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MEMORANDUM

To: Dale Martin, Superintendent
From: Justin Knight, Perry Law Firm
Date: May 6, 2026
Re: Accepting a Board Member's Resignation and Filling the Vacancy

I am responding to your request for guidance regarding a Board member who intends to resign, and the process to fill the vacancy.

Action on Resignation

The resignation must be in writing. It does "not take effect until accepted by the board or officer to whom the resignation is tendered."¹ The resignation and the action to accept the resignation must be included in the Board Minutes.²

Timing

The Board must fill the vacancy "within forty-five days after the vacancy occurs unless good cause is shown that the requirement imposes an undue burden."³ The 45-day timeline begins when the Board member's resignation is accepted by the school board.

Notices of Vacancy

Notice of the vacancy is required to be given: "The school board shall give notice of the date the vacancy occurred, the office vacated, and the length of the unexpired term (a) in writing to the election commissioner or county clerk and (b) by a notice published in a newspaper of general circulation in the school district."⁴

¹ Neb. Rev. Stat. § 32-562.

² Neb. Rev. Stat. § 32-570(1) states: "The resignation of a member or any other reason for a vacancy shall be made a part of the minutes of the school board."

³ Neb. Rev. Stat. § 32-574.

⁴ Neb. Rev. Stat. § 32-570(1).

Filling the Vacancy

1. Fill by Appointment. “[A] vacancy in the membership of a school board resulting from any cause other than the expiration of a term shall be filled by appointment of a qualified registered voter by the remaining members of the board for the remainder of the unexpired term. A registered voter appointed pursuant to this subsection shall meet the same requirements as the member whose office is vacant.”⁵
2. Term of Appointment. The appointed member will serve for the remainder of the unexpired term.⁶ The exact date of the ending of this appointment and when the newly elected person takes office for the remainder of the unexpired term is somewhat unclear and should be worked out with your election commissioner or county clerk.⁷
3. Qualifications of Appointee. The appointee must “meet the same requirements as the member whose office is vacant.”⁸ The requirements are that the appointee be a registered voter in the school district⁹ and not be employed as a teacher by the school district.¹⁰
4. Selection of the Appointee. The statutes do not dictate a specific process for selecting the person to fill the vacancy. As such, the process is to be determined by the Board.

Boards have typically used one of the following approaches:

- i. Appoint the non-elected candidate from the last election who received the highest number of votes, after confirming that the candidate is willing to fill the vacancy.

This approach has the advantage of being simple and politically neutral.

The disadvantage is that the person appointed via this approach may not be the most qualified person available.
- ii. Board members informally recruit candidates and Board votes to appoint a successor.
- iii. Formal advertisement, application and interview process.

⁵ Neb. Rev. Stat. § 32-570(2).

⁶ Neb. Rev. Stat. § 32-570(2)

⁷ Neb. Rev. Stat. § 32-571 states: “Appointments ... shall continue ... until a successor is elected and qualified except as otherwise provided in such sections” which could be when election results are certified after the November general if there is no election contest.” On the other hand, Neb. Rev. Stat. § 79-543, suggests terms generally end “the first Thursday after the first Tuesday in January.”

⁸ Neb. Rev. Stat. § 32-571.

⁹ Neb. Rev. Stat. § 79-543.

¹⁰ Neb. Rev. Stat. § 79-544.

Where there is no clear “best” candidate to fill the vacancy, or where there are a number of good candidates for the vacancy, the Board may adopt a motion to use a formal “vacancy filling process.”

The formal process is as follows:

- (a) Advertise to solicit applicants for the vacancy.
- (b) Have the candidates complete an application to provide information about their background and their reasons for wanting to be on the Board.
- (c) Interview the candidates. The interviews may not be held in closed session.¹¹ Some Boards have used a Board committee approach to conduct the interviews in private.

5. Appointment Action. Ultimately, whichever process is used, the Board would take action by adopting a resolution:

Once appointed, the new member must take the oath of office before voting on any matter.

You must then inform the County Clerk that you have made the appointment.¹²

6. Candidates for the Unexpired Term. Candidates for the unexpired term should work with the County Clerk regarding filing deadlines for the vacancy.

¹¹ Neb. Rev. Stat. 84-1410: “Nothing in this section shall permit a closed meeting for discussion of the appointment or election of a new member to any public body.”

¹² Neb. Rev. Stat. § 32-571: “The written appointment shall be filed with the Secretary of State or county or township clerk.”