elections there was a name included on the ballot even if there was only one person nominated to fill the seat. This principal in the law is that the more specific statute (here the one applying to school district elections) applies over any over other more general laws that apply to other offices.

(4) DID THE PETITION HAVE TO COMPLY WITH THE NEW LEGAL REQUIREMENTS OF SB 1061?

SB 1061 amends Education Code section 5091 which governs the process for filling a vacancy on a school board. The statute allows for the governing boards to order an election or to provisionally appoint a board member to a vacancy and then allows for members of the public to petition for a special election after a provisional appointment. SB 1061 amends existing law and requires that petitions for a special election following a provisional appointment include the estimated cost of a special election expressed on a per-pupil or per-student basis. This law also amends the time period when such an election can be held. There has been a question raised about whether this amended law went into effect immediately.

Generally, laws enacted at a regular session go into effect the following January. There are specific exceptions to this including “statutes calling elections”, statutes providing tax levies and urgency legislation. (Gov. Code s. 9600). Where these types of statutes are involved, the effective and/or operative date is generally prominently included in the statute. Both the Legislature and Westlaw indicate that SB 1061 is intended to go into effect on January 1, 2023 and it contains no such clause with a different effective or operative date.

By the plain language of Section 5091, it does not call for an election as described in Government Code section 9600 given that an election is only one of the avenues identified for filling the vacancy. There have been numerous amendments to Education Code 5091 that have previously gone into effect on January 1 of the year of the amendment. In the SB 1061 amendments, there are no changes to the law regarding the ordering of an election but instead the changes relate to adding flexibility as to when an election may be held and the requirement to include specified election costs on a petition for a special election.

As such, we believe this law goes into effect on January 1, 2023 and does not impact the Petition.

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