

BOARD MEMBERS
VACANCIES AND REMOVAL FROM OFFICE

BBC
(LEGAL)

VACANCY	Any vacancy or vacancies occurring on the Board, whether by death, resignation, forfeiture, lack of qualifications, or removal, shall be filled with citizens having the same qualifications as candidates for election. If a vacancy occurs on the Board, the remaining members of the Board may fill the vacancy by appointment until the next regular Board election or may order a special election to fill the vacancy for the unexpired term. If more than one year remains in the term of the position vacated, the vacancy shall be filled not later than the 180th day after the vacancy occurs. <i>Tex. Const. Art. XVI, Sec. 27; Education Code 11.060; Atty. Gen. Ops. WW-1387 (1962), M-402 (1969)</i>
OPTIONAL APPOINTMENT CONSIDERATION	An appointment to the Board shall be made as required by applicable law and may be made with the intent to ensure that the Board is representative of the constituency served by the Board. A Board that chooses this optional appointment consideration shall adopt procedures for its implementation. <i>Local Gov't Code 180.005(b), (c)</i>
SPECIAL ELECTION	A special election shall be conducted in the same manner as the general election on the next uniform election date that will afford enough time to hold the election in the manner required by law. <i>Education Code 11.060(c); Election Code 41.001(a), 41.004(a)</i> [See BBB]
PRECLEARANCE REQUIRED	A special election is subject to federal preclearance requirements to the extent that the District makes changes in the practices or procedures to be followed. Any discretionary setting of the date for a special election or scheduling of events leading up to or following a special election is subject to the preclearance requirement. <i>28 CFR 51.17</i> [See BBB]
RESIGNATION	To be effective, a Board member's resignation must be in writing and signed by the officer and must be delivered to the Board for action on the resignation. The Board may not refuse to accept a resignation. If a Trustee submits a resignation, whether to be effective immediately or at a future date, a vacancy occurs on the date the resignation is accepted by the Board or on the eighth day after the date of its receipt by the Board, whichever is earlier. <i>Election Code 201.001(a), 201.023</i>
HOLDOVER DOCTRINE	All public officers shall continue to perform the duties of their offices until their successors shall be duly qualified, i.e., sworn in. Until the vacancy created by a Trustee's resignation is filled by a successor, the Trustee continues to serve and have the duties and powers of office, except that a Trustee may not vote on the appointment of the Trustee's successor. <i>Tex. Const., Art. XVI, Sec. 17; Atty. Gen. Ops. JM-636 (1987), DM-2 (1991), O-6259 (1945)</i> [See DBE]

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FORMER TRUSTEE EMPLOYMENT A Trustee is prohibited from accepting employment with the District until the first anniversary of the date the Trustee's membership on the Board ends. *Education Code 11.063*

NONRESIDENCE A person elected to serve as a Board member must remain a resident of the District throughout the term of office. A Board member who ceases to reside in the District vacates his or her office. *Tex. Const., Art. XVI, Sec. 14; Prince v. Inman, 280 S.W.2d 779 (1955); Whitmarsh v. Buckley, 324 S.W.2d 298 (1959)*

'RESIDENCE' DEFINED "Residence" shall mean domicile, one's home and fixed place of habitation to which one intends to return after any temporary absence; one does not lose one's residence status by leaving to go to another place for temporary purposes only. *Election Code 1.015*

REMOVAL FROM OFFICE Board members may be removed from office for:

1. "Incompetency," which means:
 - a. Gross ignorance of official duties;
 - b. Gross carelessness in the discharge of those duties; or
 - c. Unfitness or inability to promptly and properly discharge official duties because of a serious physical or mental defect that did not exist at the time of election.
2. "Official misconduct," which means intentional, unlawful behavior relating to official duties by a Trustee entrusted with the administration of justice or the execution of the law. The term includes an intentional or corrupt failure, refusal, or neglect of a Trustee to perform a duty imposed on the Trustee by law and conviction of an offense relating to violation of purchase procedures. [See CH]
3. Intoxication on or off duty caused by drinking an alcoholic beverage, but not if it was caused by drinking an alcoholic beverage on the direction and prescription of a licensed physician;
4. Conviction of a Trustee by a jury for any felony or for misdemeanor official misconduct.

Actions for removal of Board members must be brought before the judge of the district court holding jurisdiction, except that any court convicting a Trustee of a felony or official misconduct shall order immediate removal.

Tex. Const., Art. V, Sec. 24; Local Gov't Code 87.011, 87.012, 87.013, 87.031; Education Code 44.032(e); Hendricks v. State, 49

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S.W. 705 (1899), Tovar v. Somerset ISD, 994 S.W.2d 756 (Tex. App.-Corpus Christi 1999)

TEMPORARY
REPLACEMENT OF
BOARD MEMBER ON
MILITARY ACTIVE
DUTY

A Board member who enters active duty in the armed forces of the United States as a result of being called to duty, drafted, or activated does not vacate the office held, but the Board may appoint a replacement to serve as a temporary Board member if the elected or appointed Board member will be on active duty for longer than 30 days.

The Board member who is temporarily replaced may recommend to the Board the name of a person to temporarily fill the office. The Board shall appoint the temporary Board member to begin service on the date specified in writing by the Board member being temporarily replaced as the date the Board member will enter active military service.

A temporary Board member has all the powers, privileges, and duties of the office as the Board member who is temporarily replaced. A temporary Board member shall perform the duties of office for the shorter period of:

1. The term of the active military service of the Board member who is temporarily replaced; or
2. The term of office of the Board member who is temporarily replaced.

“Armed forces of the United States” means the United States Army, the United States Navy, the United States Air Force, the United States Marine Corps, the United States Coast Guard, any reserve or auxiliary component of any of those services, or the National Guard.

Tex. Const., Art. XVI, Sec. 72