



FILLING A VACANCY ON THE BOARD

This page provides an overview of the process for filling board vacancies through appointment. It is a resource for informational purposes only and does not constitute legal advice. This page will be updated, if necessary, to reflect changes implemented during the 2023 legislative session or by the Secretary of State's office. School districts should consult legal counsel regarding specific questions. Visit CASB's Elections webpage for additional resources.

<p>Sample Resolutions</p> <ul style="list-style-type: none"> • Declaring a Vacancy - Board Member Resignation • Declaring a Vacancy - Board Member Failure to Attend Meetings • Declaring a Vacancy - Board Member Death • Notice of Board Vacancy & Request for Applications (English) (Spanish) 	<p>Sample Forms</p> <ul style="list-style-type: none"> • Affidavit of Applicant, Qualifications of Office • Certificate of Appointment - Board • Certificate of Appointment - Board President • Oath of Office (notary) (English) (Spanish) • Oath of Office (Board President) (English)(Spanish) • Confidentiality Affidavit • Sample Board Interview Questions
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Q1: When do board vacancies occur?

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

1. if for any reason a school director is not elected at the regular biennial election;
2. 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;
3. if the director submits a written resignation to the board and such resignation has been duly accepted by the board of education;
4. if the director becomes a nonresident of the school district [or director district];
5. if the director is found guilty of a felony;
6. if a court voids the director’s election or removes the director from office;
7. if a court determines that a director is mentally incompetent;
8. 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
9. if the director dies during the term of office.

Q2: What are the steps a board must take when a vacancy occurs?

A. 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. Sample resolutions declaring a board vacancy are available on CASB's [Elections](#) webpage. 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.

Q3: Who is eligible for appointment to fill a board vacancy?

A. 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.

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. Here is CASB's [sample affidavit](#). 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.

Q4: Are there any legal requirements regarding the vacancy and appointment process?

A. No, there are no specific legal requirements regarding the process to be used in filling a board vacancy, addressing how a board should seek out candidates for appointment, or outlining the kinds of notice a district must provide to the community before making an appointment.

Despite the lack of specific statutory procedures, a board should ensure that it conducts a fair and open process when filling a vacancy. To maximize the chance of finding great candidates, increase community engagement, and minimize the risk of public relations trouble, CASB recommends that the appointment process be open and transparent. Prominently include information in district communications about how to apply, publish the board's resolution declaring a vacancy in local newspapers, and make the application process as simple as possible. Discuss and interview candidates publicly, read their written submissions carefully, and be sure to publicly commend every applicant for their interest.

Q5: Can a board convene in executive session to discuss board applicants?

No, state law prohibits a board from convening in executive session to discuss board applicants, as the appointment of a person to fill a board vacancy is not a "personnel matter" under Colorado's Open Meetings Law. C.R.S. 24-6-402(4)(f)(II). Voting on appointments must follow a board's normal voting procedure and cannot be completed by secret ballot.

Additionally, the appointment must be noted by an appropriate entry in the meeting minutes, and the board must cause a "certificate of appointment" to be delivered to the person appointed. Sample certificates of appointment are available on CASB's [Elections](#) webpage.



Q6: What are the steps that need to be taken once someone has been appointed to fill the vacancy?

- 1. Oath of Office:** Once the board appoints a person to fill the vacancy, the oath of office should be administered no later than 10 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.
- 2. Confidentiality Affidavit:** 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). Here is CASB's [sample confidentiality affidavit](#).
- 3. Notify CDE & CASB:** Boards have an ongoing statutory duty to inform the Colorado Department of Education of any changes to the make-up of the board. C.R.S. 22-32-109(1)(d). After the appointment of a new board member, the school district needs to go into the Data Pipeline Directory and update the board member information and forward a copy of the certificate of appointment to CDE. Details and directions on updating CDE with new board member information are available on CDE's website [here](#).

Please also update CASB with your newly appointed board member's information! The superintendent secretary or the key contact for the district is able to update district and board member information by logging into their CASB profile.

Q7: What happens if there aren't any applicants or if there is only one applicant to fill a vacancy?

A. If there are no applicants to fill a board vacancy, the office remains vacant until there is a willing and eligible appointee or until the next election. In these situations, CASB recommends that the board notes the lack of applicants by an appropriate entry in its meeting minutes and consider doing so until an appointment is made or the office is filled via election.

CASB does not believe that a board is obligated to appoint a sole applicant just because they are the only applicant. However, even if there is only one applicant, the board should still follow its open and transparent application and interview process and provide clear communication to both the applicant and the community. Boards facing this situation should consult with their legal counsel for specifics regarding how best to proceed.

Q8: How are term limits calculated for an appointed board member?

A. The Office of the Attorney General has concluded that the constitutional term limits apply only to full terms of office, not partial terms of office that result from interim appointments made to



fill a vacancy. [Op. Att'y Gen. No. 2000-2 \(February 9, 2000\), 11-13](#). Accordingly, the limit on the number of terms a school director may serve does not apply to the time served as an appointee; the clock starts once the board member is elected to remain on the board. See CASB's [Modifying or Eliminating School Board Term Limits FAQ](#) for more information on term limits.

Q9: How long does an appointed member serve?

It depends, based on the requirements outlined in statute at C.R.S. 22-31-129(3). Please refer to the following scenarios:

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 next regular school election when a person will be elected to serve as the 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.

Example: A vacancy is created on May 15, 2022 in a board seat with a 4-year term from 2021-2025. Since there are more than 2 years remaining in the term and the next regular school election is on November 7, 2023, the board has 60 days to appoint someone to fill the vacancy and the appointed board member would serve until the election on November 7 when a successor for the remainder of the term (until 2025) is elected.

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** regular school election when a successor for the remainder of the term is elected.

Rationale: There is not enough time before the impending election on November 7, 2023, 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.

Example: A vacancy with more than 2 years remaining in the term occurs on August 15, 2023, and the next succeeding regular school election is on November 4, 2025. The appointed board member would serve until the November 2025 election at which point either someone will be elected to finish out the term or the term will have expired and the seat will be filled at the election.



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.

Example: A vacancy with less than 2 years remaining in the term occurs on May 15, 2023, and the next regular school election is on November 7, 2023. The board appoints someone to serve out the remainder of the 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.

Example: A vacancy with less than 2 years remaining in the term occurs on August 15, 2023, and the next regular school election is on November 7, 2023. The board appoints someone to serve out the remainder of the term.

Scenario V

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 next regular school election.

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Specific questions should be referred to the school district's legal counsel.*

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