

## Attorney General Opines on Trustee Area Vacancies

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On October 27, 2022, the California Attorney General (AG) released its Opinion No. 22-502 responding to pressing questions regarding vacancies on school district governing boards. Specifically, the AG opined:

- (1) If a governing board member who was elected at-large vacates their seat during the district's transition to by-trustee area elections, that vacancy should be filled "at-large."
- (2) If a board member vacates their seat while the school district is "redistricting" following the release of the decennial census, that vacancy should be filled using the previous trustee area map in effect when that vacating member was most recently appointed or elected to the board.

### Background

When a school board member resigns prior to the end of their term, the school district must determine how to fill the vacant seat, a determination that can be complicated if the district is in the process of adopting trustee area elections pursuant to the California Voting Rights Act (CVRA). Advice was sought from the AG on whether school districts should fill the vacancy "at-large" or by using the newly adopted trustee areas. On a related question, school districts who have revised their trustee area boundaries as a result of the release of the 2020 decennial census wondered whether to fill their vacancy using the prior trustee area map, or the newly revised trustee area map.

### Filling Vacancies While Adopting Trustee Areas Under the CVRA

Many school districts have recently transitioned from at-large elections (where all board members are elected by voters throughout the entire district) to by-trustee area elections (where each board member must reside within a designated trustee area boundary and is elected only by the voters in that trustee area). Some of those districts have experienced vacancies on their governing boards during this transition process, which prompted State Assemblymember Marc Berman to ask the AG for guidance on whether the newly adopted trustee areas would apply when filling the vacancy.

The AG opined that the vacancy should not be filled by trustee area, but instead should be filled “at-large.” In reaching this conclusion, the AG reasoned that the Education Code provisions related to filling vacancies focus on the “unexpired term of the former incumbent.” Therefore, if the resigning incumbent was elected at-large, that means the vacancy should be filled “at-large,” even if the board recently adopted, or is about to adopt, trustee areas.

## **Filling Vacancies During the Revision of Trustee Areas Following the Decennial Census**

Once a school district has adopted by-trustee area elections, it must review and potentially re-draw the trustee area boundaries every 10 years, a process known as redistricting. Redistricting requires a district to review the federal decennial census data to determine whether the existing trustee areas are population balanced. If the trustee areas are not population balanced, the district is required to adjust trustee area boundaries to ensure that each area has substantially the same number of people living in it. School districts that experienced vacancies during this redistricting process wanted to know whether to fill the vacancy using the old trustee area boundaries, or the newly adjusted boundaries adopted using the newly released census data.

Similar to its opinion above, the AG opined that where a district has revised the boundaries of its trustee areas following the decennial census, and a vacancy occurs before the next regular election for that seat, that vacancy should be filled using the trustee area map in effect when that vacating member was most recently appointed or elected to the board.

## **Takeaways**

This AG opinion provides helpful guidance for school districts faced with a board vacancy while adopting or adjusting trustee areas. AG opinions do not carry the force of law. Nevertheless, in the absence of controlling authority, an AG opinion on a given matter is considered persuasive to a court. The AG made its position clear that in filling vacancies, it is important to focus on the method of election (or trustee area map) used when the vacating incumbent was last elected or appointed.

If you have any questions regarding the law on filling vacant positions on school boards, please contact one of the authors of this Client News Brief or an attorney at one of our [eight offices](#) located statewide. You can also subscribe to our [podcast](#), follow us on [Facebook](#), [Twitter](#) and [LinkedIn](#) or download our [mobile app](#).

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