

Governance support resources

Filling casual vacancies of elected trustees

Advice to boards

Section 105 of the Education Act 1989 provides information on filling casual vacancies of elected trustees which occur during a board's three-year term of office.

Note: Where a casual vacancy for an elected trustee occurs during any period of six months commencing on the first day of October in a year before an election year, the board may, not later than 28 days after it occurs, resolve not to fill it, and in that case, it shall not be filled. This exemption does not apply to years in which a mid-term election is held.

1. How does a casual vacancy occur?

A casual vacancy occurs when an elected or selected parent representative or an elected staff or student representative:

- a. dies, or
- b. resigns in writing to the board, or
- c. without the prior leave of the board is absent from three consecutive board meetings, or
- d. is no longer eligible to be a trustee (section 103 and 103A Education Act 1989).

2. General

a. A board of trustees must decide how to fill a vacancy for an elected trustee (known as a casual vacancy) within eight weeks. A vacancy must be filled by either:

- i. **holding a by-election.** The by-election shall follow the procedure set out in the Returning Officers' Handbook 2016-2019. (See funding details below.)

OR

- ii. **selecting someone.** A person selected under this option to fill a casual vacancy for a parent elected trustee is regarded as a parent representative and is not included in the number of trustees a board may co-opt or have appointed to it. A board with five elected parent representative positions (including the vacancy) may, in addition, co-opt, or (in special circumstances) have appointed to it, up to four other people.

b. A board cannot fill a vacancy by selection if the effect would be that the number of elected parent representatives would be less than or equal to the number of parent representatives who are selected.

c. **A board must not fill a casual vacancy for an elected parent/staff/student representative by co-option.**

Note: The term of office for the person elected or selected will be for the remainder of the vacating trustee's term of office.

d. Reimbursements for by-elections

To receive reimbursement, all claims for actual and reasonable costs for by-elections must be submitted as soon as possible to the Ministry, by furnishing detailed invoices and completing the appropriate form. The claim form is available on the Ministry's website <http://www.education.govt.nz/school/running-a-school/resourcing/board-of-trustees-by-elections-expenses-reimbursement/>

3. Procedure

- a. If the board decides to hold a by-election it must appoint a returning officer and set an election date. The election date must be at least 6 weeks away and at the latest be the 15th Friday after the vacancy occurred. The returning officer must follow the short election timetable set out in schedule 1, page 32, of the Returning Officers' Handbook 2016-2019.

OR

- b. If, within eight weeks of the vacancy occurring, a board has decided to fill it by selecting someone, the following procedure applies:
- i. Within 14 days of making the decision to select someone, the board must publish, in a newspaper circulating in the area of the school, a notice about the vacancy and the resolution to fill it by selection. The wording for the notice is below.
 - ii. If, within 28 days after the notice is published, fewer than ten percent of eligible voters have asked the board not to make a selection but to hold a by-election, then the board may fill the vacancy by selecting someone. This selection must be made within six weeks of the end of the 28 day notification period and the person selected takes office on the day of selection by the board. An eligibility attestation must be filled out and submitted to the board by the prospective trustee before selection. The attestation can be printed out from www.trustee-election.co.nz/trustee-elections/board-resources/election-forms-and-appendices/.
 - iii. If ten percent or more of eligible voters ask that a by-election be held, the board must set the election date **either** on the tenth Friday after the end of the 28-day notification period or earlier date (the board must set this at least six weeks out from the election).
 - iv. If a by-election is to be held a returning officer must be appointed.
 - v. **Sample notice for filling a casual vacancy by selection:**

(name of school)
Board of Trustees

Casual vacancy for an elected trustee

A casual vacancy has occurred on the board of trustees for an elected parent representative.

The board has resolved under section 105 of the Education Act 1989 to fill the vacancy by selection.

If ten percent or more of eligible voters on the school roll ask the board, within 28 days of this notice being published, to hold a by-election to fill the vacancy, then a by-election will be held.

Any eligible voter who wishes to ask the board to hold a by-election should write to:

Chairperson
Board of Trustees
(Name of school)
(Address)

By: (relevant date)

- vi. <http://www.trustee-election.co.nz/board-resources/casual-vacancies/casual-vacancy-flow-chart>
A copy of the casual vacancy flowchart can be downloaded from the link above
- vii. The board notifies both NZSTA and the Ministry of Education of the new trustee by using Appendix 2, available from www.trustee-election.co.nz.

4. Staff By-election

If the vacancy occurs due to a staff trustee resigning or finishing employment at the school the board need to fill the vacancy by holding a by-election.

The board needs to appoint a Returning officer and set a date for the election using the [election planning tool](#) available on the school-trustee election website.

The by-election shall follow the procedure set out in the Returning Officers' Handbook 2016-2019. (See funding details below.)

NB Roll Eligibility for Staff Elections: Permanent employees of the board are able to go straight on to the electoral roll; however fixed term employees need to have been employed for 2 months on the date the roll closes in order to be eligible go on to the roll. Staff who have dual eligibility will automatically go on the staff roll but may opt for the parent roll if they so choose in a triennial year (the last one was 2016). They must stay on that roll until the next triennial year.



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Where do I get advice?

The *Governance advisory and support centre* advisers can also assist and are contacted on 0800 782 435, option 1 or govadvice@nzsta.org.nz