

California Department of Education

Executive Office

SBE-005 (REV. 1/2018)

General Waiver

# California State Board of Education September 2018 AgendaItem #W-17

## Subject

Request by **Desert Center Unified School District** to waive California *Education Code* Section 35780(a), which requires lapsation of a district with an average daily attendance of less than 11 in ninth through twelfth grades.

## Waiver Number

10-6-2018

## 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 ninth through twelfth grade average daily attendance (ADA) in schools maintained by that district falls below 11. No high school students have been educated in any school maintained by the Desert Center Unified School District (USD) for at least 30 years. The district has requested previous waivers of *EC* Section 35780(a) and now is requesting a permanent waiver of the lapsation requirement in that statute. The Riverside County Superintendent of Schools (County Superintendent) supports the waiver request.

## Authority for Waiver

*EC* Section 33050

## Recommendation

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

The recommendation of the California Department of Education (CDE) is for a permanent waiver under subdivision (b) of *EC* Section 33051. This subdivision also states that the waiver will be permanent as long as “information contained on the request remains current.” If enrollment conditions change (i.e., the district experiences sufficient enrollment growth for high school ADA to exceed the minimum level established in *EC* Section 35780[a]), the SBE may consider rescinding the waiver.

## 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.

### Background

In the early 1980s, after the Kaiser Mine (the largest employer in the Desert Center USD) closed, the resident population (and student enrollment) of the district plummeted. In the fall of 1983, the district began transporting its few remaining high school students to the adjacent Palo Verde USD to attend high school in that district under a Memorandum of Understanding (MOU) between the districts. As noted above, *EC* Section 35780 requires a school district to be lapsed if the ADA of students in the schools maintained by the district is less than 11 in grades 9 through 12. Since the Desert Center USD does not educate any high school students in schools it maintains, it is subject to lapsation.

Although the conditions for lapsation of the Desert Center USD have existed for over 30 years, it was not until the 2015–16 school year that the Riverside County Office of Education and the district became aware that the *EC* Section 35780(a) lapsation conditions apply. The Desert Center USD subsequently requested that the SBE approve a permanent waiver to avoid lapsation (and thus to continue the practice of the unified district serving only kindergarten through eighth grade students and sending high school students to an adjacent district). The SBE, at its May 2016 meeting, did not approve the permanent waiver but did approve a waiver allowing the Desert Center USD to avoid lapsation for the 2016–17 and the 2017–18 school years, with the condition that the district work with the County Superintendent to find a permanent district reorganization resolution to the issue.

In early 2018, the Desert Center USD, along with County Superintendent, believed a permanent local solution, which would reorganize the Desert Center USD into a component elementary school district of an adjacent unified school district, had preliminary approval—but both the district and the county believed that more time would be needed to review and take action on this solution. As a result, the district requested waiver of *EC* Section 35780(a) for an additional year (the 2018–19 school year). The SBE approved this request at its March 2018 meeting.

Although an independent study commissioned by the County Superintendent determined that the most viable local option for the Desert Center USD was to become a component elementary district of an adjacent unified school district, both unified districts under consideration ultimately decided they did not want to accept permanent responsibility for Desert Center USD’s secondary students. As a result, the district was left with three options:

* Continue requesting that the SBE waive *EC* Section 35780(a);
* Pursue reorganization as a “stand-alone” elementary school district under provisions of *EC* Section 48031[[1]](#footnote-1); or
* Allow the district to lapse if it is unable to reorganize or obtain SBE approval for additional waivers.

The Desert Center USD waiver requests note that lapsation of the district could create considerable hardships for elementary students and their parents if the lapsation resulted in closure of the district elementary school because:

* The district’s elementary school has been an important part of the Desert Center community for many years.
* As an excess tax district, the Desert Center USD is financially well-situated to operate the small elementary school.
* The nearest adjacent school district is approximately 50 miles from Desert Center. Elementary students would be on a bus to and from school for up to four hours each day.
* If students attend a school in another district, many parents will be limited in their ability to participate in their children’s educational program due to financial hardship and travel issues.

Because of these hardships on students and parents, the Desert Center USD further states that, even if the district is lapsed, the district’s elementary school likely would need to remain open.

For the above stated reasons, the Desert Center USD is requesting that the SBE approve the request for permanent waiver of *EC* Section 35780(a), and allow the district to operate as it has for 35 years—a unified school district that does not provide a secondary education program.[[2]](#footnote-2) The County Superintendent supports the district’s request.

### Findings and Recommendation

The waiver request has been reviewed by the CDE and it has been determined that there was no public opposition to the waiver at the public hearing held by the governing board of the district.

The CDE further notes that the study commissioned by the County Superintendent identified a number of financial concerns with lapsation of the Desert Center USD:

* *The district into which Desert Center USD is annexed would face financial hardship operating the current Desert Center USD elementary school site.* As an excess tax district, the Desert Center USD received about $1.4 million in funding for both the 2015–16 and the 2016–17 school years,[[3]](#footnote-3) which allowed the district to provide a “rich educational environment” for the students in its single school. If the district lapsed, the excess tax status would not apply to the receiving district and that district would receive only $150,000 in Necessary Small School funding to operate the remote school. The study notes that that level of funding “would barely cover the cost of teachers let alone custodial, maintenance, and transportation services.”
* *Transportation costs for the receiving district would increase.* It currently costs $53,000 annually to transport the two high school students from Desert Center USD to the Palo Verde USD. The two districts share those transportation costs under the MOU. The receiving district would incur all transportation costs if the Desert Center USD is lapsed.
* *Closure of the Desert Center USD school site would result in a significant increase in transportation costs and likely would cause significant problems for the area’s economy*. The receiving district could close the current Desert Center USD school site, but such closure would significantly increase the receiving district’s transportation costs. Also, the lack of a school in the area could increase difficulties for local employers to attract and maintain workers.

The county study also notes that the Desert Center-area economy is likely to expand in the next few years. Construction of a new hydroelectric regeneration plant likely will begin next year bringing up to 700 temporary construction-related jobs over the projected five-year construction period and 135 permanent jobs post-construction. Additionally, the local agriculture economy is projected to increase with a startup for aquaponics and expansion of local fish and asparagus farming. New jobs from this projected economic expansion likely will result in future student enrollment increases.

Given these findings, the CDE believes that a permanent waiver to allow the Desert Center USD to operate with fewer than 11 high school students is the best available option. The permanent waiver also will allow the district to reopen a local high school if improvement in local economic conditions results in increases to the high school student population.

In response to the Desert Center USD’s previous request for permanent waiver of the lapsation conditions, the CDE had recommended that the SBE could consider issues specified in *EC* Section 33051 to justify denial.[[4]](#footnote-4) Although those issues still exist, the CDE finds that the permanent waiver is the best option for the district to address its circumstances. For these reasons, the CDE recommends the SBE approve the request by the Desert Center USD for permanent waiver of *EC* Section 35780(a), which requires lapsation of a district with an average daily attendance of less than 11 in ninth through twelfth grades, subject to the condition that the Desert Center USD notify the SBE if future high school ADA exceeds the minimum level established in *EC* section 35780(a).

**Demographic Information:** The Desert Center USD has a student population of 24 and is located in a rural area in Riverside 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, at its May 2016 meeting, approved a request from the Desert Center USD to allow the district to avoid lapsation for the 2016–17 and the 2017–18 school years with the condition that the district work with the County Superintendent to find a permanent district reorganization resolution. Although the SBE also has approved requests from other school districts to waive *EC* Section 35780(a), it has not approved a request for permanent waiver of the lapsation requirement.

## Fiscal Analysis (as appropriate)

There are no increases in statewide fiscal costs due to waiver approval. However, the CDE does note that denial of this waiver would force lapsation of the Desert Center USD (currently an excess tax district). Lapsation would result in current Desert Center USD local property tax revenues going to the district annexing the territory of the lapsed district, which likely would reduce the amount of state aid provided.

## Attachment(s)

* **Attachment 1:** Summary Table (1 page)
* **Attachment 2:** Desert Center Unified School District General Waiver Request 10-6-2018 (8 pages). (Original waiver request is signed and on file in the Waiver Office.)

# Attachment 1: Summary Table

California *Education Code* Section 35780(a)

| **Waiver Number** | **District** | **Period of Request** | **Bargaining Unit Representatives Consulted** | **Public Hearing and Board Dates** | **Advisory Committee Position** |
| --- | --- | --- | --- | --- | --- |
| 10-6-2018 | Desert Center Unified School District | **Requested**:April 1, 2019,toJuly 1, 2021**Recommended**:April 1, 2019,toJuly 1, 2021 | The district has no bargaining unit for teachers.California School Employees Association,Tammie CastorUnion RepresentativeMay 3, 2018**Support** | May 15, 2018 | School Site Council May 7, 2018**No objections** |

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# Attachment 2: Desert Center Unified School District General Waiver Request 10-6-2018

## California Department of EducationWAIVER SUBMISSION - General

CD Code: 3367041

Waiver Number: 10-6-2018

Active Year: 2018

Date In: 6/18/2018 12:05:53 PM

Local Education Agency: Desert Center Unified School District

Address: 1434 Kaiser Rd.

Desert Center, CA 92239

Start: 4/1/2019

End: 7/1/2021

Waiver Renewal: Yes

Previous Waiver Number: 6-1-2018-W-11

Previous SBE Approval Date: 3/15/2018

Waiver Topic: School District Reorganization

Ed Code Title: Lapsation of a Small District

Ed Code Section: 35780(a)

Ed Code Authority: 33050

*Education Code* or *CCR* to Waive: Any 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 district is less than six or if the average daily attendance of pupils in the school or schools maintained by the district is less than six in grades 1 through 8 [or is less than 11 in grades 9 through 12, except that for any unified district which has established and continues to operate at least one senior high school, the board of supervisors shall defer the lapsation of the district for one year upon a written request of the governing board of the district and written concurrence of the county committee. The board of supervisors shall make no more than three deferments.]

Outcome Rationale: See attached

Student Population: 24

City Type: Rural

Public Hearing Date: 5/15/2018

Public Hearing Advertised: Displayed on website, posted in the following community areas: library, post office and community recreation center as well as the school

Local Board Approval Date: 5/15/2018

Community Council Reviewed By: School Site Council

Community Council Reviewed Date: 5/7/2018

Community Council Objection: No

Community Council Objection Explanation:

Audit Penalty Yes or No: No

Categorical Program Monitoring: No

Submitted by: Ms. Susan Scott

Position: Superintendent

E-mail: suescott@eaglemtnschool.com

Telephone: 760-413-2646

Bargaining Unit Date: 05/03/2018

Name: CSEA

Representative: Tammie Castor

Title: Union Representative

Position: Support

## Outcome Rationale Attachment

### School District Background and Geography

The Desert Center Unified School District encompasses 1,722 square miles, with a large portion of it presently uninhabited desert land. Practically all of the population is centered in the small communities of Desert Center located 49 miles east of Indio on U.S. Interstate 10, Eagle Mountain, located 12 miles north of Desert Center; and Lake Tamarisk, 2 miles north of Desert Center.

Eagle Mountain High School opened its doors for the first time in September, 1962 as part of the Coachella Valley Unified School District but finally merged with the Desert Center Elementary School District in 1965 to become the Desert Center Unified School District. Due to the closure of Kaiser Mine in the fall of 1983 the Eagle Mountain High School became the Eagle Mountain School which houses kindergarten to eighth grade.

Since the conversion of the high school to an elementary school, Desert Center USD has transported their high school students to Palo Verde Unified School District. All DCUSD high school (grades 9 through twelve) students are on an inter district transfer to the Pale Verde Unified School District.

The Desert Center Unified School District is currently the largest employer in the community.

### Students Being Served

The Desert Center USD primarily serves students of Lake Tamarisk, municipal water treatment plant families, CALTRANS, and solar energy plant families. The Eaglecrest Energy Project that is developing in this community is anticipated to add an additional 22 jobs and housing is being provided to the employee families in the Eagle Mountain community. In addition, two solar farms will be constructed in the community as well as the potential of the mine being reopened by some private investors.

For the 17 -18 school year, Eagle Mountain School had twenty four students in grades kindergarten through eight. For the past five years, enrollment has fluctuated between fourteen to twenty five students. 67% of the students qualify for Free and Reduced Meal Program. The student population is a mixture of Caucasian and Hispanic. Two of the students in attendance are fifth generation descendants of the founder of the town of Desert Center.

### Staffing and Support

Staffing for the school is minimal and efficient. There are two highly qualified teachers, one instructional aide, one instructional aide/lunch program coordinator, one fulltime Bus Driver/Maintenance, one part time custodian and one Superintendent/Principal. Parents are active as classroom volunteers as well as field trip chaperones.

The School Site Council is active. The District has a five member Board of Trustees. Board membership has historically been very stable, unlike many districts of similar size. There has been little difficulty attracting members of the community to serve on the board.

### Community

The school is essential to the fabric of the community and fills many needs for its residents, from a social gathering place for community events, to an essential educational resource to its students and the greater community. The Lake Tamarisk community is reciprocal in letting the school district use their club house for student performances.

The parents of the students work locally in the community. The parents are employed by the Solar Energy plant, by CALTRANS, by the school district, by the two municipal water pumping plants and the new Eaglecrest Energy project. The location of the school is very accessible for parents who want to be directly involved in their student’s education.

During the recession, the School Board and staff were committed and took the necessary measures to ensure that the school could remain open. Under the new Local Control Funding Formula the district has ample funds to continue to operate and not require the state to supply additional funding or become a “Necessary Small School”. Our community desires to keep Eagle Mountain School open.

### Contiguous School Districts and Schools

There are four contiguous school districts – Coachella Valley Unified School District, Palo Verde Unified School District, Desert Sands Unified School District and Needles Unified School District which is located in San Bernardino County. Coachella Valley USD is approximately 50 miles from Desert Center as is Palo Verde USD. Needles USD has a school in Big River which is approximately 95 miles away.

It would be most reasonable for Desert Center USD to merge with Palo Verde USD in the event of lapsation. While Coachella and Palo Verde are equidistant from Desert Center, the drive on Interstate 10 to Coachella Valley is far more difficult due to the long slow grade which is heavily travelled by semi-trucks.

The students would be on a bus to Palo Verde for four hours each day. Parents of transitional kindergarten and kindergarten students do not desire to enroll their students in Palo Verde because of the long commute and the danger that exists with the excessive amount of traffic on Interstate 10 as it is a major thorough fare for interstate travel. In addition due to the unpredictable weather in the desert, travelling the Interstate can be treacherous as the community had a recent bridge collapse on Interstate 10 near Desert Center.

Needles USD is opening a new school in 15-16 located in Big River which is 95 miles away from Desert Center. This school District is also located in another county. Providing transportation to this school would involve a four hour commute daily as well as subjecting our students to inclement weather and potential flash floods that would close the existing highway to this school.

### Challenges in Transportation

Desert Center USD provides bus transportation for 100% of the enrolled students. It is a hardship for many parents to provide transportation from home to school. Our bus driver lives in Desert Center and has been driving our local roads during times of flash floods for over 13 years. In addition to providing the transportation to the elementary school, the District provides the transportation of the high school students to Palo Verde High School in Blythe.

 At this time, Palo Verde USD is considering discontinuing their home to school transportation for general education students. The majority of our families could not afford the daily drive to town to transport their children to another school. Some of the families struggle to keep a vehicle running just to get to town for groceries. In addition to the added financial burden of fuel costs for these families, it would be very difficult to make the two hour commute in the morning and the afternoon and continue working at their fulltime job. The hardship of the daily commute would make a quality education difficult if not impossible.

### Financial Considerations

If Desert Center USD is lapsed, it is likely to be reorganized into one of the contiguous districts. Because of the distance students would be required to travel to a neighboring district, due to the transportation costs and liability, the receiving district would most likely have to keep Eagle Mountain School open as a school site and would qualify as a Necessary Small School which would cost the state additional monies. The neighboring district would incur a financial loss due to the loss of transportation funding presently allocated to Eagle Mountain.

### Supportive Community

Parents and community members are grateful for the location and the quality of education that their children are receiving. The educational program and technology access has never been greater. The school’s current highly qualified teaching staff individualizes the education for each student through the structure of the daily math and language arts program. The school has a 1:1 ratio for technological devices, which the students use for daily curriculum and individual and group projects. These are qualities that attract and retain students.

If the students are bussed to a neighboring district, many of the parents will be limited in their ability to participate in their children’s educational program due to financial hardship and road conditions. Parents are concerned that if their children became ill or if there was an emergency, they would not be able to get to the neighboring district quickly or at all.

Eagle Mountain School has been an important part of the Desert Center community for many years. Community members and parents, as well as school personnel, are committed to upholding the tradition of providing accessible and quality education for the children in Desert Center.

### Local action

Desert Center USD applied for a waiver at the SBE meeting on May 12, 2016, which was approved with conditions. Desert Center was to work with the Riverside County Office of Education to find a permanent solution to the issue of lapsation. The Riverside County Office of Education (RCOE) consulted with Christy White Associates to conduct a School District Organization Study. The study reported three options for DCUSD:

**Option 1**: Reorganize DCUSD into a K-8 District

**Option 2**: Lapse DCUSD and Transfer the K -12 Territory to a Neighboring Unified School District

**Option 3**: DCUSD to Maintain Status Quo with SBE Approved Waiver Until Secondary Enrollment Increases to 11 Pupils

According to Christy White Associates opinion, Option 1 was the most feasible, Option 2 is feasible but not optimal and under Option 3 the outcome is risky.

**Option 1:** Under Option 1, DCUSD consulted with Palo Verde Unified School District and Coachella Valley Unified School District to discuss reorganization. DCUSD would reorganize to a K -8 elementary district and be a component district of either Palo Verde or Coachella Valley. After multiple meetings, neither district wanted to reorganize and take our high school students permanently. Both districts are willing to educate our students through a Memorandum of Understanding Inter District Agreement as we have done for the past 35 years.

Desert Center would still like to reorganize as an elementary district as we have been able to maintain a sufficient number of students in grades K -8 and would eliminate the need for a waiver. Our current enrollment is 24 in grades K -8. EC Section 48031 allows any high school student who does not reside in a high school district or in a unified school district to attend high school in any district within the county. So our two high school students could chose to attend Palo Verde or Coachella or any other district in Riverside County.

**Option 2:** Lapsation would transfer the entire territory of DCUSD to Palo Verde or Coachella Valley. The receiving district would need to keep Eagle Mountain School open but would only receive $150,000 for necessary small school and not be able to afford to operate this facility with so little funding. In addition high school students would need to be transported without any funding.

The receiving district might consider closure of the school. Closing the Eagle Mountain School would be a hardship to young children who then must ride the bus up to four hours per day. The employers in the area might also lose resident workers’ and their families, plus have difficulties recruiting new workers without a school for their children in the area. The community’s economy would likely collapse even further.

Based on the work performed in this study, lapsation is not recommended, as it appears it would have a negative fiscal impact on the receiving district, loss of community identity, and a potential negative impact on the educational program.

**Option 3:** This option requires DCUSD to apply for additional waivers in hopes that the enrollment of high school students exceeds 11. This is a risky option and Desert Center is looking for a permanent solution. There is potential for growth in the area as the hydroelectric plant is still in the works as well as two additional solar farms. Completion of these projects are three to six years out. In addition, there is the potential of the mine reopening at a smaller scale than the original mine.

If DCUSD is granted additional waivers to remain open with less than 11 high school students, Palo Verde, Coachella Valley and Desert Sands Unified School District have stated that they are willing to educate our high school students. Desert Sands has an Independent Study Program that requires students to complete their work online and report to the high school weekly. This results in a significant savings time of our high school students commuting back and forth to school. The parents of Desert Center requested that the District look into this option as they preferred the students bussing to school once a week. The other four school days of the week, the students will report to the computer lab at Eagle Mountain School and complete their schoolwork with the ability to communicate with their teachers on a daily basis virtually.

At the SBE meeting on March 15, 2018, a waiver was approved from 4/1/2018 to 3/30/2019. At that time, DCUSD was still working with Coachella Valley and Palo Verde to reorganize as a component district, In April 2018, both districts decided not to pursue the reorganization to receive the high school students. The Board of Trustees of Desert Center directed their Superintendent to pursue an additional waiver so that Eagle Mountain School could continue to operate as they have sufficient enrollment for an elementary district.

Desert Center is requesting the waiver to continue to provide an education for our elementary students. Academically, our elementary students are out performing the neighboring districts on state assessments. We have an agreement with Desert Sands Unified School District to provide our high school students an education that was requested by their parents. Keeping Eagle Mountain School open is best for our students, their families and our community.

1. The district also submitted a request for a waiver necessary to attain this option—however, that request is held in abeyance pending SBE action on the current waiver request. [↑](#footnote-ref-1)
2. The CDE is aware of only one other unified district in the state that does not offer a secondary education program—Sunol Glen USD in Alameda County. This district is authorized to operate in this manner under special legislation (Chapter 106, Statutes of 1987 [Senate Bill 1639]). [↑](#footnote-ref-2)
3. The study also notes that the Desert Center USD’s revenue, since it is dependent upon property taxes, is subject to variation depending on the economic climate. As recently as 2011–12, the district’s revenue was only about $400,000. [↑](#footnote-ref-3)
4. The CDE recommended, at the May 2016 SBE meeting, that the SBE deny the Desert Center USD’s previous request for permanent waiver of *EC* Section 35780. At that time, the CDE believed that a local reorganization resolution to the issues could be found. In its recommendation, the CDE noted that the SBE could choose to deny the waiver request under *EC* Section 33051(a)(5)—Guarantees of parental involvement are jeopardized, since parents were unable to participate in electing governing board members of the district providing the secondary education program for their students. [↑](#footnote-ref-4)