



Ohio School Boards  
Association

TO: Board Members, Superintendents and Treasurers

FROM: OSBA Division of Legal Services

RE: **BOARD OF EDUCATION VACANCY**

From time to time, a vacancy occurs on a board of education, requiring the rest of the board to act promptly to replace the departing board member. OSBA offers this complimentary Board Vacancy Toolkit to assist boards of education as they appoint a replacement board member who will make positive contributions to the school district.

The process for filling a board vacancy is not complicated, but there are some legal timelines and compliance details that must be followed. If this is the first vacancy your district has had recently, you may wish to review the enclosed materials to refresh your recollection of the process required by the Ohio Revised Code.

This toolkit includes:

- Ohio Revised Code provisions that discuss board vacancies;
- A fact sheet explaining how vacancies occur and the process of filling vacancies;
- OSBA's sample board policy BBE, Unexpired Term Fulfillment;
- A sample press release announcing a board vacancy and seeking applicants that your board can use or customize;
- A sample application for candidates;
- Sample questions for interviews with board candidates;
- Sample resolution to adopt to fill the board of education vacancy;
- A form to send back to OSBA once the new board member is seated.

Information on the responsibilities of serving on a school board are available on OSBA's Get on Board school board candidate website at <http://www.getonboardohio.org/resources>.

If you have any questions about the process or this toolkit, please contact the division of legal services at (855) 672-2529.

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*OSBA leads the way to educational excellence by serving Ohio's public school board members and the diverse districts they represent through superior service, unwavering advocacy and creative solutions.*



## Ohio Revised Code

### Section 3313.11 Vacancy in board.

Effective: November 12, 1997

Legislation: House Bill 269 - 122nd General Assembly

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Notwithstanding division (D) of section 3311.19 and division (D) of section 3311.52 of the Revised Code, this section does not apply to any joint vocational or cooperative education school district.

A vacancy in any board of education may be caused by death, nonresidence, resignation, removal from office, failure of a person elected or appointed to qualify within ten days after the organization of the board or of appointment or election, removal from the district, or absence from meetings of the board for a period of ninety days, if such absence is caused by reasons declared insufficient by a two-thirds vote of the remaining members of the board, which vote must be taken and entered upon the records of the board not less than thirty days after such absence.

If the board members are selected by appointment pursuant to division (B) or (F) of section 3311.71 of the Revised Code, the appointing authority responsible for the appointment shall fill any such vacancy by appointment of an individual to serve the remainder of the unexpired term from a slate of at least three persons proposed by the municipal school district nominating panel established under that section. If the member creating the vacancy resides in a municipal school district but not in the municipal corporation containing the greatest portion of the district's territory, the individuals included on such slate shall also reside in the municipal school district but not in the municipal corporation containing the greatest portion of the district's territory.

If the board members are selected by election, the board shall fill any such vacancy at its next regular or special meeting, not earlier than ten days after such vacancy occurs. A majority vote of all the remaining members of the board may fill any such vacancy. Immediately after such a vote, the treasurer of the board of education shall give written notice to the board of elections responsible for conducting elections for that school district that a vacancy has been filled, and the name of the person appointed to fill the vacancy. Each person selected by the board or probate court to fill a vacancy shall hold office for the shorter of the following periods: until the completion of the unexpired term, or until the first day of January immediately following the next regular board of education election taking place more than ninety days after a person is selected by the board or



probate court to fill the vacancy. At that election, a special election to fill the vacancy shall be held in accordance with laws controlling regular elections for board of education members, except that no such special election shall be held if the unexpired term ends on or before the first day of January immediately following that regular board of education election. The term of a person chosen at a special election under this section shall begin on the first day of January immediately following the election, and the person shall serve for the remainder of the unexpired term. Whenever the need for a special election under this section becomes known, the board of education shall immediately give written notice of this fact to the board of elections responsible for conducting the regular board of education election for that school district.

The term of a board of education member shall not be lengthened by the member's resignation and subsequent selection by the board or probate court under this section.



## Ohio Revised Code

### Section 3313.85 Failure of board of education or governing board to fill vacancy.

Effective: January 13, 2012

Legislation: Senate Bill 124 - 129th General Assembly

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If the board of education of any city, exempted village, or local school district or the governing board of any educational service center fails to fill a vacancy in that board within a period of thirty days after the vacancy occurs, the probate court of the county in which the district or service center is located, upon being advised and satisfied of that failure, shall act as that board to fill any vacancy as promptly as possible.

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# Filling board of education vacancies

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*Board vacancies occur whenever a member of a board of education either chooses to stop serving or is no longer able to serve on the board. The Ohio Revised Code (RC) provides a mechanism for boards to fill vacancies when they occur for whatever reason.*

*This fact sheet is designed to address the most frequently asked questions about filling vacancies on boards of education under RC 3313.11. The information is of a general nature. Readers should seek the advice of legal counsel with specific legal problems or questions.*

## Reasons for a vacancy

*What can cause a vacancy on a board of education?*

RC 3313.11 provides that a vacancy in a board of education may be caused by:

- death;
- nonresidence;
- resignation;
- removal from office;
- failure of a person elected or appointed to qualify;
- removal from the district;
- absence from board meetings for a period of 90 days if for reasons declared insufficient by a two-thirds vote of the remaining board members.

Other ways in which a vacancy may be created are:

- A board member forfeits the office if convicted of certain crimes, which include: giving, soliciting or accepting a bribe; receiving improper compensation; and certain election offenses.
- A board member forfeits the office if the member fails to attend at least three-fifths of the regular and special meetings held by the board during any two-year period (RC 3.17; 2011 Ohio Atty.Gen.Ops. No. 2011-043).
- Not enough candidates run for available positions in a November general election, leaving one or more vacancies after the newly elected members are sworn into office in January (*State ex rel. Henry v. Triplett*, 134 Ohio St. 480 (1938)).

Issues concerning compatible or incompatible offices for board members, which could, in some circumstances, create a board vacancy, are beyond the scope of this fact sheet.

## *What constitutes 'nonresidence'?*

Residence is a factual issue to be determined on a case-by-case basis. In deciding where an individual "resides," a court is likely to consider several factors, including where the individual sleeps, receives mail and is registered to vote. An individual's intent regarding his place of residence also may be a consideration (1927 Ohio Atty.Gen.Ops. No. 1057).

## *What is the effective date of a resignation?*

A person submitting a written resignation may include an effective date in the future or indicate that it is effective immediately. Oral resignations also can be effective immediately or at a date specified in the future. If no effective date is stated in a written or oral resignation, the resignation probably will be deemed effective immediately.

This fact sheet is published as an OSBA membership service

For more information on this subject, please contact OSBA's Division of Legal Services

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### *To whom must the resignation be delivered?*

There are no statutory guidelines regarding to whom a resignation should or must be delivered. Some communication of the resignation is required, presumably to the board itself, or to a board member, the superintendent or treasurer as a representative of the board.

### *Can a resignation be withdrawn?*

If it is effective immediately, a resignation cannot be withdrawn. If it has an effective date in the future, it may be withdrawn prior to that date. However, if the board of education accepts the resignation, even before the effective date, the resignation may not be withdrawn thereafter.

### *Must a resignation be acted upon by the board of education?*

No. However, a board may act to accept a resignation. Acceptance can be important if the individual later attempts to withdraw the resignation as indicated in the question above.

### *What constitutes 'insufficient reasons for missing board meetings for 90 days?'*

This determination is left to the discretion of each board of education. The statute sets forth no standards.

### *How can an individual be removed from his or her position as a board member?*

The Ohio Constitution authorizes laws to be passed to provide for removal from office for misconduct. Pursuant to this authorization, the General Assembly has enacted RC 3.07 through 3.10. These statutes provide a process for removing public officeholders, including school board members. An official can be removed if he or she willfully and flagrantly exercises authority or power not authorized by law, refuses or willfully neglects to enforce the law or to perform any official duty imposed upon him or her by law, or is guilty of gross neglect of duty, gross immorality, drunkenness, misfeasance, malfeasance or nonfeasance. The procedure that must be followed requires preparation of a complaint stating specific charges, which must be signed by a specified number of electors of the school district. The complaint then must be filed with the common pleas court, which conducts a hearing to determine whether the charges are true and whether removal is warranted.

### **Procedural timelines**

#### *When does a vacancy occur?*

The vacancy occurs on the date of any of the events indicated in the first question. In the case of a resignation, the vacancy occurs on the effective date of the resignation.

### *When may a board act to fill the vacancy?*

The statute requires the board to act to fill the vacancy at its "next regular or special meeting," which is held at least 10 days after the vacancy occurs. The board must act to fill the vacancy within 30 days.

A few courts have held that the phrase "at its next regular or special meeting" is directory and not mandatory, and does not require the board of education to appoint a member at the meeting immediately following the resignation. In *Stierwalt v. Hoppe*, 6th Dist. Sandusky No. S-15-017 (Sept. 10, 2015), for example, the appeals court held that an appointment occurring at the second meeting after the vacancy (but still within 30 days) was a valid appointment.

### *What happens if the board is unable or unwilling to name a replacement?*

If the board fails to act within 30 days after a vacancy occurs, the vacancy is filled by the probate court of the county in which the school district is located (RC 3313.85).

#### Filling the vacancy

### *What procedure should our board use to select a person to fill the vacancy?*

There are no procedural requirements other than the time deadlines for board action. Many boards have adopted procedures in board policy that should be followed whenever a vacancy occurs. If the board's policies are silent, the board will need to determine the procedures it will follow in soliciting candidates and selecting the person to fill the vacancy.

### *Can the board accept applications?*

Yes. Oral or written applications can be suggested or required by the board. Written applications are recommended to avoid later misunderstandings. Written applications also serve to document all information submitted for consideration by each candidate.

In its board vacancy toolkit, OSBA has included a sample application for boards to use to assess prospective board members. The board may customize the application for its own needs. The toolkit also includes a list of suggested appropriate interview questions to ask prospective board members. Individual boards of education may use any or all of these questions and add additional areas of inquiry. The Board Vacancy Toolkit is available on OSBA's website at <http://links.ohioschoolboards.org/VacancyToolKit>.

*Is a special majority required to appoint a board member?*

Yes. A majority vote of the remaining members is required. For five-person boards, this means at least three of the remaining members must vote in favor of an appointee. For seven-person boards, at least four of the remaining members must vote in favor of an appointee.

The Ohio attorney general has issued an opinion that if four vacancies occur on a five-member board of education, the remaining board member does not have authority to fill the vacancies (2004 Ohio Atty. Gen.Ops. No. 027). The same reasoning may apply if only two members of a five-person board attempt to fill three vacancies. A board should consult with its attorney if there are multiple vacancies at the same time.

*Can the board interview candidates in executive session?*

OSBA's interpretation of the Sunshine Laws supports the authority of the board to interview prospective board of education candidates in executive session. This activity would appear to fall within RC 121.22(G)(1). That section permits, among other things, executive sessions to be held to consider "... the appointment ... of a public ... official." This is precisely what a board is doing in appointing a person to fill a board vacancy. The formal board action to name a person to fill the vacancy must be taken in open session of the board (*Kauffman v. Tiffin City Council*, 3rd Dist. Seneca No. 13-84-9, 1985 Ohio App. LEXIS 8627 (Aug. 14, 1985)).

*After losing an election for the board, could a current board member resign and be reappointed to an additional term on the board?*

No. A board member's term cannot be lengthened by resignation and subsequent appointment by either the board or probate court (RC 3313.11). A former board member may be appointed to the board after his term of office has expired.

*Does the last board of education election have any influence on the person to be appointed?*

No, unless the remaining board members want it to. Some believe the highest vote recipient among unsuccessful board candidates at the last election should or must be appointed to fill a vacancy. Although the remaining board members may appoint this person, they are under no obligation to do so.

## **Length of appointment**

*How long will an appointed person serve?*

This depends on when the vacancy occurs. The person appointed serves the shorter of either the completion of the term of the original board member or until Jan. 1 following the next regular board of education election, if the election occurs at least 90 days after the person is appointed. (Regular board of education elections are held at the November general elections in each odd-numbered year. The 90-day cut-off therefore occurs in August.)

*What happens if a person appointed serves less than the full remaining term of the original board member?*

Such an appointee serves until Jan. 1 following the completion of the first two years of the original board member's four-year term. At the November general election that occurs prior to that Jan. 1, there is a special election for the remaining two years of the original board member's term. Individuals wishing to run for this two-year position do so separately from the candidates for the normal four-year board vacancies up for election that year. An individual then is elected to serve for only the two remaining years of the original board member's term.

*When can special elections be held?*

Only at the November general elections in odd-numbered years. This is when regular board of education elections are scheduled. The election is "special" in that there is an election for a two-year term to complete the original board member's four-year term.

*Who is responsible for conducting such a special election?*

The county board of elections. The board of education is required to give written notice to the board of elections immediately upon becoming aware of the need for a special election.

*Note: Readers are advised to obtain legal advice regarding the application of the law addressing filling board of education vacancies in specific situations.*

## **Unexpired Term Fulfillment (Board Vacancy)**

### **Unexpired Term Fulfillment (Board Vacancy)**

A vacancy on the Board may be caused by:

1. death;
2. nonresidence;
3. resignation;
4. removal from office;
5. failure of a person elected or appointed to qualify within 10 days after the organization of the Board or of his/her appointment or election;
6. relocation beyond District boundaries or
7. absence from Board meetings for a period of 90 days, if the reasons for the absence are declared insufficient by a two-thirds vote of the remaining Board members. (The vote must be taken not earlier than 30 days after the 90-day period of absence.)

Any such vacancy will be filled by the Board at its next regular or special meeting not earlier than 10 days nor later than 30 days after the vacancy occurs. A majority vote of all the remaining members of the Board is required to fill the vacancy.

Each person selected to fill a vacancy holds office:

1. until the completion of the unexpired term or
2. until the first day of January immediately following the next regular Board election taking place more than 90 days after a person is selected to fill the vacancy. (At that election, a special election to fill the vacancy is held. No such special election is held if the unexpired term ends on or before the first day of January immediately following that regular Board election. The term of a person elected in this manner begins on the first day of January following the election and is for the remainder of the unexpired term.)

The shorter of the above options determines the length of office.

CROSS REF.: BBBA, Board Member Qualifications

**NOTE:** *The substance of most statements in this category is usually established by law. Any procedures that a board follows to select a person to fill a vacancy could be presented as a board-approved regulation, code BBE-R.*

*Under Ohio Revised Code Section 3313.85, the probate court of a county will fill any vacancy if the board of education of any city, exempted village or local district or educational service center governing board does not act within 30 days.*



Cross References:

BBBA - Board Member Qualifications

Legal References:

ORC 3.01

ORC 3.02

ORC 3.07

ORC 3.08

ORC 3313.11

ORC 3313.85

Adoption Date:

Classification:

Revised Dates: ;

## SAMPLE NEWS RELEASE FOR BOARD VACANCIES

*(Please retype on district letterhead and customize portions in brackets and/or in italics)*

### FOR IMMEDIATE RELEASE

*date*

*Contact name*

*Title*

*Phone number*

*Email*

CITY – The *name of board of education* Board of Education seeks applicants to fill an unexpired term of board member which became vacant on *date*.

*[The board can, if it chooses, include a paragraph that identifies the event that is the reason the position became vacant (resignation, death, nonresidence) and recognize the person who held the seat before that event occurred. Could include a quote from the board president or other board members thanking the former member and/or noting accomplishments of the board during the board member's service. This paragraph is discretionary.]*

The board will begin interviewing candidates soon and must name a replacement within 30 days of the vacancy occurring. The newly appointed member will serve until *Jan. 1, YEAR\** *[The year depends on when, during the term, the position became vacant]*. If the appointed member desires to continue serving, he or she must run in the next general election.

Those interested in serving on the *name of board of education* Board of Education should contact *name of person collecting applications* for an application. *Applications are also available on the district's website at this link.*

According to Ohio law, people serving on Ohio school boards must be district residents, registered voters in the district and at least 18 years old.

*Last name of board president* said the board will review all applications, *interview candidates* and decide on the replacement at its *date* meeting.

*[You may include some information on the process here.]*

*Name of school district* serves *number of students* in *number of buildings* in *list cities, townships and villages served by the district.*



## APPLICATION FOR MEMBER BOARD OF EDUCATION

\_\_\_\_\_  
*School District*

**Name (First, Middle, Last):** \_\_\_\_\_

**Address:** \_\_\_\_\_

**City/State/Zip Code:** \_\_\_\_\_

**Home Phone:** \_\_\_\_\_

**Work Phone:** \_\_\_\_\_

**Occupation:** \_\_\_\_\_

**Current Place of Employment:** \_\_\_\_\_

**Employment History:** (List most recent position first)

Dates	Position	Organization

**Education:**

School Name	Major/Course	Dates	Degree

**Civic or Professional Organization Memberships:**

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**References:**

Name	Address	Phone

Are you 18 years or older? ☐ Yes ☐ No

Are you a registered voter in the school district? ☐ Yes ☐ No

Have you ever been arrested for or convicted of a felony\*? ☐ Yes ☐ No

Is any member of your immediate family an employee of the school system? ☐ Yes ☐ No

If yes, whom? \_\_\_\_\_ (name) \_\_\_\_\_ (position)

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Signature of Applicant

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Date

\*[RC 2961.01](#) provides that any person who pleads guilty to, or is found guilty of, committing a felony cannot be an elector (*i.e.*, eligible to vote) until that person is granted parole, judicial release, conditional pardon or final discharge. To be eligible to serve as a school board member, a person must be an elector.

## **OSBA SAMPLE QUESTIONS FOR BOARD CANDIDATES/APPLICANTS**

The following questions are meant to be thought-provoking and in no way represent a complete list of possible questions for interviewing potential school board members. Questions agreed to by your board best reflect the concerns of the board. Answers should be judged on the acceptability of responses according to your board's standards.

1. Why are you interested in becoming a board member?
2. Are you willing to spend the necessary time, to familiarize yourself with the school district's operations enabling you to function as a contributing member of this board, and to keep abreast of the ever-changing business of schools?
3. Are there aspects of your education and experience that you feel would be especially helpful in this position?
4. If appointed, would you be a candidate for re-election at the next election?
5. Are you willing to assume a leadership role in this community as a member of the body responsible for the management of public schools in this district?
6. What do you believe our schools should be accomplishing?
7. What is the single best thing you know about our schools?
8. What are your beliefs about the roles of the board and superintendent and the difference between policymaking and administration?
9. What are your beliefs regarding the role of management and employee organizations?
10. What criteria do you use in evaluating educational programs?
11. How do you respond to criticism?
12. Do you realize the need for confidentiality? Can you maintain confidentiality?
13. Can you be supportive of our schools?
14. If you disagree with others, can you separate this difference and proceed as a team member after a vote is taken?
15. Are you willing to let administrators administer the system while the board of education serves as policymaker?
16. Do you believe in service training for board members? Are you willing to participate in such meetings?
17. How much do you think a school board member earns?

## RESOLUTION TO FILL BOARD OF EDUCATION VACANCY

(RC 3313.11)

Whereas a vacancy has been caused on the board of education by reason of \_\_\_\_\_\*; and

Whereas this board of education has the legal authority to fill a vacancy for the unexpired term thereof;

Now, therefore, be it resolved that \_\_\_\_\_ is hereby appointed to serve as a member of the board of education of the \_\_\_\_\_ School District [*for the remainder of the unexpired term, ending on Jan. 1, 20\_\_*] or [*until Jan. 1, 20\_\_*].

**\*NOTE:** A vacancy may be caused by death, nonresidence, resignation, removal from office, failure of member to qualify, etc. (RC 3313.11).



### BOARD MEMBER INFORMATION UPDATE

Please fax to (614) 540-4100 or email to [scinadr@ohioschoolboards.org](mailto:scinadr@ohioschoolboards.org)

TO: Susie Cinadr, OSBA Data and Operations Coordinator  
FROM: \_\_\_\_\_  
DATE: \_\_\_\_\_

Please be advised that \_\_\_\_\_ has vacated his/her seat on the  
\_\_\_\_\_ board of education effective \_\_\_\_\_  
due to:

- ☐ Death;
- ☐ Nonresidence;
- ☐ Resignation;
- ☐ Removal from office;
- ☐ Failure of a person elected or appointed to qualify;
- ☐ Removal from the district;
- ☐ Absence from board meetings for a period of 90 days if for reasons declared insufficient by a two-thirds vote of the remaining board members;
- ☐ Other: \_\_\_\_\_

*Additional information. Please complete if appropriate.*

- ☐ The vacating board member was the board president/vice president. The new board president/vice-president is:  
\_\_\_\_\_.

- ☐ The board has filled the vacancy and appointed:

Name: \_\_\_\_\_

Date of Appointment: \_\_\_\_\_

Occupation: \_\_\_\_\_

Home Address: \_\_\_\_\_

Email: \_\_\_\_\_

Home Phone: \_\_\_\_\_ Cellphone: \_\_\_\_\_

Work Phone: \_\_\_\_\_ Fax: \_\_\_\_\_