

California Department of Education

Executive Office

SBE-005 (REV. 1/2018)

General Waiver

# California State Board of Education March 2020 Agenda Item #W-07

## Subject

Request by **Linden Unified** to waive California *Education Code* sections 5020, 5025, and 5026; and portions of sections 5019, 5021, and 5030, which require a districtwide election to reduce the size of the governing board from seven to five members and establish trustee areas for future board elections for the five-member governing board.

## Waiver Number

* 19-12-2019

## Type of Action

Action, Consent

## Summary of the Issue(s)

A school district can reduce the size of its governing board and establish trustee areas for future governing board elections only if these changes are approved by both the County Committee on School District Organization (County Committee) and voters at a districtwide election.

In recent years, the Linden Unified School District (USD) has experienced significant difficulties in finding community members willing to serve four-year terms on its seven-member board. The district requests that the California State Board of Education (SBE) waive the requirement that districtwide elections be held to reduce the size of its governing board and to establish five new trustee areas—allowing the changes to be adopted upon review and approval of the County Committee.

## Authority for Waiver

*Education Code* (*EC*) Section 33050

## Recommendation

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

The California Department of Education (CDE) recommends approval of the request with the condition that *EC* sections 5025 and 5026 not be included in the waiver. The Linden USD supports this condition.

## Summary of Key Issues

Approval of the waiver request will eliminate the requirement to present to the voters of the district a reduction in the size of the Linden USD governing board from seven to five members and establishment of five new trustee areas. Voters will continue to elect all board members—however, if the waiver request is approved, district voters will elect board members for a five-member board by trustee area beginning with the November 2020 election.

County Committees have the authority to approve or disapprove the establishment of trustee areas and reductions to the number of governing board members. Pursuant to *EC* Section 5020, County Committee approval of trustee areas and board size constitutes an order of election—thus, voters in the districts have final approval.

The Linden USD currently has a seven-member board elected from seven trustee areas. In recent years this district of 2,350 students has had difficulty finding community members willing to commit to serving four years on the seven-member board. A handful of community members have served for many terms, most running unopposed at election, and vacancies due to resignations have become more frequent.

The Linden USD requests that the SBE waive the requirement to present to the voters of the district a reduction in the size of the governing board from seven to five members and establishment of five new trustee areas. Waiver of this election requirement will avoid the costs of the elections and help ensure that the district will have a quorum of governing board members to conduct district business. The Linden USD governing board has discussed the potential reduction in governing board size at multiple public meetings over the past three years.

Only the elections to reduce the size of the governing board and to establish five new trustee areas will be eliminated by approval of the waiver request—voters in the district will continue to elect all governing board members. Moreover, approval of the waiver will not eliminate any existing legal rights of currently seated board members.

The waiver request has been reviewed by the CDE and it has been determined that there was no significant public opposition to the waiver at the public hearing conducted by the governing board of the district. The CDE also has determined that none of the grounds specified in *EC* Section 33051, which authorize denial of a waiver, exist. The CDE recommends the SBE approve the Linden USD request to waive *EC* sections 5020, 5025, and 5026; and portions of sections 5019, 5021, and 5030—which require districtwide elections to reduce the size of the governing board from seven to five members and to establish trustee areas for future governing board elections—with the condition that *EC* sections 5025 and 5026 are not included in the waiver.

**Demographic Information:** The Linden USD has a student population of 2,350 and is located in a rural area of San Joaquin 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 multiple requests to waive the election to reduce the size of a governing board—most recently for the Whitmore Union Elementary School District (Shasta County) at the July 2019 SBE meeting. The SBE also has approved over 200 waiver requests to eliminate the election to establish trustee areas—most recently for nine school districts at the January 2020 SBE meeting. The Linden USD also received approval to eliminate the election to establish trustee areas for its seven-member board at the March 2014 SBE meeting.

## Fiscal Analysis (as appropriate)

Approval of the waiver request will not have negative fiscal effects on any local or state agency. Failure to approve the request will result in additional costs to the Linden USD for districtwide elections.

## Attachment(s)

* **Attachment 1:** Summary Table (1 page)
* **Attachment 2:** Linden Unified School District General Waiver Request  
  19-12-2019 (7 pages). (Original waiver request is signed and on file in the Waiver Office.)

# Attachment 1: Summary Table

California *Education Code* Sections 5019, 5020, 5021, 5025, 5026, and 5030

| **Waiver Number** | **District** | **Period of Request** | **Bargaining Unit Representatives Consulted** | **Public Hearing and Board Approval Dates** | **Advisory Committee Position** |
| --- | --- | --- | --- | --- | --- |
| 19-12-2019 | Linden Unified School District | **Requested:**  July 1, 2020,  to  November 30, 2020  **Recommended:**  November 20, 2019,  to  December 31, 2020 | Association of Linden Educators, Teresa Coyle, President 11/21/2019 **Support**  California School Employees Association, William Tidwell, President 12/3/2019 **Support** | November 20, 2019 | School site councils (multiple meeting dates, with 12/9/2019 as the final date) **No objections** |

Created by California Department of Education  
January 2020

# Attachment 2 Linden Unified School District General Waiver Request 19-12-2019

**California Department of Education**

**WAIVER SUBMISSION – General**

CD Code: 3968577

Waiver Number: 19-12-2019

Active Year: 2019

Date In: 12/23/2019 10:29:33 AM

Local Education Agency: Linden Unified

Address: 18527 East Main St.

Linden, CA 95236

Start: 7/1/2020

End: 11/30/2020

Waiver Renewal: No

Waiver Topic: School District Reorganization

Ed Code Title: Elimination of Election Requirement

Ed Code Section: Portions of 5019, 5021, 5030, and all of 5020

Ed Code Authority: 33050 - 33053

## Education Code or CCR to Waive:

### Ed Code 5019

(d) If the county committee on school district organization approves pursuant to subdivision (a) [the rearrangement of the boundaries of] trustee areas for a particular district, then the rearrangement of the trustee areas shall be effectuated for the next district election occurring at least 120 days after its approval, [unless at least 5 percent of the registered voters of the district sign a petition requesting an election on the proposed rearrangement of trustee area boundaries. The petition for an election shall be submitted to the county elections official within 60 days of the proposal's adoption by the county committee on school district organization. If the qualified registered voters approve pursuant to subdivision (b) or (c) the rearrangement of the boundaries to the trustee areas for a particular district, the rearrangement of the trustee areas shall be effective for the next district election occurring at least 120 days after its approval by the voters.]

### Ed Code 5020

(a) [The resolution of the county committee approving a proposal to establish or abolish trustee areas or to increase or decrease the number of members of the governing board shall constitute an order of election, and the proposal shall be presented to the electors of the district not later than the next succeeding election for members of the governing board.

(b) If a petition requesting an election on a proposal to rearrange trustee area boundaries is filed, containing at least 5 percent of the signatures of the district's registered voters as determined by the elections official, the proposal shall be presented to the electors of the district, at the next succeeding election for the members of the governing board, at the next succeeding statewide primary or general election, or at the next succeeding regularly scheduled election at which the electors of the district are otherwise entitled to vote, provided that there is sufficient time to place the issue on the ballot.

(c) If a petition requesting an election on a proposal to establish or abolish trustee areas, to increase or decrease the number of members of the board, or to adopt one of the alternative methods of electing governing board members specified in Section 5030 is filed, containing at least 10 percent of the signatures of the district's registered voters as determined by the elections official, the proposal shall be presented to the electors of the district, at the next succeeding election for the members of the governing board, at the next succeeding statewide primary or general election, or at the next succeeding regularly scheduled election at which the electors of the district are otherwise entitled to vote, provided that there is sufficient time to place the issue on the ballot.

Before the proposal is presented to the electors, the county committee on school district organization may call and conduct one or more public hearings on the proposal.

(d) The resolution of the county committee approving a proposal to establish or abolish a common governing board for a high school and an elementary school district within the boundaries of the high school district shall constitute an order of election. The proposal shall be presented to the electors of the district at the next succeeding statewide primary or general election, or at the next succeeding regularly scheduled election at which the electors of the district are otherwise entitled to vote, provided that there is sufficient time to place the issue on the ballot.

(e) For each proposal there shall be a separate proposition on the ballot. The ballot shall contain the following words:

"For the establishment (or abolition or rearrangement) of trustee areas in \_\_\_\_ (insert name) School District --Yes" and "For the establishment (or abolition or rearrangement) of trustee areas in \_\_\_\_ (insert name) School District--No."

"For increasing the number of members of the governing board of \_\_\_\_ (insert name) School District from five to seven--Yes" and "For increasing the number of members of the governing board of \_\_\_\_(insert name) School District from five to seven--No."

"For decreasing the number of members of the governing board of \_\_\_\_ (insert name) School District from seven to five--Yes" and "For decreasing the number of members of the governing board of \_\_\_\_(insert name) School District from seven to five--No."

"For the election of each member of the governing board of the \_\_\_\_ (insert name) School District by the registered voters of the entire \_\_\_\_ (insert name) School District--Yes" and "For the election of each member of the governing board of the \_\_\_\_ (insert name)School District by the registered voters of the entire \_\_\_\_ (insert name) School District--No."

"For the election of one member of the governing board of the \_\_\_\_(insert name) School District residing in each trustee area elected by the registered voters in that trustee area--Yes" and "For the election of one member of the governing board of the \_\_\_\_ (insert name) School District residing in each trustee area elected by the registered voters in that trustee area--No."

"For the election of one member, or more than one member for one or more trustee areas, of the governing board of the \_\_\_\_ (insert name) School District residing in each trustee area elected by the registered voters of the entire \_\_\_\_ (insert name) School District--Yes" and "For the election of one member, or more than one member for one or more trustee areas, of the governing board of the \_\_\_\_ (insert name) School District residing in each trustee area elected by the registered voters of the entire \_\_\_\_ (insert name)School District--No."

"For the establishment (or abolition) of a common governing board in the \_\_\_\_ (insert name) School District and the \_\_\_\_ (insert name)School District--Yes" and "For the establishment (or abolition) of a common governing board in the \_\_\_\_ (insert name) School District and the \_\_\_\_ (insert name) School District--No."

If more than one proposal appears on the ballot, all must carry in order for any to become effective, except that a proposal to adopt one of the methods of election of board members specified in Section 5030 which is approved by the voters shall become effective unless a proposal which is inconsistent with that proposal has been approved by a greater number of voters. An inconsistent proposal approved by a lesser number of voters than the number which have approved a proposal to adopt one of the methods of election of board members specified in Section 5030 shall not be effective.]

### Ed Code 5021

(a) If a proposal for the establishment of trustee areas formulated under Sections 5019 and 5020 is approved [by a majority of the voters voting at the election,] any affected incumbent board member shall serve out his or her term of office and succeeding board members shall be nominated and elected in accordance with Section 5030. In the event two or more trustee areas are established [at such election] which are not represented in the membership of the governing board of the school district, or community college district the county committee shall determine by lot the trustee area from which the nomination and election for the next vacancy on the governing board shall be made.

(b) If a proposal for rearrangement of boundaries is approved [by a majority of the voters voting on the measure, or] by the county committee on school district organization [when no election is required,] and if the boundary changes affect the board membership, any affected incumbent board member shall serve out his or her term of office and succeeding board members shall be nominated and elected in accordance with Section 5030.

(c) If a proposal for abolishing trustee areas is approved [by a majority of the voters voting at the election,] the incumbent board members shall serve out their terms of office and succeeding board members shall be nominated and elected [at large] from the district.

### Ed Code 5025

[In the event an election is called pursuant to Section 5020, the county superintendent of schools having jurisdiction shall, as to each trustee area having more than its allotted number of representatives in the membership of the governing board for the next succeeding school year, determine by lot which of said representatives shall relinquish their offices either immediately upon the election and qualification of the governing board members who are elected as provided in Section 5024 or on the first day of April next succeeding the election establishing trustee areas in the district, whichever is the later.]

### Ed Code 5026

[Members elected to fill vacancies created pursuant to Section 5025 shall serve out the unexpired term of the office that was terminated.

The county committee shall designate by lot for each newly formed trustee area the expiring term of office for which a member shall be elected.]

### Ed Code 5030

Except as provided in Sections 5027 and 5028, in any school district or community college district having trustee areas, the county committee on school district organization and the registered voters of a district, pursuant to Sections 5019 [and 5020,] respectively, may at any time recommend one of the following alternate methods of electing governing board members:

(a) That each member of the governing board be elected by the registered voters of the entire district.

(b) That one or more members residing in each trustee area be elected by the registered voters of that particular trustee area.

(c) That each governing board member be elected by the registered voters of the entire school district or community college district, but reside in the trustee area which he or she represents.

The recommendation shall provide that any affected incumbent member shall serve out his or her term of office and that succeeding board members shall be nominated and elected in accordance with the method recommended by the county committee.

Whenever trustee areas are established in a district, provision shall be made for one of the alternative methods of electing governing board members.

[In counties with a population of less than 25,000,] the county committee on school district organization or the county board of education, if it has succeeded to the duties of the county committee, may at any time, by resolution, with respect to trustee areas established for any school district, other than a community college district, amend the provision required by this section without additional approval by the electors, to require one of the alternate methods for electing board members to be utilized.

## Outcome Rationale:

The Linden Unified School District Governing Board (Board) desires to have the requested *Education Code* sections waived because the waiver of these sections will allow the Board to successfully decrease the number of governing board members from seven to five and to create trustee areas that accommodate a five-member board member structure as expeditiously as possible, thereby enabling the Board to continue doing business as a body that reflects the composition and size of the community and student population that it serves.

It is imperative that the Board decrease its number of members and create new trustee areas without delay and without interference because it has been difficult to find continuous interest of at least seven community members to carry out the business of a rural school district with an area of 7.5 square miles. This distracts the Board from carrying out its business and poses an undue hardship and extreme detriment to the school district and ultimately students in the small community of Linden, California. The district has functioned as a seven-member board since its unification in 1967, when each school within the area of unification was represented by a member of its community. The district enjoyed community interest that filled all seven seats for many years but since approximately 2002 it has been difficult to find members of the community willing to commit to four years of service. A handful of community members have served for many terms, most time unopposed at election time. There has been cause to appoint community members to vacant seats more and more frequently due to resignations; mostly recently occurring in 2014, 2017, 2018, and again in 2019.

Normally, under *Education Code* § 5020, the San Joaquin County Committee on School District Organization, after conducting its own public hearing on the school district’s proposal, would call for an election and put the matter to a vote of the Linden Unified School District electorate. However, going through that process would prevent the school district from electing successor trustees in a timely manner and leaves the district vulnerable to the inability to complete its business as required by law.

The requested waiver will allow the Linden Unified School District to complete the transition from a seven-member board to a five-member board and create the new trustee areas to accommodate a five-member board in time for the next governing board member election. The waiver would provide opportunity for this small school district to avoid the costly effort to create a ballot item, or hold a special election, ensuring funds go toward other district needs. In addition, the Linden Unified School District Trustees have agendized and discussed the possible trustee reduction several times over the past three years, with opportunity for public comment during the meetings.

Student Population: 2350

City Type: Rural

Public Hearing Date: 11/18/2019

Public Hearing Advertised: Posted outside the district office, at the post office and grocery store, emailed to board and staff, and posted on the district website.

Local Board Approval Date: 11/18/2019

Community Council Reviewed By: School Site Councils - total of 5 with 5 different dates, final meeting date identified below.

Community Council Reviewed Date: 12/9/2019

Community Council Objection: No

Community Council Objection Explanation:

Audit Penalty Yes or No: No

Categorical Program Monitoring: No

Submitted by: Ms. Heather Harris

Position: Executive Assistant to Superintendent

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Bargaining Unit Date: 11/21/2019  
Name: ALE - Association of Linden Educators  
Representative: Teresa Coyle  
Title: ALE President  
Position: Support  
Comments:

Bargaining Unit Date: 12/03/2019  
Name: CSEA  
Representative: William Tidwell  
Title: CSEA Local chapter #372 President  
Position: Support  
Comments