



FILLING A VACANCY ON THE BOARD

Under state law (C.R.S. 22-31-129), a school director's office is deemed to be vacant under any one of the following circumstances:

- a) if for any reason a school director is not elected at the regular biennial election;
- b) if the person who was elected or appointed does not take the oath of office within 10 days after receiving the certificate of election or appointment;
- c) if the director submits a written resignation to the board;
- d) if the director becomes a nonresident of the school district [or director district];
- e) if the director is found guilty of a felony;
- f) if a court voids the director's election or removes the director from office;
- g) if a court determines that a director is mentally incompetent;
- h) if the director does not attend three consecutive regular meetings of the board, unless the board by resolution approves any additional absences or unless the absences are due to a temporary mental or physical disability or illness; or
- i) if the director dies during the term of office.

At the next board meeting immediately following the occurrence of any condition listed above, the board must adopt a resolution declaring a vacancy in the office. (*See* sample resolution, attached.) Once the vacancy has occurred, the board has 60 days to appoint a person to fill the vacancy. If the board fails to appoint within this 60-day period, the board president is required to make the appointment.

The appointment must be noted by an appropriate entry in the minutes of the meeting, and the board must cause a "certificate of appointment" to be delivered to the person appointed. A duplicate of the certificate of appointment must also be forwarded to the Colorado Department of Education (CDE). In addition, the board has an ongoing statutory duty to notify CDE of changes to the make-up of the board. C.R.S. 22-32-109(1)(d). Under most circumstances, the appointee will serve until the next regular school biennial election. (*See* the chart below describing different scenarios that may arise.)

To be eligible for appointment, a candidate must be a registered elector of the school district for at least twelve consecutive months prior to the date of appointment and must not have been convicted of a sexual offense against a child. C.R.S. 22-31-107(1), (5). The applicant must also be a resident of the director district in which the vacancy exists, where applicable.

There are no specific legal requirements regarding the process to be used in filling a board vacancy. To ensure the candidates for appointment are qualified to serve pursuant to C.R.S. 1-4-501(1), boards may request that all candidates submit a sworn affidavit certifying their qualifications for office. (*See* sample affidavit, attached.) There is no required timeline or

procedure for demonstrating a candidate’s qualification for office, but these matters should be addressed early in the application process to ensure that all candidates considered by the board are qualified to serve.

Despite the lack of specific statutory procedures, the board should ensure that it conducts a fair and open process when filling a vacancy. Board discussion of applicants and board interviews of applicants must be held in a meeting open to the public and may not occur in an executive session. C.R.S. 24-6-402(4)(f)(II).

Once the board appoints a person to fill the vacancy, the oath of office should be administered no later than ten days following the person’s appointment. C.R.S. 22-31-125. The oath may be administered by the board president or a notary public, and it need not be administered during a public meeting. The limit on the number of terms a school director may serve does not apply to the time served as an appointee.

The newly appointed board member must also sign a “confidentiality affidavit,” affirming that the board member is aware of and will comply with the confidentiality requirements applicable to discussions that occur in executive session. C.R.S. 22-32-108(5)(a). (*See sample affidavit, attached*).

Scenario I:

If the vacancy occurs more than 90 days prior to the next regular school election and the remaining term is more than 2 years, the board appoints someone to serve until the election when a successor for the remainder of the term is elected.

Rationale:

There is enough time before the next election for someone to run for the vacancy; because there are more than 2 years left on the term, the appointed board member only serves until the election when someone will be elected to serve out the time remaining on the term.

Scenario II:

If the vacancy occurs within 90 days of a regular school election and the remaining term is more than 2 years, the board appoints someone to serve until the next succeeding regular school election when a successor for the remainder of the term is elected.

Rationale:

There is not enough time before the impending election, but there are more than 2 years left on the term, so the appointed member serves for approximately 2 years until the next election during which someone will be elected to finish out the term.

Scenario III:

If the vacancy occurs more than 90 days prior to the next regular school election and the remaining term is less than 2 years, the board appoints someone to serve out the remainder of the term.

Rationale:

Because the unexpired time left on the term will run out at the time of the next election, the appointed member will serve the remainder of the term when a new member will be elected and start a new term.

Scenario IV:

If the vacancy occurs within 90 days of a regular school election and the remaining term is less than 2 years, the board appoints someone to serve out the remainder of the term.

Rationale:

There is not enough time before the impending election for someone to run and because there are less than 2 years left on the term, the appointed member serves on the board for approximately 2 years until the next election during which someone will be elected to start a new term.

Note: If the vacancy occurs within 90 days of a regular school election and the term is expiring, petitions will be circulated for the vacant seat. As a result, some boards choose not to make an appointment because the vacancy will be filled at the election.

Updated September 2015