

BOARD MEMBERS
VACANCIES AND REMOVAL FROM OFFICE

BBC
(LEGAL)

Resignation

To be effective, a public officer's resignation or an officer-elect's declination must be in writing and signed by the officer or officer-elect and delivered to the appropriate authority, the college district board of trustees, for acting on the resignation or declination. The resignation or declination may be delivered to the presiding officer of the body or to its clerk or secretary. The authority may not refuse to accept a resignation. *Election Code 201.001(a)–(b), .002*

Effective Date

If an officer 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 appropriate authority or on the eighth day after the date of its receipt by the authority, whichever is earlier. *Election Code 201.023*

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 public officer's resignation is filled by a successor, the public officer continues to serve and have the duties and powers of office and continues to be subject to the nepotism provision. A holdover public officer may not vote on the appointment of the officer's successor. [See DBE] *Tex. Const. Art. XVI, Sec. 17; Atty. Gen. Ops. JM-636 (1987), DM-2 (1991), GS-6259 (1945)*

Residency

A person elected or appointed to serve as a board member must remain a resident of the college district throughout the term of office. A board member who ceases to reside in the college district vacates office. *Tex. Const. Art. XVI, Sec. 14; Whitmarsh v. Buckley, 324 S.W.2d 298 (Tex. App.—Houston 1959, no writ) [See BBA]*

Single-Member
Districts

A trustee other than a trustee allowed to complete the remainder of the trustee's term after the initial election from single-member districts vacates the office if the trustee ceases to reside in the trustee district the trustee represents. *Education Code 130.0822(g)–(h)*

**Involuntary Removal
from Office**

Quo Warranto

If grounds for the remedy exist, the attorney general or the county or district attorney of the proper county may petition the district court of the proper county or a district judge if the court is in vacation for leave to file an information in the nature of quo warranto. The attorney general or county or district attorney may file the petition on his or her own motion or at the request of an individual relator. An action in the nature of quo warranto is available if:

1. A person usurps, intrudes into, or unlawfully holds or executes a public office; or
2. A public officer does an act or allows an act that by law causes forfeiture of office.

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Civ. Prac. & Rem. Code 66.001–.002

Removal by Petition
and Trial

A petition for removal of a public officer may be filed by any resident of this state who has lived for at least six months in the county in which the petition is to be filed and who is not currently under indictment in the county. A proceeding for removal is begun by filing a written petition for removal in a district court of the county in which the officer resides. *Local Gov't Code 87.015(a)-(b)*

*Reasons for
Removal*

An officer may be removed for:

1. Incompetency. "Incompetency" 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 the officer's election.
2. Official misconduct. "Official misconduct" means intentional, unlawful behavior relating to official duties by an officer entrusted with the administration of justice or the execution of the law. The term includes an intentional or corrupt failure, refusal, or neglect of an officer to perform a duty imposed on the officer by law.
3. Intoxication on or off duty caused by drinking an alcoholic beverage. Intoxication is not grounds for removal if it appears at the trial that the intoxication was caused by drinking an alcoholic beverage on the direction and prescription of a licensed physician practicing in this state.
4. The conviction of a board member by a jury for any felony or for misdemeanor official misconduct. The conviction of a public officer by a petit jury for any felony or for a misdemeanor involving official misconduct operates as an immediate removal from office of that officer.
5. Nonattendance of board meetings if the member is absent from more than half of the regularly scheduled board meetings that the member is eligible to attend during a calendar year, not counting an absence for which the member is excused by a majority vote of the board.

Tex. Const. Art. V, Sec. 24; Local Gov't Code 87.011(2)–(3), .013, .031; Education Code 130.0845

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Automatic Removal
for Certain Criminal
Offenses

*Qualifying
Offense*

“Qualifying offense” means a criminal offense involving:

1. Bribery;
2. Theft of public money;
3. Perjury;
4. Coercion of public servant or voter;
5. Tampering with governmental record;
6. Misuse of official information;
7. Abuse of official capacity; or
8. Conspiracy or the attempt to commit any of the offenses described by this provision.

Local Gov’t Code 180.010(a)

*Automatic
Removal*

A person who holds an elected or appointed office of a college district is automatically removed from and vacates the office on the earlier of the date the person:

1. Enters a plea of guilty or nolo contendere to a qualifying offense;
2. Receives deferred adjudication for a qualifying offense; or
3. Is convicted of a qualifying offense.

Local Gov’t Code 180.010(b)

*Filling Vacancy
Upon Removal*

The governing body of a political subdivision shall, at the first regularly scheduled meeting of the governing body for which notice is required under Government Code Chapter 551, fill the vacancy in the manner provided by law following the date an officer of the political subdivision is removed from office, if an election is not required. *Local Gov’t Code 180.010(a)-(b), (c)*

Removal for
Purchasing
Violations

A board member who is convicted of a purchasing offense under Education Code 44.032 [see CF(LEGAL), Impermissible Practices] is considered to have committed official misconduct and is subject to removal under Local Government Code Chapter 87. *Education Code 44.032*

Filling a Vacancy

Any vacancy occurring on the board through death, resignation, or otherwise, shall be filled by a special election ordered by the board or by appointment by resolution or order of the board. *Education Code 130.082(d)*

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Special Election

A special election to fill a board vacancy is conducted in the same manner as the district's general election except as provided by the applicable provisions of the Election Code. [See BBBA]

If a vacancy in office is to be filled by special election, the election shall be ordered as soon as practicable after the vacancy occurs. A special election to fill a vacancy shall be held on the first authorized uniform election date occurring on or after the 46th day after the date the election is ordered. For a vacancy to be filled by a special election to be held on the date of the general election for state and county officers (November of even-numbered years), the election shall be ordered not later than the 78th day before election day.

In all elections to fill vacancies of office in this state, it shall be to fill the unexpired term only.

Tex. Const. Art. XVI, Sec. 27; Education Code 130.082(d); Election Code 41.002, 201.051–.052

Appointment

An appointment to the governing body of a local government shall be made as required by the law applicable to that local government and may be made with the intent to ensure that the governing body is representative of the constituency served by the governing body. A local government that chooses to implement this provision shall adopt procedures for the implementation. *Local Gov't Code 180.005(b)–(c)*

To be eligible to be appointed to a public elective office, a person must meet the qualifications set forth at Election Code 141.001(a) and Education Code 130.082(d). [See BBA] *Election Code 141.001(a); Education Code 130.082(d)*

The person appointed to fill the unexpired term shall serve until the next regular election of members to the board, at which time the position shall be filled by election for a term appropriately shortened to conform with what regularly would have been the length of the term for that position. *Tex. Const. Art. XVI, Sec. 27; Education Code 130.082(d)*

*Single-Member
Districts*

Except as provided in Education Code 130.0822(l), in single-member districts, any vacancy on the board shall be filled by appointment made by the remaining members of the board. The appointed person serves for the unexpired term. *Tex. Const. Art. XVI, Sec. 27; Education Code 130.0822(i), (l)*

**Temporary
Replacement of
Board Member on
Military Active Duty**

An elected or appointed officer of the state or of any political subdivision, including a member of the college district board of trustees, 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 appropriate authority may appoint a re-

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placement to serve as a temporary active officer as provided by Texas Constitution Article XVI, Section 72 if the elected or appointed board member will be on active duty for longer than 30 days.

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

A temporary acting officer has all the powers, privileges, and duties of the office. A temporary acting officer shall perform the duties of office for the shorter period of:

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

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

Tex. Const. Art. XVI, Sec. 72