

California Department of Education

Executive Office

SBE-005 (REV. 1/2018)

General Waiver

# California State Board of Education July 2021 AgendaItem # W-05

## Subject

Request by **Norwalk-La Mirada Unified School District** to waive portions of California *Education Code* Section 5091, which will allow an adjustment to the type and timing of elections to fill vacant board positions.

## Waiver Number

11-4-2021

## Type of Action

Action, Consent

## Summary of the Issue(s)

California *Education Code* (*EC*) Section 5091 requires a school district governing board to order an election, or make a provisional appointment, to fill a vacancy on the board within 60 days of the vacancy. An election to fill the vacancy is required to be held on an established election date. If a provisional appointment is made to fill the vacancy, voters of the district may petition to terminate the appointment and require a special election.

The Norwalk-La Mirada Unified School District (USD) has two vacancies on its board. Due to local circumstances, *EC* Section 5091 currently requires one vacancy to be filled on an established election date and the second vacancy to be filled at a separate special election. California State Board of Education (SBE) approval of this waiver request would allow the two vacancies to be filled at the same special election.

## Authority for Waiver

*EC* Section 33050

## Recommendation

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

## Summary of Key Issues

*EC* Section 5091 requires a governing board to order an election, or make a provisional appointment, to fill a vacancy on the board within 60 days of the vacancy. An election to fill the vacancy, if ordered, is required to be held on an established election date (as defined in *Elections Code* Section 1000). If a provisional appointment is made to fill the vacancy, voters of the district may petition to terminate the appointment and require a special election to fill the vacancy—this election would be ordered by the county superintendent of schools (county superintendent).

The Norwalk-La Mirada USD currently has two vacant seats on its governing board. The first vacancy occurred in December 2020 upon the death of a board member. In January 2021, the governing board made a provisional appointment of a former board member to fill the vacancy. However, district voters submitted a petition to conduct a special election to fill the vacancy under the provisions of *EC* Section 5091(c)(1)—the Los Angeles County Superintendent certified the petition as sufficient. This certification terminated the provisional appointment and required the County Superintendent to order a special election to be conducted within 130 days (i.e., by July 13, 2021).

A second board member submitted his resignation from the governing board, effective February 1, 2021. Since the first vacancy must be filled at an election, the Norwalk-La Mirada USD governing board voted to order an election to fill the second vacancy as well. Pursuant to *EC* Section 5091(b), this election must occur no earlier than 130 days after the board action (i.e., after July 26, 2021)—and on the next established election date provided in *Elections Code* Section 1000 (which is November 2, 2021).

The Los Angeles County Registrar-Recorder/County Clerk (Registrar) provided the Norwalk-La Mirada USD with election cost estimates. The estimated cost of the special election for the first vacancy is $587,000. The estimated cost of the second election on an established election date (November 2, 2021) is an additional $561,000.

Both the County Superintendent and the Registrar have provided significant assistance to the district in addressing its election issues and have supported the effort to hold an election for the two vacant governing board positions on the same election date. The Registrar requested that the County Superintendent issue election orders placing both vacancies on a July 20, 2021, election—the same date as a Governor-ordered election for the vacant Assembly District 54 seat.

That date has been designated as an official election date in Los Angeles County, as several other local elections also will be held at that same time. Consolidating multiple elections on a single date considerably reduces the election costs for each entity with a measure on the ballot—thus, the Registrar’s estimated cost to the Norwalk-La Mirada USD for both vacancies on this election date is $588,000, or just $1,000 more than the estimated cost of a special election to fill a single vacancy. Placing both elections on this date also will remove the need for a November 2, 2021, election to fill the second vacancy—saving the Norwalk-La Mirada USD approximately $560,000 in election costs.

In April 2021, the County Superintendent issued the election orders as requested by the Registrar. The Registrar subsequently began processing the election orders per *Elections Code* required timelines.

In its waiver, the Norwalk-La Mirada USD requests that the SBE waive appropriate portions of *EC* Section 5091 (pertaining to the types and timing of elections) so that:

* The election for the first vacancy would be held at the special election on July 20, 2021 (one week after the July 13, 2021, deadline in *EC* Section 5091).
* The election for the second vacancy would be held at this same July 20, 2021, special election—instead of on the next available established election date (November 2, 2021) as required by *EC* Section 5091.

Essentially, an SBE-approved waiver would delay the election to fill the first vacancy by a week and move the election to fill the second vacancy to an earlier date. Both vacancies would be filled at the same election, which saves the district approximately $560,000 in election costs.

Given the above circumstances, the support of the County Superintendent and the Registrar, and the determination of the California Department of Education (CDE) that none of the reasons for denial in *EC* Section 33051(a) exist, the CDE recommends that the SBE approve the request by the Norwalk-La Mirada USD to waive portions of *EC* Section 5091, which will allow an adjustment to the type and timing of elections to fill vacant board positions.

The CDE notes that the bargaining unit for classified employees (California School Employees Association [CSEA]) is on record opposing the waiver. Reasons for this opposition, as provided by the district, are included in Attachment 1. When contacted by the CDE, the CSEA president did not dispute the district’s description but did provide additional context—noting that the Norwalk-La Mirada USD governing board failed to consider the stated concerns of the community and failed to adhere to “due process” when initially considering potential board actions to address the vacancies on the board. No concerns regarding the purpose or outcome of the waiver itself were raised.

The bargaining unit for certificated staff (Teachers Association of the Norwalk-La Mirada Area) supports the waiver.

**Demographic Information:** The Norwalk-La Mirada USD has a student population of 16,040 and is located in an urban area of Los Angeles 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 not approved a similar waiver request in the past—although it has approved numerous waivers of *EC* Section 5091 to provide district governing boards additional time to make a provisional appointment to fill a board vacancy.

## Fiscal Analysis (as appropriate)

Approval of the waiver request will not have negative fiscal effects on any local or state agency. Disapproval of the request may result in additional election costs for the Norwalk-La Mirada USD of approximately $560,000.

## Attachment(s)

* **Attachment 1:** Summary Table (1 page)
* **Attachment 2:** Norwalk-La Mirada Unified School District General Waiver Request 11-4-2021 (5 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** |
| --- | --- | --- | --- | --- | --- |
| 11-4-2021 | Norwalk-La Mirada Unified School District | **Requested:** December 22, 2020, to December 31, 2021**Recommended:** December 22, 2020, to December 31, 2021 | Teachers Association of the Norwalk-La Mirada AreaMaureen Quiros GrayPresident4/14/2021**Support**California School Employees Association (CSEA),Martha JaureguiPresident4/14/2021**Oppose\*** | April 19, 2021 | Norwalk-La Mirada Council of Parent Teacher Associations; District English Language Advisory Committee 4/14/2021**No objections** |

\* In its waiver submittal, the district reports that the classified employee bargaining unit (CSEA) opposes the waiver because it is concerned that the board member who submitted a resignation at a December 2020 meeting deferred the resignation until February 2021. CSEA believes that the statement of intent to resign at the December meeting meant that the board member no longer should be part of the governing board as of that date. CSEA also did not support the December 2020 appointment of a former board member to fill the vacancy caused by a member’s death, when two of the sitting board members and members of the public supported an election.

Created by California Department of Education
May 2021

# Attachment 2:Norwalk-La Mirada Unified School DistrictGeneral Waiver Request 11-4-2021

**California Department of Education**

**WAIVER SUBMISSION - General**

CD Code: 1964840

Waiver Number: 11-4-2021

Active Year: 2021

Date In: 4/25/2021 1:31:41 PM

Local Education Agency: Norwalk-La Mirada Unified

Address: 12820 Pioneer Blvd.

Norwalk, CA 90650

Start: 12/22/2020

End: 12/31/2021

Waiver Renewal: N

Previous Waiver Number:

Previous SBE Approval Date:

Waiver Topic: Other Waivers

Ed Code Title: Other Waivers

Ed Code Section: 5091

Ed Code Authority: General Waiver, *Education Code*s 33050 – 33053

*Education Code* or *CCR* to Waive: (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 1 ½ 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.

(2) The petition shall be submitted to the county superintendent of schools having jurisdiction who shall have 30 days to verify the signatures. If the petition is determined to be legally sufficient by the county superintendent of schools, the provisional appointment is terminated, and the county superintendent of schools shall order a special election [to be conducted no later than the 130th day after the determination]. However, if an established election date, as defined in Section 1000 of the Elections Code, occurs between the 130th day and the 150th day following the order of the election, the county superintendent of schools may order the special election to be conducted on the established election date.

(3) For purposes of this section, “registered voters” means the following:

(A) If the district uses the at-large method of election, as defined in subdivision (a) of Section 14026 of the Elections Code, registered voters of the entire school district or community college district.

(B) If the district uses district-based elections, as defined in subdivision (b) of Section 14026 of the Elections Code, registered voters of the election district.

(d) A provisional appointment made pursuant to subdivision (a) confers all powers and duties of a governing board member upon the appointee immediately following his or her appointment.

(e) A person appointed to fill a vacancy shall hold office only until the next regularly scheduled election for district governing board members that is scheduled 130 or more days after the effective date of the vacancy, whereupon an election shall be held to fill the vacancy for the remainder of the unexpired term. A person elected at an election to fill the vacancy shall hold office for the remainder of the term in which the vacancy occurs or will occur.

(f)(1) If a petition calling for a special election is circulated, the petition shall meet all of the following requirements:

(A) The petition shall contain the estimate of the elections official of the cost of conducting the special election.

(B) The name and residence address of at least one, but not more than five, of the proponents of the petition shall appear on the petition, each of which proponents shall be a registered voter of the school district or community college district, as applicable.

(C) None of the text or other language of the petition shall appear in less than six-point type.

(D) The petition shall be prepared and circulated in conformity with Sections 100 and 104 of the Elections Code.

(2) If any of the requirements of this subdivision are not met as to any petition calling for a special election, the county superintendent of schools shall not verify the signatures, nor shall any further action be taken with respect to the petition.

(3) No person shall permit the list of names on petitions prescribed by this section to be used for any purpose other than qualification of the petition for the purpose of holding an election pursuant to this section.

(4) The petition filed with the county superintendent of schools shall be subject to the restrictions in Section 6253.5 of the Government Code.

(g) Elections held pursuant to subdivisions (b) and (c) shall be conducted in as nearly the same manner as practicable as other governing board member elections.

Outcome Rationale: The District currently has two vacant seats on the Board. For one seat, the Board appointed someone and the local voters submitted a petition for special election requiring the District to undo the appointment and hold an election by July 13, 2021. Since an election must be held, the Board voted to hold an election for the second seat as well. The Board desires to hold one election for both seats but needs a State Board of Education waiver of the timelines for holding elections in *Education Code* 5091. For the petition election, we are asking essentially for a one week extension. For the Board ordered election we are asking to run it six days early and not on an established election date as defined by Elections Code. The granting of the waiver would save the District general fund $561,000.

The first vacancy occurred on December 22, 2020 when a board member passed away. On January 11, 2021, the Board provisionally appointed a former board member to fill the seat. However, on February 10, 2021, local voters submitted a petition for special election under *Education Code* 5091(c)(1) to the Los Angeles County Office of Education (LACOE). The petition was certified as sufficient on March 9, 2021, which voided the provisional appointment and per *Education Code* 5091(c)(2) and Elections Code 1100 required the District to conduct a special election within 130 days or by July 13, 2021.

On January 30, 2021, a second board member submitted his resignation from the Board effective February 1, 2021. In light of the petition for election, the Board voted on March 18, 2021 to order an election to fill the second seat as well. Election resolutions for both seats were adopted by the Board. Per *Education Code* 5091(b) the Board ordered election must occur no earlier than 130 days after March 18, 2021 or after July 26, 2021 and on the next established election date provided in Elections Code.

On March 15, 2021, the Los Angeles County Registrar Recorder/County Clerk (Registrar) apprised the District of the election cost estimates for three scenarios. The estimated cost of the petition election on July 20, 2021 for one seat would be $587,000. The estimated cost of an election on July 20, 2021 for two seats would be $588,000 (or $1,000 more). The estimated cost of a second Board ordered election on November 2, 2021 would be $561,000.

Both LACOE and the Registrar have assisted the District in addressing the required petition election and have supported the effort to hold an election for two seats on the same day. Alex Olvera, Division Manager, Election Information and Preparation, at the Registrar asked LACOE to issue an Order for Election for both seats for July 20, 2021, the same date as a Governor ordered election for the vacant Assembly District 54 seat. On or about April 1, 2021, LACOE issued the requested Order. On March 30, 2021 the Registrar began processing the Election Order per required timelines in the Elections Code.

Student Population: 16040

City Type: Urban

Public Hearing Date: 4/19/2021

Public Hearing Advertised: Local newspaper, District webpage, Brown Act Agenda

Local Board Approval Date: 4/19/2021

Community Council Reviewed By: Norwalk-La Mirada Council of PTAs and the District English Language Advisory Committee

Community Council Reviewed Date: 4/14/2021

Community Council Objection: N

Community Council Objection Explanation:

Audit Penalty Yes or No: N

Categorical Program Monitoring: N

Submitted by: Mr. Robert Jacobsen

Position: General Counsel

E-mail: rjacobsen@nlmusd.org

Telephone: 562-210-2121

Fax:

Bargaining Unit Date: 04/14/2021

Name: California School Employees Association

Representative: Martha Jauregui

Title: President

Phone: (714)726-3319

Position: Oppose

Comments: They took issue on when a board member resigned and why an appointment was made.

Bargaining Unit Date: 04/14/2021

Name: Teachers Association of the Norwalk-La Mirada Area

Representative: Maureen Quiros Gray

Title: President

Phone: (562)868-6521

Position: Support

Comments: