

BOARD MEMBERS
VACANCIES AND REMOVAL FROM OFFICE

BBC
(LEGAL)

Resignation	To be effective, a board member's resignation must be in writing and signed by the board member and delivered to the presiding officer of the board. A board may not refuse to accept a resignation. <i>Election Code 201.001</i>
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. <i>Election Code 201.023</i>
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. <i>Tex. Const., Art. XVI, Sec. 17; Atty. Gen. Ops. JM-636 (1987), O-6259 (1945)</i> [See DBE for more information on nepotism]
Residency	A person elected or appointed to serve as a board member must remain a resident of the area represented throughout the term of office. A board member who ceases to reside in the area represented vacates the office. <i>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)</i> [See BBA]
Filling a Vacancy	Vacancies must be filled by appointment by the original appointing powers that appointed the initial board members for the unexpired term. <i>Former Education Code 26.34(c), as continued in effect by Education Code 11.301</i> For at-large positions, the original appointing power is the county judge. For elected positions, the original appointing power is the county judge, on recommendation from the county commissioner for the affected precinct. <i>Former Education Code 26.32, as continued in effect by Education Code 11.301</i> 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. <i>Education Code 11.060</i>
Officer's Statement and Oath	For requirements regarding the officer's statement and oath of office, see BBBB(LEGAL).
Former Board Member Employment	A trustee may not accept employment with the district until the first anniversary of the date the trustee's membership on a board ends. <i>Education Code 11.063</i>

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**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 or district attorney may petition the district court for leave to file an information in the nature of quo warranto. An action in the nature of quo warranto is available if:

1. A person usurps, intrudes into, or unlawfully holds or executes an office; or
2. A public officer does an act or allows an act that by law causes forfeiture of office.

If the person against whom the information is filed is found guilty as charged, the court:

1. Shall enter judgment removing the person from the office and for the costs of prosecution; and
2. May fine the person for usurping, intruding into, or unlawfully holding and executing the office.

Civ. Prac. & Rem. Code 66.001–.003

Removal by Petition
and Trial

A proceeding for the removal of a board member is begun by filing a written petition for removal in district court of the county in which the board member resides. 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. *Local Gov't Code 87.015*

*Reasons for
Removal*

A board member 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.

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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, .012(14), .013, .031

*Removal for
Purchasing
Violations*

A trustee who is convicted of a purchasing offense [see CH(LEGAL), regarding impermissible practices] is considered to have committed official misconduct and is subject to removal under Local Government Code Chapter 87. *Education Code 44.032(e)*

**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 appropriate authority 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 appropriate appointing authority the name of a person to temporarily fill the office. The appropriate authority 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