Ryan,

Thank you for your patience with this answer to your question about what happens if a majority of the board seats are vacated due to a recall. I intend to share this information with Superintendent Barnes because it is information that would benefit the district if the recalls are successful.

Unlike recall elections for state officials, pursuant to California Election Code 11401 a recall petition for a local office does not include a request for a successor to be elected or appointed if the recall is successful. If a recall is successful, the local agency must fill any resulting vacancies in accordance with laws applicable to the office.

For a school board, the method of filling a board member’s seat depends on the timing of the vacancy. When a vacancy occurs within four months of the end of a Board member’s term, the Board shall take no action. The seat remains vacant until the next regular election. (Education Code 5093). When a vacancy occurs from six months to 130 days before a regularly scheduled election at which the board position is not scheduled to be filled, a special election to fill the position shall be held. The special election shall be consolidated with the regular election. If the vacancy occurs more than 6 months before the end of a Board member’s term, the Board shall either order an election or make a provisional appointment 60 days of the date of the vacancy or the filing of the member’s deferred resignation. (Education Code 5091, 5093)

The law does not specify procedures for making provisional appointments for vacancies caused by reasons other than a failure to elect, which happens when no candidate or an insufficient number of candidates have been nominated and a district election cannot be held. In such cases, the Board is required to appoint a qualified person to the office in accordance with the terms of Education Code 5092 and 5328. While the law does not spell out any specific appointment process for other forms of vacancies, any appointment process must comply with the requirements of the Brown Act (Government Code 54950-54963). In addition, secret ballots are prohibited, and only an individual who meets the eligibility requirements specified in Education Code 35107 may be appointed to fill a vacancy.

Pursuant to Education Code 5094, If for any reason vacancies should occur for a majority of the school board, the president of the county board of education having jurisdiction may appoint members of the county board of education to the district governing board until new members of the governing board are elected or appointed.

A board member facing recall may choose to step down from their seat by resigning. (Government Code 1770). A resignation becomes effective immediately upon delivery of a written resignation to the County Superintendent of Schools having jurisdiction over the district unless a deferred effective date is specified in the resignation. A Board member may not defer an effective date of resignation for more than 60 days. A written resignation, whether it specifies a deferred effective date or not, is irrevocable. (Education Code 5090, 5091)

The board member who has tendered a resignation with a deferred effective date continues to have the right to exercise all powers of a member of the governing board, until the effective date
of the resignation, except that the member does not have the right to vote for his or her successor in an action taken by the board to make a provisional appointment. (Education Code 35178)

It is also worth noting that, pursuant to Education Code 5091, the County Superintendent of Schools is required to terminate a provisional appointment and order a special election if, within 30 days of the appointment, a petition requesting a special election to fill the vacancy is submitted by registered voters.

I hope this answers your questions, but please let me know if you need additional information.

Best wishes,

Bob

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