CAPISTRANO UNIFIED SCHOOL DISTRICT BOARD REPORT

To: Board of Trustees

From: Kirsten Vital Brulte, Superintendent

Date: March 16, 2022

Board Item: Trustee Process to Fill a Vacancy

HISTORY

Due to the resignation of Area 2 Trustee, Pamela Braunstein, on March 3, 2022, it is recommended the Board review the process to fill the vacancy. Trustees have reviewed the process in the past, and staff has updated timelines based on legally mandated guidelines provided by the Orange County Department of Education.

BACKGROUND INFORMATION

Area 2 Trustee Pamela Braunstein has served on the Capistrano Unified School District Board of Trustees since December 2020. Trustee Braunstein has resigned her seat on the Board of Capistrano Unified School District effective March 3, 2022.

CURRENT CONSIDERATIONS

Per Board Bylaw 9223 *Filling Vacancies* and pursuant to Education Code § 5090-5095, the resignation necessitates action be taken by the Board of Trustees within 60 days of the vacancy to make a provisional appointment or call for a special election. That date is May 2, 2022.

FINANCIAL IMPLICATIONS

There is no financial impact to review the process to fill a vacancy.

STAFF RECOMMENDATION

It is recommended the Board President recognize Kirsten M. Vital Brulte, Superintendent, to present a brief overview of the process and timeline for the Board to take action to fill a vacancy.

APPROVED BY: Kirsten Vital Brulte, Superintendent

Prepared by: Colleen Hayes, Manager II, Board Operations/Superintendent's Office



Trustee Process to Fill a Vacancy

March 16, 2022
Regular Board Meeting
Capistrano Unified School District

Board Bylaw 9223 Filling Vacancies

EXHIBIT #A-10

PROPOSED TIMELINE OF BOARD ACTIONS

Action for Provisional Appointment

- March 16, 2022, Board votes to appoint for Trustee, Area 2
 - o 3/17/2022 Website Open to Accept Applications
 - o 4/13/2022 Special Board Meeting
 - o 3/31/2022 Deadline for Accepting Applications
 - 4/11/2022 Legal to Vet Applicant Requirements for Candidacy
 - 4/11/2022 Post April 13, 2022 Special Board Meeting Agenda with Candidate Materials
 - 4/13/2022 Special Meeting to Interview Candidates and Appoint
 - 4/14-23/2022 Press Release: Notice of Provisional Appointment to the CUSD Governing Board per Ed. Code 5092. Public Notice, Posted & Published within 10 Days of Appointment
 - 4/20/2022 Regular Board Meeting/Swear in Provisional Appointee

Action to Order an Election

- March 16, 2022Board votes to hold a special election for Trustee, Area 2
 - Staff follows guidelines provided by the Orange County Department of Education to Order an Election.
 - o If an election is ordered, it shall be held on a regular election date established pursuant to Election Code Section 1000 not less than 130 days after the occurrence of the vacancy. Ed Code section 5091(b).
 - Election Day November 8, 2022

 Staff coordinate with OC Registrar of Voters to hold election.
 - (Election Day June 7, 2022 would be too soon to call for an election. It is 97 days after the occurrence of the vacancy which is less than 130 days after the occurrence, by which the law stipulates.)

EXHIBIT #A-10 3 of 21

PROPOSED TIMELINE OF BOARD ACTIONS

Action for Provisional Appointment

- April 13, 2022 if no appointment for Trustee, Area 2 is made, the Board may repeat the process
 - o 4/14/2022 Website Open to Accept Applications
 - Week of 4/25/2022 hold a Special Board Meeting
 - o 4/20/2022 Deadline for Accepting Applications
 - 4/25/2022 Legal to Vet Applicant Requirements for Candidacy
 - Week of 4/25/2022 Post TBD Special Board Meeting Agenda with Candidate Materials
 - TBD Special Meeting to Interview Candidates and Appoint
 - 4/26 5/2/2022 Press Release: Notice of Provisional Appointment to the CUSD Governing Board per Ed. Code 5092. Public Notice, Posted & Published within 10 Days of Appointment
 - On or before next scheduled Board Meeting/Swear in Provisional Appointee

Action to Order an Election

- April 13, 2022 Board votes to hold a special election for Trustee, Area 2
- Week of 4/25/2022 Board votes to hold a special election for Trustee, Area 2
 - Staff follows guidelines provided by the Orange County
 Department of Education to Order an Election.
 - o If an election is ordered, it shall be held on a regular election date established pursuant to Election Code Section 1000 not less than 130 days after the occurrence of the vacancy. Ed Code section 5091(b).
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 Staff coordinate with OC Registrar of Voters to hold election.
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EXHIBIT #A-10 4 of 21

PROPOSED TIMELINE IF BOARD TAKES NO ACTION

• If the Board takes no action March 16, 2022, the Board may call for a special election or extend the deadline to apply at the April 13, 2022 Special Board meeting.

• Action must be taken to either appoint or call for an election no later than May 2, 2022. If no action is taken, the County Superintendent of Schools must call an election to fill the vacancy.

EXHIBIT #A-10 5 of 21

PROCESS TO INTERVIEW CANDIDATES FOR VACANCY WITHIN TRUSTEE AREA 2

*Per Board Policy 9223 Trustee Interview Candidates in Public. However, public interviews are not required by law. Pursuant to BP 9314, by majority vote, the Board may suspend any policy for any purpose/time.

Proposed process to interview candidates for vacancy on April 13, 2022:

- (1) The public is given an opportunity to address the Board on the process to interview candidates for vacancy via a speaker card.
- (2) The Board may conduct a random "hat" draw to determine the order of the interviews.
- (3) Each candidate will be called to the podium to first give a brief statement.
 One (1) to three (3) minutes allotted per candidate.
- (4) The President will call for questions:
 Trustees shall be permitted two questions.
 Trustees may ask the two questions consecutively.
 Trustees may opt to ask one question and pass until other Trustees ask a question.
- (5) Time permitting, the President can ask if any Trustee would like to ask an additional question.
- (6) Each candidate may have up to 20-30 minutes HIBIT #A-10

SELECTION OF APPOINTEE FOR TRUSTEE AREA 2

Proposed process for selection of appointee on April 13, 2022:

- (1) The public is given an opportunity to address the Board regarding the candidates via a speaker card.
- (2) The President calls for nominations of candidates.
 - The President recognizes each Trustee who wishes to nominate a candidate for appointment.
- (3) Once a nomination is made, the President calls for a second of the nomination.
 - If the nomination is seconded, it is successful.
 - If the nomination does not receive a second, it is unsuccessful.
- (4) The President repeats this process until each Trustee has had the opportunity to nominate a candidate and, thereafter, shall announce nominations are closed.

SELECTION OF APPOINTEE FOR TRUSTEE AREA 2

Proposed Process Continued:

- (5) If there are multiple nominations, the President may determine which nominee to call for a vote first.
- a) <u>IF</u> the first candidate receives four votes, that candidate becomes the appointed Trustee for Area 2.
- b) <u>IF</u> the first candidate does not receive four votes, the President calls for the vote of the next nominee.
- c) <u>IF</u> the second nominee receives four votes, the appointment is made.
- d) <u>If</u> the second nominee does not receive four votes, the President reopens nominations and starts the process anew.
- e) This process will continue until all nominees have been voted on.
- f) If this series of nominations is not successful the Board may choose to begin a subsequent series of nominations during the same meeting.

If no other candidate is successfully nominated, the process is deadlocked.

If deadlocked, the Board will have the following options:

- April 13, 2022: Return to an agendized item and vote to extend the candidate application deadline to April 20, and complete the process again at a Special meeting the week of 4/25/2022.
- April 13, 2022: Return to an agendized item and wotestenowder a special election at this Special Board prejeting.

SELECTION OF APPOINTEE FOR TRUSTEE AREA 2

If no other candidate is successfully nominated, the process is deadlocked.

If deadlocked, the Board will have the following options:

- April 13, 2022: Return to an agendized item and vote to extend the candidate application deadline.
 - Board President call for a Special Meeting the week of 4/25/2022
 - Recommend subsequent candidate application deadline of April 20, 2022
 - Legal to Vet Applicant Requirements for Candidacy by April 25, 2022
 - Post Special Board Meeting Agenda with candidate materials the week of 4/25/2022
 - Special Meeting to Interview Candidates and Appoint the week of 4/25/2022

OR

• April 13, 2022: Return to next agendized item and vote to order a special election at the Special Board meeting.

EXHIBIT #A-10 9 of 21

Bylaws of the Board BB 9223(a)

FILLING VACANCIES

A vacancy on the Board of Trustees may occur for any of the events specified in Government Code 1770. Removal by conviction of a grand jury or recall election shall also create a vacancy on the Board. (Government Code 3072, Elections Code 27344) Federal military deployment exceeding six months as a member of the armed services of the United States or the California National Guard shall also create a vacancy on the Board. If the absence of the Board member for this purpose exceeds six months, the Board may approve an additional six-month absence upon a showing that there is reasonable expectation that the member will return within the second six-month period, and the Board may appoint an interim member to serve in his/her absence. (Government Code 1064)

Within 60 days of the date of the vacancy or the filing of the Board member's deferred resignation, the Board shall either order an election for the next regular election date or make a provisional appointment. (Education Code 5091)

If the vacancy occurs within four months of the end of the Board member's term, the Board shall not fill the vacancy. (Education Code 5093)

Provisional Appointment

When making a provisional appointment, the Board desires to draw from the widest possible number of candidates. The Board shall:

- 1. Solicit applications or nominations of any legally qualified citizen interested in serving on the Board.
- 2. Provide candidates with appropriate information regarding Board member responsibilities.
- 3. Interview the candidates at a public meeting.
- 4. Select the provisional appointee by majority vote at a public meeting.

Within 10 days after the appointment is made, the Board shall post notices of the vacancy or dated resignation and the provisional appointment. The notice shall be published in the local newspaper and posted in at least three public places. (Education Code 5092)

The notice shall contain: (Education Code 5092)

- 1. The full name of the appointee.
- 2. The date of appointment.

BB 9223(b)

FILLING VACANCIES (continued)

3. A statement notifying the voters that the provisional appointment shall become effective immediately and shall continue unless a petition calling for an election is filed in the office of the County Superintendent of Schools.

The person appointed shall hold office until the next regularly scheduled election for District Board members and shall be afforded all the powers and duties of a Board member upon appointment. (Education Code 5091)

Legal Reference:

EDUCATION CODE

- 5012 Declaration candidacy or nomination; withdrawal
- 5090 Definition (vacancy)
- 5091 Special election or provisional appointment
- 5092 Public notice of vacancy and provisional appointment
- 5093 Re vacancies occurring near end of term and incumbent not reelected
- 5094 Power of president of county board of education when majority of offices vacant
- 5095 Powers of remaining board members and new electees or appointees
- 5200 Districts governed by boards of education
- 5304 Duties of the governing board (re school district elections)
- 5325 Publication of information regarding district elections
- 5424 Expenses of conducting legal recall election

35107 Eligibility

ELECTIONS CODE

27344 Vacancy in office if majority vote for recall

GOVERNMENT CODE

1770 Vacancies: definition

3060-3074 Removal other than by impeachment

1064 Absence from State

CAPISTRANO UNIFIED SCHOOL DISTRICT

San Juan Capistrano, California

adopted: February 27, 1995 revised: August 11, 2008

Bylaw



March 4, 2022

ORANGE COUNTY DEPARTMENT OF EDUCATION

200 KALMUS DRIVE P.O. BOX 9050 COSTA MESA, CA 92628-9050

> (714) 966-4000 FAX (714) 432-1916 www.ocde.us

AL MIJARES, Ph.D. County Superintendent of Schools Kirsten M. Vital Brulte, District Superintendent Capistrano Unified School District 33122 Valle Road San Juan Capistrano, CA 92675

Re: Governing Board Member Vacancy - Trustee Area 2, Pamela Braunstein

Dear Mrs. Vital Brulte:

Our office received notification on March 4, 2022 that Capistrano Unified School District Trustee Pamela Braunstein resigned effective March 3, 2022. Trustee Braunstein's term was to end on December 13, 2024. The following general information addresses the procedures and timelines that affect the filling of her seat.

Current law provides that whenever a school board member resigns, the school district governing board shall, within 60 days of the vacancy or the filing of the deferred resignation, either call an election or make a provisional appointment to fill the vacancy. In this case, the deadline is **May 2, 2022**. *Education Code Section 5091(a)*.

Current law states that a person appointed to fill a vacancy shall hold office until the next regularly scheduled election for the district governing board members, whereupon an election shall be held to fill the vacancy for the remainder of the unexpired term. In this case, the next regularly scheduled governing board election for the Capistrano Unified School District's board of trustees is November 8, 2022. *Education Code Section 5091(e.).*

The law further provides that in the event a governing board <u>fails</u> to make a provisional appointment or order an election within the prescribed 60-day period as required, the County Superintendent of Schools must call an election to fill the vacancy. *Education Code Section 5091(a)*.

If an election is ordered, it shall be held on a regular election date established pursuant to Elections Code Section 1000 not less than 130 days after the occurrence of the vacancy. The next regularly established election date is November 8, 2022. *Education Code Section 5091(b)*.

ORANGE COUNTY BOARD OF EDUCATION

MARI BARKE

REBECCA "BECKIE" GOMEZ

TIM SHAW

LISA SPARKS, PH.D.

KEN L. WILLIAMS, D.O.

Mrs. Kirsten M. Vital Brulte March 4, 2022 Page 2 of 2

If a provisional appointment is made, it confers all powers and duties of a governing board member upon the appointee immediately following his/her appointment. *Education Code Section 5091(d)*.

If an appointment is made within the 60-day period, the registered voters of the district may, within 30 days from the date of the appointment, petition for the conduct of a special election to fill the vacancy. This petition must contain signatures of at least 1½% of the number of the Trustee Area 2 registered voters. The petition is submitted to the County Superintendent of Schools who has 30 days to verify the signatures. (The signatures are transmitted to the Registrar of Voters for verification.)

If the petition is found to be legally sufficient, the provisional appointment is terminated, and the County Superintendent of Schools shall order a special election to be conducted no later than the 130^{th} day after the determination. However, if an established election date, as defined in Section 1000 of the Elections Code, occurs between the 130^{th} day and the 150^{th} day following the order of election, the County Superintendent of Schools may order the election to be conducted on the established election date, and there would be no special election. Therefore, in this scenario, the election would be held on November 8, 2022, the established election date. *Education Code Section 5091(c)(2)*.

To comply with the foregoing, the remainder of the board members of the Capistrano Unified School District have until **May 2, 2022** to either make a provisional appointment or call for a special election. Enclosed is a sample form that you may use to comply with the requirements of Education Code Section 5092, for posting the notice of a provisional appointment.

If I may be of any further assistance, please call me at (714) 966-4234.

Sincerely,

Laurie Weiss

Manager, Business Services

cc: Al Mijares, Ph.D., County Superintendent of Schools

Dean West, CPA, Associate Superintendent, Business Services

Howard Marinier, Executive Director, Business Services

Jeff Riel, General Counsel, Legal Services

Enclosures: Sample Provisional Appointment Notice Form

Applicable Election and Education Codes

Oath of Office Forms

Notice of Provisional Appointment to the Capistrano Unified School District Governing Board Pursuant to Education Code Section 5092

NOTICE IS HEREBY GIVEN THAT a vacancy occurred on the Board of Trustees of
the Capistrano Unified School District, effective March 3, 2022, as a result of the resignation of
Trustee Area 2, Pamela Braunstein. On, the Board of Trustees appointed
to fill this vacancy.
This appointee shall hold office until the next regularly scheduled election for school
board members on November 8, 2022.
The registered voters of the district may, within 30 days from the date of the
appointment, petition for the conduct of a special election to fill the vacancy. If a petition calling
for a special election and containing a sufficient number of signatures is filed in the office of the
Orange County Superintendent of Schools, 200 Kalmus Drive, Costa Mesa, California, not later
than (a), 202, and found to be valid, the provisional appointment is set
aside and the seat remains vacant until a special election is held, not later than the 130th day after
the determination that the petition is legally sufficient. However, if an established election date,
as defined by Section 1000 of the Elections Coe, occurs between the 130 th day and the 150 th day
following the order of election, the County Superintendent of Schools may order the election to
be conducted on the established election date, and there would be no special election. Unless a
valid petition is filed in a timely manner, the provisional appointment shall become effective.
W. J. W. W. I.B. II
Kirsten M. Vital Brulte
District Superintendent
[signature]
Capistrano Unified School District

Post in three public places in the district. Publish in an advertisement one time in a newspaper of general circulation published in the district if such a newspaper exists; otherwise, no publication is required. The notice must be posted and published within 10 days of the provisional appointment. Note (a): Insert a date 30 calendar days after the date the appointment was made.

EDUCATION CODE - EDC



TITLE 1 GENERAL EDUCATION CODE PROVISIONS [1. - 32500] (Title 1 enacted by Stats. 1976, Ch. 1010.)

DIVISION 1 GENERAL EDUCATION CODE PROVISIONS [1. - 32500] (Division 1 enacted by Stats. 1976, Ch. 1010.)

PART 4. ELECTIONS [5000 - 5442] (Part 4 enacted by Stats. 1976, Ch. 1010.)

CHAPTER 1. Election of School District Board Members [5000 - 5095] (Chapter 1 enacted by Stats. 1976, Ch. 1010.)

ARTICLE 3. Vacancies [5090 - 5095] (Article 3 enacted by Stats. 1976, Ch. 1010.)

- (a) (1) If a vacancy occurs, or if a resignation has been filed with the county superintendent of schools containing a deferred effective date, the school district or community college district governing board shall, within 60 days of the vacancy or the filing of the deferred resignation, either order an election or make a provisional appointment to fill the vacancy. A governing board member may not defer the effective date of the member's resignation for more than 60 days after the member files the resignation with the county superintendent of schools.
- (2) In the event that a governing board fails to make a provisional appointment or order an election within the prescribed 60-day period as required by this section, the county superintendent of schools shall order an election to fill the vacancy.
- (b) When an election is ordered, it shall be held on the next established election date provided pursuant to Chapter 1 (commencing with Section 1000) of Division 1 of the Elections Code not less than 130 days after the order of the election.
- (c) (1) If a provisional appointment is made within the 60-day period, the registered voters of the district may, within 30 days from the date of the appointment, petition for the conduct of a special election to fill the vacancy. A petition shall be deemed to bear a sufficient number of signatures if signed by at least the number of registered voters of the district equal to $1^{1}/_{2}$ percent of the number of registered voters of the district at the time of the last regular election for governing board members, or 25 registered voters, whichever is greater. However, in districts with less than 2,000 registered voters, a petition shall be deemed to bear a sufficient number of signatures if signed by at least 5 percent of the number of registered voters of the district at the time of the last regular election for governing board members.
- (2) The petition shall be submitted to the county superintendent of schools having jurisdiction who shall have 30 days to verify the signatures. If the petition is determined to be legally sufficient by the county superintendent of schools, the provisional appointment is terminated, and the county superintendent of schools shall order a special election to be conducted no later than the 130th day after the determination. However, if an established election date, as defined in Section 1000 of the Elections Code, occurs between the 130th day and the 150th day following the order of the election, the county superintendent of schools may order the special election to be conducted on the established election date.
- (3) For purposes of this section, "registered voters" means the following:
- (A) If the district uses the at-large method of election, as defined in subdivision (a) of Section 14026 of the Elections Code, registered voters of the entire school district or community college district.
- (B) If the district uses district-based elections, as defined in subdivision (b) of Section 14026 of the Elections Code, registered voters of the election district.
- (d) A provisional appointment made pursuant to subdivision (a) confers all powers and duties of a governing board member upon the appointee immediately following that appointment.
- (e) A person appointed to fill a vacancy shall hold office only until the next regularly scheduled election for district governing board members that is scheduled 130 or more days after the effective that the scheduled 130 or more days after the effective that the scheduled 130 or more days after the effective that the scheduled 130 or more days after the effective that the scheduled 130 or more days after the effective that is scheduled 130 or more days after the effective that the scheduled 130 or more days after the effective that the scheduled 130 or more days after the effective that is scheduled 130 or more days after the effective that the scheduled 130 or more days after the effective that is scheduled 130 or more days after the effective that the scheduled 130 or more days after the effective t

for the remainder of the unexpired term. A person elected at an election to fill the vacancy shall hold office for the remainder of the term in which the vacancy occurs or will occur.

- (f) (1) If a petition calling for a special election is circulated, the petition shall meet all of the following requirements:
- (A) The petition shall contain the estimate of the elections official of the cost of conducting the special election.
- (B) The name and residence address of at least one, but not more than five, of the proponents of the petition shall appear on the petition, each of which proponents shall be a registered voter of the school district or community college district, as applicable.
- (C) None of the text or other language of the petition shall appear in less than six-point type.
- (D) The petition shall be prepared and circulated in conformity with Sections 100 and 104 of the Elections Code.
- (2) If any of the requirements of this subdivision are not met as to any petition calling for a special election, the county superintendent of schools shall not verify the signatures, nor shall any further action be taken with respect to the petition.
- (3) No person shall permit the list of names on petitions prescribed by this section to be used for any purpose other than qualification of the petition for the purpose of holding an election pursuant to this section.
- (4) The petition filed with the county superintendent of schools shall be subject to the restrictions in Article 2 (commencing with Section 7924.100) of Chapter 2 of Part 5 of Division 10 of Title 1 of the Government Code.
- (g) Elections held pursuant to subdivisions (b) and (c) shall be conducted in as nearly the same manner as practicable as other governing board member elections.

(Amended by Stats. 2021, Ch. 615, Sec. 60. (AB 474) Effective January 1, 2022. Operative January 1, 2023, pursuant to Sec. 463 of Stats. 2021, Ch. 615.)

EDUCATION CODE - EDC



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CHAPTER 1. Election of School District Board Members [5000 - 5095] (Chapter 1 enacted by Stats. 1976, Ch. 1010.)

ARTICLE 3. Vacancies [5090 - 5095] (Article 3 enacted by Stats. 1976, Ch. 1010.)

Whenever a provisional appointment is made to the governing board of a school district pursuant to Section 5091, the board shall, within 10 days of the provisional appointment of a person to fill a vacancy which occurs or will occur, post notices of both the actual vacancy or the filing of a deferred resignation and also the provisional appointment in three public places in the district and shall publish a notice pursuant to Section 6061 of the Government Code. If there is no newspaper of general circulation published in the district, notice need not be published.

The notice shall state the fact of the vacancy or resignation and the date of the occurrence of the vacancy or the date of the filing of, and the effective date of, the resignation. The notice shall also contain the full name of the provisional appointee to the board and the date of his appointment, and a statement that unless a petition calling for a special election, containing a sufficient number of signatures, is filed in the office of county superintendent of schools within 30 days of the date of the provisional appointment, it shall become an effective appointment.

(Enacted by Stats. 1976, Ch. 1010.)

ELECTIONS CODE - ELEC



DIVISION 1. ESTABLISHED ELECTION DATES [1000 - 1500] (Division 1 enacted by Stats. 1994, Ch. 920, Sec. 2.)

CHAPTER 1. Election Dates [1000 - 1003] (Chapter 1 enacted by Stats. 1994, Ch. 920, Sec. 2.)

The established election dates are as follows:

- 1000. (a) The first Tuesday after the first Monday in March of each even-numbered year that is evenly divisible by four.
 - (b) The first Tuesday after the first Monday in March of each odd-numbered year.
- (c) The second Tuesday of April in each even-numbered year.
- (d) The first Tuesday after the first Monday in June in each even-numbered year that is not evenly divisible by four.
- (e) The first Tuesday after the first Monday in November of each year.

(Amended by Stats. 2020, Ch. 111, Sec. 4. (SB 970) Effective January 1, 2021.)

AREA 2 TRUSTEE CANDIDATE INFORMATION SHEET

Capistrano Unified School District

Ple	ease fill out and return by	to the Superintendent's office.
Da	ite:	
(L	ast Name) (First Name) (Initial)	
Βu	siness Address:	Phone:
Ho	ome Address:	Phone:
E-1	mail:	
Oc	ccupation and Employer:	
No	o. of Years Residing in the Distric	et:
Do	you have children in CUSD sch	ools? Yes No
If :	yes, what schools?	
1. _	district board? Please list such p	erving on a governing board, specifically a school prior experience.
		l committees or participated in any school em.
3.	3	or business activities in which you have and whether your work was volunteer or

4. 	Why do you want to be a school board member?
5. 	What do you see as the basic purpose of the public schools?
6.	What is the role of the Board of Trustees in the fulfillment of that purpose?
7. 	How does the Board's role differ from that of the Superintendent?
8.	What should be the relationship between the Board members and the administration in the handling of school concerns?
9. 	Briefly describe your commitment to public education and CUSD.
10.	What do you see as the strengths of CUSD?

1. What do you see as the area(s) most needing improvement in CUSD?				