

CAPISTRANO UNIFIED SCHOOL DISTRICT  
33122 Valle Road  
San Juan Capistrano, CA 92675  
BOARD OF TRUSTEES  
Special Meeting

**AGENDA**

August 14, 2019

Closed Session 4:15 p.m.  
Open Session 4:30 p.m.

**CLOSED SESSION AT 4:15 P.M.**

1. **CALL TO ORDER**
2. **CLOSED SESSION COMMENTS**
3. **CLOSED SESSION** (as authorized by law)

**A. PUBLIC EMPLOYEE EMPLOYMENT/APPOINTMENT**

**EXHIBIT A-1**

Tim Brooks  
Principal, Elementary School  
(Pursuant to Government Code § 54957)

**RECORDING OF SCHOOL BOARD MEETINGS**

In accordance with Board Policy 9324, Board Minutes, all Regular School Board Meetings will be audio recorded.

**OPEN SESSION AT 4:30 P.M.**

**CALL TO ORDER – ROLL CALL**

**PLEDGE OF ALLEGIANCE**

**ADOPTION OF THE AGENDA**

**REPORT ON CLOSED SESSION ACTION**

**PUBLIC HEARING**

1. **PUBLIC HEARING: PRESENTATION OF PETITION FOR ORANGE COUNTY ACADEMY OF SCIENCES AND ARTS COLLEGE PREP CHARTER SCHOOL:**

Page 1  
**EXHIBIT 1**

A Public Hearing is scheduled before the Board of Trustees which necessitates this Board item. Orange County Academy of Sciences and Arts College Prep Charter School has presented a petition for a Charter School within the District. Due to the size of the exhibit, the information can be viewed by clicking: [here](#)

***CUSD WIG 1: Teaching and Learning – Engage students in meaningful, challenging, and innovative educational experiences to increase post-secondary options for all students.***

***Contact: Susan Holliday, Associate Superintendent, Education Services***

**Staff Recommendation**

It is recommended the Board President open the public hearing, determine if members of the public have submitted requests to speak on this item, and after hearing any speakers, formally close the hearing.

## DISCUSSION/ACTION ITEMS

2. **TRUSTEE APPOINTMENT PROCESS - TRUSTEE VACANCY IN TRUSTEE AREA 5:** **INFORMATION/ DISCUSSION**  
Page 3  
**EXHIBIT 2**

Area 5 Trustee, Gary Pritchard has resigned his seat as of August 9, 2019, on the Board of Capistrano Unified School District. 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.

Trustees directed staff to provide a brief overview of the process to appoint a Trustee. In the overview staff has provided two options for Trustees along with a recommended timeline to either appoint a candidate or call for a special election.

**CUSD WIG 2: Communications – Communicate with, and engage students, parents, employees, and community members in Districtwide and community-specific decisions.**

**Contact: Kirsten M. Vital, Superintendent**

### Staff Recommendation

It is recommended the Board President recognize Kirsten M. Vital, Superintendent, to present information on this item. This is an information item only and no Board action is necessary.

3. **RESOLUTION NO. 1920-18, TO MAKE A PROVISIONAL APPOINTMENT TO FILL BOARD VACANCY FOR TRUSTEE AREA 5:** **DISCUSSION/ ACTION**  
Page 24  
**EXHIBIT 3**

Area 5 Trustee, Gary Pritchard has resigned his seat, as of August 9, 2019, on the Board of Capistrano Unified School District. 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. There are no financial implications to make a provisional appointment.

**CUSD WIG 2: Communications – Communicate with, and engage students, parents, employees, and community members in Districtwide and community-specific decisions.**

**Contact: Kirsten M. Vital, Superintendent**

### Staff Recommendation

It is recommended the Board President recognize Kirsten M. Vital, Superintendent, to present information on this item.

Following discussion, it is recommended the Board of Trustees, adopt Resolution No. 1920-18, *To Make a Provisional Appointment to Fill Board Vacancy for Trustee Area 5.*

Motion by \_\_\_\_\_ Seconded by \_\_\_\_\_

4. **RESOLUTION NO. 1920-19, TO ORDER AN ELECTION TO FILL BOARD VACANCY FOR TRUSTEE AREA 5:** **DISCUSSION/ ACTION**  
Page 28  
**EXHIBIT 4**

Area 5 Trustee, Gary Pritchard has resigned his seat, as of August 9, 2019, on the Board of Capistrano Unified School District. 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.

Previously, the estimated fiscal implications were provided by the Orange County Registrar of Voters who notified the Orange County Department of Education that the estimated cost to the District of an election to fill the vacancy would range between \$165,000 and \$185,000. The actual cost will be verified by the OCDE if the Board takes action to call for an election.

**CUSD WIG 2: Communications – Communicate with, and engage students, parents, employees, and community members in Districtwide and community-specific decisions.**

**Contact: Kirsten M. Vital, Superintendent**

Staff Recommendation

It is recommended the Board President recognize Kirsten M. Vital, Superintendent, to present information on this item.

Following discussion, it is recommended the Board of Trustees, adopt Resolution No. 1920-19, *To Order an Election to Call for a Special Election to Fill Board Vacancy For Trustee Area 5.*

Motion by \_\_\_\_\_ Seconded by \_\_\_\_\_

**ADJOURNMENT**

Motion by \_\_\_\_\_ Seconded by \_\_\_\_\_

**THE NEXT REGULAR MEETING OF THE BOARD OF TRUSTEES IS  
WEDNESDAY, AUGUST 21, 2019, 7:00 P.M.  
AT THE CAPISTRANO UNIFIED SCHOOL DISTRICT OFFICE BOARD ROOM  
33122 VALLE ROAD, SAN JUAN CAPISTRANO, CALIFORNIA**

For information regarding Capistrano Unified School District, please visit our website:

[www.capousd.org](http://www.capousd.org)

## **INSTRUCTIONS FOR PRESENTATIONS TO THE BOARD BY PARENTS AND CITIZENS PRESENT AT THIS MEETING**

We are pleased you can be with us at this meeting, and we hope you will return often. Your visit assures us of continuing community interest in our schools.

The members of the Board of Trustees of this District are locally elected state officials, who serve four-year terms of office, and who are responsible for the educational program of our community from grades kindergarten through twelve. They are required to conduct programs of the schools in accordance with the State of California Constitution, the State Education Code, and other laws relating to schools enacted by the Legislature, and policies and procedures which this Board adopts.

The Board is a policy-making body whose actions are guided by the school district's Mission and Goals. Administration of the District is delegated to a professional administrative staff headed by the Superintendent.

The agenda and its extensive background material are studied by each member of the Board for at least two days preceding the meeting. Board Members can call the administrative staff for clarification on any item, and many of the items on the agenda were discussed by the Board during previous meetings. These procedures enable the Board to act more effectively on agenda items than would otherwise be possible.

### **WHAT TO DO IF YOU WISH TO ADDRESS THE BOARD OF TRUSTEES**

**CLOSED SESSION:** In accordance with Education Code § 35146 and Government Code § 54957, the Board may recess to Closed Session to discuss personnel matters which they consider inadvisable to take up in a public meeting.

Members of the public shall have an opportunity to address the Board regarding items on the agenda to be considered during Closed Session prior to the Board adjourning the meeting to Closed Session. Individual presentations are limited to a maximum of three minutes; however, the time assigned for individual presentations could be fewer than three minutes depending upon the total number of speakers who wish to address a specific agenda topic.

**ORAL COMMUNICATIONS (Non-Agenda Items):** Regular, scheduled meetings of the Board shall have a portion of each meeting devoted to Oral Communications. Oral Communications, will take place following Special Recognitions. The total time for the Oral Communications portion of regular meetings shall be twenty minutes. Individual presentations are limited to a maximum of three minutes per individual but could be less if there are a large number of Oral Communication speakers. Legally, the Board may not take action on items raised by speakers under Oral Communications. The Board may, however, at its discretion, refer items to the administration for follow-up or place topics on a future Board agenda.

**ORAL COMMUNICATIONS (Agenda Items):** Members of the public shall also have an opportunity to address the Board on Open Session agenda items before their consideration by the Board. Individual presentations for the Consent Calendar are limited to a maximum of five minutes for all Consent Calendar items. Individual presentations for Discussion/Action agenda items are limited to a maximum of three minutes however; the time assigned for individual presentations could be fewer than three minutes depending upon the total number of speakers, who wish to address a specific agenda topic. The total time for presentations shall be limited to twenty minutes per agenda topic, unless the Board grants additional time. The Board shall hear all presentations after any staff comments but prior to the formal discussion by Board members of the agenda topic under consideration.

Once an agenda item has been opened for public comment, no additional "Request to Address the Board of Trustees" cards shall be accepted for that topic unless otherwise approved by the Board. When addressing a specific item on the agenda, the Board may vote to allow additional public speaker time for an individual Discussion/Action item.

**PUBLIC HEARINGS:** Any time the Board schedules a separate public hearing on a given topic, it shall not hear speakers on that topic before the public hearing, except as to the scheduling of the hearing, nor shall it hear speakers after the hearing, except as to changes in the recommended action at the time of the hearing.

#### **REASONABLE ACCOMMODATION**

*In order to help ensure participation in the meeting of disabled individuals, appropriate disability-related accommodations or modifications shall be provided by the Board, upon request, in accordance with the Americans with Disabilities Act (ADA). Persons with a disability who require a disability-related accommodation or modification, including auxiliary aids and services in order to participate in a Board meeting, shall contact the Superintendent or designee in writing by noon on the Friday before the scheduled meeting. Such notification shall provide school district personnel time to make reasonable arrangements to assure accessibility to the meeting.*

CAPISTRANO UNIFIED SCHOOL DISTRICT  
San Juan Capistrano, California

August 14, 2019

**PUBLIC HEARING: PRESENTATION OF RENEWAL PETITION FOR ORANGE  
COUNTY ACADEMY OF SCIENCES AND ARTS COLLEGE PREP CHARTER  
SCHOOL:**

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Orange County Academy of Sciences and Arts College Prep's Charter School Renewal Petition may be inspected at 33122 Valle Road, San Juan Capistrano, CA 92675 until August 14, 2019, between the hours of 8:30 a.m. and 4:30 p.m.

Due to the size of the exhibit, the information can be viewed by clicking: [here](#)

# CAPISTRANO UNIFIED SCHOOL DISTRICT

## NOTICE OF PUBLIC HEARING

The Capistrano Unified School District Board of Trustees hereby gives notice that a Public Hearing will be held as follows:

### TOPIC OF HEARING

During the Board meeting of August 14, 2019, the Capistrano Unified School District Board of Trustees will hold a hearing to accept comments from members of the public on the OCASA College Prep Charter School Petition. Copies of OCASA College Prep's Charter School Petition may be inspected at 33122 Valle Road, San Juan Capistrano, CA 92675 until August 14, 2019, between the hours of 8:30 a.m. and 4:30 p.m.

**HEARING DATE:** August 14, 2019  
**TIME:** 4:30 p.m.  
**LOCATION:** CUSD Education Center  
33122 Valle Road  
San Juan Capistrano, CA  
949-234-9200

**CAPISTRANO UNIFIED SCHOOL DISTRICT  
BOARD REPORT**

To: Board of Trustees

From: Kirsten Vital, Superintendent

Date: August 14, 2019

Board Item: Trustee Process to Fill a Vacancy

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**HISTORY**

Due to the resignation of Area 5 Trustee, Gary Pritchard, on August 9, 2019, 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 5 Trustee Gary Pritchard has served on the Capistrano Unified School District Board of Trustees since 2010. Trustee Pritchard has resigned his seat on the Board of Capistrano Unified School District effective August 9, 2019.

**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 October 8, 2019.

**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, 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, Superintendent

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



# Trustee Process to Fill a Vacancy

August 14, 2019

Special Board Meeting

Capistrano Unified School District

*Board Bylaw 9223 Filling Vacancies*



# PROPOSED TIMELINE OF BOARD ACTIONS

## **Action for Provisional Appointment**

- August 14, 2019, Board votes to appoint for Trustee, Area 5
  - 8/15/2019 Website Open to Accept Applications
  - 8/21/2019 Regular Board Meeting
  - 8/28/2019 Deadline for Accepting Applications
  - 9/4/2019 Legal to Vet Applicant Requirements for Candidacy
  - 9/6/2019 Post September 9, Special Board Meeting Agenda with Candidate Materials
  - 9/9/2019 Special Meeting to Interview Candidates and Appoint
  - 9/10-18/2019 Press Release: Notice of Provisional Appointment to the CUSD Governing Board per Ed. Code 5092. Public Notice, Posted & Published within 10 Days of Appointment
  - 9/18/2019 Regular Board Meeting/Swear in Provisional Appointee

## **Action to Order an Election**

- August 14, 2019, Board votes to hold a special election for Trustee, Area 5
  - Staff follows guidelines provided by the Orange County Department of Education to Order an Election.
  - 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 March 3, 2020 – Staff coordinate with OC Registrar of Voters to hold election.
  - *(Election Day November 5, 2019 – would be too soon to call for an election. It is 89 days after the occurrence of the vacancy which is less than 130 days after the occurrence, by which the law stipulates.)*

# PROPOSED TIMELINE IF BOARD TAKES NO ACTION

- If the Board takes no action September 9, 2019, the Board may call for a special election or extend the deadline to apply at the September 18, 2019 Regular Board meeting.
- Action must be taken to either appoint or call for an election no later than October 8, 2019. If no action is taken, the County Superintendent of Schools must call an election to fill the vacancy.

# PROCESS TO INTERVIEW CANDIDATES FOR VACANCY WITHIN TRUSTEE AREA 5

\*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 September 9, 2019:

- (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 successively.
  - 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

# SELECTION OF APPOINTEE FOR TRUSTEE AREA 5

## Proposed process for selection of appointee on September 9, 2019:

- (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 5

## Proposed Process Continued:

- (5) If there are a series of nominations, the President may determine which nominee to call for a vote first.
- (a) **IF** the first candidate receives four votes, that candidate becomes the appointed Trustee for Area 5.
  - (b) **IF** the first candidate does not receive four votes, the President calls for the vote of the next nominee.  
The first candidate is now disqualified from further nomination.
  - (c) **IF** the second nominee receives four votes, the appointment is made.
  - (d) **IF** the second nominee does not receive four votes, the President reopens nominations and starts the process anew. The second candidate is now also disqualified from further nomination.
  - (e) This process will continue until all nominees have been voted on.

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

If deadlocked, the Board will have the following options:

- **September 18, 2019:** Return to an agendized item and vote to extend the candidate application deadline.
- **September 18, 2019:** Vote to order a special election at the Regular Board meeting.

**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.

**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

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

**CAPISTRANO UNIFIED SCHOOL DISTRICT**  
San Juan Capistrano, California



July 29, 2019

Kirsten M. Vital, District Superintendent  
Capistrano Unified School District  
33122 Valle Road  
San Juan Capistrano, CA 92675

**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

**Re: Governing Board Member Vacancy – Trustee Area 5, Gary Pritchard**

Dear Ms. Vital:

Our office officially received notification on July 25, 2019 that Capistrano Unified School District Trustee Gary Pritchard will resign effective August 9, 2019. Trustee Pritchard's term was to end on December 11, 2020. The following general information addresses the procedures and timelines that affect the filling of his 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 **October 8, 2019**. *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 3, 2020. *Education Code Section 5091(e)*.

The law further provides that in the event a governing board fails 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. *Education Code Section 5091(b)*.

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)*.

**ORANGE COUNTY  
BOARD OF EDUCATION**

MARI BARKE

JOHN W. BEDELL, PH.D.

REBECCA "BECKIE" GOMEZ

LISA SPARKS, PH.D.

KEN L. WILLIAMS, D.O.



Ms. Kirsten M. Vital  
July 29, 2019  
Page 2 of 2

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 28,690 Trustee Area 5 registered voters as of the 2018 biennial board member election, which is approximately 431 valid signatures. 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 must call a special election. *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 **October 8, 2019** to either make a provisional appointment or call for a special election. Enclosed with this letter are three timeline scenarios that provide a general illustration of how a particular procedure might flow. These scenarios are as follows:

- Assumption 1: A provisional appointment is made and no citizens' petition is filed.
- Assumption 2: A provisional appointment is made and a citizens' petition is filed.
- Assumption 3: A special election is called by the board to fill the vacancy.

Also 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) 966-4248.

Sincerely,



Chris Lombardo  
Executive Director, Business Services

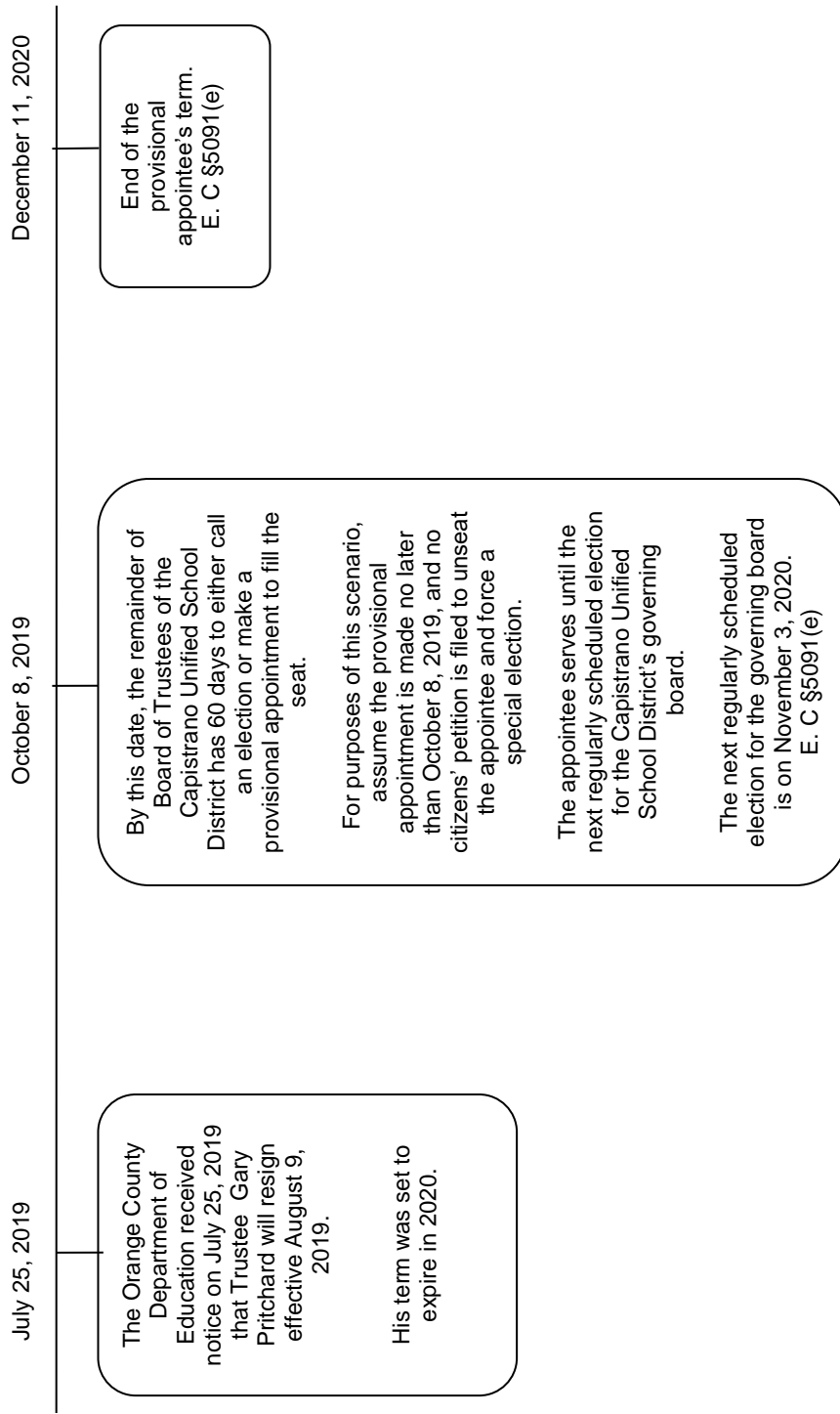
cc: Al Mijares, Ph.D., County Superintendent of Schools  
Dean West, Associate Superintendent, Business Services  
Jeff Riel, General Counsel, Legal Services  
Laurie Weiss, Manager, Business Services

Enclosures: Three Assumptions (as referenced above)  
Sample Provisional Appointment Notice Form  
Applicable Election, Government, and Education Code Sections



## Time Frame for Filling a Vacancy on the Board of Trustees, Capistrano Unified School District

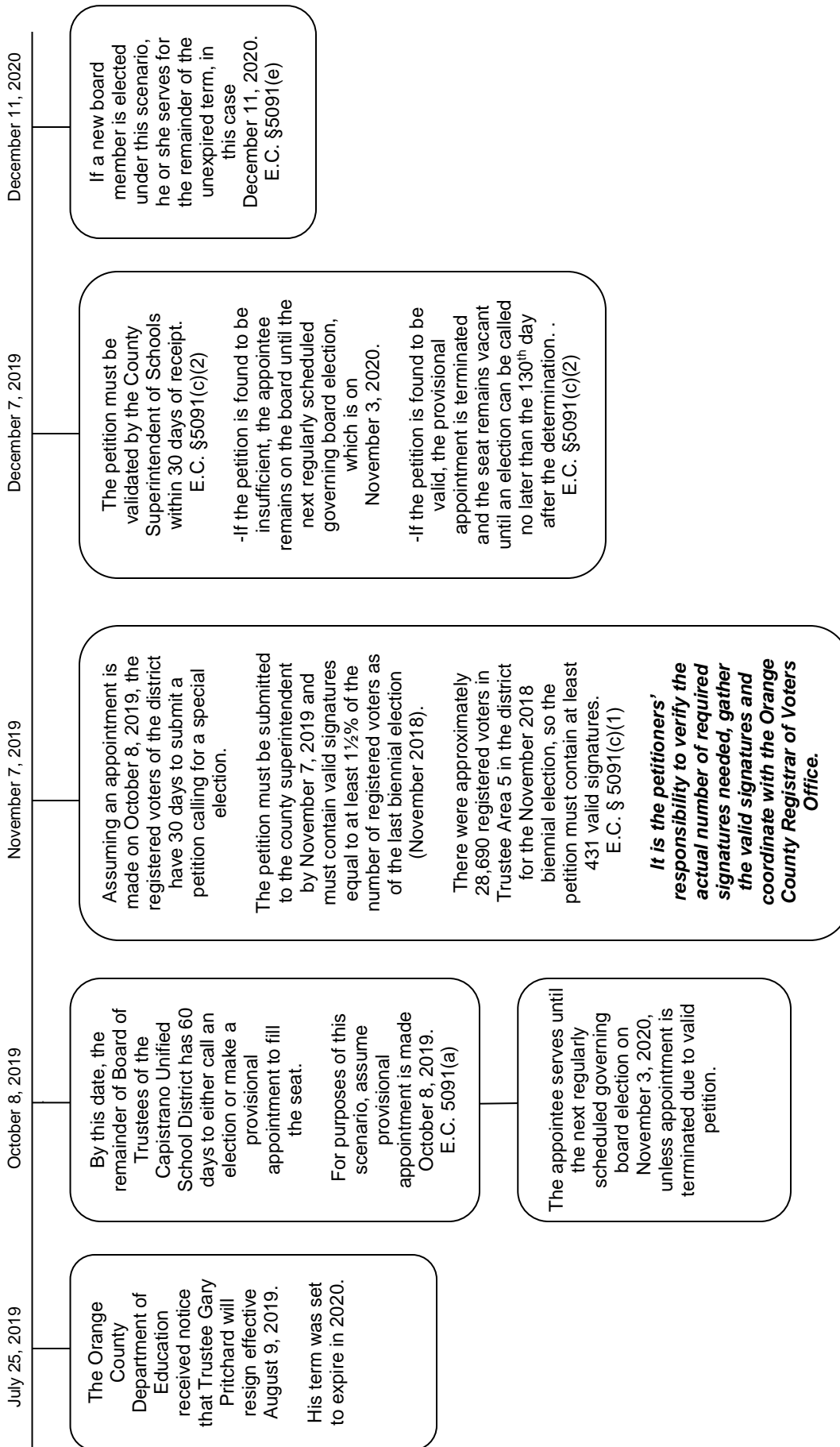
Assumption #1: A provisional appointment is made, and no citizens' petition is filed.





## Time Frame for Filling a Vacancy on the Board of Trustees, Capistrano Unified School District

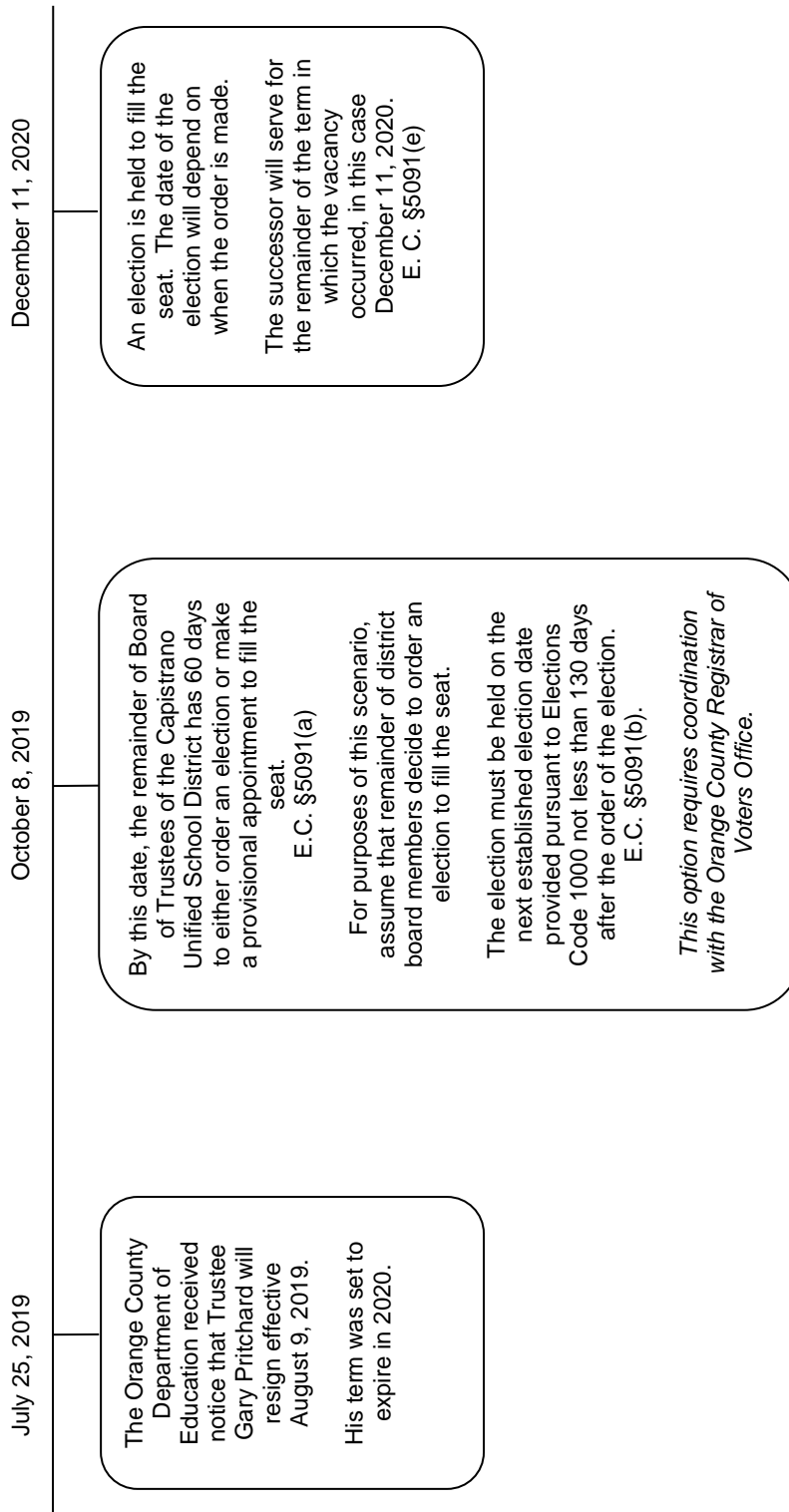
Assumption #2: A provisional appointment is made, and a citizens' petition is filed





## Time Frame for Filling a Vacancy on the Board of Trustees, Capistrano Unified School District

Assumption #3: An election is called to fill the vacancy



**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 August 9, 2019, as a result of the resignation of Trustee Gary Pritchard. 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 3, 2020.

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) \_\_\_\_\_, 201\_\_\_\_, 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 130<sup>th</sup> day after the determination that the petition is legally sufficient. Unless a valid petition is filed in a timely manner, the provisional appointment shall become effective.

Kirsten M. Vital  
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.



**State of California**

**EDUCATION CODE**

**Section 5091**

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5091. (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 his or her resignation for more than 60 days after he or she 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  $1\frac{1}{2}$  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 his or her 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 date of the vacancy, whereupon an election shall be held to fill the vacancy 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 Section 6253.5 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. 2014, Ch. 909, Sec. 1. (AB 2562) Effective January 1, 2015.)



**State of California**

**EDUCATION CODE**

**Section 5092**

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5092. 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.)





**State of California**

**ELECTIONS CODE**

**Section 1000**

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1000. The established election dates are as follows:

- (a) The second Tuesday of April in each even-numbered year.
- (b) The first Tuesday after the first Monday in March of each odd-numbered year.
- (c) The first Tuesday after the first Monday in November of each year.
- (d) The first Tuesday after the first Monday in March in each even-numbered year.
- (e) This section shall become operative January 1, 2019.

(Repealed (in Sec. 5) and added by Stats. 2017, Ch. 335, Sec. 6. (SB 568) Effective January 1, 2018. Section operative January 1, 2019, by its own provisions.)

## AREA 5 TRUSTEE CANDIDATE INFORMATION

### SHEET Capistrano Unified School District

Please fill out and return by \_\_\_\_\_ to  
\_\_\_\_\_, or leave at the Superintendent's office.

Date: \_\_\_\_\_

\_\_\_\_\_  
(Last Name) (First Name) (Initial)

Business Address: \_\_\_\_\_ Phone: \_\_\_\_\_

Home Address: \_\_\_\_\_ Phone: \_\_\_\_\_

E-mail: \_\_\_\_\_

Occupation and Employer: \_\_\_\_\_

No. of Years Residing in the District: \_\_\_\_\_

Do you have children in CUSD schools? Yes \_\_\_\_\_ No \_\_\_\_\_

If yes, what schools? \_\_\_\_\_

1. Do you have prior experience serving on a governing board, specifically a school district board? Please list such prior experience.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

2. Have you worked on any school committees or participated in any school activities recently? Please list them.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

3. Describe any other community or business activities in which you have participated. Describe your role, and whether your work was volunteer or employment-related

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

4. Why do you want to be a school board member?

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5. What do you see as the basic purpose of the public schools?

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6. What is the role of the Board of Trustees in the fulfillment of that purpose?

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7. How does the Board's role differ from that of the Superintendent?

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8. What should be the relationship between the Board members and the administration in the handling of school concerns?

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9. Briefly describe your commitment to public education and CUSD.

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10. What do you see as the strengths of CUSD?

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

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**CAPISTRANO UNIFIED SCHOOL DISTRICT  
BOARD REPORT**

To: Board of Trustees

From: Kirsten Vital, Superintendent

Date: August 14, 2019

Board Item: Resolution No. 1920-18, Resolution to Make a Provisional Appointment to Fill Board Vacancy for Trustee Area 5

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**HISTORY**

Area 5 Trustee, Gary Pritchard has served on the Capistrano Unified School District Board of Trustees since 2010. On July 25, 2019, Trustee Gary Pritchard formally notified the Superintendent of his intent to resign his position from the Board of Trustees effective Friday, August 9, 2019.

**BACKGROUND INFORMATION**

Trustee Gary Pritchard submitted his resignation to the Orange County Department of Education and in response their staff provided guidelines to the District to fill the vacancy. The Board may take action for a provisional appointment or they may take action to call for an election. If they fail to take action on either of the two options, the Orange County Superintendent of Schools must call an election to fill the vacancy.

**CURRENT CONSIDERATIONS**

Per Board Policy 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. The date to complete the process in this situation is October 8, 2019. Staff recommends noticing the public and accepting applications from August 15 – August 28, 2019. Staff recommends holding a Special Board meeting on September 9, 2019 to interview candidates and appoint a candidate to fill the position. Staff recommends the Board swear in the newly appointed candidate on September 18, during their Regular Board meeting.

**FINANCIAL IMPLICATIONS**

There is no financial impact to the District to make a provisional appointment.

**STAFF RECOMMENDATION**

It is recommended the Board President recognize Kirsten M. Vital, Superintendent, to present information on this item.

Following discussion, it is recommended the Board of Trustees, adopt *Resolution No. 1920-18, to Make a Provisional Appointment to Fill Vacancy of Trustee Area 5*.

**APPROVED BY:** Kirsten Vital, Superintendent

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

**BEFORE THE BOARD OF TRUSTEES OF THE  
CAPISTRANO UNIFIED SCHOOL DISTRICT  
COUNTY OF ORANGE, STATE OF CALIFORNIA**

**RESOLUTION NO. 1920-18**

**RESOLUTION TO MAKE A PROVISIONAL APPOINTMENT TO FILL BOARD  
VACANCY FOR TRUSTEE AREA 5**  
(Education Code § 5090 *et seq.*)

**WHEREAS**, a vacancy on the Board of Trustees is created when, among other things, a Trustee files with the County Superintendent of Schools a written resignation (Education Code section 5090);

**WHEREAS**, Gary Pritchard, a Trustee of the Capistrano Unified School District representing Trustee Area 5, filed a written resignation with the County Superintendent of Schools on July 24, 2019, with a deferred resignation date of August 9, 2019 (Education Code sections 5090, 5091(a));

**WHEREAS**, Education Code section 5091 and Board Policy BB 9223 provide that when a vacancy occurs on the Board of Trustees, the Board of Trustees may make a provisional appointment to fill the vacancy;

**WHEREAS**, the Orange County Registrar of Voters has notified the District that the cost to the District of a special election to fill the vacancy would range between \$165,000 and \$185,000. The actual cost will be verified by the OCDE once the Board takes action.

**WHEREAS**, the Board of Trustees believes these funds can be more prudently expended on the educational programs of the District;

**WHEREAS**, the Board of Trustees has determined that it is in the best interests of the District, the public funds of the District, and the communities of the District to make a provisional appointment to fill the vacancy; and,

**WHEREAS**, Board Policy BB 9223 provides that when making a provisional appointment, 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.

**NOW, THEREFORE, BE IT RESOLVED AND ORDERED:**

1. That the Board of Trustees expresses its respect for the electoral process and acknowledges its vital importance to the communities of the District.
2. That the Board of Education also recognizes the Legislature's intent that provisional appointments may be used to fill school board vacancies in appropriate circumstances, such as the vacancy created by Trustee Pritchard's resignation.
3. That in light of the prohibitive cost to the District of conducting a special election, the Board of Trustees' preference that the monetary resources of the District be applied, insofar as possible, toward the operation and improvement of the District's educational programs, and that an election will occur in November 2020 in Trustee Area 5 at no additional cost to the District, the Board of Trustees shall make a provisional appointment to fill the vacancy created by Trustee Pritchard's resignation.
4. That the Board of Trustees does now solicit applications or nominations of any person who is interested in serving on the Board of Trustees that meets all the following criteria as required by Education Code section 35107:
  - a. 18 years of age or older;
  - b. A citizen of California;
  - c. A resident of Trustee Area 5;
  - d. A registered voter in Trustee Area 5;
  - e. Not disqualified by the Constitution or laws of the state from holding a civil office.
5. That the Superintendent or designee shall provide all applicants or nominees with appropriate information regarding Board member responsibilities.
6. That applicant and nominated candidates for provisional appointment shall be interviewed by the Board of Trustees at a special meeting, to be held on Monday, September 9, 2019.
7. That the Board of Trustees intends by majority vote to make a provisional appointment of a candidate at the same special meeting of the Board of Trustees on Monday, September 9, 2019.

**BE IT FURTHER RESOLVED AND ORDERED** that upon the Board of Trustees making the provisional appointment to fill the vacancy created by Trustee Pritchard's resignation, the Superintendent or designee shall post within the time and in all locations or publications required by law, all notices, documents and other information as required by Education Code section 5092 and Board Policy BB 9223.

**ADOPTED** by the Board of Trustees of the Capistrano Unified School District this 14th day of August, 2019.

AYES: \_\_\_\_\_

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NOES: \_\_\_\_\_

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ABSENT: \_\_\_\_\_

ABSTENTION: \_\_\_\_\_

\_\_\_\_\_  
Gila Jones

President, Board of Trustees

I, Kirsten M. Vital, Secretary of the Board of Trustees of the Capistrano Unified School District, do certify that the foregoing Resolution was regularly introduced, passed and adopted by the Board of Trustees at its meeting held on the 14th day of August, 2019.

\_\_\_\_\_  
Kirsten M. Vital

Secretary, Board of Trustees of the  
Capistrano Unified School District

**CAPISTRANO UNIFIED SCHOOL DISTRICT  
BOARD REPORT**

To: Board of Trustees

From: Kirsten Vital, Superintendent

Date: August 14, 2019

Board Item: Resolution No. 1920-19, Resolution to Order an Election to Fill Vacancy for Trustee Area 5

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**HISTORY**

Area 5 Trustee, Gary Pritchard has served on the Capistrano Unified School District Board of Trustees since 2010. On July 25, 2019, Trustee Gary Pritchard formally notified the Superintendent of his intent to resign his position from the Board of Trustees effective Friday, August 9, 2019.

**BACKGROUND INFORMATION**

Trustee Gary Pritchard submitted his resignation to the Orange County Department of Education and in response their staff provided guidelines to the District to fill the vacancy. The Board may take action for a provisional appointment or they may take action to call for an election. If they fail to take action on either of the options, the Orange County Superintendent of Schools must call an election to fill the vacancy.

**CURRENT CONSIDERATIONS**

Per Board Policy 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. The date to complete the process in this situation is October 8, 2019.

**FINANCIAL IMPLICATIONS**

If the Board takes action to call for a special election the cost to the District is estimated to range from \$165,000 and \$185,000. The actual cost will be verified by the OCDE if the Board takes action to call for an election.

**STAFF RECOMMENDATION**

It is recommended the Board President recognize Kirsten M. Vital, Superintendent, to present information on this item.

**APPROVED BY:** Kirsten Vital, Superintendent

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



**BEFORE THE BOARD OF TRUSTEES OF THE  
CAPISTRANO UNIFIED SCHOOL DISTRICT  
COUNTY OF ORANGE, STATE OF CALIFORNIA**

**RESOLUTION NO. 1920-19**

**RESOLUTION TO ORDER AN ELECTION TO FILL BOARD VACANCY FOR  
TRUSTEE AREA 5**

(Education Code § 5090 *et seq.*)

**WHEREAS**, a vacancy on the Board of Trustees is created when, among other things, a Trustee files with the County Superintendent of Schools a written resignation (Education Code section 5090);

**WHEREAS**, Gary Pritchard, a Trustee of the Capistrano Unified School District representing Trustee Area 5, filed a written resignation with the County Superintendent of Schools on July 24, 2019, with a deferred resignation date of August 9, 2019 (Education Code sections 5090, 5091(a));

**WHEREAS**, Education Code section 5091 and Board Policy BB 9223 provide that when a vacancy occurs on the Board of Trustees, the Board of Trustees may order an election to fill the vacancy;

**WHEREAS**, the Board of Trustees has determined that it is in the best interests of the District and the communities of the District to order an election to fill the vacancy;

**WHEREAS**, Education Code section 5091 requires that when an election is ordered, the election will be held on the next established election date provided it is not less than 130 days after the order of election; and,

**WHEREAS**, pursuant to Elections Code section 1000, the next established election date occurring more than 130 days after the order of election is March 3, 2020.

**NOW, THEREFORE, BE IT RESOLVED AND ORDERED** that the Board of Trustees of the Capistrano Unified School District does hereby order an election for the vacant seat of Trustee Area 5 be held on March 3, 2020.

**ADOPTED** by the Board of Trustees of the Capistrano Unified School District 14th day of August, 2019.

AYES:

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\_\_\_\_\_  
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\_\_\_\_\_

NOES:

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ABSENT:  
ABSTENTION:

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Gila Jones  
President, Board of Trustees

I, Kirsten M. Vital, Secretary of the Board of Trustees of the Capistrano Unified School District, do certify that the foregoing Resolution was regularly introduced, passed and adopted by the Board of Trustees at its meeting held on the 14th day of August, 2019.

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Kirsten M. Vital  
Secretary, Board of Trustees of the  
Capistrano Unified School District