

California Department of Education

Executive Office

SBE-005 (REV. 1/2018)

General Waiver

# California State Board of Education September 2023 AgendaItem #W-13

## Subject

Request by **Big Sur Unified School District** to waive California *Education Code* Section 5020, which requires a districtwide election to reduce the number of governing board members from five to three, and portions of Section 5091, which require the county superintendent of schools to call an election to fill a vacancy on the governing board within 60 days of the vacancy occurring.

## Waiver Numbers

13-3-2023

## Type of Action

Action, Consent

## Summary of the Issue(s)

The Big Sur Unified School District (USD) is requesting to waive California *Education Code* (*EC*) Section 5020, which requires that an approved resolution by a county committee on school district organization (County Committee) to decrease the size of a school district governing board from five to three members be approved by voters at a districtwide election. To expedite this reduction, the district requests that the California State Board of Education (SBE) waive the requirement in *EC* Section 5020 that the reduction be approved at a districtwide election.

The Big Sur USD currently has a vacancy on its governing board and expects a second vacancy to occur soon. *EC* Section 5091 requires the county superintendent of schools to order an election to fill these vacancies if the governing fails to do so within 60 days of the vacancy. The district also requests that the SBE waive this requirement until the reduction of the size of the governing board (which would eliminate these vacant seats on the board) is effective.

## Authority for Waiver

*EC* Section 33050

## Recommendation

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

## Summary of Key Issues

Under the provisions of *EC* Section 33050, the Big Sur USD requests that the SBE waive specific portions of the *Education Code* relating to (1) an election requirement for a reduction in board size; and (2) a requirement that the county superintendent of schools (county superintendent) call an election to fill a vacancy if the governing board fails to do so within 60 days of the vacancy occurring.

**Election requirement for a reduction in board size**

Approval of this waiver request would eliminate the election requirement for approval of the reduction in the number of members (from five to three) on the Big Sur USD governing board. County Committee approval of this reduction constitutes an order of election,[[1]](#footnote-1) pursuant to *EC* Section 5020, unless this waiver is approved.

The Big Sur USD is a small, coastal school district (15 students and 5 teachers) with a five-member board in a rural area of Monterey County. Currently, the board consists of only four members, with a long-term vacancy. The board has made numerous efforts to recruit a new member for that long-term vacancy without success, given that only about 200 adults in the community are eligible to serve. Additionally, another member is expected to resign soon. This would leave the board with a minimal quorum of three members, and no prospect for filling the new vacancy, given the unsuccessful attempts to recruit for the current opening.

Moreover, the community has recently suffered a series of problems, leaving them isolated. Recent storms and their associated rainfall triggered mudslides that closed Highway 1 on both the northern and southern sides of this coastal community. This meant that, in addition to damaged bridges, housing, etc., the community experienced a severe shortage of resources. It is vital that the district be able to maintain a functional board now and in similar future emergencies.

Due to these difficulties in recruiting and maintaining a full five-member board in a district of this size, the governing board has acted to reduce its size from five to three. This reduction already has been reviewed and was unanimously approved by the Monterey County Committee on March 22, 2023 with no public objections. As noted above, this reduction constitutes an order of election, unless that requirement is waived by the SBE. While the waiver of *EC* Section 5020 does not affect the decision to reduce the size of the governing board, it will allow the reduction to be implemented without the cost or delay that accompanies an election.

The *Education Code* already envisions that small elementary school districts have a three-member board. Subdivision (c) of *EC* Section 35012 requires that an elementary school district with an average daily attendance of less than 300 have a three-member board—however, the governing board of any such district is required to act to increase the size of the board to five members, without approval by the district’s electorate, if enrollment increases to 300 or more (*EC* Section 5018). There is no corresponding statute to allow the governing board to reduce from five to three members without an election.

**Requirement that the county superintendent call an election to fill a vacancy**

Approval of this waiver request would eliminate the requirement that the Monterey County Superintendent call an election to fill current vacancies on the Board if it fails to do so within 60 days of a vacancy occurring. The reduction in governing board size (which already is approved by the County Committee) will eliminate the vacant positions—thus, elections to fill the vacancies are unnecessary. Approval of this waiver will remove the requirement that the Monterey County Superintendent call an election to fill the vacancies before the reduction in board size is effective.[[2]](#footnote-2)

Because the county superintendent must order an election to fill the vacancy if the district governing board does not act within 60 days of the vacancy, approval of this waiver also would affect a statutory responsibility of the Monterey County Superintendent. Because of this effect, the California Department of Education (CDE) requested that the county superintendent provide her position regarding this waiver request. Her response indicates support for the district’s efforts to fill the vacancy on its board, including submittal of the waiver request.

The Big Sur USD has no collective bargaining units, due to its size. However, in order to ensure compliance with statute, the district consulted with all of its certificated staff prior to approving this action. No objections were noted. The CDE has reviewed the waiver request and has determined that there was no significant opposition to the waiver at the public hearings held by the Board or the county committee. The CDE also has determined that none of the findings specified in *EC* Section 33051, which authorize denial of a waiver, exist. Thus, the CDE recommends the SBE approve both the waiver requests by the Big Sur USD to waive *EC* Section 5020, which requires a districtwide election to reduce the number of governing board members from five to three; and portions of Section 5091, which require the county superintendent of schools to call an election to fill a vacancy on the governing board within 60 days of the vacancy occurring.

**Demographic Information**

The Big Sur USD has a student population of 15, served by a single school site, and is located along the California coast, in a rural area of Monterey 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 has approved similar waiver requests in the past. The most recent approval was at the May 2023 SBE meeting for Big Lagoon Union Elementary School District (Humboldt County).

## Fiscal Analysis (as appropriate)

Approval of the waiver requests will not have fiscal effects on any local or state agency. Disapproval of the requests may result in additional election costs for the districts requesting waivers.

## Attachment(s)

* **Attachment 1:** Summary Table (1 page)
* **Attachment 2:** Big Sur Unified School District General Waiver Request 13-3-2023 (2 pages). (Original waiver request is signed and on-file in the Waiver Office.)
* **Attachment 3:** *Education Code* Sections Requested for Waiver (1 page)

# Attachment 1: Summary Table

California *Education Code* Section 5020

| **Waiver Number** | **District** | **Period of Request** | **Bargaining Unit Representatives Consulted** | **Public Hearing and Board Date** | **Advisory Committee Position** |
| --- | --- | --- | --- | --- | --- |
| 13-3-2023 | Big Sur Unified School District | **Requested:** March 17, 2023, to December 31, 2024**Recommended:** March 17, 2023, to December 31, 2024 | District has no bargaining units | March 16, 2023 | School Site Council 3/15/2023**No objections** |

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# Attachment 2: Big Sur Unified School DistrictGeneral Waiver Request 13-3-2023

**California Department of Education**

**WAIVER SUBMISSION - General**

CD Code: 2775150

Waiver Number: 13-3-2023

Active Year: 2023

Date In: 3/17/2023 2:11:22 PM

Local Education Agency: Big Sur Unified

Address: 69325 Highway 1

Big Sur, CA 93920

Start: 3/17/2023

End: 12/31/2024

Waiver Renewal: No

Waiver Topic: School District Reorganization

Ed Code Title: 60 day Requirement to Fill Board Vacancy

Ed Code Section: 5020 and 5091

Ed Code Authority: 33050-33053

*Education Code* or *CCR* to Waive: Please see Attachment 3.

Outcome Rationale: The District is located in a small rural community along the California coastline. It currently has approximately 15 students and five teachers, and has historically struggled to fill and maintain Board membership as community interest in Board service is minimal, also resulting in difficulty achieving Board quorum. No contested elections have occurred in recent memory, and Board members are typically appointed in lieu of elections. Whenever vacancies have occurred, the District has struggled to convince community members to even show interest in appointment.

The District is currently operating with a four-member Board, and has been unsuccessful in finding a replacement for the fifth seat. The Board is anticipating yet another Board vacancy as one Board member has recently expressed his intent to resign from the Board. If this occurs, Board membership will soon be reduced to three members. The current members have staggered terms, such that two are up for election in 2024, and two are up for election in 2026. This will naturally maintain staggered elections moving forward. All Board members remain committed to seeing this proposed Board reduction to fruition in the best interest of the District.

Finally, we wish to share that the District is currently isolated as the recent storms and rainfall have triggered damaging landslides that have made Highway 1 impassable on both the north and south sides of the community. Moreover, the community has recently experienced severe weather conditions that have contributed to a lack of access to essential resources, in addition to damaged bridges, roads, homes, and surroundings. Approval of the District's waiver will allow the Board to operate with three members without the need for an election, and would allow the Board and the community to continue its focus on ensuring the needs of its residents are met.

Student Population: 15

City Type: Rural

Public Hearing Date: 3/16/2023

Public Hearing Advertised: Local newspaper (Monterey Herald), emailed to each District family, posted around the community and on District website.

Local Board Approval Date: 3/16/2023

Community Council Reviewed By: School Site Council

Community Council Reviewed Date: 3/15/2023

Community Council Objection: No

Audit Penalty Yes or No: No

Categorical Program Monitoring: No

Submitted by: Dr. Debbie Gold

Position: Superintendent/Principal

E-mail: debbie.gold@bigsurunified.org

Telephone: 805-927-4507

# Attachment 3: *Education Code* SectionsRequested for Waiver

## *EC* Section 5020

*Waive entire section*

## *EC* Section 5091(a)(1) to (c)(1)

(a) (1) If a vacancy occurs, or if 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 the member’s resignation for more than 60 days after the member files the resignation with the county superintendent of schools.

(2) 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 11/2 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 less than 2,000 registered voters, 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.

## Notes

The words, *within 60 days of the vacancy or the filing of the deferred resignation*, in paragraph (a) (1) contain strikethrough.

The words, *within the prescribed 60-day period as required by this section*, in paragraph (2) contain strikethrough.

The words, *within the 60-day period*, in paragraph (c) (1) contain strikethrough.

1. Pursuant to *EC* Section 5020, the proposal to reduce the size of the governing board must be presented to the district’s electorate no later than the “next succeeding election” for board members. [↑](#footnote-ref-1)
2. Although the Monterey County Committee already has approved the reduction in board size, it will not be effective until the SBE approves the waiver to remove the election requirement or (if the SBE does not approve the waiver request) until the reduction is approved by voters at an election. [↑](#footnote-ref-2)