

California Department of Education

Executive Office

SBE-005 (REV. 1/2018)

General Waiver

# California State Board of Education July 2020 Agenda Item #W-16

## Subject

Request by **Fallbrook Union Elementary School District** to waive California *Education Code* Section 5020, and portions of sections 5019, 5021, and 5030, that require a districtwide election to establish a by-trustee-area method of election.

## Waiver Number

1-7-2020

## Type of Action

Action

## Summary of the Issue(s)

School districts that elect board members at-large face existing or potential litigation under the California Voting Rights Act of 2001 (CVRA). Pursuant to the California *Education Code* (*EC*), a district can change from at-large elections to by-trustee-area elections only if the change is approved by both the County Committee on School District Organization (County Committee) and voters at a districtwide election.

To reduce the potential for litigation and to establish by-trustee-area elections as expeditiously as possible, the Fallbrook Union Elementary School District (UESD) requests that the California State Board of Education (SBE) waive the requirement that a by-trustee-area election method be approved at a districtwide election—allowing a by-trustee-area election method to be adopted upon review and approval of the County Committee.

The agenda for the July 9-10, 2020 SBE meeting was posted on June 26, 2020. On July 2, Fallbrook UESD contacted SBE and the California Department of Education (CDE) staff to request that the waiver be added to the July agenda. Although the waiver was approved by the Fallbrook UESD governing board, the application had not been submitted to CDE. In order to meet the deadlines established by the San Diego County Registrar of Voters, the waiver needs to be heard at the July SBE meeting. If it is not heard, then an election will need to be held in November on the question whether to switch to a by-trustee-area election method, which, according to their attorney, will cost the district $300,000.

*Government Code* Section 11125.3 of the Bagley-Keene Act allows an item to be added to the agenda with less than 10 days’ notice upon a determination of two-thirds of the SBE that there is a need to take immediate action and that the need for action came to the attention of the SBE subsequent to the agenda being posted.

## Authority for Waiver

*EC* Section 33050

## Recommendation

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

Given the unique circumstances of the COVID-19 pandemic, the resulting budget problems for school districts, and the fact that district staff were working remotely in the spring, CDE recommends that the SBE make a determination that there is a need to take immediate action on this waiver and that the need for action came to the attention of CDE/SBE after the agenda was posted on June 26, 2020. If the SBE makes that determination with a two-thirds vote, then the CDE recommends that the SBE approve the waiver.

## Summary of Key Issues

Approval of the waiver request will eliminate the election requirement for approval of trustee areas and a by-trustee-area method of election for future governing board elections in the Fallbrook UESD. Voters in the district will continue to elect all board members—however, if the waiver request is approved, board members will be elected by trustee areas beginning with the next governing board election that occurs at least 120 days after County Committee approval of the election method.

County Committees have the authority to approve or disapprove the adoption of trustee areas and methods of election for school district governing board elections. Pursuant to *EC* Section 5020, County Committee approval of trustee areas and election methods constitutes an order of election—thus, school district voters provide final approval.

Many districts in California are facing existing or potential litigation under the CVRA because of their at-large election methods. To help avoid potential litigation, the Fallbrook UESD is taking actions to establish trustee areas and adopt a by-trustee-area election method. In order to establish the trustee areas and the method of election as expeditiously as possible, the district requests that the SBE waive the requirement that the trustee areas and the election method be approved at a districtwide election. If the SBE approves the waiver request, a by-trustee-area election method can be adopted in the district upon review and approval of the County Committee without a subsequent local election to approve the change.

Only the election to establish trustee areas and the election method 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 request 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 request to waive *EC* Section 5020 and portions of sections 5019, 5021, and 5030, which require a districtwide election to approve a by-trustee-area method of election.

**Demographic Information:** The Fallbrook UESD has a student population of 5,043 and is located in a small city of San Diego 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 over 230 similar waiver requests—most recently for 15 school districts at the May 2020 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 requests will result in additional costs to the Fallbrook UESD for a districtwide election.

## Attachment(s)

* **Attachment 1:** Summary Table (1 page)
* **Attachment 2:** Fallbrook Union Elementary School District General Waiver Request 1-7-2020 (2 pages). (Original waiver request is signed and on file in the Waiver Office.)
* **Attachment 3:** California *Education Code* Sections Proposed for Waiver  
  (5 pages).

# Attachment 1: Summary Table

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

| **Waiver Number** | **District** | **Period of Request** | **Bargaining Unit Representatives Consulted** | **Public Hearing and Board Approval Dates** | **Advisory Committee Position** |
| --- | --- | --- | --- | --- | --- |
| 1-7-2020 | Fallbrook Union Elementary School District | **Requested:** July 2, 2020, to July 1, 2021  **Recommended:** July 2, 2020, to July 1, 2021 | Fallbrook Elementary Teachers Association, Jennifer Mariucci, President 2/4/2019 **Support**  California School Employees Association, Nydia Perez, President 2/4/2019 **Support** | May 8, 2019 | District English Language Advisory Committee (12/17/2018) **No objections** |

Created by California Department of Education  
July 2020

# Attachment 2 Fallbrook Union Elementary School District General Waiver Request 1-7-2020

**California Department of Education**

**WAIVER SUBMISSION – General**

CD Code: 3768114

Waiver Number: 1-7-2020

Active Year: 2020

Date In: 7/2/2020 7:17:05 AM

Local Education Agency: Fallbrook Union Elementary

Address: 321 North Iowa St.

Fallbrook, CA 92028

Start: 7/2/2020

End: 7/1/2021

Waiver Renewal: No

Waiver Topic: School District Reorganization

Ed Code Title: Elimination of Election Requirement

Ed Code Section: 5020 and portions of 5019, 5021, 5030

Ed Code Authority: 33050-33053

*Education Code* or *CCR* to Waive: See Attachment 3.

Outcome Rationale: This waiver is requested to expedite the efforts of the Fallbrook Union Elementary School District (“District”) to ensure compliance with the California Voting Rights Act (Elections Code section 14025 et seq.)(“CVRA”). By granting this waiver, the District will be able to implement its new “by-trustee area” election system for its November 2020 elections to reduce any potential liability under the CVRA. Due to the fact that the CVRA grants a prevailing plaintiff the right to reasonable attorneys’ and expert witness fees, the District seeks to reduce the risk of costly litigation under the CVRA. By reducing the risk of such costly litigation in an expeditious and cost-efficient manner, the District will be able to ensure that cuts to necessary and valuable District student programs are not needed because of claims being brought under the CVRA.

Student Population: 5043

City Type: Small

Public Hearing Date: 5/8/2019

Public Hearing Advertised: Newspaper, Internet, School Sites, District Website SDCOE website

Local Board Approval Date: 5/8/2019

Community Council Reviewed By: District English Language Advisory Committee

Community Council Reviewed Date: 12/17/2018

Community Council Objection: N

Community Council Objection Explanation:

Audit Penalty Yes or No: No

Categorical Program Monitoring: No

Submitted by: Ms. Stephanie Weaver

Position: Executive Assistant

E-mail: [sweaver@fuesd.org](mailto:sweaver@fuesd.org)

Telephone: 760-731-5420

Bargaining Unit Date: 02/04/2019  
Name: California School Employees Association  
Representative: Nydia Perez  
Title: President  
Phone: 760-731-4001  
Position: Support  
Comments:

Bargaining Unit Date: 02/04/2019  
Name: Fallbrook Elementary Teachers Association  
Representative: Jennifer Mariucci  
Title: President  
Phone: 760-731-4132  
Position: Support  
Comments:

# Attachment 3 California *Education Code* Sections Proposed for Waiver

Request to waive California Education Code Section 5020, and portions of sections 5019, 5021, and 5030, that require a districtwide election to establish by-trustee-area method of election. Language proposed to be waived is bracketed and in italics below:

## § 5019.

**Trustee areas and size of school district governing boards; powers of county committee; proposal and hearing**

(a) Except in a school district governed by a board of education provided for in the charter of a city or city and county, in any school district or community college district, the county committee on school district organization may establish trustee areas, rearrange the boundaries of trustee areas, abolish trustee areas, and increase to seven or decrease to five the number of members of the governing board, or adopt one of the alternative methods of electing governing board members specified in Section 5030.

(b) The county committee on school district organization may establish or abolish a common governing board for a high school district and an elementary school district within the boundaries of the high school district. The resolution of the county committee on school district organization approving the establishment or abolition of a common governing board shall be presented to the electors of the school districts as specified in Section 5020.

(c) (1) A proposal to make the changes described in subdivision (a) or (b) may be initiated by the county committee on school district organization or made to the county committee on school district organization either by a petition signed by 5 percent or 50, whichever is less, of the qualified registered voters residing in a district in which there are 2,500 or fewer qualified registered voters, by 3 percent or 100, whichever is less, of the qualified registered voters residing in a district in which there are 2,501 to 10,000 qualified registered voters, by 1 percent or 250, whichever is less, of the qualified registered voters residing in a district in which there are 10,001 to 50,000 qualified registered voters, by 500 or more of the qualified registered voters residing in a district in which there are 50,001 to 100,000 qualified registered voters, by 750 or more of the qualified registered voters residing in a district in which there are 100,001 to 250,000 qualified registered voters, or by 1,000 or more of the qualified registered voters residing in a district in which there are 250,001 or more qualified registered voters or by resolution of the governing board of the district. For this purpose, the necessary signatures for a petition shall be obtained within a period of 180 days before the submission of the petition to the county committee on school district organization and the number of qualified registered voters in the district shall be determined pursuant to the most recent report submitted by the county elections official to the Secretary of State under Section 2187 of the Elections Code.

(2) When a proposal is made pursuant to paragraph (1), the county committee on school district organization shall call and conduct at least one hearing in the district on the matter. At the conclusion of the hearing, the county committee on school district organization shall approve or disapprove the proposal.

(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*].

## [§ 5020.

***Presentation of proposal to electors***

*(a) The resolution of the county committee approving a proposal to establish or abolish trustee areas, to adopt one of the alternative methods of electing governing board members specified in Section 5030, 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*.]

## § 5021.

**Incumbents to serve out terms despite approval of change**

(a) If a proposal for the establishment of trustee areas formulated under Section[*s*] 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.

## § 5030.

**Alternate method of election**

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 Section[*s*] 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.