

BOARD MEMBERS
VACANCIES AND REMOVAL FROM OFFICE

BBC
(LEGAL)

RESIGNATION	<p>A board member may resign by delivering written notice, signed by the board member, to the presiding officer of the board. A board may not refuse to accept a resignation. <i>Election Code 201.001</i></p>
EFFECTIVE DATE	<p>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></p> <p>A board member who resigns from office or experiences a change in status that disqualifies the member from appointment shall become ineligible to serve at the time of the change of status. <i>19 TAC 61.2(c)</i></p>
HOLDOVER DOCTRINE	<p>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), DM-2 (1991), O-6259 (1945)</i> [See DBE]</p>
INVOLUNTARY REMOVAL FROM OFFICE	<p>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:</p>
QUO WARRANTO	<ol style="list-style-type: none">1. A person usurps, intrudes into, or unlawfully holds or executes a public office; or2. A public officer does an act or allows an act that by law causes forfeiture of office. <p><i>Civ. Prac. & Rem. Code 66.001-.002</i></p>
REMOVAL BY PETITION AND TRIAL	<p>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. <i>Local Gov't Code 87.015</i></p>
REASONS FOR REMOVAL	<p>A public officer may be removed from office for:</p> <ol style="list-style-type: none">1. "Incompetency," which means:<ol style="list-style-type: none">a. Gross ignorance of official duties;

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- 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 appointment.
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 a board ends. *Education Code 11.063*

FILLING A VACANCY

A vacancy occurring on the board, whether by death, resignation, lack of residency or other qualification, or involuntary removal, shall be filled with citizens having the same qualifications outlined in policy BBA.

The procedure for filing a vacancy that occurs on the board shall be the same as that outlined in policy BBB.

Education Code 11.060; 19 TAC 61.2(c)

OATH

After appointment, the board member shall file the official oath with the board president. *Education Code 11.061(a)* [See BBB]

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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 State Board of Education (SBOE) may appoint a replacement to serve as a temporary board member if the appointed board member will be on active duty for longer than 30 days.

The board member who is temporarily replaced may recommend to the SBOE the name of a person to temporarily fill the office. The SBOE 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