

EAST SIDE UNION HIGH SCHOOL DISTRICT
Special Meeting of the Board of Trustees
830 N. Capitol Avenue, San Jose, CA 95133

AGENDA
November 25, 2008

In compliance with the Americans with Disabilities Act, if you need special assistance, disability-related modifications or accommodations, including auxiliary aids or services, in order to participate in the public meeting of the Board of Trustees, please contact the office of the District Superintendent at (408) 347-5010. Notification 24 hours prior to the meeting will enable the District to make reasonable arrangements to ensure accommodation and accessibility to this meeting. Upon request, the District shall also make available this agenda and all other public records associated with this meeting in appropriate alternative formats for persons with a disability.

Closed Session will begin at 5:00 P.M.

The Special Board Meeting will begin at 5:00 p.m. in the Board Room. Anyone wishing to address the Board regarding Closed Session items may speak at this time. The Board will then adjourn to Closed Session in the Superintendent's Conference Room.

1. Call to Order/ Roll Call

- 1.01 Roll Call
- 1.02 Announcement and Public Comment regarding Items to be discussed in Closed Session
(*Government Code §54957.7*)
- 1.03 Recess to Closed Session (Open Session will resume at the end of Closed Session in the Board Room at approximately 6:00 p.m.)
SEE ITEM 2 ON AGENDA (CLOSED SESSION)

2. Closed Session

- 2.01 PUBLIC EMPLOYEE PERFORMANCE EVALUATION
(*Government Code §Section 54957*)
 - *Superintendent*

Open Session 6:00 P.M. – Board Room

3. Pledge of Allegiance

4. Welcome and Explanation to Audience

Information explaining Board meeting procedures and how citizens can address the Board will be read. Written information is located near the entrance to the Board Room.

5. Consideration of Proposed Amendments to Agenda

6. Public Members Who Wish to Address the Board of Trustees

Persons wishing to address the Board must fill out a "gold" request form, which is located at the entrance of the Board Room.

7. **Operational Items/Board Discussion and/or Action**

7.01 Pending Board Vacancy: Process for Appointment and Provisional Appointment to the Governing Board – Bob Nuñez, Superintendent

8. **Report Closed Session Action(s)**

9. **Adjournment**

Agenda Item

7.01 Pending Board Vacancy: Process for Appointment and Provisional Appointment to the Governing Board – Bob Nuñez, Superintendent

Meeting: 11/25/2008 ESUHSD SPECIAL BOARD MEETING - 4:00 P.M.
Category: 7. Operational Items/Board Discussion and/or Action
Agenda Type: Action, Discussion
Public Access: Yes

Agenda Item Content



EAST SIDE UNION HIGH SCHOOL DISTRICT

TO: Board of Trustees

FROM: Bob Nuñez, Superintendent

SUBJECT: Pending Board Vacancy: Process for Appointment and Provisional Appointment to the Governing Board

Board Member Shirakawa's election to the County Board of Supervisors will result in a vacancy on the Governing Board for the remainder of Member Shirakawa's term.

Board Bylaw 9223 (a copy of which is attached) specifies the process for provisional appointments to the Governing Board. Per Board Bylaw 9223, when a vacancy occurs four or more months before the end of a Board member's term, the Board shall, within 60 days of the date of the vacancy or the filing of the member's deferred resignation, either order an election or make a provisional appointment. If no election is ordered, then the Board will make a provisional appointment.

Board Bylaw 9223 specifies that the Board shall advertise in the local media to solicit "candidate applications or nominations." Thus, the Board must decide whether it will seek applications or nominations for the upcoming Board vacancy. Per Board Bylaw 9223, the Board must also establish the timeline and the rules for the selection of the provisional appointees, and approve an application and a set of questions for all candidates to answer in writing. The Board must also appoint an ad hoc committee consisting of less than a quorum of the Board to ensure that applicants are eligible for Board membership as required by law. The applications of all eligible candidates will be forwarded to all Board members. The Board may appoint an advisory committee to, at a public meeting, review applications, interview candidates and make recommendations to the Board. The Board is not restricted by the advisory committee's recommendation and may appoint any of the eligible applicants. The Board shall interview the candidates, of it's choosing from the list of eligible applicants, at a public meeting, accept oral or written public input, and select the provisional appointee by a majority vote.

FISCAL IMPACT: To be determined.

FUNDING SOURCE: Not Applicable

RECOMMENDATION: Take action consistent with Board Bylaw 9223 to determine: (1) whether to seek applications or nominations to the pending Board vacancy; (2) authorize and direct Administration to advertise in the local media to solicit such applications/nominations to fill the pending Board vacancy; (3) determine the timeline and rules for the selection of the provisional appointee; and (4) approve an application and a set of questions for all candidates to answer in writing.



BB9223.pdf



BB9222.pdf

Additional Executive Content

Created on Today at 05:33 PM by Mary Guillen. Last update on 11/21/2008 by Mary Guillen.

BOARD BYLAWS

SUBJECT: Filling Vacancies

Events Causing a Vacancy

A vacancy on the Governing Board may occur by a failure to elect or for any of the following events:

1. The death of an incumbent. (Government Code 1770)
2. The adjudication pursuant to a quo warrant proceeding declaring that an incumbent is physically or mentally incapacitated due to disease, illness, or accident and that there is reasonable cause to believe that the incumbent will not be able to perform the duties of his/her office for the remainder of his/her term. (Government Code 1770)
3. A Board member's resignation. (Government Code 1770)

A vacancy resulting from resignation occurs when the written resignation is filed with the County Superintendent of Schools having jurisdiction over the district, except where a deferred effective date is specified in the resignation so filed, in which case the resignation shall become operative on that date. Upon being filed with the County Superintendent, a written resignation, whether specifying a deferred effective date or otherwise, shall be irrevocable. (Education Code 5090)

A Board member may not defer the effective date of his/her resignation for more than 60 days after he/she files the resignation with the County Superintendent.

4. A Board member's removal from office, including recall. (Government Code 1770; Elections Code 11384)
5. A Board member's ceasing to be an inhabitant of the state or resident of the district. (Government Code 1770)

A vacancy on the Board also occurs when a Board member ceases to inhabit the trustee area which he/she represents on the Board. (58 Ops.Cal.Atty.Gen. 888 (1975))

6. A Board member's absence from the state beyond the period allowed by law without the permission required by law. (Government Code 1770)

No Board member shall be absent from the state for more than 60 days, except in any of the following situations: (Government Code 1064)

- a. Upon business of the school district with the approval of the Board
- b. With the consent of the Board for an additional period not to exceed a total absence of 90 days
- c. For federal military deployment not to exceed six months as a member of the armed forces of the United States or the California National Guard

If the absence of the Board member for this purpose exceeds six months, the Board may approve an additional six-month absence upon a showing that there is a reasonable expectation that the member will return within the second six-month period, and the Board may appoint an interim member to serve in his/her absence. If two or more members of the Board are absent by reason of these circumstances, and those absences result in the inability to establish a quorum at a regular meeting, the Board may immediately appoint one or more interim members, as necessary to enable the Board to conduct business and discharge its responsibilities.

- d. In the case of illness or other urgent necessity, and upon a proper showing thereof, the time limited for absence from the state may be extended by the Board for an additional period not to exceed 30 days.

(cf. 9250 - Remuneration, Reimbursement and Other Benefits)

7. A Board member's ceasing to discharge the duties of his/her office for the period of three consecutive months, except when prevented by sickness or when absent from the state with the permission required by law. (Government Code 1770)
8. A Board member's conviction of a felony or any offense involving a violation of his/her official duties. (Government Code 1770)
9. A Board member's refusal or neglect to file his/her required oath or bond within the time prescribed. (Government Code 1770)

(cf. 9224 - Oath or Affirmation)

10. The decision of a competent tribunal declaring void a Board member's election or appointment. (Government Code 1770)
11. The making of an order vacating a Board member's office or declaring the office vacant when the officer fails to furnish an additional or supplemental bond. (Government Code 1770)
12. A Board member's commitment to a hospital or sanitarium by a court of competent jurisdiction as a drug addict, dipsomaniac, inebriate, or stimulant addict; in this event, the office shall not be deemed vacant until the order of commitment has become final. (Government Code 1770)

Timelines for Filling a Vacancy

When a vacancy occurs, the Board shall take the following action, as appropriate:

1. When a vacancy occurs less than four months before the end of a Board member's term, the Board shall take no action. (Education Code 5093)
2. When a vacancy occurs four or more months before the end of a Board member's term, the Board shall, within 60 days of the date of the vacancy or the filing of the member's deferred resignation, either order an election or make a provisional appointment, unless a special election is mandated as described below. (Education Code 5091)
3. When a vacancy occurs from six months to 130 days before a regularly scheduled Board election at which the position is not scheduled to be filled, a special election to fill the position shall be consolidated with the regular election. The person so elected shall take office at the first regularly scheduled Board meeting following the certification of the election and shall serve only until the end of the term of the position which he/she was elected to fill. (Education Code 5093)

Provisional Appointments

When the special election described above is not required, the Board may make a provisional appointment. (Education Code 5091, 5093)

In order to draw from the largest possible number of candidates, the Board shall advertise in the local media to solicit candidate applications or nominations. The Board shall establish the timeline and the rules for the selection of the provisional appointees. The Board shall approve an application and a set of questions for all candidates to answer in writing. A committee consisting of less than a quorum of the Board shall ensure that applicants are eligible for Board membership and announce the names of the eligible candidates. The applications of all eligible candidates will be forwarded to all Board members. The Board may appoint an advisory committee to, at a public meeting, review applications, interview candidates and make recommendations to the Board. The Board is not restricted by the advisory committee's recommendation and may appoint any of the eligible applicants. The Board shall interview the candidates, of it's choosing from the list of eligible applicants, at a public meeting, accept oral or written public input, and select the provisional appointee by a majority vote.

If, after three attempts, the Board is unable to reach a majority vote for one candidate the Board may agree to determine the provisional appointment by lot.

The Board may appoint a person who meets all of the qualifications.

(cf. 9130 - Board Committees)

(cf. 9220 - Governing Board Elections)

(cf. 9323.2 - Actions by the Board)

In order to serve on the Board, a person must meet the eligibility requirements specified in Education Code 35107.

(cf. 9220 - Governing Board Elections)

Within 10 days after the appointment is made, the Board shall post notices of the actual vacancy, or the filing of a deferred resignation, and the provisional appointment. The notice shall be published in the local newspaper pursuant to Government Code 6061 and posted in at least three public places within the district. (Education Code 5092)

The notice shall contain: (Education Code 5092)

1. The date of the occurrence of the vacancy or the date of the filing of, and the effective date of, the resignation
2. The full name of the appointee
3. The date of appointment
4. A statement notifying the voters that unless a petition calling for a special election pursuant to Education Code 5091 is filed in the office of the County Superintendent of Schools within 30 days of the provisional appointment, it shall become an effective appointment

The person appointed shall hold office until the next regularly scheduled election for district Board members and shall be afforded all the powers and duties of a Board member upon appointment. (Education Code 5091)

Legal Reference:

EDUCATION CODE

5000-5033 Elections

5090-5095 Vacancies

5200-5208 Districts governed by boards of education

5300-5304 Elections

5320-5329 Order and call of election

5340-5345 Consolidation of elections

5360-5363 Election notice

5420-5426 Cost of elections

5440-5442 Miscellaneous provisions, elections

35107 Eligibility of board members

35178 Resignation with deferred effective date

ELECTIONS CODE

10600-10604 School district elections
11381-11386 Candidates for recall
GOVERNMENT CODE
1064 Absence from state
1770 Vacancies: definition
3060-3075 Removal other than by impeachment
6061 One time
54950-54963 The Ralph M. Brown Act
ATTORNEY GENERAL OPINIONS
58 Ops.Cal.Atty.Gen. 888 (1975)

Management Resources:

WEB SITES

CSBA: <http://www.csba.org>

California State Attorney General's Office, Quo Warran to Applications:

<http://caag.state.ca.us/opinions/quo.htm>

BOARD BYLAWS

SUBJECT: Resignation

A Governing Board member who wishes to resign may do so by filing a written resignation with the County Superintendent of Schools. (Education Code 5090)

A copy shall be given to the Board secretary.

The written resignation is effective when filed, except when a deferred effective date is specified in the resignation. (Education Code 5090)

A Board member may not defer the effective date of his/her resignation for more than 60 days after filing. (Education Code 5091)

A written resignation, whether specifying a deferred effective date or otherwise, shall be irrevocable upon being filed. (Education Code 5090)

Upon resignation, the Board member may continue to exercise all his/her powers, save that of voting for a successor, until the effective date of resignation. (Education Code 35178)

Note: When leaving office, the Board member is required to file a financial disclosure statement within 30 days.

(cf. 9270 - Conflict of Interest)

Legal Reference:

EDUCATION CODE

5090 Definition (vacancy)

5091 Special Election

35178 Resignation with deferred effective date