

California Department of Education

Executive Office

SBE-005 (REV. 1/2018)

General Waiver

# California State Board of Education May 2023 Agenda Item #W-06

## Subject

Request by the **Hughes-Elizabeth Lakes Union Elementary School District** to waive portions of California *Education Code* Section 5091, which requires the board of trustees to make an appointment to fill a vacant board position within 60 days of the position becoming vacant.

## Waiver Number

5-2-2023

## Type of Action

Action, Consent

## Summary of the Issue(s)

California *Education Code* (*EC*) Section 5091 requires a governing board to make a provisional appointment or order an election to fill a vacancy on the board within 60 days of the vacancy. *EC* Section 5091 further requires the county superintendent of schools (county superintendent) to order an election to fill the vacancy if the board does not take action within the 60 days. California State Board of Education (SBE) approval of this waiver request would retroactively remove the 60-day time limit and provide the additional time necessary to make a provisional appointment to fill a governing board vacancy.

## Authority for Waiver

*EC* Section 33050

## Recommendation

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

## Summary of Key Issues

*EC* Section 5091 provides that a school district governing board make a provisional appointment or order an election to fill a vacancy on the board within 60 days of a vacancy. *EC* Section 5091 further provides that, if the governing board fails to take such action, the county superintendent must order an election to fill the vacancy.

The Hughes-Elizabeth Lakes Union Elementary School District (ESD) is a small school district (170 students) with a five-member board. The district uses a trustee area election system rather than an at-large system, which complicates recruitment by requiring the district to identify at least one candidate within each trustee area. This trustee area system was implemented in 2022, due to concerns over liability under the California Voting Rights Act. However, with a voting population of roughly 2,600 people district-wide, each trustee area has less than 700 eligible voters from whom the district can recruit potential trustees. Even prior to the change from at-large voting, the district struggled to maintain a full five-member board. When the new system was implemented for the November 2022 election, no candidates were found for two seats, representing Trustee areas 1 and 2. Area 2 was previously held by a long-time board member who is now ineligible due to the new trustee areas, and Area 1 was held by a short-term appointee selected to fill a previous vacancy, who chose not to extend her service.

The district has been attempting to fill the open seats since it became apparent that no candidates intended to declare for the November 2022 election from these trustee areas. Recruitment avenues include the school district’s website and newsletter to parents. The district remains active in its search and additional time is needed to continue to advertise, review, and approve an appointee.  
  
As noted previously, a county superintendent must order an election to fill the vacancy if the district governing board does not act within 60 days of the vacancy. Thus, approval of this waiver also would affect a statutory responsibility of the Los Angeles County Superintendent. Because of this effect, the California Department of Education (CDE) requested that the Los Angeles 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.

Given the lack of local opposition to the waiver request, and the CDE determination that none of the reasons for denial in *EC* Section 33051(a) exist, the CDE recommends that the SBE approve the Hughes-Elizabeth Lakes Union ESD request to waive portions of *EC* Section 5091, which require a governing board to fill a vacancy on the board within 60 days of the vacancy.

**Demographic Information:** The Hughes-Elizabeth Lakes Union ESD has a student population of 170, served by a single TK-8 school, and is located in the unincorporated area of Lake Hughes, located in Los Angeles 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 January 2023 SBE meeting for Columbia ESD (Shasta County).

## Fiscal Analysis (as appropriate)

Approval of the waiver request will not have fiscal effects on any local or state agency. Disapproval of the request may result in additional costs if an appointment or election to fill the vacancy beyond 60 days is successfully challenged.

## Attachment(s)

* **Attachment 1:** Summary Table (1 page)
* **Attachment 2:** Hughes-Elizabeth Lakes Union Elementary School District General Waiver Request 5-2-2023 (2 pages). (Original waiver request is signed and on-file in the Waiver Office.)

# 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** |
| --- | --- | --- | --- | --- | --- |
| 5-2-2023 | Hughes-Elizabeth Lakes Union Elementary School District | **Requested:**  February 8, 2023, to October 30, 2023  **Recommended:** February 8, 2023, to October 30, 2023 | Lakes Teachers Association, Kari Christensen, President 11/14/2022  **Support** | February 7, 2023 | Parent Teacher Association 11/15/2022  **No objections** |

Created by California Department of Education  
March 2023

# Attachment 2 Hughes-Elizabeth Lakes Union Elementary School District General Waiver Request 5-2-2023

**California Department of Education**

**WAIVER SUBMISSION - General**

CD Code: 1964626

Waiver Number: 5-2-2023

Active Year: 2023

Date In: 2/14/2023 3:18:31 PM

Local Education Agency: Hughes-Elizabeth Lakes Union Elementary

Address: 16633 Elizabeth Lake Rd.

Lake Hughes, CA 93532

Start: 2/8/2023

End: 10/30/2023

Waiver Renewal: No

Waiver Topic: School District Reorganization

Ed Code Title: 60 day Requirement to Fill Board Vacancy

Ed Code Section: Portions of 5091

Ed Code Authority: 33050-33053

*Education Code* or *CCR* to Waive: Please see Attachment A, attached hereto and incorporated herein by reference.

Outcome Rationale: Hughes-Elizabeth Lakes Union Elementary School District is a small, rural district with fewer than 170 students enrolled. With our trustee area election system, there is at least one trustee area for which no qualified candidates applied. The district is attempting to fill the open seats – and has been for months ever since no candidates declared for the November 2022 election from these areas. The district remains active in its search and additional time is needed to continue to advertise, review, and approve an appointee.

Student Population: 170

City Type: Rural

Public Hearing Date: 2/7/2023

Public Hearing Advertised: Newspaper, Internet, and District Office

Local Board Approval Date: 2/7/2023

Community Council Reviewed By: Parent Teacher Association, Lakes Teachers Association

Community Council Reviewed Date: 11/15/2022

Community Council Objection: No

Community Council Objection Explanation:

Audit Penalty Yes or No: No

Categorical Program Monitoring: No

Submitted by: Ms. Susan Denton

Position: Superintendent-Principal

E-mail: [sdenton@heluesd.org](mailto:sdenton@heluesd.org)

Telephone: 661-724-1231

Fax: 661-724-1485

Bargaining Unit Date: 11/14/2022  
Name: Lakes Teachers Association  
Representative: Kari Christensen  
Title: President  
Phone: 6617241231  
Position: Support