

California Department of Education

Executive Office

SBE-005 (REV. 1/2018)

General Waiver

# California State Board of Education January 2022 AgendaItem #W-09

## Subject

Request by **Big Sur Unified School District** to waive portions of California *Education Code* Section 35780, which require lapsation of a district with an average daily attendance of less than 11 in ninth through twelfth grades.

## Waiver Number

3-9-2021

## Type of Action

Action, Consent

## Summary of the Issue(s)

*Education Code* (*EC*) Section 35780(a) requires a county committee on school district organization (County Committee) to lapse a school district when the kindergarten through eighth grade average daily attendance (ADA) falls below six, or the ninth through twelfth grade ADA in that district falls below 11. The Big Sur Unified School District (USD) has not met the ninth through twelfth grade ADA requirement since the 2006–07 school year.

The Big Sur USD is requesting that the California State Board of Education (SBE) approve a permanent waiver of the lapsation requirement in *EC* Section 35780. The Monterey County Superintendent of Schools (County Superintendent) supports the waiver request.

## Authority for Waiver

*EC* Section 33050

## Recommendation

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

The Big Sur USD (under the provisions of *EC* Section 33051[b]) requests that the SBE approve a permanent waiver of the lapsation requirements in *EC* Section 35780(a). The California Department of Education (CDE) recommends that the SBE approve waiver of the lapsation requirements for the Big Sur USD with the following condition:

* The period of request for the waiver is 15 months (April 1, 2022, to July 1, 2023), which will allow the Big Sur USD to avoid lapsation for the 2022–23 and 2023–24 school years.

Under this condition, the request for a permanent waiver would not be approved. If the Big Sur USD anticipates that it will not meet the *EC* Section 35780(a) ADA levels required to avoid lapsation for the 2024–25 school year, it may submit a new waiver request to the SBE at that time.

## Summary of Key Issues

*EC* Section 35780 establishes the conditions necessary for a County Committee to initiate lapsation proceedings for a school district. Subdivision (a) of this section requires lapsation of a school district when the ADA of students in “the school or schools maintained by the school district is less than six in grades 1 through 8 or is less than 11 in grades 9 through 12.” The County Committee is required to annex a lapsed district to one or more adjoining school districts.

Ninth through twelfth grade enrollment in the district has not exceeded five students for the past six years. The following table depicts enrollment over these six years (Source: *California Longitudinal Pupil Achievement Data System*).

*Big Sur USD Historical High School Enrollment*

| **Year** | **9th Grade** | **10th Grade** | **11th Grade** | **12th Grade** |
| --- | --- | --- | --- | --- |
| 2015–16 | 0 | 1 | 0 | 3 |
| 2016–17 | 2 | 0 | 1 | 0 |
| 2017–18 | 2 | 2 | 0 | 1 |
| 2018–19 | 0 | 2 | 3 | 0 |
| 2019–20 | 0 | 0 | 3 | 2 |
| 2020–21 | 0 | 0 | 0 | 1 |

The district reports four high school students in the current year (2021–22); three ninth graders and one tenth grader.

The district authorized a charter school (kindergarten through twelfth grade) effective the 2008–09 school year. The ninth through twelfth grade enrollment at this charter school, when added to the Big Sur USD’s non-charter school enrollment, allowed the district to appear to meet the *EC* Section 35780 ADA requirement for some of the years since that time. However, *EC* Section 35780 requires ADA to be calculated using students in schools “maintained by the school district.” It is the CDE’s position that charter schools are not schools “maintained” by the district. The charter school’s enrollment cannot be counted when calculating the ADA for purposes of *EC* Section 35780, and only students enrolled in the Big Sur USD’s kindergarten through twelfth grade school (Pacific Valley School) used in the calculations. It is CDE’s opinion that the Big Sur USD has not met the *EC* Section 35780 ninth through twelfth grade ADA requirement since the 2006–07 school year.

The charter school stopped offering the ninth through twelfth grades in 2017–18, and district high school ADA has not met the *EC* Section 35780 requirements since that time.

The Big Sur USD has operated for the past three years (including 2021–22) under the *EC* Section 35780 “lapsation deferment” option for a unified school district that operates a high school, as authorized by the Monterey County Board of Education. However, the number of deferments under *EC* Section 35780 is limited to three—thus, the district now has exhausted that local deferment option.

The Big Sur USD is a rural district located between the Los Padres National Forest and the Pacific Ocean, with Highway 1 as the primary transportation option. The closest other school in the Carmel USD is 60 miles away. When Highway 1 is open, the drive to this school is approximately one hour. When Highway 1 is closed, and an alternate route must be used, the drive can take up to five hours each way. Highway 1 has been closed frequently over the past five years due to extreme weather conditions, rock slides, and wildfires.

The Big Sur USD states that travel back and forth to Carmel USD via Highway 1 also creates significant safety concerns since “that stretch of Highway 1 is particularly winding and narrow, and is especially treacherous during winter rainstorms and wind events.” The district further claims that lapsation would force students to endure long commutes on a daily basis.[[1]](#footnote-1)

The Monterey County Superintendent, remarking that the Big Sur USD is a well-functioning remote district, believes it important that the district remain open for its rural students. She stated strong support for the Big Sur USD waiver request, noting that:

* The Big Sur USD works intensely to provide its small population of students a comprehensive educational program.
* The school has been operating as a necessary small school[[2]](#footnote-2) for over 70 years and provides an essential service to the community.
* The district has successfully attracted and retained “qualified, effective, and passionate members of the community” to serve on the governing board.
* The Big Sur USD is over an hour away from the nearest school district (Carmel USD) when Highway 1 conditions are optimal. However, that highway frequently is closed for extended periods due to inclement weather, rock slides, and forest fires—alternative routes to Carmel USD increase travel time to five hours.

**Demographic Information:** The Big Sur USD has a student population of 17 and is located in a rural area in 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 numerous requests to waive *EC* Section 35780 lapsation requirements, most recently for the Coffee Creek Elementary School District in Trinity County at its March 2020 meeting. At its September 2018 meeting, the SBE approved a request from the Desert Center USD in Riverside County for a permanent waiver of *EC* Section 35780 lapsation requirements. Although the SBE has approved previous requests to waive the lapsation requirements, the Desert Center USD is the only SBE-approved permanent waiver.

## Fiscal Analysis (as appropriate)

There are no increases in statewide fiscal costs due to waiver approval.

## Attachment(s)

* **Attachment 1:** Summary Table (1 page)
* **Attachment 2:** Big Sur Unified School District General Waiver Request
3-9-2021 (3 pages). (Original waiver request is signed and on file in the Waiver Office.)

# Attachment 1: Summary Table

California *Education Code* Section 35780

| **Waiver Number** | **District** | **Period of Request** | **Bargaining Unit Representatives Consulted** | **Public Hearing and Board Dates** | **Advisory Committee Position** |
| --- | --- | --- | --- | --- | --- |
| 3-9-2021 | Big Sur Unified School District | **Requested**:April 1, 2022,toJuly 1, 2024**Recommended**:April 1, 2022,toJuly 1, 2023 | The district has no bargaining units.  | August 10, 2021 | School Site Council 8/7/2021**No objections** |

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# Attachment 2:Big Sur Unified School DistrictGeneral Waiver Request 3-9-2021

**California Department of Education
WAIVER SUBMISSION - General**

CD Code: 2775150

Waiver Number: 3-9-2021

Active Year: 2021

Date In: 9/18/2021 3:35:58 PM

Local Education Agency: Big Sur Unified

Address: 69325 Highway 1

Big Sur, CA 93920

Start: 4/1/2022

End: 7/1/2024

Waiver Renewal: N

Previous Waiver Number:

Previous SBE Approval Date:

Waiver Topic: School District Reorganization

Ed Code Title: Lapsation of a Small District

Ed Code Section: Section 35780

Ed Code Authority: Section 33050-33053

*Education Code* or *CCR* to Waive: 35780 (a) A school district that has been organized for more than three years shall be lapsed as provided in this article if the number of registered electors in the school district is less than six or if the average daily attendance of pupils in the school or schools maintained by the school district is less than six in kindergarten and grades 1 to 8[, inclusive, or is less than 11 in grades 9 to 12, inclusive.] The county board of education may defer the lapsation of the school district for one year upon adoption of a resolution approved by a majority of the members of the governing board of the school district and written concurrence of the county superintendent of schools. The county board of education shall make no more than three deferments for any school district.

(b) For a new district that has been unable to provide the school facilities necessary for instructional services by employees of the school district to all of the pupils who are residents of the school district after five years from the date that the reorganization became effective, the county committee on school district organization, upon direction from the state board, shall initiate lapsation procedures pursuant to Section 35783 or revert the reorganized district to its original status.

(c) A school district may also be lapsed when there are no school facilities or sites on which to maintain any school in the school district.

(d) A school district may also be lapsed upon adoption of a resolution approved by a majority of the members of the governing board of the school district and written concurrence of the county superintendent of schools.

Outcome Rationale: Big Sur Unified School District (“District”) is a small, rural school district serving students in K through twelfth grades at a single school—Pacific Valley School. The District has operated as a “necessary small school” for many years. The District desires to have the relevant portion of *Education Code* section 35780(a) waived in order to prevent the District’s 9-12 grades from lapsing. The District’s 9-12 Average Daily Attendance (“ADA”) is below 11; thus, these grade levels qualify for lapsation. Further, the Monterey County Board of Education has already approved its three allotted local deferments. The third deferment, approved by the County Board on March 17, 2021, will expire on June 30, 2022.

The District wishes to avoid lapsation so that it may continue to serve its 9-12 grade students locally and provide them with unique nature-focused educational opportunities that can only be available in a small rural community such as Big Sur. If the District’s 9th through 12th grades lapse, its 9-12 grade students will need to be bussed to the next-closest school district, which is Carmel Unified School District (“CUSD”). Unfortunately, Carmel High School is 60 miles away, and the primary route to CUSD is Highway 1, which is frequently closed for long periods, or is undergoing extensive maintenance due to landslides, fallen trees, wildfires, and other extreme weather events and natural phenomena. When Highway 1 is open, the drive to CUSD is approximately one hour; when Highway 1 is closed and an alternate route must be used, the drive can take up to 5 hours each way. Highway 1 has been closed an average of two weeks per month over the past five years due to extreme weather conditions and wildfires. Requiring the District’s high schoolers to travel back and forth to Carmel via Highway 1 also creates additional safety concerns as that stretch of Highway 1 is particularly winding and narrow, and is especially treacherous during winter rainstorms and wind events. In the event of an accident or vehicle breakdown, no cell service is available along much of the commute route. Thus, lapsation would force the District’s 9-12 grade students to endure long commutes to and from CUSD on a daily basis, which would detract from their educational experience, limit opportunities for after-school and extracurricular activities, and negatively impact their daily lives and those of their families. The District is especially concerned that, if high school students are required to travel such long distances to school, many will simply drop out of school and will not graduate.

The District asks for this waiver so that it can continue to educate all of its students locally. Both the District and the Monterey County Office of Education agree that avoiding lapsation yields the best outcome for the District’s 9-12 grade students and the District as a whole. Many of the District’s concerns are reflected in the County Superintendent’s letter of support, which we have submitted along with this application. Additionally, the District seeks a permanent waiver as it anticipates that its 9-12 grade ADA may remain below the lapsation threshold for the near future due to the ongoing COVID-19 pandemic. A permanent waiver will allow the District to serve all of its students locally for the foreseeable future and will provide Big Sur residents with certainty that their students may attend school within the District from kindergarten through twelfth grade.

Student Population: 17

City Type: Rural

Public Hearing Date: 8/10/2021

Public Hearing Advertised: Notice of the public hearing was published in the Monterey Herald newspaper and was posted at the District's school site and at 4 public places within the District.

Local Board Approval Date: 8/10/2021

Community Council Reviewed By: School Site Council

Community Council Reviewed Date: 8/7/2021

Community Council Objection: N

Community Council Objection Explanation:

Audit Penalty Yes or No: N

Categorical Program Monitoring: N

Submitted by: Dr. Debbie Gold

Position: Superintendent

E-mail: debbie.gold@bigsurunified.org

Telephone: 805-927-4507

Fax:

1. The CDE notes that the lapsation process applies only to closure of the district and not the schools in the district. If Big Sur USD is lapsed, schools in the district would be the property of the annexing district. That district then would decide whether to close the schools or continue to operate the schools. [↑](#footnote-ref-1)
2. A necessary small school is an elementary school with an ADA of less than 97 pupils, excluding pupils attending the 7th and 8th grades of a junior high school, maintained by a school district to which any of certain conditions apply, including specified distance requirements (*EC* Section 42283). [↑](#footnote-ref-2)