

California Department of Education

Executive Office

SBE-005 (REV. 11/2017)

General Waiver

# California State Board of Education May 2018 AgendaItem #W-06

## Subject

Request by **Happy Camp Union Elementary School District** to waive portions of California *Education Code* Section 5091, which will allow the board of trustees to make a provisional appointment to a vacant board position past the 60-day statutory deadline.

## Waiver Number

12-3-2018

## 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. State Board of Education (SBE) approval of this waiver request removes the 60-day time limit and provides the Happy Camp Union Elementary School District (UESD) additional time to make appointments.

## 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. Approval of this waiver request would remove the 60-day time limit, allowing the Happy Camp UESD additional time to make a provisional appointment.[[1]](#footnote-1)

A Happy Camp UESD governing board member resigned on September 23, 2017. District staff have actively recruited for the position, but did not receive any qualified applicants within the 60-day timeline.

The Siskiyou County Superintendent is aware of the difficulties that school districts in small rural communities have recruiting and retaining school board members. He supports the efforts of the district to continue recruitment of qualified candidates.

The California Department of Education (CDE) also notes that calling an election when no qualified candidates currently have expressed interest in being appointed to the board is not the best option at this time.

Given the above circumstances, the lack of local opposition to the waiver request, and the CDE’s determination that none of the reasons for denial in *EC* Section 33051(a) exist, the CDE recommends that the SBE approve the request by the Happy Camp UESD to waive portions of *EC* Section 5091, which require a governing board to take action to fill a vacancy on the board within 60 days.

**Demographic Information:** The Happy Camp UESD has a student population of 108 and is located in a rural area of Siskiyou 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 approvals were at the March 2018 SBE meeting for the Central UESD (Kings County), the Mountain UESD (Shasta County), and the Shasta UESD (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 election costs for the Happy Camp UESD.

## Attachment(s)

* **Attachment 1**: Summary Table (1 page).
* **Attachment 2**: Happy Camp Union Elementary School District General Waiver Request 12-3-2018 (3 pages). (Original waiver request is signed and on file in the Waiver Office.)

# Attachment 1: Summary Table

California *Education Code* Section 5091

| **Waiver Number** | **District** | **Period of Request** | **Bargaining Unit Representatives Consulted** | **Public Hearing and Board Date** | **Advisory Committee Position** |
| --- | --- | --- | --- | --- | --- |
| 12-3-2018 | Happy Camp Union Elementary School District | **Requested:** November 22, 2017, to July 30, 2018**Recommended:** November 22, 2017, to July 30, 2018 | California Teachers Association,Robert BleyPresident3/6/2018**Support**California School Employees Association,Kerri KingPresident2/22/2018**Support** | 3/8/2018 | Happy Camp Elementary School Site Council2/27/2018**No objections** |

Created by California Department of Education
March 2018

# Attachment 2: Happy Camp Union Elementary School District Waiver Request 12-3-2018

**California Department of Education**

**WAIVER SUBMISSION - General**

CD Code: 4770334

Waiver Number: 12-3-2018

Active Year: 2018

Date In: 3/9/2018 2:58:27 PM

Local Education Agency: Happy Camp Union Elementary School

Address: 114 Park Way

Happy Camp, CA 96039

Start: 11/22/2017

End: 7/30/2018

Waiver Renewal: No

Waiver Topic: School District Reorganization

Ed Code Title: 60 day Requirement to Fill Board Vacancy

Ed Code Section: 5091-92

Ed Code Authority: 33051

*Education Code* or *CCR* to Waive: Portions of California *Education Code* Section 5091 Recommended for Waiver.

5091.(a)(1) 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 for more than 60 days after he or she files the resignation withe 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 1 1/2 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 district with less than 2,000 registered voters, a petition shall be deemed to bear a sufficient number of signatures is 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.

Portions recommended for waiver are bracketed.

Outcome Rationale: Happy Camp Union Elementary School District Board Member resigned from the Board of Trustees on September 23rd, 2017. The Board voted to appoint a new member at the October 2nd, 2017 meeting. The Happy Camp Union Elementary School District staff have actively recruited for the position. We posted the vacancy in four places within the District. Unfortunately, the district had not received any valid applicants within the 60 day deadline. The District is requesting more time to continue the search and appoint a new interest Board Member.

Student Population: 108

City Type: Rural

Public Hearing Date: 3/8/2018

Public Hearing Advertised: The Notice of the Public Hearing was posted at the local Post Office, Happy Camp Elementary School as well as the two local grocery stores.

Local Board Approval Date: 3/8/2018

Community Council Reviewed By: Happy Camp Elementary School Site Council

Community Council Reviewed Date: 2/27/2018

Community Council Objection: No

Community Council Objection Explanation: N/a

Audit Penalty Yes or No: No

Categorical Program Monitoring: No

Submitted by: Mr. Kevin Triance

Position: Superintendent

E-mail: ktriance@happycamp.k12.ca.us

Telephone: 530-493-2267 x300

Fax: 530-493-2734

Bargaining Unit Date: 02/22/2018

Name: California School Employee's Association

Representative: Kerri King

Title: President

Position: Support

Bargaining Unit Date: 03/06/2018

Name: California Teacher's Association

Representative: Robert Bley

Title: President

Position: Support

1. The end date of the Happy Camp UESD governing board’s waiver request is July 30, 2018. There is no reason for the waiver to extend beyond that date since the next regularly scheduled election of the governing board will be in November 2018—*EC* Section 5093(a) prohibits the governing board from making an appointment within the four-month period prior to that election date. [↑](#footnote-ref-1)