

School Board Vacancies and Appointments

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The information provided in this presentation is for informational purposes only and is not intended as legal advice. Please consult with your legal counsel for direct legal assistance.

Here's what we're going to cover...

- Grounds for vacancy
- How to fill a vacancy
- Other considerations
- Q&A

What causes a vacancy?



Grounds for Vacancy – NDCC 44-02-01

- **NDCC 44-02-01. Vacancies – Causes thereof.**
- Applies to all elected and appointed offices, including school board members
- List of grounds include:
 - Death in office
 - Adjudged mentally ill
 - Resignation
 - Removed from office
 - Failure to discharge duties for at least 60 consecutive days due to unavoidable cause
 - Failure to qualify (including taking oath of office)
 - Cease to be a resident of state or other political subdivision in which duties are to be discharged
 - Conviction of felony or offense involving moral turpitude or violation of oath
 - Cease to possess any of qualifications for office
 - Election declared void by competent tribunal

Resignation from Office

- ❑ Most common cause of vacancy
- ❑ Effective upon delivery of written resignation to business manager
- ❑ No board action necessary; however, generally acknowledged

Failure to Discharge Duties of Office

- Relatively uncommon (often threatened)
- Failure to discharge duties of office when failure has continued for 60 consecutive days
- Does not apply when prevented from discharging duties by reason of military service, sickness, or “other avoidable cause”
- No remuneration can be paid to absentee officeholder during absence
- Board essentially “declares” vacancy
- EXERCISE CAUTION

Failure to Qualify for Office

- Most common – failure to take oath in required time period or not a qualified elector
- Oath must be completed within 10 days of notice of election or before commencement of duties
- Eligibility determined upon election (however....)
- Vacancy occurs at time of election (election failed to fill seat)
- Seat does not automatically go to second highest vote getter

Cease to be resident of school district

- Must be a resident upon election or appointment and continue throughout term
- Geographic areas in reorganized districts
- Vacancy occurs as soon as cease to be a resident
- Only one residence shown by actual fixed permanent dwelling to which individual returns when not called elsewhere for labor or other special or temporary purposes
- Can't just own property, even if receive mail there
- Must be an actual resident

Suspension by Governor

- NDCC 57-10-15: Audits of political subs
- State auditor may audit or review books, records and financial accounts of any political subdivisions when requested by any of following:
 - ✓ Governor
 - ✓ Governing board of pol sub
 - ✓ Upon petition of at least 35% of qualified electors voting at preceding school election
- If audit ordered due to financial irregularities or allegations of embezzlement, governor may suspend an elected or appointed school board member if determined to be in best interest of state pending results of audit
- Governor must provide notice to school board
- Within 5 days of receipt of notice, school board must appoint individual to replace suspended member

Filling a Vacancy



Filling a school board vacancy

- Requirements outlined in NDCC 15.1-09-05
- Business manager must notify county superintendent that vacancy exists
- Board must fill by appointment or special election
- Must fill within 60 days from time vacancy occurs
- If board fails to do so, county superintendent must call a special election

Appointment or Special Election?

- Board gets to decide which to use
- Appointment is most common
- Less time and resources
- Appointment can be done as soon as next board meeting
- Board decides who fills with appointment
- If special election, still only serves until successor can be elected at next annual election

Process of Appointment

- ND law does not dictate specific process of appointment
- Board policy BBC (Method of Filling a Board Vacancy)
- Selection process, including publishing of notice, period of application and board vote
- Board may choose not to use selection process and appoint by taking action with a simple or 2/3rds majority (roll call vote)
- Seated at next board meeting following appointment/election
- Must complete oath of office

Other considerations

- ❑ Individual appointed or elected serves only until successor can be elected at next regular election
- ❑ Successor then completes rest of term
- ❑ Individual must be eligible to serve:
 - ✓ 18 years of age
 - ✓ U.S. citizen
 - ✓ Resident of district
- ❑ Business manager must certify appointment/election to county superintendent

If vacancy reduces membership to under a quorum...

- State board of public school education must appoint as many individuals as necessary to achieve quorum
- Board then fills any remaining vacancies
- After vacancies filled, the individuals appointed by state board must resign and the board must fill those vacancies by appointment or special election
- Individual appointed by state board may be reappointed by board after resigning

Questions?

Next NDSBA Brunch & Learn

When: September 20, 2023, at 9 a.m. CT

What: Campaign Finance Training

Who: ND SOS office

Register: www.ndsba.org/resources/brunchlearn