

**OSBA
HB 59 JVSD Governance FAQ**

December 3, 2013

1. When does the HB 59 language become effective?

The statutory changes in Revised Code (RC) 3311.19 become effective on September 29, 2013.

2. Can our current JVSD board members continue to serve on the board?

Current board members may continue to serve on the JVSD board until the expiration of their terms. After their current term expires, a current JVSD board member may only be appointed to serve on the board if they meet the qualifications set forth in the statute (*see question #12*).

3. If our JVSD has a vacancy on the board between now and September 29, how should we fill the vacancy?

Since the statutory changes do not become effective until September 29, 2013, any vacancy that occurs prior to September 29, 2013 does not have to be filled with an individual who meets the qualifications set forth in the statute (*see question #12*). The JVSD should use its current procedures for filling board vacancies.

4. I have served on a JVSD board for 15 years. Can I continue to serve on the JVSD board?

You may continue to serve on the JVSD board until the expiration of your term. After your current term expires, you are only eligible to be appointed to a new term on your board if you meet the qualifications set forth in the statute (*see question #12*).

5. After September 29, 2013, how will board vacancies be filled?

The manner of appointment shall be in accordance with the most recent plan for the JVSD on file with ODE. Individuals appointed to the board must meet the qualifications set forth in the statute. OSBA recommends that when the appointing board passes its resolution naming the appointment, it should identify how the individual meets the qualifications set forth in the statute (*see question #12*).

6. Who is the “appointing board” under the new language?

The statute does not define “appointing board,” but we assume that the boards of the districts that make up the JVSD continue to be the appointing boards that are responsible for appointing individuals to serve as JVSD board members.

7. How many board members should we have on our JVSD board?

The total number of members on the board must be in accordance with the most recent plan for the JVSD on file with ODE.

8. Can our JVSD revise the plan we have on file with ODE?

Although nothing requires the JVSD to update or amend the plan that is on file with ODE, it appears that the board is still able to make changes to the plan either before or after HB 59 becomes effective. Any revisions must be submitted to the state board of education (SBOE) for approval in accordance with OAC 3301-61-07, which requires the board to submit amendments to SBOE by the 20th of the month prior to the month in which they are to be considered by the SBOE.

9. **What happens if the JVSD plan we have on file with ODE conflicts with the new statutory language?**
The budget bill states that the new language “shall not be construed to require a JVSD to amend the plan for that JVSD that is on file with the Department of Education.” However, it is unlikely that a JVSD will be able to rely on a plan that is directly in conflict with the new statutory language. OSBA recommends that JVSDs that find themselves in this situation should consult with board counsel.
10. **How long are the appointed board members’ terms under the new language?**
Members of the JVSD board appointed after September 29, 2013 will serve for three-year terms.
11. **Can the appointed board members serve for longer than three years on the JVSD board?**
The bill limits board members to two consecutive three-year terms, but a member may serve again after three or more years have passed since the member’s last term expired. For example, a board member who served two consecutive terms starting on January 1, 2013 (i.e. 1/1/13-12/31/15; 1/1/16-12/31/18) would be eligible to serve on the board again on January 1, 2022.
12. **What qualifications must the appointed board members satisfy?**
Members of the JVSD board shall have each of the following qualifications:
- Have experience as chief financial officers, chief executive officers, human resources managers, or other business, industry, or career counseling professions;
 - Be qualified to discuss the labor needs of the region with respect to the regional economy;
 - Represent employers in the region served by the JVSD; and
 - Be qualified to consider the state’s workforce needs with an understanding of the skills, training, and education needed for current and future employment opportunities in the state
- OSBA recommends that when the appointing board passes its resolution naming the appointment, it should identify how the individual meets the qualifications set forth in the statute.
13. **What work experience would qualify me to serve on a JVSD board?**
Aside from the qualifications identified in the previous question, the new language does not provide any additional guidance as to what work experience qualifies an individual for service on the board. OSBA recommends that appointing boards should work with board counsel to determine whether an individual qualifies for appointment under the new language (*see question #12*).
14. **Can an ESC board member still serve on a JVSD board?**
Currently, if a JVSD is composed only of two or more local school districts located in one county, or when all the participating districts are in one county and the boards of such participating districts so choose, the ESC governing board of the county in which the JVSD is located serves as the JVSD board of education. This language has been removed from the statute. As a result, the ESC governing board will never automatically serve as the JVSD board of education. However, it appears that an ESC board member could be appointed to serve as a member of the JVSD board.
15. **Will the appointed board members be required to be registered voters, state residents or residents of the United States?**
Article XV, §4 of the Ohio Constitution states that “no person shall be elected or appointed to any office in this state unless possessed of the qualifications of an elector.” To possess the “qualifications of an elector,” the individual must be a citizen of the United States, a resident of the state of Ohio and be a registered voter (RC 3503.01).

16. May the board give preference to individuals who have served on a JVSD business advisory committee?

Yes. RC 3311.19(C)(2) specifically states that the appointing board may give preference to individuals who have served as members on a JVSD business advisory committee, so long as those individuals still meet the qualifications set forth in the statute (*see question #12*).

17. Are the appointed board members entitled to receive compensation?

Yes, the bill did not make any changes to compensation for JVSD board members. As a result, JVSD board members may still be compensated at a rate not to exceed one hundred twenty-five dollars per meeting attended, plus mileage both ways.

18. Will appointed board members of JVSDs be subject to Ohio Ethics laws?

The term “public official” as defined in RC 2921.01(A) includes “any elected or appointed official, or employee, or agent of...any political subdivision.” As a result, an appointed board member of the JVSD would be considered a “public official” and would continue to be subject to Ohio Ethics laws.

This includes the law that prohibits public officials from having a definite and direct interest in a public contract entered into by the board. RC 2921.42(A)(4). An appointing board should keep this prohibition in mind when appointing board members. For example, if the district’s athletic department has a contract with a local sporting goods store for equipment, the owner of the sporting goods store would be prohibited from being appointed to the board so long as there is a contract between the two parties.

19. May an appointed board member be removed from office?

Once the appointing board makes the appointment, the board may not rescind the appointment or otherwise “un-appoint” the individual. *State ex rel. Norman v. Viebranz*, 19 Ohio St.3d 146 (1985). However, it appears that the provisions of RC 3.07 continue to operate to allow the appointed board members to be removed from office for gross neglect of duty, gross immorality drunkenness or other misconduct in office.

20. Do the JVSD boards continue to have the ability to levy taxes?

Under current language, the board of a JVSD may adopt a resolution declaring it necessary to levy a tax. RC 3311.21. The budget bill did not make any amendments to this language, so it appears that the new board of appointed board members would still have the authority to levy a tax.

The following additional questions were raised during the JVSD Webinar that took place on August 27, 2013.

21. One of our JVSD board members is appointed by our local ESC. Does this practice have to change?

No, the ESC could still appoint a board member to the JVSD. The individual member appointed would need to meet the qualifications set forth in the statute (*see question #12*).

22. How can a “private” individual vote to put a tax levy on the ballot. Isn’t this a problem?

The budget bill did not make any amendments to the language that appears in RC 3311.21 that allows the board of a JVSD to adopt a resolution declaring it necessary to levy a tax. Because the JVSD will still have a “board,” that board is still able to adopt a resolution declaring it necessary to levy a tax, regardless of the composition of the board.

23. Can a board member serve less than a three-year term? For example, can your terms be for two years instead of three years?

RC 3311.19(B) states “members of the JVSD board...shall serve for three-year terms of office.” A board member should not be appointed to serve less than a three-year term. Obviously, if someone resigns mid-term, it’s possible that a board member will serve less than the three-year term.

24. Our JVSD is represented by seven school districts. Will the number of board members be changed or the manner in which the appointments are made?

RC 3311.19(C) states that “the manner of appointment and the total number of members appointed to the JVSD board shall be in accordance with the most recent plan for the JVSD on file with the department of education.” Although the statute does not define who is the “appointing board,” we assume that the boards of the districts that make up the JVSD continue to be the appointing boards that are responsible for appointing individuals to serve on the JVSD board.

The most recent plan for the JVSD on file with ODE will determine the make-up of the JVSD board. If the plan indicates that one board member will be appointed from each of the seven participating districts, then that will continue to be the case unless and until the JVSD board updates its plan on file with ODE.

25. If we have Adult Education Training agreements with a local company, can that company’s employees still be considered as an appointed board member?

See *question # 18*. If the appointment would result in the individual having a definite and direct interest in a public contract entered into by the board, the individual would have a conflict of interest under Ohio Ethics laws and should not be considered as an appointment.

26. Are the terms that are currently being completed included in the 6-year limit or do those term limits start after their current term expires?

The terms that are currently being completed are not included in the 6-year limit. As a result, if reappointed, a current JVSD board member could serve for two consecutive terms (i.e. 6 years) after the completion of their current term of office.

27. If someone resigns early, does the new appointee fulfill the remaining term or get a new three-year term?

JVSD boards are specifically excluded from the board vacancy procedures set forth in RC 3311.19. Because of this, JVSD boards should check the most recent plan on file with ODE for clarification about how the board should fill its vacancies. Several of the plans that we’ve reviewed indicate that the person appointed to fill the vacancy shall serve for the unexpired term.

28. Are school district employees eligible to serve as JVSD board members?

It’s possible that certain district employees would meet the new qualifications set forth in RC 3311.19. For example, a district treasurer could argue that he/she has experience as a chief financial officer, and that his/her appointment to the JVSD is representative of employers in the region (i.e. the school district). Additionally, a school district treasurer is likely qualified to consider the state’s workforce needs and has an understanding of the skills, training and education needed for current and future employment opportunities in the state. Accordingly, the treasurer could argue that he/she meets the new qualifications.

Districts are advised to consult with board counsel prior to appointing a district employee to the JVSD board to ensure that Ohio Ethics laws are being complied with and to rule out any potential conflicts of interest.

29. The qualifications don't require that you have all of those qualifications, correct? Just at least one of them?

Members of the JVSD board shall have experience in one of the following four areas: chief financial officers, chief executive officers, human resources managers, OR other business, industry or career counseling professions. In addition, all JVSD board members must be qualified to discuss the labor needs of the region with respect to the regional economy, and be qualified to consider the state's workforce needs with an understanding of the skills, training, and education needed for current and future employment opportunities in the state.

Additionally, at least 3/5 of the members of the board shall reside in or be employed within the territory of the JVSD board upon which the member serves.

30. Our JVSD has a board member whose term on the JVSD board ends 12/31/14. However, his term on the local "appointing" board expires 12/31/13. Can the board member complete his unexpired term on the JVSD board?

Yes, the board member may complete his unexpired term on the JVSD board. There is no longer a requirement that the JVSD board member serve as a member of a local "appointing" board. As a result, the fact that his term on the local board expires 12/31/13 would have no impact on his ability to continue to serve on the JVSD board until 12/31/14.

31. What if we have a rotating member who serves a one-year term?

RC 3311.19(B) states "members of the JVSD board appointed on or after the effective date of this amendment shall serve for three years of office." As a result, the JVSD would not be able to continue having a 1-year rotating board seat without violating that provision.

32. When the law references board members who have an understanding of the workforce, couldn't each and every current sitting member make a case that because of their participation on the JVS board, they have an understanding of the workforce?

Aside from the qualifications listed in the statute, the new language does not provide any additional guidance as to what work experience qualifies an individual for service on the board. An argument could be made that, in their capacity as members of the JVSD board, current or former board members gained an understanding of the skills, training and education needed for current and future employment opportunities in the state and are qualified to consider the state's workforce needs.

Keep in mind that the JVSD would still need to demonstrate that the board members meet the other qualifications in order to continue to serve on the board (i.e. experience as CFO, CEO, HR manager, or other business, industry, or career counseling professions; qualified to discuss the labor needs of the region; and represent employers in the region served by the JVSD).

33. What constitutes a "CEO?" A former superintendent? A former mayor?

The new statutory language does not provide any additional guidance as to what work experience qualifies an individual for service on the board. The Oxford dictionary defines a CEO to be "the top-ranking person in a business organization, ultimately responsible for making managerial decisions." Using this definition, an argument could be made that a former superintendent or a former mayor constitutes a CEO. Keep in mind that the individual would still need to demonstrate that he/she meets the other qualifications in order to continue to serve on the board.

34. If a current board member will continue to serve, on which date does his new term begin? Is it September 29 or the first organizational meeting in January?

If the board member's current term is scheduled to end in 2013 and the board member is reappointed to serve on the JVSD board, the board member's new term will begin with his reappointment to the board at the organizational meeting in January.

35. If all board members are appointed each year in January at the organizational meeting, is that when the new terms begin?

Yes. If each of your current board members' terms are expiring this December, each board member who is appointed at the organizational meeting in January will begin a new term and their appointment to the board must comply with the new statutory language.

The following additional questions were raised during the JVSD meeting that took place on September 11, 2013.

36. Can the appointing district place requirements on its appointed board member that are in addition to those listed in the statute (e.g. requiring the appointed board member to attend the board meetings of the local appointing district or requiring the appointed board member to reside in the district)?

Appointing districts can certainly grant a preference toward these individuals. However, a policy, either formal or informal, that would require a board member to reside in the district may be difficult to enforce. The Ohio Supreme Court has ruled that once a local board appoints one of its members to serve on a JVS board, it cannot "un-appoint" the individual. *State ex rel. Norman v. Viebranz*, 19 OS3d 146 (1985). As a result, if the JVSD board member refuses to attend the local district's board meetings or ends up moving out of the district during his/her term of office, there does not appear to be an enforcement mechanism for removing the board member for that purpose.

37. Over 70% of the residents in my county work in Kentucky and West Virginia. Do I need to consider the workforce needs of those in Kentucky or West Virginia when appointing JVSD board members?

No, the statute requires that members should be selected based on the "diversity of the employers from the geographical region of the state in which the territory of the JVSD is located." As a result, appointing boards are not required to look across state lines.

38. If a CEO is appointed to the JVSD board and later indicates that he's too busy to complete his term, can the CEO delegate authority to someone else?

No, a public official cannot delegate his or her duties in this manner and nothing in the statute specifically authorizes this delegation.

39. We have several current JVSD members who are interested in continuing their service on the board. How do we know whether they meet the qualifications?

There is no clear answer as to whether an individual, based on their job title, will meet the qualifications set forth in the statute. See *question #13*. Board members who are interested in continuing their service on the board should review their resumes and see if they meet the new qualifications. Appointing boards should do their due diligence, make a judgment call as to whether the individual truly qualifies, and be ready to support their decision. JVSD boards should work with board counsel on questionable appointments.

40. What happens if the appointing board is not able to appoint anyone to fill the vacancy?

The new statutory language does not specify what happens if an appointing board is unable to fill a vacancy on the board. JVSDs are not included in the list of boards that appear in RC 3313.85, which states that the

county probate court acts to fill the vacancy when the board cannot. As a result, appointing boards should contact board counsel in the event they are unable to appoint someone to fill the vacancy.

41. Does the statute require the appointing board to appoint someone who is an “active” CEO or does a retired CEO also qualify under the new language?

We do not read the statute to require that the appointed board members be active employees of employers in the area. The statute requires the JVSD member to “have experience” as a CFO, CEO, human resource manager, or other business, industry, or career counseling professional who is qualified to discuss the labor needs of the region. Assuming the retired CEO was from the JVSD region, he or she would arguably still “have experience” as a CEO and would be qualified to discuss the labor needs of the region.

42. Do the appointing boards have to wait until January to make their appointments or can they make their appointments in December?

Since the vacancy will not occur on the JVSD board until January, the incoming board must wait until January to vote to fill the vacancy. The outgoing board is not able to vote to make the appointment in December, unless there is a vacancy on the board in December. *State ex rel. Norman v. Viebranz*, 19 OS3d 146 (1985).

43. Our local appointing board will have three new board members elected this fall. Since there is no opportunity for the new board to organize before January 1, how can the new appointing board gather all of the information it needs about the qualifications of their candidates before January 15?

Although the board is prohibited from making the appointment prior to January 1 (see *question #39*), it is not prohibited from gathering information on interested candidates prior to that date. The outgoing board could request information and prepare recommendations for the incoming board, but ultimately it is the incoming board’s responsibility to review the information and make the appointment in January. We acknowledge that the timing is tight. This may be an area where a legislative solution is sought to address the issue.

44. Is the requirement that at least three-fifths of the board members reside or work in the JVSD territory a minimum? In other words, is it appropriate for all of the board members to reside in the territory of the JVSD?

Yes, the three-fifths requirement is a minimum and it’s possible that all of the JVSD board members will reside in the territory of the JVSD.

45. May the local board discuss in executive session the issue of who it will appoint to the JVSD board?

Yes. Pursuant to RC 121.22(G)(1), a board may meet in executive session to “consider the appointment...of a public official.” As a result, the board could meet in executive session to consider an individual’s appointment to the JVSD board. The appointing board should make sure it words its motion properly.

46. Does the new statutory language require a board to solicit candidates, or if the board knows that someone is interested in qualified, may the board just appoint that individual?

The new statutory language doesn’t require a specific process to be followed when soliciting interest or considering candidates for appointment to the JVSD board. Because the statute is silent, the appointing board has the ability to make the process as robust as they want.

47. Who is responsible for compensating the appointed JVSD board member?

There were no statutory changes in this area. The JVSD continues to be responsible for compensating the appointed board member.