

California Department of Education

Executive Office

SBE-005 (REV. 1/2018)

General Waiver

# California State Board of Education March 2020 Agenda Item #W-05

## Subject

Request by **Potter Valley Community Unified 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

8-11-2019

## 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 this waiver request removes the 60-day time limit and provides additional time to the Potter Valley Community Unified School District (CUSD 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 Potter Valley CUSD additional time to make a provisional appointment to a vacant governing board seat.

A vacancy on the Potter Valley CUSD governing board occurred on August 16, 2019. The governing board of the district received two applications for the vacancy —but both of the meetings scheduled to interview the candidates and make an appointment were cancelled due to “Public Safety Power Shutoffs” by Pacific Gas & Electric. As a result of these cancellations, the governing board was unable to make an appointment prior to expiration of the 60-day time limit.

Given the above circumstances, the lack of local opposition to the waiver requests, and the California Department of Education (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 Potter Valley CUSD 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 Potter Valley CUSD has a student population of 290 and is located in a rural area of Mendocino 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 2019 SBE meeting for the Manchester Union Elementary School District (UESD) in Mendocino County and the Pacheco 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 Potter Valley CUSD.

## Attachment(s)

* **Attachment 1:** Summary Table (1 page)
* **Attachment 2:** Potter Valley Community Unified School District General Waiver Request 8-11-2019 (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** |
| --- | --- | --- | --- | --- | --- |
| 8-11-2019 | Potter Valley Community Unified School District | **Requested:**  November 14, 2019, to April 1, 2020  **Recommended:** August 16, 2019, to July 3, 2020\* | Potter Valley Teachers Association Nichole Stoughton President 11/7/2019 **Support**  Potter Valley Employee Professionals Association, Duval Philips President 11/7/2019 **Support** | November 13, 2019 | District Advisory Committee  11/7/2019  **No objections** |

\* Potter Valley Community Unified School District has a governing board election scheduled for November 3, 2020. *Education Code* Section 5093 states that no appointment can be made to fill a vacancy if that vacancy occurs within four months of the end of the term of the vacant position (the term for the district’s vacant position expires with the November 2020 election). July 3, 2020, is four months prior to the November 2020 election.

Created by California Department of Education  
December 2019

# Attachment 2 Potter Valley Community Unified School District General Waiver Request 8-11-2019

**California Department of Education**

**WAIVER SUBMISSION - General**

CD Code: 2373866

Waiver Number: 8-11-2019

Active Year: 2019

Date In: 11/14/2019 11:22:14 AM

Local Education Agency: Potter Valley Community Unified

Address: 10401 Main St.

Potter Valley, CA 95469

Start: 11/14/2019

End: 4/1/2020

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

*Education Code* or *CCR* to Waive: [5091] California *Education Code* 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. The following portions of Section 5091(a) are requested for waiver: 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.]

Outcome Rationale: A vacancy occurred on the PVCUSD governing board. We advertised and received two applications. We were scheduled to interview and appoint one of the candidates at the October 9, 2019 board meeting. Unfortunately, the board meeting was cancelled due to the PG&E Public Safety Power Shutoff. This caused the district to miss the 60 day deadline.

Student Population: 290

City Type: Rural

Public Hearing Date: 11/13/2019

Public Hearing Advertised: It was posted at all of the schools, the town grocery store, the post office and the community center.

Local Board Approval Date: 11/13/2019

Community Council Reviewed By: District Advisory Committee

Community Council Reviewed Date: 11/7/2019

Community Council Objection: No

Community Council Objection Explanation:

Audit Penalty Yes or No: No

Categorical Program Monitoring: No

Submitted by: Ms. Krista Looney

Position: Business Manager

E-mail: [klooney@pottervalleyschools.us](mailto:klooney@pottervalleyschools.us)

Telephone: 707-743-2101

Fax: 707-743-2101

Bargaining Unit Date: 11/07/2019  
Name: Potter Valley Employee Professionals Association  
Representative: Duval Philips  
Title: President  
Position: Support  
Comments:

Bargaining Unit Date: 11/07/2019  
Name: Potter Valley Teachers Association  
Representative: Nichole Stoughton  
Title: President  
Position: Support  
Comments: