

California Department of Education

Executive Office

SBE-005 (REV. 1/2018)

General Waiver

# California State Board of Education May 2019 Agenda Item #W-05

## Subject

Request by **Santa Clara County Office of Education** to waive portions of California *Education Code* Section 5091, which will allow the board of trustees of the Mount Pleasant Elementary School District to make a provisional appointment to a vacant board position past the 60-day statutory deadline.

## Waiver Number

3-3-2019

## 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. The governing board of the Mount Pleasant Elementary School District (ESD) was unable to decide on an appointment to fill a vacancy on the board within 60 days of a vacancy. The Santa Clara County Office of Education (County Office), with the support of the Mount Pleasant ESD, requests that the California State Board of Education (SBE) waive the 60-day time limit (and, thus, the requirement that the Santa Clara County Superintendent order an election). Approval of this waiver request will provide the Mount Pleasant ESD governing board additional time to make an appointment to fill a vacancy created when one of its members resigned.

## 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 Mount Pleasant ESD additional time to make a provisional appointment.

A vacancy on the Mount Pleasant ESD governing board occurred on December 7, 2018. Multiple candidates for the vacancy were considered by the board, but no candidate was able to receive support from three of the four remaining board members—and the governing board was unable to fill the vacancy within the 60-day timeline. Under *EC* Section 5091, the County Superintendent must order an election to fill the vacancy at the next established election date (which is November 5, 2019, pursuant to *Elections Code* Section 1000). Timelines established by the Santa Clara County Registrar of Voters (County Registrar) require the County Superintendent to order this election by early-June 2019.

The County Registrar informed the County Superintendent that the November 5, 2019, election likely will have no other issues on the ballot—thus, it would be considered a “special” election by the County Registrar.[[1]](#footnote-1) Costs to the Mount Pleasant ESD for this special election would exceed $600,000. The governing board of the Mount Pleasant ESD assumed election costs would be approximately $180,000 when it first considered candidates to fill the vacancy. Even at that lower election cost, significant concerns regarding the cost of a potential election were raised by residents of the Mount Pleasant ESD and transmitted to the County Superintendent. These concerns further included a desire that the governing board of the Mount Pleasant ESD make an appointment rather than forcing an expensive election.

In an effort to avoid a substantial financial effect on district resources due to the special election costs, the Mount Pleasant ESD requested assistance from the County Office. In response, the County Superintendent requested, with the support of the Mount Pleasant ESD, that the Santa Clara County Board of Education (County Board) submit a request to the SBE to remove the requirement that she order an election (by waiving the 60-day timeline in *EC* Section 5091). The County Board unanimously approved submitting the waiver, establishing a period of request with an August 1, 2019, end date.[[2]](#footnote-2) If this waiver request is approved by the SBE, the Mount Pleasant ESD will have until that end date to take action to fill the vacancy on the board.

If the Mount Pleasant ESD governing board is unable to take action to fill the vacancy by the specified date, an election to fill the vacancy will be conducted on November 5, 2019, pursuant to the election order of the County Superintendent. SBE approval of the waiver request will not delay the potential election— November 5, 2019, is the earliest possible election date regardless of waiver approval.

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 County Office 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 Mount Pleasant ESD has a student population of 2,333 and is located in an urban area of Santa Clara 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** <https://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 (nine in the past two years). The most recent approval was at the September 2018 SBE meeting for a waiver request from the Igo, Ono, Platina Union ESD.

## 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 Mount Pleasant ESD.

## Attachment(s)

* **Attachment 1:** Summary Table (1 page)
* **Attachment 2:** Santa Clara County Office of Education General Waiver Request 3-3-2019 (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** |
| --- | --- | --- | --- | --- | --- |
| 3-3-2019 | Santa Clara County Office of Education | **Requested:**  February 12, 2019 to August 1, 2019  **Recommended:** February 1, 2019 to June 30, 2019 | Mount Pleasant Education Association,  Adam Montes, President  March 5, 2019  **Support**  California School Employees Association,  Sue Ambrosini, President  March 5, 2019  **Support**  California Teachers Association,  Lisa Vieler  Regional UniServ Staff  March 4, 2019  **Support**  Association of County Educators  Bobby Welch, Representative  March 4, 2019  **Support** | March 6, 2019 | Parent Teacher Association and School Site Council Presidents  March 5, 2019  **No objections** |

Created by California Department of Education  
March 2019

# Attachment 2: Santa Clara County Office of Education General Waiver Request 3-3-2019

**California Department of Education**

**WAIVER SUBMISSION - General**

CD Code: 4310439

Waiver Number: 3-3-2019

Active Year: 2019

Date In: 3/11/2019 1:55:41 PM

Local Education Agency: Santa Clara County Office of Education

Address: 1290 Ridder Park Dr.

San Jose, CA 95125

Start: 2/12/2019

End: 8/1/2019

Waiver Renewal: No

Waiver Topic: School District Reorganization

Ed Code Title: 60 day Requirement to Fill Board Vacancy

Ed Code Section: 5091

Ed Code Authority: 33050-33053

*Education Code* or *CCR* to Waive: (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 his or her resignation for more than 60 days after he or she 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.

Outcome Rationale: Mount Pleasant School Board unable to make provisional appointment, cost of election in November 2019 estimated to be approximately $603,000 due to stand-alone special election. Cost of election was unknown to district until after 60 day timeline; election costs are a concern to parents in the district as well as to the Mount Pleasant School District. Waiver would provide the district the opportunity to appoint and avoid high costs of November election.

Student Population: 2333

City Type: Urban

Public Hearing Date: 3/6/2019

Public Hearing Advertised: BoardDocs, public posting by County Office of Education

Local Board Approval Date: 3/6/2019

Community Council Reviewed By: PTA/SSC Presidents

Community Council Reviewed Date: 3/5/2019

Community Council Objection: No

Community Council Objection Explanation:

Audit Penalty Yes or No: No

Categorical Program Monitoring: No

Submitted by: Ms. Suzanne Carrig

Position: Director, Policy Development & Admin. Programs

E-mail: [suzanne\_carrig@sccoe.org](mailto:suzanne_carrig@sccoe.org)

Telephone: 408-453-6869

Bargaining Unit Date: 03/04/2019

Name: ACE (SCCOE)

Representative: Bobby Welch

Title: ACE Representative

Position: Support

Bargaining Unit Date: 03/05/2019

Name: CSEA

Representative: Sue Ambrosini

Title: President, CSEA

Position: Support

Bargaining Unit Date: 03/04/2019

Name: CTA (SCCOE)

Representative: Lisa Vieler

Title: CTA Regional UniServ Staff

Position: Support

Bargaining Unit Date: 03/05/2019

Name: Mount Pleasant Education Association (MPEA)/CTA

Representative: Adam Montes

Title: President, MPEA

Position: Support

1. Recent legislation (Statutes of 2015, chapter 235, operative January 1, 2018) prohibits a political subdivision (e.g., a school district) from holding regularly scheduled elections on non-statewide election dates (i.e., during odd-numbered years) if prior voter turnout on non-statewide election dates is significantly lower than on statewide election dates. As a result, most political subdivisions are consolidating their elections with state elections—significantly reducing the number of ballot issues for elections on non-statewide election dates. [↑](#footnote-ref-1)
2. The CDE recommends an end date of June 30, 2019. Pursuant to *Elections Code* Section 12112, the public notice period for an election begins 120 days prior to an election—this notice begins the process for potential candidates to file for the election. July 5, 2019, is 120 days prior to the November 5, 2019, election. Extending the process to fill a vacancy by appointment beyond July 5, 2019, potentially adds an unnecessary level of local confusion. Furthermore, the CDE does not believe that an action by the Mount Pleasant ESD to make an appointment during the week of the July Fourth holiday contributes toward public involvement in that appointment process. [↑](#footnote-ref-2)