



SACRAMENTO CITY UNIFIED SCHOOL DISTRICT BOARD OF EDUCATION

Agenda Item# 11.6

Meeting Date: November 1, 2012

Subject: Adoption of Appointment or Election Process for Replacing
Resigning Board

- ☐ Information Item Only
- ☐ Approval on Consent Agenda
- ☐ Conference (for discussion only)
- ☐ Conference/First Reading (Action Anticipated: _____)
- ☒ Conference/Action
- ☐ Action
- ☐ Public Hearing

Division: Board of Education

Recommendation: To decide whether to appoint a qualified candidate or to order an election to replace the resigning Board member for Trustee Area 1.

Background/Rationale: At the last Board meeting (October 18, 2012), Board member Ellyn Bell announced that she would be submitting a deferred resignation to be effective on December 23, 2012. Pursuant to section 5091 of the Education Code, the Board of Education has 60 days either to order an election or to make a “provisional appointment” to serve out her remaining term which would end on December 4, 2014.

The 60 day period commences on the date the deferred resignation is filed with the Sacramento County Superintendent of Schools.

If the Board orders an election, the Sacramento County Elections Department has estimated that the District would have to pay a cost ranging from \$136,830 to \$273,600. This amount could increase based on a new schedule beginning in January, 2013. The earliest election date available would be June 4, 2013.

If the Board makes a provisional appointment, a process should be adopted and an appointment made no later than the District’s last regular Board meeting on December 20, 2012. A suggested appointment timeline and process for Board discussion and adoption are described in the Executive Summary and its Attachments 1-6.

Financial Considerations: An election would require the District to incur substantial election costs to the County of Sacramento as set forth above.

Documents Attached:

1. Executive Summary with Attachments 1-6.
2. Board Bylaw (BB) 9223.
3. Coherent Governance GC-5.

<p>Estimated Time of Presentation: 5 minutes</p>

<p>Submitted by: General Counsel</p>

Board of Education Executive Summary

Board of Education

Adoption of Appointment or Election Process for Replacing Resigning Board Member

November 1, 2012



I. Overview:

At the last Board meeting (October 18, 2012), Board member Ellyn Bell announced that she would be submitting a deferred resignation to be effective on December 23, 2012. On or about October 25, 2012, Board member Bell tendered her deferred resignation to the Sacramento County Superintendent of Schools.

II. Driving Governance:

Pursuant to section 5091 of the Education Code, the Board of Education has 60 days either to order an election or to make a "provisional appointment" to serve out Board member Bell's remaining term for Trustee Area 1 which would end on December 4, 2014. The 60 day period commences on the date the deferred resignation is filed with the Sacramento County Superintendent of Schools. Based on an October 25 filing date, the Board should make an appointment no later than its last Board meeting on December 20, 2012.

There is a minimum notice of 130 days between calling an election and holding an election. Ed. Code 5091(b). The established election dates are specified in Elections Code 1000. The earliest election date available would be June 4, 2013 if the Board were to order an election at its meeting on November 1. The District would incur substantial costs for an election as set forth below in section III (Budget).

If the Board proceeds by making an appointment, the minimum requirements for eligible applicants is specified in section 35107(a) of the Education Code as follows:

Any person, regardless of sex, who is 18 years of age or older, a citizen of the state, a resident of the school district, a registered voter, and who is not disqualified by the Constitution or laws of the state from holding a civil office, is eligible to be elected or appointed a member of a governing board of a school district without further qualifications.

The residency requirement must be within Trustee Area 1.

There is no statutory process required to be followed for making a provisional appointment. Local school boards may adopt a process through its bylaws supplemented by a timeline and specific steps in the appointment process.

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Board Bylaw (BB) 9223 states the following regarding “Provisional Appointments”:

In order to draw from the largest possible number of candidates, the Board shall advertise in the local media to solicit candidate applications or nominations. A committee consisting of less than a quorum of the Board shall ensure that applicants are eligible for Board membership and announce the names of the eligible candidates. The Board shall interview the candidates at a public meeting, accept oral or written public input, and select the provisional appointee by a majority vote.

The committee process needs to be harmonized with the Board’s adoption of Coherent Governance and Policy GC-5 which would require Board action to form an ad hoc committee. Pursuant to GC-5, section 2:

Board committees may not speak or act for the Board. The responsibilities and authority of all Board committees are carefully stated in this policy to assure that committees fully understand their duties and extent of authority, and to assure that committee work will not usurp or conflict with the Board’s own authority or conflict with authority delegated to the Superintendent.

To the extent a committee is formed by the Board in accordance with Board Bylaw 9223 and Policy GC-5, the committee’s role appears to be ministerial in nature, i.e., to screen out any applicants who do not meet the minimum eligibility requirements of Education Code 35107(a) described above.

III. Budget:

If an election is ordered, the Sacramento County Elections Department has estimated a cost between \$136,830 and \$273,660. The cost would, no doubt, increase based on a new fee schedule in January 2013.

IV. Goals, Objectives and Measures:

The goal is to select a qualified member of the public for Trustee Area 1, either by ordering an election or making a provisional appointment by a vote of the majority of the Board (the retiring Board member would not be eligible to vote). If the Board fails to act,

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the Sacramento County Superintendent of Schools must order an election at the District's cost.

V. Major Initiatives:

Replacing the retiring Board member for Trustee Area 1 is a major Board initiative.

VI. Results:

The end result is to fill the Board member position for Trustee Area 1 with an eligible member of the public either by a provisional appointment or by the Board ordering an election to fill the position.

VII. Lessons Learned/Next Steps:

If the Board decides to order an election, a motion should be made and seconded for discussion and a majority vote to:

1. Order an election to take place on June 4, 2013 and authorize payment for the election, and any deposit required, as calculated by the Sacramento County Elections Department.

If the Board decides to select an applicant for a provisional appointment for Trustee Area 1, the recommended next steps for Board discussion and action on November 1, in the form of a series of motions, or a comprehensive motion, would be:

1. Determine that a provisional appointment should be made by no later than December 20, 2012 to complete the remaining term of Board member Bell for Trustee Area 1;
2. Discuss, revise per majority concurrence, and adopt a timeline for the appointment process (see Attachment 1);
3. Discuss, revise per majority concurrence, and adopt an ad hoc applicant screening committee (Trustee Area 1) pursuant to GC-5 (see Attachment 2);

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Adoption of Appointment or Election Process for Replacing Resigning Board Member

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4. Discuss, revise per majority concurrence, and adopt a public notice and direct the Chief Communications Officer to advertise in the local media per Board Bylaw 9223 (see Attachment 3); and
5. Discuss, revise per majority concurrence, and adopt the (1) Notice to Prospective Applicants (see Attachment 4); (2) Letter of Application (see Attachment 5); and (3) Applicant Information Sheet (see Attachment 6).

Item 11.6 – Board Appointment Process

ATTACHMENT 1

DRAFT TIMELINE FOR APPOINTMENT PROCESS

1. **November 1 Board Meeting.** Determine whether to proceed by appointment or election; adopt process and timeline.
2. **Between November 1 and November 14.** Advertise on District website and through the media inviting applicants to submit applications for appointment to represent Trustee Area 1.
3. **November 14.** All applications must be submitted by 5:00 p.m. on Wednesday, November 14. Ad hoc committee meets to screen out applicants who do not comply with the minimum requirements as specified in Ed. Code 35107(a).
4. **November 15 Board meeting.** Board reviews applications in open session. All applications are available at the Board meeting for public inspection.
5. **December 6 Board meeting (if no special meeting(s) scheduled).** Board allows qualified applicants to make a timed presentation and may ask questions in the interview process. If desired, Board invites final applicants for additional interviews and final questions at the December 20th Board meeting.
6. **December 20 Board meeting.** Invite, if desired, final applicants for timed presentations and final questions. Vote to appoint and swear in new Board member for Trustee Area 1. Provisional appointee would assume office after deferred resignation expires.

Item 11.6 – Board Appointment Process

ATTACHMENT 2

AD HOC APPLICANT SCREENING COMMITTEE (TRUSTEE AREA 1) PER GC-5 REQUIREMENTS

1. **Name:** Ad Hoc Applicant Screening Committee (Trustee Area 1)
2. **Purpose:** To screen out applicants for appointment who do not comply with the minimum eligibility requirements per Education Code 35107(a).
3. **Membership:** [To be determined by the Board at November 1 meeting. Any Board members included must be less than a quorum.]
4. **Reporting Schedule:** To report in a timely fashion pursuant to the Board's adopted Timeline for Appointment Process.
5. **Term:** When purpose is accomplished; no later than December 20, 2012.
6. **Authority Over Resources:** As determined by the Board, the Executive Committee, or the Board President.

Item 11.6 – Board Appointment Process

ATTACHMENT 3

PROPOSED NOTICE FOR PUBLICATION AND POSTING ON DISTRICT WEBSITE

NOTICE OF INTENT TO APPOINT A MEMBER OF THE SACRAMENTO CITY UNIFIED SCHOOL DISTRICT (Trustee Area 1)

NOTICE IS HEREBY GIVEN that the Board of Education of the Sacramento City Unified School District intends to appoint a member to represent Trustee Area 1. Interested applicants must reside in Trustee Area 1 and comply with the submission requirements and the deadline of November __, 2012 as set forth on the District's website (www.scusd.edu_____). Instructions for Applicants and the Letter of Application and Applicant Information Sheet may be accessed on the District's website at www.scusd.edu_____.

Item 11.6 – Board Appointment Process

ATTACHMENT 4

SACRAMENTO CITY UNIFIED SCHOOL DISTRICT

NOTICE TO PROSPECTIVE APPLICANTS

INSTRUCTIONS FOR APPLICANTS TO BE CONSIDERED FOR APPOINTMENT AS BOARD OF EDUCATION MEMBER TO REPRESENT TRUSTEE AREA 1

Dear Applicants,

In order to be considered as an applicant for the appointment as a Board of Education member to represent Trustee Area 1, please comply with the following requirements:

1. Letter of Application. Prepare and submit a Letter of Application in the format attached.
2. Applicant Information Sheet. Prepare and attach the Applicant Information Sheet to the Letter of Application. See Applicant Information Sheet attached.
3. Submission Deadline. The Letter of Application, with the Applicant Information Sheet attached, shall be submitted no later than 5:00 p.m. on November __, 2012. Any late submissions shall not be considered. [Note: submission may be in the form of personal delivery to the receptionist at the Serna Center at 5735 47th Avenue, Sacramento, California; fax delivery to (916) 643-9440; email delivery to Gail-Ferguson@scusd.edu; overnight mail to the Serna Center at 5735 47th Avenue, Sacramento, California 95824; or a combination thereof. Please note that email delivery does not have a system of verification unlike fax delivery and overnight mail delivery.]

Reservation of Rights by Board of Education: The Board reserves the right to waive any irregularities except for late submission of applications and the failure to meet statutory eligibility requirements for appointment as a Board member for Trustee Area 1. The Board further reserves the right to appoint an applicant in accordance with the Board's process and timeline which may be subject to change in the discretion of the Board.

Item 11.6 – Board Appointment Process

ATTACHMENT 5

LETTER OF APPLICATION

*[Please submit to the Board of Education per the Notice to Prospective Applicants
in the format below together with the Applicant Information Sheet
by the submission deadline as set forth on the District's website at www.scusd.edu _____]*

_____, 2012

[Via Email: Gail-Ferguson@scusd.edu or Fax: (916) 643-9440, overnight mail, and/or hand delivery to the receptionist at the Serna Center address below]

Diana Rodriguez, President
c/o Gail Ferguson, Interim Administrative Assistant
Board of Education
Sacramento City Unified School District
Serna Center
5735 47th Avenue
Sacramento, CA 95824

Re: Letter of application for appointment and applicant information sheet for appointment as school board member for Trustee Area 1

Dear President Rodriguez,

Please consider this correspondence as my letter of application for consideration to be appointed to serve as the Sacramento City Unified School Board member for Trustee Area 1.

Attached is my Applicant Information Sheet. I represent that I meet the minimum qualifications under Education Code section 35107 in that I am at least eighteen years of age, a citizen of the state, a resident in Trustee Area 1, a registered voter and not legally disqualified from holding a civil office.

[Note to applicant: Add any other information here that you desire to this correspondence.]

For purposes of my application, I may be contacted at the following address and phone number:

[Note: A fax number and email address is optional but may be added in addition to the contact information requested above.]

I hereby certify that the statements made in this Letter of Application and my Applicant Information Sheet are true and correct.

Sincerely,

Enclosure: Applicant Information Sheet

Item 11.6 – Board Appointment Process

ATTACHMENT 6

APPLICANT INFORMATION SHEET

*[Please fill out and submit to the Board of Education
per the Notice to Prospective Applicants with a
Letter of Application by the submission deadline as set forth
on the District's website at www.scusd.edu _____]*

Date:

Name:

Business Address:

Home Address:

(Your home as your principal residence must be in Trustee Area 1)

- 1. Have you worked on any District committees or participated in any school or educational activities related to k-12 schools, whether or not in the District, within the past 10 years?**
- 2. What community or business activities have you been involved in?**
- 3. Why do you want to be a school board member?**
- 4. How do you feel you can contribute as a school board member?**
- 5. What experience, education or training do you think qualifies you to be appointed as the Board member representing Trustee Area 1?**

References. Written references submitted with the Letter of Application are not required but may be helpful in assessing your qualifications for appointment. The Board of Education may subsequently request references during the Board's selection process.

Note: Your responses are not subject to a specific page limitation but should be responsive to the questions above without being repetitive.

Sacramento City USD

Board Bylaw

Meeting Conduct

BB 9323

Board Bylaws

Meeting Procedures

All Governing Board meetings shall begin on time and shall be guided by an agenda prepared in accordance with Board bylaws and posted and distributed in accordance with the Ralph M. Brown Act (open meeting requirements) and other applicable laws.

(cf. 9322 - Agenda/Meeting Materials)

The Board president shall conduct Board meetings in accordance with Board bylaws and procedures that enable the Board to efficiently consider issues and carry out the will of the majority.

(cf. 9121 - President)

The Board believes that late night meetings deter public participation, can affect the Board's decision-making ability, and can be a burden to staff. Regular Board meetings shall be adjourned at 10:30 p.m. unless extended to a specific time determined by a majority of the Board. The meeting shall be extended no more than once and subsequently may be adjourned to a later date.

(cf. 9320 - Meetings and Notices)

Quorum and Abstentions

A majority of the number of filled positions on the Board constitutes a quorum.
(Education Code 5095, 35164)

The Board believes that when no conflict of interest requires abstention, its members have a duty to vote on issues before them. When a member abstains, his/her abstention shall not be counted for purposes of determining whether a majority of the membership of the Board has taken action.

(cf. 9270 - Conflict of Interest)

If a Board consists of seven members and not more than two vacancies occur on the Board, the vacant position(s) shall not be counted for purposes of determining how many members of the Board constitute a majority. In addition, if a vacancy exists on the

Board, whenever any provisions of the Education Code require unanimous action of all or a specific number of the members, the vacant position(s) shall not be counted for purposes of determining the total membership constituting the Board. (Education Code 35165)

Public Participation

Members of the public are encouraged to attend Board meetings and to address the Board concerning any item on the agenda or within the Board's jurisdiction. So as not to inhibit public participation, persons attending Board meetings shall not be requested to sign in, complete a questionnaire, or otherwise provide their name or other information as a condition of attending the meeting.

In order to conduct district business in an orderly and efficient manner, the Board requires that public presentations to the Board comply with the following procedures:

1. The Board shall give members of the public an opportunity to address the Board either before or during the Board's consideration of each item of business to be discussed at regular or special meetings. (Education Code 35145.5, Government Code 54954.3)

2. At a time so designated on the agenda, members of the public may bring before the Board, at a regular meeting, matters that are not listed on the agenda. The Board may refer such a matter to the Superintendent or designee or take it under advisement, but shall not take action at that time except as allowed by law. The matter may be placed on the agenda of a subsequent meeting for action or discussion by the Board. (Education Code 35145.5, Government Code 54954.2)

3. Without taking action, Board members or district staff members may briefly respond to statements made or questions posed by the public about items on the agenda or items not appearing on the agenda. Additionally, on their own initiative or in response to questions posed by the public, a Board or staff member may ask a question for clarification, make a brief announcement, or make a brief report on his/her own activities. (Government Code 54954.2)

Furthermore, the Board or a Board member may provide a reference to staff or other resources for factual information, ask staff to report back to the Board at a subsequent meeting concerning any matter, or request the Executive Committee and the Superintendent to place the matter on a future agenda. (Government Code 54954.2)

4. The Board need not allow the public to speak on any item that has already been considered by a committee composed exclusively of Board members at a public meeting where the public had the opportunity to address the committee on that item. However, if the Board determines that the item has been substantially changed since the committee heard the item, the Board shall provide an opportunity for the public to speak. (Government Code 54954.3)

(cf. 9130 - Board Committees)

5. A person wishing to be heard by the Board shall first be recognized by the president and shall then proceed to comment as briefly as the subject permits.

Individual speakers shall be allowed two minutes to address the Board on each agenda or nonagenda item. The Board shall limit the total time for public input on each item to 15 minutes. With Board consent, the president may increase or decrease the time allowed for public presentation, depending on the topic and the number of persons wishing to be heard. The president may take a poll of speakers for or against a particular issue and may ask that additional persons speak only if they have something new to add.

6. The Board president may rule on the appropriateness of a topic. If the topic would be more suitably addressed at a later time, the president may indicate the time and place when it should be presented.

The Board shall not prohibit public criticism of its policies, procedures, programs, services, acts, or omissions. (Government Code 54954.3) In addition, the Board may not prohibit public criticism of district employees.

Whenever a member of the public initiates specific complaints or charges against an employee, the Board president shall inform the complainant that in order to protect the employee's right to adequate notice before a hearing of such complaints and charges, and also to preserve the ability of the Board to legally consider the complaints or charges in any subsequent evaluation of the employee, it is the policy of the Board to hear such complaints or charges in closed session unless otherwise requested by the employee pursuant to Government Code 54957. The Board president shall also inform the complainant of their ability to file a complaint using the appropriate district complaint procedure.

(cf. 1312.1 - Complaints Concerning District Employees)
(cf. 9321 - Closed Session Purposes and Agendas)

7. The Board president shall not permit any disturbance or willful interruption of Board meetings. Persistent disruption by an individual or group shall be grounds for the president to terminate the privilege of addressing the Board.

The Board may remove disruptive individuals and order the room cleared if necessary; in this case, members of the media not participating in the disturbance shall be allowed to remain, and individuals not participating in such disturbances may be allowed to remain at the discretion of the Board. When the room is ordered cleared due to a disturbance, further Board proceedings shall concern only matters appearing on the agenda. (Government Code 54957.9)

When such disruptive conduct occurs, the Superintendent or designee shall contact local law enforcement.

Recording by the Public

The Superintendent or designee shall designate locations from which members of the public may broadcast, photograph, or tape record open meetings without causing a distraction.

(cf. 9324 - Minutes and Recordings)

If the Board finds that noise, illumination, or obstruction of view related to these activities would persistently disrupt the proceedings, these activities shall be discontinued or restricted as determined by the Board. (Government Code 54953.5, 54953.6)

Legal Reference:

EDUCATION CODE

5095 Powers of remaining board members and new appointees

32210 Willful disturbance of public school or meeting a misdemeanor

35010 Prescription and enforcement of rules

35145.5 Agenda; public participation; regulations

35163 Official actions, minutes and journal

35164 Vote requirements

35165 Effect of vacancies upon majority and unanimous votes by seven member board

GOVERNMENT CODE

54953.5 Audio or video tape recording of proceedings

54953.6 Broadcasting of proceedings

54954.2 Agenda; posting; action on other matters

54954.3 Opportunity for public to address legislative body; regulations

54957 Closed sessions

54957.9 Disorderly conduct of general public during meeting; clearing of room

PENAL CODE

403 Disruption of assembly or meeting

COURT DECISIONS

McMahon v. Albany Unified School District, (2002) 104 Cal.App.4th 1275

Rubin v. City of Burbank, (2002) 101 Cal.App.4th 1194

Baca v. Moreno Valley Unified School District, (1996) 936 F.Supp. 719

ATTORNEY GENERAL OPINIONS

76 Ops.Cal.Atty.Gen. 281 (1993)

66 Ops.Cal.Atty.Gen. 336 (1983)

63 Ops.Cal.Atty.Gen. 215 (1980)

61 Ops.Cal.Atty.Gen. 243, 253 (1978)

55 Ops.Cal.Atty.Gen. 26 (1972)

59 Ops.Cal.Atty.Gen. 532 (1976)

Management Resources:

CSBA PUBLICATIONS

The Brown Act: School Boards and Open Meeting Laws, rev. 2005
Board Presidents' Handbook, rev. 2002

Maximizing School Board Governance: Boardsmanship

ATTORNEY GENERAL PUBLICATIONS

The Brown Act: Open Meetings for Legislative Bodies, 2003

WEB SITES

CSBA: <http://www.csba.org>

California Attorney General's Office: <http://www.caag.state.ca.us>

Bylaw SACRAMENTO CITY UNIFIED SCHOOL DISTRICT

adopted: November 16, 1998 Sacramento, California

revised: November 5, 2001

revised: November 6, 2008

Policy Type: Governance Culture

Board Committees

The Board may create committees if they are deemed helpful to assist the Board in the performance of its responsibilities. If committees are established, they will be used exclusively to support the work of the Board as described in Policy GC-3, and will never be created or used to assist the Superintendent in any operational area.

1. Board committees and other such entities by whatever name created by the Board will not be used to direct, advise, assist or oversee the staff. Committees customarily will prepare recommendations for Board consideration. Board committees will have no authority over staff, and may exercise demands on staff time and organizational resources only to the extent authorized in this policy.
2. Board committees may not speak or act for the Board. The responsibilities and authority of all Board committees are carefully stated in this policy to assure that committees fully understand their duties and extent of authority, and to assure that committee work will not usurp or conflict with the Board's own authority or conflict with authority delegated to the Superintendent.
3. All Board committees are considered to be ad hoc, or temporary. The date for their termination is listed for each committee. Committees may be renewed or reauthorized upon their expiration, but unless the Board acts to renew the committee's existence, it shall cease to exist upon the date specified.
4. Board committees may or may not include members of the Board.
5. All Board committees are listed below.

Adopted: May 20, 2010

Revised: October 6, 2011

Monitoring Method: Board self-assessment

Monitoring Frequency: Annually in August

Sacramento City Unified School District Board of Education

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Board committees:

A. **Name:**

a. **Purpose/Charge:**

- 1)
- 2)

b. **Membership:**

- 1)
- 2)

c. **Reporting Schedule:**

d. **Term:**

e. **Authority Over Resources:**

Adopted: May 20, 2010

Revised: October 6, 2011

Monitoring Method: Board self-assessment

Monitoring Frequency: Annually in August

Sacramento City Unified School District Board of Education

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