

SCHOOL DISTRICT PETITION CALLING ELECTION IN LIEU OF APPOINTMENT



This guide was developed in an effort to provide answers to questions frequently asked the Kern County Elections Division regarding the procedures for initiating a petition calling for an election after a provisional appointment has been made to fill a vacancy on a School Board. It is for general information only and does not have the force and effect of law, regulation or rule. In case of conflict, the law, regulation or rule will apply. Persons using this guide must bear full responsibility to make their own determinations as to all legal standards and duties. It is recommended that you contact private legal counsel to advise you of the legal requirements of the petition process. The County Superintendent of Schools or the Kern County Elections Division cannot give legal advice or interpretations of law.

May 2019

This Document is subject to change without notice.

CONTACT INFORMATION

Kern County Elections Division 1115 Truxtun Avenue, 1 st Floor Bakersfield, CA 93301	
General Information	661-868-3590 or 1-800-452-8683
Fax – General	661-868-3768
Website	www.kernvote.com

Kern County Superintendent of Schools 1300 17 th St. – City Centre Bakersfield, CA 93301	
General Information	661-636-4000
Fax – General	661-636-4130
Website	www.kern.org

Schools Legal Service PO Box 2445 Bakersfield, CA 93303	
General Information	661-636-4830
Fax – General	661-636-4843
Website	www.schoolslegalservice.org

EDUCATION CODE SECTION 5091

(a) (1) If a vacancy occurs, or if a resignation has been filed with the county superintendent of schools containing a deferred effective date, the school district or community college district governing board shall, within 60 days of the vacancy or the filing of the deferred resignation, either order an election or make a provisional appointment to fill the vacancy. A governing board member may not defer the effective date of his or her resignation for more than 60 days after he or she files the resignation with the county superintendent of schools.

(2) In the event that a governing board fails to make a provisional appointment or order an election within the prescribed 60-day period as required by this section, the county superintendent of schools shall order an election to fill the vacancy.

(b) When an election is ordered, it shall be held on the next established election date provided pursuant to Chapter 1 (commencing with Section 1000) of Division 1 of the Elections Code not less than 130 days after the order of the election.

(c) (1) If a provisional appointment is made within the 60-day period, the registered voters of the district may, within 30 days from the date of the appointment, petition for the conduct of a special election to fill the vacancy. A petition shall be deemed to bear a sufficient number of signatures if signed by at least the number of registered voters of the district equal to 1¹/₂ percent of the number of registered voters of the district at the time of the last regular election for governing board members, or 25 registered voters, whichever is greater. However, in districts with less than 2,000 registered voters, a petition shall be deemed to bear a sufficient number of signatures if signed by at least 5 percent of the number of registered voters of the district at the time of the last regular election for governing board members.

(2) The petition shall be submitted to the county superintendent of schools having jurisdiction who shall have 30 days to verify the signatures. If the petition is determined to be legally sufficient by the county superintendent of schools, the provisional appointment is terminated, and the county superintendent of schools shall order a special election to be conducted no later than the 130th day after the determination. However, if an established election date, as defined in Section 1000 of the Elections Code, occurs between the 130th day and the 150th day following the order of the election, the county superintendent of schools may order the special election to be conducted on the established election date.

(3) For purposes of this section, "registered voters" means the following:

(A) If the district uses the at-large method of election, as defined in subdivision (a) of Section 14026 of the Elections Code, registered voters of the entire school district or community college district.

(B) If the district uses district-based elections, as defined in subdivision (b) of Section 14026 of the Elections Code, registered voters of the election district.

(d) A provisional appointment made pursuant to subdivision (a) confers all powers and duties of a governing board member upon the appointee immediately following his or her appointment.

(e) A person appointed to fill a vacancy shall hold office only until the next regularly scheduled election for district governing board members that is scheduled 130 or more days after the effective date of the vacancy, whereupon an election shall be held to fill the vacancy for the remainder of the unexpired term. A person elected at an election to fill the vacancy shall hold office for the remainder of the term in which the vacancy occurs or will occur.

(f) (1) If a petition calling for a special election is circulated, the petition shall meet all of the following requirements:

(A) The petition shall contain the estimate of the elections official of the cost of conducting the special election.

(B) The name and residence address of at least one, but not more than five, of the proponents of the petition shall appear on the petition, each of which proponents shall be a registered voter of the school district or community college district, as applicable.

(C) None of the text or other language of the petition shall appear in less than six-point type.

(D) The petition shall be prepared and circulated in conformity with Sections 100 and 104 of the Elections Code.

(2) If any of the requirements of this subdivision are not met as to any petition calling for a special election, the county superintendent of schools shall not verify the signatures, nor shall any further action be taken with respect to the petition.

(3) No person shall permit the list of names on petitions prescribed by this section to be used for any purpose other than qualification of the petition for the purpose of holding an election pursuant to this section.

(4) The petition filed with the county superintendent of schools shall be subject to the restrictions in Section 6253.5 of the Government Code.

(g) Elections held pursuant to subdivisions (b) and (c) shall be conducted in as nearly the same manner as practicable as other governing board member elections.

Elections Code Section 100

(a) Notwithstanding any other provision of law, whenever an initiative, referendum, recall, nominating petition or paper, or any other petition or paper, is required to be signed by voters of a county, city, school district, or special district subject to petitioning, only a person who is an eligible registered voter at the time of signing the petition or paper is entitled to sign the petition or paper. A person who submits his or her affidavit of registration pursuant to subdivision (d) of Section 2102 is not eligible to sign a petition or paper unless at the time of the signing of the petition or paper he or she is 18 years of age.

(b) A signer shall at the time of signing the petition or paper personally affix his or her signature, printed name, and place of residence, including the street and number of the place of residence, and if no street or number for the place of residence exists, then a designation of the place of residence that will enable the location to be readily ascertained. An incomplete or inaccurate apartment or unit number in the signer's residence address shall not invalidate his or her signature pursuant to Section 105. A space at least one inch wide shall be left blank after each name for the use of the elections official in verifying the petition or paper.

(c) The part of a petition for the signatures, printed names, and residence addresses of the voters and for the blank spaces for verification purposes shall be numbered consecutively commencing with the number one and continuing through the number of signature spaces allotted to each section.

Elections Code Section 104

(a) Wherever any petition or paper is submitted to the elections official, each section of the petition or paper shall have attached to it a declaration signed by the circulator of the petition or paper, setting forth, in the circulator's own hand, the following:

- (1) The printed name of the circulator.
- (2) The residence address of the circulator, giving street and number, or if no street or number exists, adequate designation of residence so that the location may be readily ascertained.
- (3) The dates between which all the signatures to the petition or paper were obtained.

(b) Each declaration submitted pursuant to this section shall also set forth the following:

- (1) That the circulator circulated that section and witnessed the appended signatures being written.
- (2) That according to the best information and belief of the circulator, each signature is the genuine signature of the person whose name it purports to be.
- (3) That the circulator is 18 years of age or older.

(c) The circulator shall certify the content of the declaration as to its truth and correctness, under penalty of perjury under the laws of the State of California, with the signature of his or her name. The circulator shall state the date and the place of execution on the declaration immediately preceding his or her signature.

SAMPLE PETITION

**PETITION CALLING FOR A SPECIAL
GOVERNING BOARD MEMBER ELECTION AND
TERMINATING THE PROVISIONAL APPOINTMENT**

TO THE COUNTY SUPERINTENDENT OF SCHOOLS OF KERN COUNTY:

Pursuant to Education Code Section 5091, we the undersigned registered and qualified electors of the **(name of district)**, County of Kern, State of California, request a special election be called to fill the vacancy in the office of governing board member and to terminate the provisional appointment of **(name of appointee)**.

The proponent (s) of this petition calling for the special election is (are):

Insert name and residence address of at least one and not more than five proponents who must be registered voters of the district.

The Elections Division of Kern County has estimated the cost to conduct a special election in the **(name of district)** will be **(insert cost estimate)**.

The following text, which must be in **12-point type** must be included:

“NOTICE TO THE PUBLIC – THIS PETITION MAY BE CIRCULATED BY A PAID SIGNATURE GATHERER OR A VOLUNTEER. YOU HAVE THE RIGHT TO ASK.”

Each of the undersigned states for himself/herself that he or she is a registered and qualified elector of the **(name of district)**, in the County of Kern.

		Official Use Only
1	Print Your Name _____ Signature _____	Residence Address Only _____ City _____ Zip _____ _____ City _____ Zip _____
2	Print Your Name _____ Signature _____	

Column must be at least 1" wide

**DECLARATION OF PERSON CIRCULATING SECTION OF PETITION
FOR A SPECIAL ELECTION
(To be completed in circulator’s own hand)**

I, _____, solemnly swear (or affirm) all of the following:
(Print Name)

1. That I am 18 years of age or older.
2. That my residence address, including street and number, is _____.
(If no street or number exists, a designation of my residence adequate to readily ascertain its location is _____.)
3. That the signatures on this section of the petition form were obtained between (Month and Day), 20____, and (Month and Day), 20 ____; that I circulated the petition and I witnessed the signatures on this section of the petition form being written; and that, to the best of my information and belief, each signature is the genuine signature of the person whose name it purports to be.

I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on (Date) _____, at (City or Community Where Signed) _____, California.

Circulator’s Signature

Date