RESIGNATION

A Board member may resign by delivering written notice, signed by the Board member, to the presiding officer of the Board. The Board may not refuse to accept a resignation. *Election Code 201.001*

EFFECTIVE DATE

If a Board member submits a resignation, whether to be effective immediately or at a future date, a vacancy occurs on the date the resignation is accepted by the Board or on the eighth day after the date of its receipt by the Board, whichever is earlier. *Election Code 201.023*

HOLDOVER DOCTRINE

All public officers shall continue to perform the duties of their offices until their successors shall be duly qualified, i.e., sworn in. Until the vacancy created by a Board member's resignation is filled by a successor, the Board member continues to serve and have the duties and powers of office and continues to be subject to the nepotism provisions. A holdover Board member may not vote on the appointment of his or her successor. *Tex. Const., Art. XVI, Sec. 17; Atty. Gen. Ops. JM-636 (1987), DM-2 (1991), O-6259 (1945)* [See DBE]

RESIDENCY

A person elected to serve as a Board member must remain a resident of the District throughout the term of office. A Board member who ceases to reside in the District vacates his or her office. *Tex. Const., Art. XVI, Sec. 14; Prince v. Inman, 280 S.W.2d 779 (Tex. Civ. App.—Beaumont 1955, no writ); Whitmarsh v. Buckley, 324 S.W.2d 298 (Tex. Civ. App.—Houston 1959, no writ)*

RESIDENCE DEFINED

"Residence" means domicile, one's home and fixed place of habitation to which one intends to return after any temporary absence. A person does not lose one's residence status by leaving to go to another place for temporary purposes only. A person does not acquire a residence in a place to which the person has come for temporary purposes only and without the intention of making that place the person's home. Residence shall be determined in accordance with the common-law rules, as enunciated by the courts of this state, except as otherwise provided by the Election Code. *Election Code 1.015*

Note: The issue of whether a candidate has satisfied residency requirements should be judicially determined. *State v. Fischer, 769 S.W.2d 619 (Tex. App.—Corpus Christi 1989, writ dism'd w.o.j)*

INVOLUNTARY REMOVAL FROM OFFICE

QUO WARRANTO

On his or her own motion, or at the request of an individual, the attorney general or the county district attorney may petition the district court for leave to file an action in quo warranto to remove a Board member. An action in quo warranto is available if:

1. A person usurps, intrudes into, or unlawfully holds or executes a public office; or

2. A public officer does an act or allows an act that by law causes forfeiture of office.

Civ. Prac. & Rem. Code 66.001–.002

REMOVAL BY PETITION AND TRIAL

A resident of the state who has lived for at least six months in the county in which the petition is to be filed and who is not currently under indictment in the county may file a petition to remove a public officer from office for one of the reasons listed below. A proceeding for removal is begun by filing a written petition for removal in a district court of the county in which the officer resides. *Local Gov't Code 87.015*

REASONS FOR REMOVAL

A public officer may be removed from office for:

1. "Incompetency," which means:

   a. Gross ignorance of official duties;

   b. Gross carelessness in the discharge of those duties; or

   c. Unfitness or inability to promptly and properly discharge official duties because of a serious physical or mental defect that did not exist at the time of election.

2. "Official misconduct," which means intentional, unlawful behavior relating to official duties by a Board member entrusted with the administration of justice or the execution of the law. The term includes an intentional or corrupt failure, refusal, or neglect of a Board member to perform a duty imposed on the Board member by law.

3. Intoxication on or off duty caused by drinking an alcoholic beverage, but not if it was caused by drinking an alcoholic beverage on the direction and prescription of a licensed physician.

4. Conviction of a Board member by a jury for any felony or for misdemeanor official misconduct. The conviction of a public officer by a petit jury for any felony or for a misdemeanor involving official misconduct operates as an immediate removal from office of that officer.

Tex. Const., Art. V, Sec. 24; Local Gov't Code 87.011, .013, .031; Hendricks v. State, 49 S.W. 705 (1899), Tovar v. Somerset Indep.

Sch. Dist., 994 S.W.2d 756 (Tex. App.—Corpus Christi 1999, pet. denied)

REMOVAL FOR PURCHASING VIOLATIONS

A Board member who is convicted of a purchasing offense [see CH(LEGAL), IMPERMISSIBLE PRACTICES] is considered to have committed official misconduct and is subject to removal under Local Government Code Chapter 87. *Education Code 44.032*

FORMER BOARD MEMBER EMPLOYMENT

A Board member is prohibited from accepting employment with the District until the first anniversary of the date the Board member's membership on the Board ends. *Education Code 11.063*

FILLING A VACANCY

If a vacancy occurs on the Board, whether by death, resignation, lack of residency or other qualification, or involuntary removal, the remaining Board members may fill the vacancy by appointment until the next Board member election, or may order a special election to fill the vacancy. If more than one year remains in the term of the position vacated, the vacancy shall be filled not later than the 180th day after the date the vacancy occurs. *Education Code 11.060*

An election to fill a vacancy shall be to fill the unexpired term only. *Tex. Const. Art. XVI, Sec. 27*

APPOINTMENT

To be eligible to be appointed to the Board, a person must have the qualifications set forth at Election Code 141.001(a). *Election Code 141.001(a)* [See BBA]

An appointment to the Board may be made with the intent to ensure that the Board is representative of the constituency served by the Board. A board that chooses this option shall adopt procedures for its implementation. *Local Gov't Code 180.005(b), (c)*

SPECIAL ELECTION

A special election to fill a vacancy shall be conducted in the same manner as the District's general election, except as provided in the Election Code. *Education Code 11.060(c)*

DATE OF ELECTION

If a law requires a special election to be held within a particular period after the occurrence of a certain event, the election shall be held on an authorized uniform election date occurring within the period. If no uniform election date affords enough time to hold the election in the manner required by law, the election shall be held on the first authorized uniform election date occurring after the expiration of the period. *Election Code 41.001(a), .004(a)* [See BBB]

ORDERING ELECTION

If a vacancy is to be filled by special election, the election shall be ordered as soon as practicable after the vacancy occurs. The special election shall be held on the first authorized uniform election date occurring on or after the 30th day after the date the election is ordered. If the special election is to be held on the date of the

general election for state and county officers, the election shall be ordered not later than the 70th day before election day. *Election Code 201.051–.052*

PRECLEARANCE REQUIRED

A special election is subject to federal preclearance requirements to the extent that the District makes changes in the practices or procedures to be followed. Any discretionary setting of the date for a special election or scheduling of events leading up to or following a special election is subject to the preclearance requirement. *28 CFR 51.17* [See BBB]

TEMPORARY REPLACEMENT OF BOARD MEMBER ON MILITARY ACTIVE DUTY

A Board member who enters active duty in the armed forces of the United States as a result of being called to duty, drafted, or activated does not vacate the office held, but the Board may appoint a replacement to serve as a temporary Board member if the elected or appointed Board member will be on active duty for longer than 30 days.

The Board member who is temporarily replaced may recommend to the Board the name of a person to temporarily fill the office. The Board shall appoint the temporary Board member to begin service on the date specified in writing by the Board member being temporarily replaced as the date the Board member will enter active military service.

A temporary Board member has all the powers, privileges, and duties of the office as the Board member who is temporarily replaced. A temporary Board member shall perform the duties of office for the shorter period of:

1. The term of the active military service of the Board member who is temporarily replaced; or

2. The term of office of the Board member who is temporarily replaced.

“Armed forces of the United States” means the United States Army, the United States Navy, the United States Air Force, the United States Marine Corps, the United States Coast Guard, any reserve or auxiliary component of any of those services, or the National Guard.

Tex. Const., Art. XVI, Sec. 72