

Frequently asked questions regarding vacancies on local boards of education:

1. When is the resignation of a local board member considered to be effective?

The resignation of a local board member is effective when accepted by the local board of education. This must occur in an open regular or specially called board meeting. (OAG 81-316 and OAG 75-635).

2. When is a vacancy created on a local board of education?

A vacancy exists when the local board of education officially accepts the resignation or upon the death (OAG 63-926) or removal of a board member from office. A board member's resignation must be accepted in an open regular or specially called board meeting. (OAG 81-316 and OAG 75-635).

3. How long does the local board of education have to fill the vacancy?

KRS 160.190(1) states that a local board of education has sixty (60) days to fill the vacancy from the date the vacancy occurs, which is the date that the local board officially accepts the resignation or upon a board member's death (OAG 63-926) or removal from office. (See KRS 446.030 regarding the computation of time).

4. What is the process for filling vacancies on the local board of education?

KRS 160.190 governs the process for filling vacancies on the local board of education. KRS 160.190(1)-(3) states:

- (1) Any vacancy in any board of education shall be filled by a majority vote of the remaining members of the local board within sixty (60) days after the vacancy occurs. Within thirty (30) days of the vacancy, the local board shall, for two (2) weeks, have solicited applications by posting a notice announcing the vacancy on the district's Web site and by placing an advertisement in the newspaper of the largest general circulation in the county. An applicant shall file a letter of intent with the local board affirming that the applicant meets the eligibility requirements as established by KRS 160.180 and shall submit with the application a transcript evidencing completion of the twelfth grade or results of a twelfth grade equivalency examination. After the two (2) weeks of advertisement on the district's Web site and in the newspaper, the local board shall select from the applicants under this subsection to fill the vacancy.

- (2) If the local board fails to make an appointment under subsection (1) of this section, then the chief state school officer shall fill the vacancy within sixty (60) days of the failure.
- (3) The member chosen under this section shall meet the eligibility requirements as established by KRS 160.180 and shall hold office until his or her successor is elected or appointed, and has qualified.

See also Policy 01.3 regarding local board vacancies (as adopted by the local boards of education).

5. What happens if the local board of education fails to fill the vacancy within 60 days of the date the vacancy occurred?

KRS 160.190(2) states that if the local board fails to make an appointment under KRS 160.190(1), then the chief state school officer (the Commissioner of Education) shall fill the vacancy within sixty (60) days of the failure. Therefore, the local board must immediately notify the Commissioner of Education of the failure to fill the vacancy.

6. Does KDE have the authority to expand or extend the 60-day period for the local board to fill a vacancy?

KRS 160.190 governs local board vacancies and the appointment process. The statute does not grant KDE the authority to provide flexibility to extend the 60-day period for the local board to fill the vacancy.

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(2) If the local board fails to make an appointment under subsection (1) of this section, then the chief state school officer shall fill the vacancy within sixty (60) days of the failure.
(Emphasis added).

The statute only provides authority to the local board to make an appointment "within sixty (60) days after the vacancy occurs." Therefore, once 60 days have passed, by operation of the statute, the local board loses its authority to make the appointment and the authority to appoint transfers to the Commissioner.

7. What happens if the unexpired term for the local board vacancy is more than one year on August 1 after the vacancy occurs?

KRS 160.190(4) provides that any vacancy having an unexpired term of one (1) year or more on August 1 after the vacancy occurs shall be filled for the unexpired term by an election to be held at the next regular election after the vacancy occurs. The elected member shall succeed the member chosen under KRS 160.190(1) or (2) to fill the vacancy. KRS 62.010(3) states: "Each person appointed to an office shall take the oath of office within thirty (30) days after he receives notice of his appointment."

8. What happens if no candidate files to run in the election for the local board vacancy with an unexpired term of more than one year on August 1 after the vacancy occurs?

KRS 160.190(5)(a) provides that if no candidate files a petition of nomination to fill an unexpired term on a local board of education under KRS 160.190(4), then a new vacancy shall exist on November 1. In these situations, the local board will utilize the procedures of KRS 160.190(1) to fill the new vacancy.

Write-in candidates are precluded from taking office "when no candidate has filed a nominating petition for that school board position within the statutory deadline since no election is held in that event." OAG 90-105. "[S]uch vacancies cannot be filled by election, but must be made via appointment . . . Where there is no election, write-in candidates are ineligible to fill the school board vacancy." OAG 03-001. "[The law] conditions the holding of an election upon the filing of a petition of nomination." OAG 04-007.

The previous opinions of the Attorney General discuss KRS 160.210 before its amendment by House Bill 22 in 2019. Although House Bill 22 eliminated subsection (1)(b) of KRS 160.210, that bill added almost identical language in subsection (5) of KRS 160.190. Because the operative language has remained the same, the conclusions stated in the previous opinions remain valid.

The lack of a candidate who has filed a petition of nomination at the deadline triggers a vacancy that must be filled pursuant to KRS 160.190(5)(b). KRS 62.010(3) states: "Each person appointed to an office shall take the oath of office within thirty (30) days after he receives notice of his appointment."

9. What happens if no candidate files to run in the election for a new term on the local school board?

KRS 160.190(5)(b) provides that if no candidate files a petition of nomination for a new term on a local board of education opening pursuant to KRS 118.315 and 118.365, then a vacancy shall exist on January 1, and the vacancy shall be filled according to subsection (1) of this section. KRS 62.010(3) states: "Each person appointed to an office shall take the oath of office within thirty (30) days after he receives notice of his appointment."

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10. When will the appointed local board member assume the duties of the office?

Once a board member is appointed pursuant to KRS 160.190(1), upon being duly sworn in, they may assume the duties of the office of the board member. See KRS 160.170, Section 228 of the Kentucky Constitution, and *Commonwealth ex rel. Breckinridge v. Marshall*, 361 S.W.2d 103 (Ky. 1962). KRS 62.010(3) states: "Each person appointed to an office shall take the oath of office within thirty (30) days after he receives notice of his appointment."

11. What happens if the individual declines the appointment to fill the local board vacancy?

If an individual attempts to decline an appointment after being sworn in, this would be considered a resignation. The board member should tender written resignation to the board in such cases. The local board would fill the new vacancy created by the appointed member's resignation under KRS 160.190. The Office of the Attorney General has determined that a vacancy exists when the local board of education accepts a resignation. (OAG 81-316 and OAG 75-635).

If the individual declined the appointment before being sworn in, this would also create a new vacancy the local board would fill pursuant to KRS 160.190. It should also be noted that KRS 62.010(3) states: "Each person appointed to an office shall take the oath of office within thirty (30) days after he receives notice of his appointment." In addition, KRS 62.990(2)(b) states: "If any person violates KRS 62.010(2) or (3) on or after January 1, 2010, his office shall be considered vacant, and he shall not be eligible for the same office for two (2) years." Therefore, if an appointed local board member fails to take the oath within thirty (30) days, they would be ineligible to serve as a local board member for two years.

12. If it is alleged that the appointed candidate to fill the local board vacancy does not qualify under KRS 160.180, what course of action is available?

KRS 160.190 does not confer any authority to the Commissioner of Education to disqualify or remove a candidate after appointment or election to a local board of education. If it is alleged that a local board candidate does not qualify under KRS 160.180 after their appointment or election, the Attorney General would be responsible for removal. See KRS 160.180(3). If the appointed candidate declines to take the oath, that will create a new vacancy to be filled pursuant to KRS 160.190. (OAG 81-316 and OAG 75-635).