

Filling Vacancies on Elected School Boards

(revised July 1, 2021)

VSBA frequently gets questions about what to do when there is a vacancy on a elected school board. The relevant information is provided below. This information is of a general nature. Readers should seek the advice of legal counsel regarding specific legal problems or questions or the application of the following information to specific factual situations.

The Virginia Code establishes that vacancies on elected school boards are to be filled as provided in Va. Code §§ 24.2-226 and 24.2-228 except in any county that has adopted the urban county executive form of government (Va. Code § 22.1-57.3). In counties with the urban county executive form of government, vacancies must be filled as provided for in Va. Code § 15.2-802. If the vacancy is created by a school board member being called to active military duty, Va. Code § 2.2-2802 should also be reviewed.

Filling a vacancy on an elected School Board is a two-step process. In the first step, the board selects someone to serve on an interim basis until the seat can be filled by the voters. In the second step, the voters fill the seat at a special election. The person chosen at the special election completes the term.

First Step—Interim Replacement

When a vacancy occurs on an elected school board, the remaining members of the board may appoint someone to fill the vacancy. If the remaining members of the board decide to fill the vacancy, they must do so within 45 days of the vacancy. The person appointed to the seat must be a qualified voter of the election district in which the vacancy occurred. If the remaining members of the board do not fill the vacancy, the judges of the local circuit court may fill the vacancy.

If the seat is filled on an interim basis, the person appointed holds office until the voters fill the seat at a special election and the person elected qualifies.

Second Step—Permanent Replacement

When a vacancy arises, the school board must petition the local circuit court within 15 days to issue a writ of election to fill the vacancy. The court will order the election to be held on the date of the next general election in November. The school board may request a different date for the special election in its petition and, if it does, the court will order the special election to be held on that date, as long as the date requested precedes the date of the next general election and complies with the provisions of Va. Code § 24.2-682. However, if the vacancy occurs within 90 days of the next general election and the school board does not request a different date for the election, the special election will be held on the date of the second general election.

If a school board member gives written notice of the member's resignation as of a stated date, the board may immediately petition the court to issue a writ of election and the court may immediately issue the writ to call the election. The resignation cannot be revoked after the date stated as the date of the resignation or after the 45th day before the date set for the special election. The person elected at the special election will hold office for the remaining portion of the term for which the vacancy is being filled.

No election to fill a vacancy will be ordered if the general election at which it is to be called is scheduled within 60 days of the end of the term being filled.

When an interim appointment has been made, no election to fill the vacancy will be ordered if the general election at which it is to be called is scheduled in the year in which the term expires.

Process for making an interim appointment

Virginia law provides only a few details regarding the process to be followed in making an interim appointment. Except as follows, the process to be followed is to be determined by the school board.

A public hearing regarding the appointment must be held at least 7 days before the appointment is made. Notice of the public hearing must be given at least 10 days before the hearing in a newspaper with general circulation in the school division. No one whose name was not considered at the public hearing may be appointed.