

California Department of Education

Executive Office

SBE-005 (REV. 1/2018)

General Waiver

# California State Board of Education September 2019 Agenda Item #W-10

## Subject

Request by **Panoche Elementary School District** to waive California *Education Code* Section 35780(a), which requires lapsation of a district with an average daily attendance of less than six in first through eighth grades.

## Waiver Number

* 15-5-2019

## Type of Action

Action, Consent

## Summary of the Issue(s)

*Education Code* (*EC*) Section 35780(a) requires a county committee on school district organization (county committee) to lapse a school district when the first through eighth grade average daily attendance (ADA) in schools maintained by that district falls below six. Enrollment in the Panoche Elementary School District (ESD) has ranged between 3 and 10 students for the past 10 years—and the district submitted a previous request to the State Board of Education (SBE) to waive the lapsation requirement in 2006. The first through eighth grade ADA of the Panoche ESD is expected to fall below six for the 2018–19 school-year and the district requests waiver of the lapsation requirement in *EC* Section 35780. Approval of the request will allow the district to remain operational for the 2019–20 and 2020–21 school years regardless of ADA. The San Benito County Superintendent of Schools (County Superintendent) supports the waiver.

## Authority for Waiver

*EC* Section 33050

## Recommendation

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

## Summary of Key Issues

*EC* Section 35780 establishes the conditions necessary for a county committee to initiate lapsation proceedings for a school district. Subdivision (a) of this section requires lapsation of a school district when the ADA of students in “the school or schools maintained by the school district is less than six in grades 1 through 8 or is less than 11 in grades 9 through 12.” The county committee is required to annex the territory of a lapsed district to one or more adjoining school districts.

The ADA of the Panoche ESD is fell below six in the first through eighth grades for the 2018–19 school-year. Enrollment in the district has ranged from 3 to 10 students over the past 10 years. Also, the SBE approved a district request to waive the *EC* Section 35780 lapsation requirement in 2006.

If the Panoche ESD were to lapse, it would be most reasonable to annex the district’s territory to the Willow Grove Union ESD (with a 2018–19 enrollment of 13) or the Tres Pinos Union ESD (with a 2018–19 enrollment of 108). These districts are 30 and 35 miles away, respectively, and due to road conditions (curvy, narrow two-lane and, at times one lane, roads) travel time is approximately one hour each way.

Due to its significant geographic isolation, the Panoche ESD believes that, even if the district is lapsed, continued operation of the Panoche School is critical to the learning environment and the safety of its students. Because of commute difficulties between the Panoche area and surrounding communities, no school district provides transportation services for high school students residing in the area. Typically, these high school students enroll in online learning programs or the family relocates. If the Panoche School closes, elementary school students would face the same circumstances.

The County Superintendent supports the Panoche ESD’s request—stating that, after working with the district since 2015 regarding enrollment issues, she believes that the continued operation of the district is in the best interests of students, parents, and the communities served by the district.

The CDE finds that the Panoche ESD is geographically isolated and has no fiscal concerns.[[1]](#footnote-1) The CDE recommends the SBE approve the request by the Panoche ESD for waiver of *EC* Section 35780(a) for the 2019-20 and 2020-21 school years. There has been no local opposition to the waiver request reported and the CDE has determined that none of the grounds specified in *EC* Section 33051(a) that authorize denial of a waiver, exist.

**Demographic Information:** The Panoche ESD has a student population of five and is located in a rural area of San Benito 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

Over the past five years, the SBE has approved eleven requests to waive the lapsation requirement—most recently for the Maple Creek ESD (Humboldt County) at its May 2019 meeting.

## Fiscal Analysis (as appropriate)

There will be no increases in statewide costs due to waiver approval.

## Attachment(s)

* **Attachment 1:** Summary Table (1 page)
* **Attachment 2** Panoche Elementary School District General Waiver Request 15-5-2019 (3 pages). (Original waiver request is signed and on file in the Waiver Office.)

# Attachment 1: Summary Table

California *Education Code* Section 35780(a)

| **Waiver Number** | **District** | **Period of Request** | **Bargaining Unit Representatives Consulted** | **Public Hearing and Board Dates** | **Advisory Committee Position** |
| --- | --- | --- | --- | --- | --- |
| 15-5-2019 | Panoche Elementary School District | **Requested**:  July 1, 2019,  to  June 30, 2020  **Recommended**:  April 1, 2019,  to  June 30, 2020 | The district has no bargaining units. | March 18, 2019 | Parent Teacher Organization (3/18/2019)  **No objections** |

Created by California Department of Education  
May 2019

# Attachment 2: Panoche Elementary School District General Waiver Request 15-5-2019

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

CD Code: 3567520

Waiver Number: 15-5-2019

Active Year: 2019

Date In: 5/23/2019 12:13:42 PM

Local Education Agency: Panoche Elementary School District

Address: 31441 Panoche Rd.

Paicines, CA 95043

Start: 7/1/2019

End: 6/30/2020

Waiver Renewal: No

Previous Waiver Number:

Previous SBE Approval Date:

Waiver Topic: School District Reorganization

Ed Code Title: Lapsation of a Small District

Ed Code Section: 35780

Ed Code Authority: 33050

*Education Code* or *CCR* to Waive: N/A

Outcome Rationale: *EC* Section 35780 establishes the conditions necessary for a county committee to initiate lapsation proceedings for a school district. Subdivision (a) of this section requires lapsation of a school district when the ADA of students in “the school or schools maintained by the school district is less than six in grades 1 through 8 or is less than 11 in grades 9 through 12.” The ADA of the Panoche ESD has fallen below six in the first through eighth grades for the 2018–19 school year, which requires the county to initiate procedures to lapse the district effective July 1, 2019.

The county committee is required to annex a lapsed district to one or more adjoining school districts. If the Panoche ESD were to be lapsed, there would be two potential options for annexation:

• Willow Grove Elementary School District (2018-19 enrollment—13 students)

• Tres Pinos Elementary School District (2018-19 enrollment—108 students)

Panoche ESD is 29.5miles away from Willow Grove ESD and 35.1 miles away from Tres Pinos ESD. Due to road conditions, travel time is close to one hour each way, making it a burden on the families in this district to travel, if Panoche ESD were to close. Panoche ESD is in a rural remote area with narrow two-lane and at times, one-lane roads. During the winter months, the Tres Pinos River flows over the road in at least three different places, often leading to road closures due to heavy rains. The road is dangerous, curvy, and very rural. In addition, there is little to no cell service along most of the route to Panoche ESD.

Panoche ESD meets the requirements to be considered a “necessary small school” for purposes of *Education Code* 42281 and 42282 which defines a necessary small school in an elementary school with an average daily attendance of less than 97 students, excluding pupils attending the seventh and eighth grades of a junior high school, maintained by a school district to which any of the following conditions apply:

(a)(3) If topographical or other conditions exist in a school district which would impose unusual hardships if the number of miles specified in paragraph (1) or (2) were required to be traveled, or if during the fiscal year the road which would be traveled have been impassable for more than an average of two weeks per year for the preceding five years, etc.

Because of the commute difficulties from the Panoche area to other areas, no school district provides transportation for high school students who graduate from the Panoche ESD. These high school students typically enroll in online learning programs or the student’s family relocates. Due to this significant geographic isolation, the district believes that, even if it is lapsed, continued operation of the Panoche Elementary School is necessary for the safety of its elementary students. The continued operation of the Panoche ESD is in the best interests of the students, parents and communities served by the Panoche ESD, as well as San Benito County at large.

There would be no clear financial benefit to lapsation if the Panoche Elementary School remains operational. Fiscally, Panoche Elemetary School District is solvent and maintains an excees in reserve levels outside of the state requirement. There have been no significant or financial findings in their audits for multiple years. The District is basic aid and has an excess of $400 thousand in reserves. Staffing consists of one full-time Teacher/Principal. The District contracts with the County Office for the following services: curriculum and instruction, fiscal services, human resources, and technology. Contracts for custodial and groundskeeping services are also in place. The District has a committed and dedicated school board consisting of three individuals.

Given this lack of financial benefit, the district’s sound fiscal status, and its significant geographic isolation, the Panoche ESD is requesting the approval of a waiver of *Education Code* 35780, either permanently or subject to review at periodic intervals, to avoid lapsation for the 2019–20 and subsequent school years.

The County Superintendent supports the district’s request.

Student Population: 5

City Type: Rural

Public Hearing Date: 3/18/2019

Public Hearing Advertised: Posted at Panoche ESD site and on San Benito County Office of Education website

Local Board Approval Date: 3/18/2019

Community Council Reviewed By: Parent Teacher Organization

Community Council Reviewed Date: 3/18/2019

Community Council Objection: No

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

Categorical Program Monitoring: No  
Submitted by: Ms. Jennifer Logue

Position: Assistant Superintendent, Educational Services

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1. The Panoche ESD is an excess tax (i.e., basic aid) district and is fiscally solvent with reserve levels above state minimum requirements. [↑](#footnote-ref-1)