

California Department of Education

Executive Office

SBE-005 (REV. 11/2017)

General Waiver

# California State Board of Education March 2018 Agenda Item #W-05

## Subject

Request by threelocal 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

* Central Union Elementary School District 19-11-2017
* Mountain Union Elementary School District 12-12-2017
* Shasta Union Elementary School District 36-12-2017

## 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. Approval of this waiver request removes the 60-day time limit and provides the Central Union Elementary School District (UESD), the Mountain UESD, and the Shasta UESD additional time to make appointments.

## 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 Central UESD, the Mountain UESD, and the Shasta UESD additional time to make provisional appointments.

After a member of the Central UESD governing board resigned, the district actively recruited for the position by advertising in local newspapers, posting notices with school newsletters and websites, utilizing the school messenger system, and working with the Navy School Liaison Officer (Naval Air Station Lemoore encompasses two of the district’s governing board trustee areas). However, the district did not receive any valid applicants within the 60-day timeline. The Kings County Superintendent (with current responsibility for calling the election for the board vacancy) supports the district’s waiver request.

The Central UESD historically has faced challenges with filling seats on the governing board from the two trustee areas within the Naval Air Station (NAS) due to the high mobility of the NAS population and the fact that members from many military families are ineligible to serve on the district governing board because they maintain residency in other parts of the country and, thus, are not registered voters in the Central UESD. The governing board has had to make appointments to fill vacancies from these two trustee areas six times within the past six years due to the high mobility and transfer rates of personnel from the NAS. The governing board has been successful in the past filling the vacancies, but is experiencing difficulty with the current vacancy.

Two members of the Mountain UESD governing board resigned between September and October of 2017. District staff actively recruited for the resultant vacancies but no qualified candidates applied for the vacant positions within the required 60-day period.

A Shasta UESD governing board member resigned on October 25, 2017. Shasta UESD staff have actively recruited for the position, but did not receive any qualified applicants within the 60-day timeline.

Mountain UESD and Shasta UESD are the third and fourth Shasta County school districts to request a waiver of this 60-day timeline over the past year (Oak Run Elementary School District [ESD] at the November 2017 SBE meeting; Indian Springs ESD at the July 2017 SBE meeting). The Shasta County Superintendent is aware of the difficulties that school districts in small rural communities have recruiting and retaining school board members. She supports the efforts of the districts to continue recruitment of qualified candidates.

The CDE also notes that calling an election when no qualified candidates currently have expressed interest in being appointed to the board is not the best option at this time.

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 requests by the Central UESD, the Mountain UESD, and the Shasta UESD to waive portions of *EC* Section 5091 (as shown in Attachment 5), which require a governing board to take action to fill a vacancy on the board within 60 days.

**Demographic Information:** The Central Union ESD has a student population of 1,810 and is located in a rural area of Kings County.

The Mountain Union ESD has a student population of 74 and is located in a rural area of Shasta County.

The Shasta UESD has a student population of 155 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. The most recent approval was at the January 2018 SBE meeting for the Laytonville Unified School District (Mendocino 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 election costs for the Central UESD, the Mountain UESD, and the Shasta UESD.

## Attachment(s)

* **Attachment 1:** Summary Table (2 pages).
* **Attachment 2:** Central Union Elementary School District General Waiver Request 19-11-2017 (3 pages). (Original waiver request is signed and on file in the Waiver Office.)
* **Attachment 3:** Mountain Union Elementary School District General Waiver Request 12-12-2017 (2 pages). (Original waiver request is signed and on file in the Waiver Office.)
* **Attachment 4:** Shasta Union Elementary School District General Waiver Request 36-12-2017 (2 pages). (Original waiver request is signed and on file in the Waiver Office.)
* **Attachment 5:** *Education Code* Language Requested for Waiver (1 page).

# 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 |
| --- | --- | --- | --- | --- | --- |
| 19-11-2017 | Central Union Elementary School District | **Requested:**  October 1, 2017, to November 6, 2018  **Recommended:** October 1, 2017, to November 6, 2018 | Central Union Teachers Association,  Theresa Copeland, President  10/25/2017  **Support**  Central Union Classified Employees Association,  Laurie Heaton, President  10/25/2017  **Support** | 11/13/2017 | District Advisory Council,  11/16/2017  **No objections** |
| 12-12-2017 | Mountain Union Elementary School District | **Requested:**  December 7, 2017, to December 13, 2018  **Recommended:** December 7, 2017, to December 13, 2018 | California Teachers Association,  Tracey Licerio, Teacher  12/1/2017  **Neutral**  Teamsters,  Wendy Montgomery, Representative  12/1/2017  **Support** | 12/7/2017 | School Site Council,  10/12/2017  **No objections** |
| 36-12-2017 | Shasta Union Elementary School District | **Requested:**  December 22, 2017, to January 31, 2018  **Recommended:** December 22, 2017, to July 31, 2018 | California Teachers Association,  Michelle Cook, President  12/7/2017  **Support**  California School Employees Association,  Mike Snell, President  12/7/2017  **Support** | 12/11/2017 | School Site Council,  12/13/2017  **No objections** |

Created by California Department of Education  
January 2018

# Attachment 2: Central Union Elementary School District Waiver Request 19-11-2017

**California Department of Education  
WAIVER SUBMISSION - General**

CD Code: 1663883

Waiver Number: 19-11-2017

Active Year: 2017

Date In: 11/14/2017 1:18:04 PM

Local Education Agency: Central Union Elementary School District

Address: 15783 18th Ave.

Lemoore, CA 93245

Start: 10/1/2017

End: 11/6/2018

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 Board

Ed Code Authority: 33050

Ed Code or *CCR* to Waive: See Attachment 5 of this California State Board of Education agenda item.

Outcome Rationale: Central Union is submitting a waiver for consideration of filling a vacant board seat within the timelines specified in Ed. Code 5091 (60 days). Ordering a special election will not yield any candidates as well, the District will be required to seek an appointment for the vacant board seat.

The District recently received a board member resignation and has been actively seeking a potential replacement. The District has exercised due diligence in seeking a candidate for this vacancy. We have advertised in local newspapers, websites, school newsletters, utilized our school messenger system for notification, and have worked directly with the Navy School Liaison officer for distribution of vacancy notice, all to no avail.

Central Union is a unique district in terms of trustee boundary areas. Central Union has a five (5) member governing board. In our district, we have two federal properties (a Navy Air Station and an Indian Reservation). The Naval Installation encompasses two of our trustee areas.

The District has a continuous challenge with filling these seats, due to the high mobility of our population on the installation, and the requirement of needing California residency for board service. Many individuals who reside in these two trustee areas (Area 3 and Area 4) maintain residency in states other than California, individuals who may be interested in serving, do not want to forgo other state residencies thus significantly reducing the number of potential candidates for board service. While in the past the Governing Board has been successful with obtaining board trustees through the appointment process, we are experiencing challenges with the present vacancy.

To give some context, within the past 6 years, and the Governing Board has had to make trustee appointments on six (6) different occasions within those two trustee areas due to the high mobility and transfer rates of personal on NAS Lemoore.

The waiver will provide the necessary timeline extension for the District to seek and secure an appointment. The District will actively pursue a replacement.

Mr. Tim Bowers, Kings County Superintendent of Schools, is well aware of the District’s situation and is supportive of our waiver request.

Student Population: 1810

City Type: Rural

Public Hearing Date: 11/13/2017

Public Hearing Advertised: newspaper, website, and posting at school sites

Local Board Approval Date: 11/13/2017

Community Council Reviewed By: not applicable

Community Council Reviewed Date: 11/13/2017

Community Council Objection: No

Community Council Objection Explanation: N/a

Audit Penalty Yes or No: No

Categorical Program Monitoring: No

Submitted by: Mr. Tom Addington

Position: Superintendent

E-mail: [darthhr@me.com](mailto:darthhr@me.com)

Telephone: 559-925-2619

Fax: 559-924-5683

Bargaining Unit Date: 10/25/2017

Name: Central Union Classified Employees Association

Representative: Laurie Heaton

Title: Association President

Position: Support

Comments: N/a

Bargaining Unit Date: 10/25/2017

Name: Central Union Teachers Association

Representative: Theresa Copeland

Title: Association President

Position: Support

Comments: N/a

# Attachment 3: Mountain Union Elementary School District Waiver Request 12-12-2017

**California Department of Education  
WAIVER SUBMISSION - General**

CD Code: 4573700

Waiver Number: 12-12-2017

Active Year: 2017

Date In: 12/8/2017 3:40:58 PM

Local Education Agency: Mountain Union Elementary School District

Address: 30365 Highway 299 East

Montgomery Creek, CA 96065

Start: 12/7/2017

End: 12/13/2018

Waiver Renewal: No

Previous Waiver Number: 0

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: California *Education Code* (*EC*) Section 5091 requires a governing board to make a provisional appointment or order an election to fill a vacancy 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. Approval of this waiver request removes the 60-day limit and gives Mountain Union Elementary School District (MUESD) additional time to make an appointment.

Outcome Rationale: Two Board Members of the Mountain Union Elementary School District governing board have resigned between September & October of 2017. Although district staff actively recruited for the vacancies on its board, no candidate applications were obtained within the required 60-day period.

Student Population: 74

City Type: Rural

Public Hearing Date: 12/7/2017

Public Hearing Advertised: Posted at Mountain Union Elementary School District Office, website, and the local post offices in Round Mountain and Montgomery within the School District Boundaries.

Local Board Approval Date: 12/7/2017

Community Council Reviewed By: Mountain Union Board of Trustees

Community Council Reviewed Date: 12/7/2017

Community Council Objection: No

Community Council Objection Explanation:

Audit Penalty Yes or No: No

Categorical Program Monitoring: No

Submitted by: Ms. Wendy Platt

Position: Superintendent/Principal

E-mail: [wplatt@muesd.org](mailto:wplatt@muesd.org)

Telephone: 530-337-6214

Fax: 530-337-6215

Bargaining Unit Date: 12/01/2017

Name: CTA

Representative: Tracey Licerio

Title: Teacher

Position: Neutral

Comments: N/a

# Attachment 4: Shasta Union Elementary School District Waiver Request 36-12-2017

**California Department of Education  
WAIVER SUBMISSION - General**

CD Code: 4570128

Waiver Number: 36-12-2017

Active Year: 2017

Date In: 12/22/2017 3:23:58 PM

Local Education Agency: Shasta Union Elementary School District

Address: 10446 Red Bluff Rd.

Shasta, CA 96087

Start: 12/22/2017

End: 1/31/2018

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: See Attachment 5 of this California State Board of Education agenda item.

Outcome Rationale: Shasta Union Elementary School District Board Member resigned from the Board of Trustees on October 25, 2017. The resignation requires a provisional appointment of a new Board Member. Shasta Union Elementary School District staff have actively recruited for the position. Unfortunately, we have not received applicants. The district is requesting more time to continue the search and appoint a new interested Board Member.

Student Population: 155

City Type: Rural

Public Hearing Date: 12/11/2017

Public Hearing Advertised: Posted at Shasta Union Elementary School, District Office, website, and local post office.

Local Board Approval Date: 12/11/2017

Community Council Reviewed By: School Site Council

Community Council Reviewed Date: 12/13/2017

Community Council Objection: No

Community Council Objection Explanation: N/a

Audit Penalty Yes or No: No

Categorical Program Monitoring: No

Submitted by: Ms. Lori Carter

Position: Administrative Assistant to the Superintendent

E-mail: [lcarter@rsdnmp.org](mailto:lcarter@rsdnmp.org)

Telephone: 530-225-0011 x1170

Fax: N/a

Bargaining Unit Date: 12/13/2017

Name: California Teachers Association

Representative: Michelle Cook

Title: President

Position: Support

Comments: N/a

# Attachment 5: *Education Code* Language Requested for Waiver

Portions of *Education Code* Section 5091 requested for waiver are displayed below in italics and in brackets.

*Education Code* Section 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[ *within the prescribed 60-day period*] as required by this section, the county superintendent of schools shall order an election to fill the vacancy.

(b) When an election is ordered, it shall be held on the next established election date provided pursuant to Chapter 1 (commencing with Section 1000) of Division 1 of the Elections Code not less than 130 days after the order of the election.

(c) (1) If a provisional appointment is made[ *within the 60-day period*], the registered voters of the district may, within 30 days from the date of the appointment, petition for the conduct of a special election to fill the vacancy. A petition shall be deemed to bear a sufficient number of signatures if signed by at least the number of registered voters of the district equal to 11/2 percent of the number of registered voters of the district at the time of the last regular election for governing board members, or 25 registered voters, whichever is greater. However, in districts with less than 2,000 registered voters, a petition shall be deemed to bear a sufficient number of signatures if signed by at least 5 percent of the number of registered voters of the district at the time of the last regular election for governing board members.