

California Department of Education

Executive Office

SBE-005 (REV. 1/2018)

General Waiver

# California State Board of Education September 2019 AgendaItem #W-08

## Subject

Request by **two local educational agencies** 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

* Manchester Union Elementary School District 12-5-2019
* Pacheco Union Elementary School District 9-6-2019

## 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. California State Board of Education (SBE) approval of these waiver requests removes the 60-day time limit and provides additional time to the Manchester Union Elementary School District (UESD) and the Pacheco UESD to make a provisional appointment to a vacant governing board seat.

## 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 Manchester UESD and the Pacheco UESD additional time to make a provisional appointment to a vacant governing board seat.

A vacancy on the Manchester UESD governing board occurred on August 13, 2018, when no candidates filed for the November 2018 election to fill an open board seat. The governing board of the district appointed a new member on October 9, 2018—but it was later determined that the appointee was not properly registered to vote in the district. The potential appointee reregistered to vote but failed to attend the governing board meeting at which the board was scheduled to reappoint. By this time, the 60-day timeline in *EC* Section 5091 had expired.[[1]](#footnote-1)

The Pacheco UESD is a rural district with approximately one-third of its students residing outside its boundaries. The district has advertised the vacancy through the local newspaper, the district website, flyers sent home to students, and postings at schools and the district office. The district had no success in finding an applicant prior to expiration of the 60-day time limit.

The Manchester UESD and the Pacheco UESD request that the SBE approve their waiver requests, which will provide each district’s governing board additional time to make a provisional appointment and avoid the cost of a special election. The respective County Superintendents support the districts’ requests.

Given the above circumstances, the lack of local opposition to the waiver requests, 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 requests by the Manchester UESD and the Pacheco 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 Manchester UESD has a student population of 43 and is located in a rural area of Mendocino County.

The Pacheco UESD has a student population of 664 and is located in a rural area of Shasta 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 September 2018 SBE meeting for the Igo, Ono, Platina 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 additional election costs for the Manchester UESD and the Pacheco UESD.

## Attachment(s)

* **Attachment 1:** Summary Table (1 page)
* **Attachment 2:** Manchester Union Elementary School District General Waiver Request 12-5-2019 (2 pages). (Original waiver request is signed and on file in the Waiver Office.)
* **Attachment 3:** Pacheco Union Elementary School District General Waiver Request 9-6-2019 (2 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** |
| --- | --- | --- | --- | --- | --- |
| 12-5-2019 | Manchester Union Elementary School District | **Requested:** May 15, 2019, to November 6, 2019**Recommended:** August 13, 2018, to November 6, 2019 | Manchester Union Teachers Association,Avis AndersonPresident5/28/2019**Support**The district has no classified bargaining unit. | May 14, 2019 | School Site Council5/28/2019**No objections** |
| 9-6-2019 | Pacheco Union Elementary School District | **Requested:** March 12, 2019, to October 1, 2020**Recommended:** March 12, 2019, to October 1, 2020 | Pacheco District Teachers Association,Andrea FrisbieTeacher Representative5/30/2019**Support**California School Employees Association,Mary AndersRepresentative5/30/2019**Support**. | June 11, 2019 | District Site Council5/30/2019**No objections** |

Created by California Department of Education
June 2019

# Attachment 2: Manchester Union Elementary School DistrictGeneral Waiver Request 12-5-2019

**California Department of Education**

**WAIVER SUBMISSION - General**

CD Code: 2365573

Waiver Number: 12-5-2019

Active Year: 2019

Date In: 5/15/2019 5:07:32 PM

Local Education Agency: Manchester Union Elementary

Address: 19550 South Highway 1

Manchester, CA 95459

Start: 5/15/2019

End: 11/6/2019

Waiver Renewal: No

Previous Waiver Number:

Previous SBE Approval Date:

Waiver Topic: School District Reorganization

Ed Code Title: 60 day Requirement to Fill Board Vacancy

Ed Code Section: 5091

Ed Code Authority: 33050

*Education Code* or *CCR* to Waive: 5091(a)(1) If a vacancy occurs, or if a resignation has been filed with the county superintendent of schools containing a deferred date, the school district or community college 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.]

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 Manchester Union Elementary additional time to make a provisional appointment.

Outcome Rationale: A vacancy on the Manchester Union Elementary governing board occurred August 13, 2018 when no candidates filed for the open board seat. The district actively advertised and appointed a member to the full 4 year term on October 9, 2018, only to find out that the prospective member was not registered to vote under the correct name within the school district boundary. The prospective member re-registered to vote with the correct name and address and was on the agenda to be re-appointed but did not attend the board meeting. At this time, the 60 day timeline to appoint has passed for both the district and county superintendent. The cost of a special election is estimated at $5,000 which would be prohibitively expensive for a district with an ADA of 35. The next regular election is November 2020. A waiver of the 60 day time limit would allow the district to make a provisional appointment, as the governing board intended in October 2018, without incurring the cost of a special election.

Student Population: 43

City Type: Rural

Public Hearing Date: 5/14/2019

Public Hearing Advertised: Posted in three locations in the community.

Local Board Approval Date: 5/14/2019

Community Council Reviewed By: Manchester Union Elementary Board of Trustees

Community Council Reviewed Date: 5/14/2019

Community Council Objection: N

Community Council Objection Explanation: Audit Penalty Yes or No: No

Categorical Program Monitoring: No

Submitted by: Ms. Cynthia Gonzalez

Position: Superintendent/Principal

E-mail: mansupt@mcn.org

Telephone: 707-882-2374

Fax: 707-882-3106

Name: Manchester Union Teachers Association
Representative: Avis Anderson
Title: President

Position: Support

# Attachment 3: Pacheco Union Elementary School DistrictGeneral Waiver Request 9-6-2019

**California Department of Education**

**WAIVER SUBMISSION - General**

CD Code: 4570094

Waiver Number: 9-6-2019

Active Year: 2019

Date In: 6/24/2019 9:06:31 AM

Local Education Agency: Pacheco Union Elementary

Address: 7424 Pacheco School Rd.

Redding, CA 96002

Start: 3/12/2019

End: 10/1/2020

Waiver Renewal: No

Previous Waiver Number:

Previous SBE Approval Date:

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: 5091(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 to fill the vacancy.]

Outcome Rationale: Pacheco is a rural school district with 1/3 of our students reside outside of our district boundaries. The vacancy was advertised in the newspaper, on our district website, flyers sent home with students, and posted at each school and district office. It has been difficult to find an applicant that meets all requirements.

Student Population: 664

City Type: Rural

Public Hearing Date: 6/11/2019

Public Hearing Advertised: Posted on the district website, at school offices, and district office

Local Board Approval Date: 6/11/2019

Community Council Reviewed By: District Site Council

Community Council Reviewed Date: 5/30/2019

Community Council Objection: No

Community Council Objection Explanation:

Audit Penalty Yes or No: No

Categorical Program Monitoring: No

Submitted by: Ms. Pam Stricker

Position: Executive Assistant to the Superintendent

E-mail: pstricker@pacheco.k12.ca.us

Telephone: 530-224-4599

Fax: 530-224-4591

Bargaining Unit Date: 05/30/2019
Name: PDTA
Representative: Andrea Frisbie
Title: Teacher Representative
Position: Support
Comments:

1. According to the Manchester UESD superintendent, an application for the vacant board seat has been received as of the time this agenda item was prepared. [↑](#footnote-ref-1)