

California Department of Education

Executive Office

SBE-005 (REV. 1/2018)

General Waiver

# California State Board of EducationNovember 2021 AgendaItem #W-05

## Subject

Request by **Mendocino County Office of Education** to waive California *Education Code* Section 45134(c), to allow the employment of a State Teachers’ Retirement System retiree in a classified position on a temporary basis.

## Waiver Number

* 7-8-2021

## Type of Action

Action, Consent

## Summary of the Issue(s)

The Mendocino County Office of Education (COE) is requesting a waiver of California *Education Code* (*EC*) Section 45134(c), to allow Carol Barrett, a State Teachers’ Retirement System (STRS) retiree, to be employed in a classified management position on a temporary basis while the current manager is on maternity leave.

## Authority for Waiver

*EC* Section 33050

## Recommendation

* Approval: Yes
* Approval with conditions: No
* Denial: No

The California Department of Education recommends the State Board of Education (SBE) approve the request by the Mendocino COE to waive *EC* Section 45134(c) for the period from October 15, 2021, through March 15, 2022.

## Summary of Key Issues

An employee may continue to receive a retirement allowance while collecting a salary for work in classified service if *EC* Section 45134(c) is waived. The Mendocino COE is requesting a waiver to allow a retired individual, Carol Barrett, to be employed in a classified management position on a temporary basis while the current manager is on maternity leave.

An employee in the classified management position of Manager, Workability I/Transition Partnership Programs will be on maternity leave beginning in October 2021 for five months. The Mendocino COE is seeking to fill this temporary position with the prior manager, Carol Barrett, who is now a STRS retiree. This individual was chosen for the position due to the short-term nature of the work and also because she has broad operational knowledge needed in this program area. She previously held this position for 26 years. The district is requesting the waiver for the period October 15, 2021 through March 15, 2022.

**Demographic Information:** The Mendocino COE has a student population of 13,245 and is located in a rural area of Mendocino County.

**Because this is a general waiver, if the SBE decides to deny the waiver, it must cite one of the seven reasons in *EC* 33051(a), available at** <http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=EDC&sectionNum=33051>.

## Summary of Previous State Board of Education Discussion and Action

The SBE approved previous requests from the Los Angeles Unified School District (USD) in March 2015, September 2019, November 2020, and March 2021 to employ a STRS retiree as an assistant to a board member. In addition, the SBE has approved previous requests from the Sanger USD to employ a STRS retiree as a classified bus driver.

## Fiscal Analysis (as appropriate)

There is no statewide fiscal impact of this waiver approval.

## Attachment(s)

* **Attachment 1:** Summary Table (1 page)
* **Attachment 2:** Mendocino County Office of Education General Waiver Request 7-8-2021 (3 pages). (Original waiver request is signed and on file in the Waiver Office.)

# Attachment 1: Summary Table

California *Education Code* Section 45134(c)

| **Waiver Number** | **Local Educational Agency** | **Period of Request** | **Bargaining Unit Representatives Consulted, Date and Position** | **Public Hearing and Board Date** | **Advisory Committee Position** |
| --- | --- | --- | --- | --- | --- |
| 7-8-2021 | Mendocino County Office of Education | **Requested:**October 15, 2021, to March 15, 2022**Recommended:**October 15, 2021, to March 15, 2022 | Mendocino County Federation of School Employees AFT LocalMike Nemeth, PresidentAugust 26, 2021**Support** | Approved:August 26, 2021 | Mendocino County SELPA Community Advisory CommitteeSeptember 23, 2021**No Objections** |

Created by California Department of Education
September 2021

# Attachment 2: Mendocino County Office of Education General Waiver Request 7-8-2021

**California Department of Education**

**WAIVER SUBMISSION - General**

CD Code: 2310231

Waiver Number: 7-8-2021

Active Year: 2021

Date In: 8/30/2021 11:36:29 AM

Local Education Agency: Mendocino County Office of Education

Address: 2240 Old River Rd.

Ukiah, CA 95482

Start: 10/15/2021

End: 3/15/2022

Waiver Renewal: N

Previous Waiver Number:

Previous SBE Approval Date:

Waiver Topic: Other Waivers

Ed Code Title: Other Waivers

Ed Code Section: 45134(c)

Ed Code Authority: 33050

*Education Code* or *CCR* to Waive: (a) Notwithstanding any other provisions of law, no minimum or maximum age limits shall be established for the employment or continuance in employment of persons as part of the classified service.

(b) Any person possessing all of the minimum qualifications for any employment shall be eligible for appointment to that employment, and no rule or policy, either written or unwritten, heretofore or hereafter adopted, shall prohibit the employment or continued employment, solely because of the age of any person in any school employment who is otherwise qualified.

[(c) No person shall be employed in school employment while he or she is receiving a retirement allowance under any retirement system by reason of prior school employment, except that a person may be hired:

(1) Pursuant to Article 8 (commencing with Section 21220) of Chapter 12 of Part 3 of Division 5 of Title 2 of the Government Code.

(2) As an aide in one of the following circumstances:

(A) An aide is needed in a class with a high pupil-teacher ratio.

(B) An aide is needed to provide one-on-one instruction in remedial classes or for underprivileged students.

A person working as an aide pursuant to this subdivision shall not receive service credits for purposes of the State Teachers' Retirement System.]

(d) The provisions of subdivision (c) shall be inapplicable to persons who were employed in the classified service of any school district as of September 18, 1959, and who are still in the employ of the same district on the effective date of this subdivision, and the rights of those persons shall be fixed and determined as of September 18, 1959, and no such person shall be deprived of any right to any retirement allowance or eligibility for any such allowance to which he or she would have been entitled as of that date. Any such person who, by reason of any provision of law to the contrary, has been deprived of any right to retirement allowance or eligibility for such an allowance, shall, upon the filing of application therefor, be reinstated to such rights as he or she would have had had this subdivision been in effect on September 18, 1959.

(e) This section shall apply to districts that have adopted the merit system in the same manner and effect as if it were a part of Article 6 (commencing with Section 45240) of this chapter.

Outcome Rationale: An employee in the classified management position of Manager, Workability I/Transition Partnership Programs, is going out on maternity leave. We are requesting the temporary employee that fills the position while the regular employee is on leave, Carol Barrett, be hired to fill this position. She previously worked in this position for 26 years. She has broad knowledge in this highly specialized field. She is a STRS retiree, which is why we are seeking this waiver.

Student Population: 13245

City Type: Rural

Public Hearing Date: 8/26/2021

Public Hearing Advertised: Website, BoardDocs and at three physical County Office building locations

Local Board Approval Date: 8/26/2021

Community Council Reviewed By: Mendocino County SELPA Community Advisory Committee

Community Council Reviewed Date: 9/23/2021

Community Council Objection: N

Community Council Objection Explanation:

Audit Penalty Yes or No: N

Categorical Program Monitoring: N

Submitted by: Ms. Michelle Hutchins

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