

# DRAFT

Last revised 11/12/2014

FOR AN ACT ENTITLED, An Act to clarify how a vacancy on a school board is filled.  
BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

Section 1. That § 13-8-25 be amended to read as follows:

13-8-25. Appointments to fill vacancies on school board--Qualification and term of appointee. Any vacancy occurring on a school board due to the school district failing to elect any person to succeed a school board member whose term shall have expired pursuant or an elected board member failing to qualify pursuant to SDCL 13-8-22, or due to resignation pursuant to SDCL 13-8-23(9), shall be filled by appointment by the remaining all school board members. ~~Any vacancy occurring~~ Vacancies on a school board pursuant to SDCL 13-8-24(1), (2), (4), (5), (6), (7) and (8) shall be filled by appointment by the remaining school board members.

The appointee shall qualify as if elected at or before the next school board meeting, and serve until the next succeeding election at which time a successor shall be elected to serve the unexpired term.

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*Examples of situations when a school board has to fill a vacancy and who is responsible to fill it.*

1. *Scenarios when the entire Local Board decides who fills a vacancy, including a board member who has resigned:*

*SDCL 13-8-23. Events creating vacancy on school board. A vacancy on the school board occurs if any of the following events happen before the expiration of the term of a school board member. If the member*

- (3) Fails to qualify as a board member as provided by law;*
- (9) Resigns.*

2. *Scenarios when only the remaining members of the Local Board decide who fills the vacancy:*

*SDCL 13-8-23. Events creating vacancy on school board. A vacancy on the school board occurs if any of the following events happen before the expiration of the term of a school board member. If the member:*

- (1) Board member dies;*
- (2) Is removed from the board*
- (4) Ceases to be a resident of the school district or representation area where elected;*
- (5) Is convicted of any infamous crime or of any offense involving a violation of the member's official oath;*
- (6) Has a judgment obtained against the member for breach of the member's official bond;*
- (7) Is incapacitated and is unable to attend to the duties of the position;*
- (8) Assumes the duties of an office incompatible with the duties of a school board member;*

***Rationale:*** *SDCL 13-8-22 currently states that if for any reason a school district fails to elect any person to succeed a school board member whose term shall have expired or an elected board member fails to qualify, the term shall be deemed vacant, and the incumbent shall continue to act in an official capacity until the vacancy is filled. This implies the school board member who has resigned may be involved in the selection of his or her successor.*

### ***Supporting laws related to school Board vacancies***

*SDCL 13-8-24 currently states a resignation shall not be effective until the successor is appointed and qualified as prescribed by law, and until such time the resigning member shall continue to serve in an official capacity as a school board member. This implies the school board member who has resigned may be involved in the selection of his or her successor.*

*SDCL 13-8-25 states that all vacancies occurring on a school board shall be filled by appointment by the remaining school board members, which would indicate that the board member who continued in office pursuant to SDCL 13-8-22 or SDCL 13-8-24, and until a successor was appointed, cannot be involved in the selection of his or her successor. It would be appropriate to have the board member who continued in office pursuant to SDCL 13-8-22 and SDCL 13-8-24, who would have all of the other duties and responsibilities of a board member until his or her successor is appointed and qualifies, to also have the right to be involved in the selection of his or her successor.*

*School boards have 5, 7, or 9 members. An incumbent holding over or a resignation results in there being an even number of board members and which could result in possibly having an equally divided number of board members supporting the appointment of two different people to fill the position. Allowing the incumbent or resigning school board member to participate in the appointment of his or her successor would assure there the vacant position was filled.*

*SDCL 13-8-22. Incumbent continued in office when successor not elected or qualified. If for any reason a school district fails to elect any person to succeed a school board member whose term shall have expired or an elected board member fails to qualify, the term shall be deemed vacant, and the incumbent shall continue to act in an official capacity until the vacancy is filled.*

*SDCL 13-8-24. Resignation not effective until successor appointed and qualified. A resignation of a school board member shall necessitate a successor to be appointed to fill the vacancy, but such resignation shall not be effective until the successor is appointed and qualified as prescribed by law, and until such time the resigning member shall continue to serve in an official capacity as a school board member.*

*SDCL 13-8-25. Appointments to fill vacancies on school board--Qualification and term of appointee. Any vacancy occurring on a school board shall be filled by appointment by the remaining school board members. The appointee shall qualify as if elected at or before the next school board meeting, and serve until the next succeeding election at which time a successor shall be elected to serve the unexpired term.*