

## **APPOINTING A NEW TRUSTEE TO THE BOARD**

*Community College League of California*



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From time to time, vacancies occur on a board of trustees, and boards must either schedule an election or appoint a person to fill the vacancy. The decision of who to appoint is an important one: the person selected should be able to represent the community well and to contribute wisely to board processes. The appointment process must be done in a timely manner and in accordance with law and regulations. Filling a vacancy through appointment or election is governed by Education Code Sections 5090 – 5095 (**Attachment 6**).

The following information is designed to assist the chief executive and governing board in the appointment process; however, it is not a substitute for legal advice. Districts are encouraged to consult with counsel to assure compliance with the law.

### **How Vacancies Occur**

Vacancies usually occur due to resignation or death of an incumbent. Other conditions, such as moving out of the district or ceasing to fulfill the duties of the position, are detailed in Government Code 1770.

### **When a Vacancy Occurs**

The effective date of a resignation is the date that is specified in the written resignation or, if no date is specified, when the written resignation is filed with the county superintendent of schools.

When a vacancy occurs, the board has up to 60 days to make a provisional appointment or order an election for the position (Education Code 5091). As soon as the board knows of the vacancy, it should adopt a resolution or otherwise take action to do one of these two things. If the board does not fill the vacancy, the county superintendent is required to order an election to fill the vacancy.

There are certain conditions which limit the board's decision to either order an election or make an appointment as stated in Education Code 5093:

- a) There shall be no special election or appointment to fill a vacancy on a governing board if the vacancy occurs within four months of the end of the term of that position.
- b) ...if the vacancy occurs, or a resignation specifying a deferred effective date is filed with the county superintendent of schools, during the period between six months and 130 days prior to a regularly scheduled governing board election and the position is not scheduled to be filled at such election. In such a case, the position shall be filled at a special election for that position to be consolidated with the regular election. A person elected to fill a position under this subdivision shall take office at the next regularly scheduled meeting of the governing board following

the certification of the election and shall serve only until the end of the term of the position which he or she was elected to fill.

- c) If a special election pursuant to Section 5091 could be consolidated with the next regular election for governing board members, and the vacant position is scheduled to be filled at such regular election, there shall be no special election.

## **Holding an Election**

If the legal conditions are met and the board decides to order an election, the election must be held on the next regular election date. Special elections are allowed if a petition is submitted by the voters after a provisional appointment has been made. Conditions for special elections are specified in Education Code 5091(c) and (f).

## **Making an Appointment**

Persons applying or nominated for the position must meet the legal qualifications for members of the board stated in the Constitution and other laws. They must be residents of the district (or area, if the district has trustee areas) (Education Code 72022).

The person appointed to the position shall hold office only until the next regularly scheduled election for district governing board members.

A provisional appointment confers all powers and duties of a governing board member upon the appointee immediately following his or her appointment.

The provisional appointment must be made by a majority public vote of the board members at a public meeting. Private ballots are not allowed.

## **Timelines for Appointment**

If the board wishes to appoint a person to fill a vacancy, it has 60 days from the effective date of the vacancy to do so. Therefore, time is of the essence for publicizing the position, recruiting applicants (optional), reviewing applications, interviewing candidates (optional), and making the appointment. A sample timeline of the process is:

### ***Week 1***

- Publication of vacancy as required by law.
- CEO and board, ad hoc committee, or board chair finalize steps in the process, the timeline, and application materials and criteria for selection.

### ***Weeks 2–4***

- Publicize position and recruit candidates (optional; see suggested strategies).
- Receive applications.

### ***End of Week 4***

- Final deadline for receipt of applications in the CEO's office, preferably no later than 30 days after the vacancy is announced.

### ***Weeks 2–5***

- Board or board ad hoc committee develops/reviews selection criteria and questions to ask candidates (if interviews are held)

### ***Week 5***

- Announcement of names of applicants and distribution of materials to board members for review.

### ***Weeks 5-6***

- Informational meeting(s) for candidates, organized by CEO and staff (optional).

### ***Week 6***

- Ad hoc committee or board meeting to screen applications and select finalists for interview or further consideration (optional). If committee is used, it would report to the board to determine the finalists.

### ***Week 7 or 8***

- Board meeting to hear presentations from the candidates, interview finalists, and/or discuss the applications review. Select and provisionally appoint the trustee.

### ***Week 8 or 9***

- Publish the notice of appointment. Call and/or send appropriate letters to those who were not selected.

## Publicity about the Appointment

Education Code 5092 requires that there be publicity about the vacancy that includes posting a notice of the vacancy in three public places in the district and publishing a notice in a newspaper of general circulation. Government Code 6061 states that publication shall be for one time. The posted notice of vacancy should include instructions on how to apply for or nominate someone to be a candidate for appointment.

The Board may wish additional publicity. The required notices may include additional details or encourage interested people to call for more information about the college, board roles, and trustee responsibilities. The announcement and further information may be sent to local news media, placed on the college's website, and distributed to community leaders.

The need to appoint a trustee is an opportunity to educate the community about the governing board. The announcement, press release, or other information therefore might include what is expected of board members in fulfilling their jobs and how boards contribute to effective colleges (See Attachment 1 for sample language).

## Recruiting and Informing Candidates

Every board would like a good pool of qualified applicants who support the work of the district and have the interests of the community in mind. Foundation boards, college advisory committees, and community leaders are excellent sources of potential candidates. In addition to the required public notice, activities to recruit include:

- Send announcements about the vacancy and information about the role of a trustee to people who might be or know of good potential board members.
- Solicit names of good potential candidates from current trustees, community leaders, and college organizations. Call or send those who are identified a letter with application information.
- People who indicate an interest should be encouraged to learn more about the position. See the sample letter to potential candidates and applicants (**Attachment 2**). The district office may provide or arrange:
  - \* Information about the board role and trustee responsibilities, including compensation (if any), conflicts of interest and disclosure requirements, and expectations.
  - \* Individual meetings with the CEO.

- \* Candidate group meeting with the CEO and other staff.
- \* Packets of information available from the League, including the brochure “Board Candidate Information” and selected chapters from the Trustee Handbook.
- \* District information, including board meeting agendas and minutes, board ethics and operations, college catalogs and general reports, and summaries of long-range plans.

The recruitment process should be conducted in such a manner that reflects well on the college and the board. The primary contact should be the CEO or his/her designee in the district office. Trustees should maintain their neutrality and support for an open process.

## Applications and Candidate Information

The purpose of the application package is to gain sufficient information to determine which candidate to appoint or which finalists to invite for further consideration. See **Attachments 3 and 4** for a sample application form and questions.

First, applications should be reviewed to ensure that interested people meet the legal requirements. The district should check addresses to make sure residency requirements are met. Those who do not meet eligibility requirements should receive a letter indicating why they are ineligible to be appointed.

Boards may also request one or more of the following materials to gather additional helpful information:

- Letter of interest
- Application form
- Letter or statement that outlines qualifications and experience
- Resume
- Questionnaire

## Criteria

The board determines the criteria used to select the appointee. A board ad hoc committee may be used to develop and propose criteria to the entire board, or the discussion may take place in the board as a whole.

The selection criteria may be used to help trustees review applications to choose their top candidates, select a number of finalists to be interviewed, and decide who to appoint.

Possible criteria are:

- Interest in and commitment to service to the community;
- Interest in and commitment to public education and student learning;
- Knowledge about and commitment to the role and mission of community colleges in the communities they serve and in the context of all higher education;
- Willingness and ability to represent those who live in the service area; mindful of the perspectives of diverse constituencies;
- Willingness to advocate the district and its interests to the community and state;
- Knowledge and background related to the issues considered by the board (e.g. community needs, funding, education, district operations);
- Ability to work as a member of a public governing board; understands that the board, not the individual trustees, has authority;
- Ability to articulately express perspectives and respect the perspectives of others;
- Willingness to work cooperatively with others and in partnership with the CEO;
- Time and energy necessary to fulfill the responsibilities of being a trustee;
- Willingness and time to engage in ongoing professional development;
- Commitment to fulfill the ethical and legal responsibilities of trusteeship, unencumbered by private agendas; and/or
- Qualities, background, and stature that will enhance the standing of the district in the community.

## **Reviewing Candidates**

The law is silent on how a board is to review candidates. However, a number of strategies have been used to review applications and select the candidate. Identifying strategies and reviewing applications may take place in an ad hoc board committee, which would then report to the board in a public meeting for final action, or the board may hold the discussion at a public meeting.

Some strategies are:

- Each trustee receives and reviews applications and background materials about all candidates.

- Trustees may use rating sheets to rank the candidates or simply identify their top choices for the position using the criteria established by the board.
- The board determines whether to select a certain number of finalists for further consideration, or whether to interview or hear from all eligible applicants.

Selection of finalists occurs at a public meeting. A board committee may be used to recommend finalists, but the decision is made at a board meeting.

Selecting finalists may be based on the extent they meet the criteria for selection. One approach is that all trustees identify their top choices; those who are selected the greatest number of times become finalists for the position.

Further review of all candidates or the finalists may be done by inviting them to a) be interviewed by the board, b) make presentations to the board, and/or c) submit additional background materials for further board review.

Choosing a certain number of finalists to be interviewed may depend on whether there are a large number of applications and/or the amount of time the board has to conduct interviews or hear presentations. The board may choose to interview or hear presentations from all applicants who meet eligibility requirements. The latter choice ensures that all who are interested have full opportunity to speak to the board and reinforces that the appointment process is open to all.

A positive, public discussion of the candidates fosters a positive image and promotes good community relations. The board benefits by focusing on the strengths of the applicants rather than on the weaknesses of any one person)

## **Interviewing and/or Hearing from Candidates**

It is optional to interview or hear presentations from candidates, but most boards decide to do so to learn more about the candidates and ensure the process is open. Interviews or presentations must take place in a public, properly noticed meeting. Candidates may be invited to make a short presentation to the board (3-5 minutes) on why they should be appointed to the board. Candidates may also be interviewed after or instead of the presentation. Suggestions for the interview process include:

- Conduct interviews in the same manner for all candidates.
- Provide the questions to candidates prior to the interviews to ensure that all have the same time to prepare.

- Determine the order in which candidates are interviewed (or make presentations) by lot, alphabetical order, or some other neutral method.
- Vary the order in which candidates respond to questions; e.g. ask a question and ask each candidate to respond. Then ask the next question and vary the order in which candidates respond.
- The board president may ask all questions, or board members may take turns asking questions. It is wise to set time limits for candidate responses.

**Attachment 5** provides sample interview questions.

## Voting on the Candidates

The appointment, which is provisional, must be made by a majority public vote of the board members at a public meeting. How each trustee votes is a matter for public record; no secret ballots are allowed.

It is not necessary to vote on the candidates at the same meeting that they are interviewed. If time allows, the vote may be schedule for a subsequent meeting so that trustees have time to reflect on the candidates.

## Announcing the Appointment

The law (Ed Code 5091, Gov Code 6061) requires that notices of the provisional appointment are posted within 10 days in three public places in the district of the actual vacancy or the filing of a deferred resignation and the provisional appointment. Notice of the appointment shall also be published in a newspaper of general circulation.

The notice shall state the fact of the vacancy or resignation and the date of the occurrence of the vacancy or the date of the filing of, and the effective date of, the resignation. It shall also contain the full name of the provisional appointee to the board, the date of appointment, and a statement that unless a petition calling for a special election, containing a sufficient number of signatures, is filed in the office of county superintendent of schools within 30 days of the date of the provisional appointment, it shall become an effective appointment. (If a petition is filed, then a special election must be held.)

In addition, the announcement of the appointment should be sent to the county superintendent of schools/office of education, the county elections office, the Community College League of California and other agencies that maintain lists of elected officials. Additional publicity may include press releases to all newspapers in the region, other news media, and local governing bodies.

## Length of an Appointment

A person appointed to fill a vacancy holds office until the next regularly scheduled election for the board. An election is held to fill the vacancy for the remainder of the term. See Education Code 5091(e).

## Orienting the New Trustee

Appointed trustees deserve the same orientation that is provided to newly elected trustees, which often includes sessions with the CEO, certain administrators and faculty, staff and student leaders; college tours, and resource materials.

Upon receiving the name of the new trustee, the Community College League will send a packet of information, including a Trustee Handbook, to the person. Appointed trustees also receive a special invitation to the Effective Trusteeship Workshop held in late January/early February.

## Student Trustee Vacancies

Education Code 72023.5 provides that student trustees are chosen by the students enrolled in the colleges of the district in accordance with procedures prescribed by the governing board. Students are elected in spring and take office in May or June. Vacancies may occur through resignation or if a student trustee fails to maintain eligibility for the position.

Governing board policy and procedures should address what happens when the student trustee position becomes vacant prior to the end of the term. Options include, but are not limited to holding a special election, delegating authority to the Associated Students to recommend candidates for appointment to the board or to make an appointment, identifying a specific A. S. officer to fill the position, or leaving the position vacant (particularly if the vacancy occurs during spring semester).

## Resources

Districts may rely on local counsel to ensure compliance with applicable law. The League maintains records of newly appointed and elected trustees. Contact [cclc@ccleague.org](mailto:cclc@ccleague.org) for contact information to obtain samples from districts that recently appointed a new trustee.



# **ATTACHMENT 1**

## *Sample Recruitment Publicity*

The following information may be adapted for press releases, letters to the editor, and letters to community leaders soliciting applications or names of potential candidates.

The \_\_\_\_\_ District is soliciting applications to serve as an appointed member of the Board of Trustees until the next regularly scheduled election for governing board members, which is [date].

The Board is responsible for the performance of the [names of colleges], which serve [insert number] students and provide vital educational services to the communities in the region.

The board is seeking candidates who have the ability and time to fulfill the responsibilities of being a member of the board, which include:

- Participate fully in the work of the board, which includes attending all board meetings and key college events, studying and discussing policy issues, and participating in trustee education programs.
- Be knowledgeable about the communities served by the college and be willing to act on behalf and for the benefit of those communities.
- Be committed to community colleges and their missions; understand educational, social, and economic policy issues.
- Engage in balancing the needs of many diverse groups; be able to contribute to and build consensus.
- Contribute to effective board functioning and support the authority of the board as a whole.

The Board of Trustees meets [insert meeting days and times].

Please contact the [Superintendent or Chancellor] to indicate an interest or suggest possible candidates for the position. Further information and application materials are available from that office [provide location and contact information].

Applications are due no later than [date]. The board will interview candidates on [date] and make the provisional appointment on [date].



## **ATTACHMENT 2**

### *Sample Letter to Interested Applicants*

Districts should adapt the following sample to local practice.

Thank you for your interest in serving as an appointed member of the Board of Trustees of the \_\_\_\_\_ District. The appointee will serve until the next regularly scheduled election, which is [insert date].

We have enclosed a schedule that outlines the steps in the selection process. In order to be considered for appointment to the vacant position, all application materials must be received in the [insert office] no later than [insert time and date].

Application materials include the following: [list the appropriate materials, such as]

- A letter of interest addressed to the president of the Board of Trustees, [name]
- A resume, including community service and leadership
- A completed applicant questionnaire (enclosed)

These materials will be considered by members of the Board of Trustees in determining [who will be invited to be interviewed/makes presentations] at a public board meeting on [insert date]. Further information will be provided to those candidates about the board meeting and interview process.

The Board encourages you to review the enclosed materials that outline Governing Board responsibilities and expectations of trustees. [Enclose related board policies and ethic statements and/or relevant materials from the Community College League.]

In addition, you are encouraged to [schedule an appointment with the [CEO] and/or participate in an informational meeting for candidates] about the district, the appointment process, and governing board responsibilities. Information about the District can also be found at [insert web site].

Please contact \_\_\_\_\_ at \_\_\_\_\_, if you have any questions about the position or the selection process.



**ATTACHMENT 3**

*Sample Application Form*

Name \_\_\_\_\_

Home Address \_\_\_\_\_

City, State, Zip \_\_\_\_\_

Phone: Home \_\_\_\_\_ Business \_\_\_\_\_

Occupation \_\_\_\_\_

Company \_\_\_\_\_

Business Address \_\_\_\_\_

City, State, Zip \_\_\_\_\_

*Please complete the following or attach a current resume.*

Education (List degrees or highest year completed and the college or school.)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Employment History (last 10 years)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Public and Community Service

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(Check if applicable) I am related to a current employee of the district. If yes, name of employee and your relationship \_\_\_\_\_

I understand that I may not be an employee of the district and serve as a member of the board.

I certify that I meet all eligibility requirements. (Note: To be eligible, an individual must be at least 18 years old; must be a resident [of the district/ of the area]; must be a registered voter, and must not be disqualified from holding civil office by the Constitution or any law of the state.)

Signature:

Date:

[Insert deadline time and date and addresses for turning in the application form.]



## **ATTACHMENT 4**

### *Sample Written Application Questions*

Please state why you are seeking appointment to the \_\_\_\_\_  
Board of Trustees.

What skills and abilities would you bring to the work of the board of trustees?

Please describe your experience in serving on boards, commissions or appointed or elected positions. Please list the dates and how these experiences would contribute to your service on the board.

Describe other community involvement and experience that would contribute to the work of the board and the community college?

Please give an example of how you have handled being part of a voting body when you have had a different point of view or position than the majority of the board members.

What is your approach to working with a team of people in achieving policy level goals?

What do you hope to accomplish by serving as a trustee?

Applicants may attach supporting materials and letters of reference. However, the maximum amount of materials that may be submitted is [10] pages.



## **ATTACHMENT 5**

### *Sample Interview Questions*

Why are you interested in becoming a member of the Board of Trustees?

Please describe your public service and community involvement, and the skills you would bring to the board.

Service on the board requires a significant amount of time for meetings, studying issues, and other activities? How much time do you anticipate you will have to devote to the board and what other commitments do you have?

What is your understanding of the mission and purposes of the community colleges in California? What are the mission and purposes of our district?

What do you see as the major issues facing the community college(s) in the next decade?

Whom would you feel you are representing if you are appointed to the board of trustees?

What is your understanding of the primary responsibilities of the board? What would be your responsibility to the board as a trustee?

Please discuss your understanding of the differences between the roles of the chief executive officer and other administrators and the role of the board.

Please discuss your understanding of the relationship between the trustees on the board and the administrators, faculty, staff, and students of the institution.

What are some major accomplishments of the district in the past few years? What, if any, areas for improvement should the board address?

How would you respond to a concern from a student, a staff member, and a community member about any part of the college operation?

If a board member feels strongly about a matter, but his or her position is not supported by the board, how should this trustee conduct him or her self?

If major reductions in funding were to occur, what would be your priorities for the most important programs or services to retain?



## **APPENDIX 6**

### *California Education Code*

#### *Sections 5090-5095*

5090. Vacancies on school district governing boards or community college district boards are caused by any of the events specified in Section 1770 of the Government Code, or by a failure to elect. A vacancy resulting from resignation occurs when the written resignation is filed with the county superintendent of schools having jurisdiction over the district, except where a deferred effective date is specified in the resignation so filed, in which case the resignation shall become effective on that date. A written resignation, whether specifying a deferred effective date or otherwise, shall, upon being filed with the county superintendent of schools be irrevocable.

5091. (a) Whenever a vacancy occurs, or whenever a resignation has been filed with the county superintendent of schools containing a deferred effective date, the school district or community college district governing board shall, within 60 days of the vacancy or the filing of the deferred resignation, either order an election or make a provisional appointment to fill the vacancy. A governing board member may not defer the effective date of his or her resignation for more than 60 days after he or she files the resignation with the county superintendent of schools. In the event that a governing board fails to make a provisional appointment or order an election within the prescribed 60-day period as required by this section, the county superintendent of schools shall order an election to fill the vacancy.

(b) When an election is ordered, it shall be held on the next established election date provided pursuant to Chapter 1 (commencing with Section 1000) of Division 1 of the Elections Code not less than 130 days after the order of the election.

(c) (1) If a provisional appointment is made within the 60-day period, the registered voters of the district may, within 30 days from the date of the appointment, petition for the conduct of a special election to fill the vacancy. A petition shall be deemed to bear a sufficient number of signatures if signed by at least the number of registered voters of the district equal to 1½ percent of the number of registered voters of the district at the time of the last regular election for governing board members, or 25 registered voters, whichever is greater. However, in districts with registered voters of less than 2,000 persons, a petition shall be deemed to bear a sufficient number of signatures if signed by at least 5 percent of the number of registered voters of the district at the time of the last regular election for governing board members.

(2) The petition shall be submitted to the county superintendent of schools having jurisdiction who shall have 30 days to verify the signatures. If the petition is determined to be legally sufficient by the county superintendent

of schools, the provisional appointment is terminated, and the county superintendent of schools shall order a special election to be conducted no later than the 130th day after the determination. However, if an established election date, as defined in Section 1000 of the Elections Code, occurs between the 130th day and the 150th day following the order of the election, the county superintendent of schools may order the special election to be conducted on the regular election date.

(d) A provisional appointment made pursuant to subdivision (a) confers all powers and duties of a governing board member upon the appointee immediately following his or her appointment.

(e) A person appointed to fill a vacancy shall hold office only until the next regularly scheduled election for district governing board members, whereupon an election shall be held to fill the vacancy for the remainder of the unexpired term. A person elected at an election to fill the vacancy shall hold office for the remainder of the term in which the vacancy occurs or will occur.

(f) (1) Whenever a petition calling for a special election is circulated, the petition shall meet all of the following requirements:

(A) The petition shall contain the estimate of the elections official of the cost of conducting the special election.

(B) The name and residence address of at least one, but not more than five, of the proponents of the petition shall appear on the petition, each of which proponents shall be a registered voter of the school district or community college district, as applicable.

(C) None of the text or other language of the petition shall appear in less than six-point type.

(D) The petition shall be prepared and circulated in conformity with Sections 100 and 104 of the Elections Code.

(2) If any of the requirements of this subdivision are not met as to any petition calling for a special election, the county superintendent of schools shall not verify the signatures, nor shall any further action be taken with respect to the petition.

(3) No person shall permit the list of names on petitions prescribed by this section to be used for any purpose other than qualification of the petition for the purpose of holding an election pursuant to this section.

(4) The petition filed with the county superintendent of schools shall be subject to the restrictions in Section 6253.5 of the Government Code.

(g) Elections held pursuant to subdivisions (b) and (c) shall be conducted in as nearly the same manner as practicable as other governing board member elections.

5092. Whenever a provisional appointment is made to the governing board of a school district pursuant to Section 5091, the board shall, within 10 days of the provisional appointment of a person to fill a vacancy which occurs or will occur, post notices of both the actual vacancy or the filing of a deferred resignation and also the provisional appointment in three public places in the district and shall publish a notice pursuant to Section 6061 of the Government Code. If there is no newspaper of general circulation published in the district, notice need not be published.

The notice shall state the fact of the vacancy or resignation and the date of the occurrence of the vacancy or the date of the filing of, and the effective date of, the resignation. The notice shall also contain the full name of the provisional appointee to the board and the date of his appointment, and a statement that unless a petition calling for a special election, containing a sufficient number of signatures, is filed in the office of county superintendent of schools within 30 days of the date of the provisional appointment, it shall become an effective appointment.

5093. (a) There shall be no special election or appointment to fill a vacancy on a governing board if the vacancy occurs within four months of the end of the term of that position.

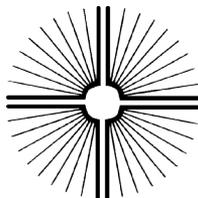
(b) Section 5091 shall not apply to a vacancy on a governing board if the vacancy occurs, or a resignation specifying a deferred effective date is filed with the county superintendent of schools, during the period between six months and 130 days prior to a regularly scheduled governing board election and the position is not scheduled to be filled at such election. In such a case, the position shall be filled at a special election for that position to be consolidated with the regular election. A person elected to fill a position under this subdivision shall take office at the next regularly scheduled meeting of the governing board following the certification of the election and shall serve only until the end of the term of the position which he or she was elected to fill.

(c) If a special election pursuant to Section 5091 could be consolidated with the next regular election for governing board members, and the vacant position is scheduled to be filled at such regular election, there shall be no special election.

5094. If for any reason vacancies should occur in a majority of the offices on any school district or community college district governing 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.

5095. Whenever any of the offices on any school district governing board or community college district governing board is vacant, the remaining governing board member or members, if any, and any governing board member or members elected or appointed to fill the vacancies, who have qualified, shall have all the powers and perform all the duties of the governing board.





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