

California Department of Education

Executive Office

SBE-005 (REV. 1/2018)

General Waiver

# California State Board of Education September 2021 Agenda Item #W-07

## Subject

Request by **Manchester Union Elementary School District** 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

14-6-2021

## 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. California State Board of Education (SBE) approval of this waiver request will remove the 60-day time limit and provide additional time to the Manchester Union Elementary School District (UESD) to make a provisional appointment to a vacant governing board seat.

## 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 Manchester UESD additional time to make a provisional appointment to a vacant governing board seat.

A vacancy on the Manchester UESD governing board occurred when no candidates filed for the November 2020 election to fill an open board seat. The district actively advertised for prospective candidates in its attempts to make a provisional appointment to the governing board—but no qualified candidate has come forward.

The Manchester UESD requests that the SBE approve its waiver request, which will provide the governing board additional time to make a provisional appointment and avoid the cost of a special election. This election cost is estimated to be $5,000, which the Manchester UESD believes to be prohibitively expensive for a district of its size.

The Mendocino County Superintendent supports the district’s request, stating that “Manchester is a close community and I believe with a little more time they will successfully fill this seat with a resident who lives in the community.”

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 request by the Manchester UESD to waive portions of *EC* Section 5091, which require a governing board to act to fill a vacancy on the board within 60 days.

**Demographic Information:** The Manchester UESD has a student population of 43 and is located in a rural area of Mendocino 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 in the past. The most recent approval was at the March 2020 SBE meeting for the Potter Valley Community Unified School District (Mendocino County). The SBE also approved identical requests from the Manchester UESD at its September 2019 and March 2013 meetings (the Manchester UESD reduced the size of its governing board from five to three members in 2017).

## 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 Manchester UESD.

## Attachment(s)

* **Attachment 1:** Summary Table (1 page)
* **Attachment 2:** Manchester Union Elementary School District General Waiver Request 14-6-2021 (2 pages). (Original waiver request is signed and on file in the Waiver Office.)
* **Attachment 3:** California *Education Code* Sections Proposed for Waiver  
  (2 pages).

# 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** |
| --- | --- | --- | --- | --- | --- |
| 14-6-2021 | Manchester Union Elementary School District | **Requested:**  June 21, 2021, to November 30, 2021  **Recommended:** January 1, 2021, to November 30, 2021 | Manchester Union Teachers Association, Tansy Leiser President 5/11/2021 **Support**  The district has no classified bargaining unit. | May 11, 2021 | School Site Council  4/27/2021  **No objections** |

Created by California Department of Education  
June 2021

# Attachment 2 Manchester Union Elementary School District General Waiver Request 14-6-2021

**California Department of Education**

**WAIVER SUBMISSION - General**

CD Code: 2365573

Waiver Number: 14-6-2021

Active Year: 2021

Date In: 6/22/2021 3:22:45 PM

Local Education Agency: Manchester Union Elementary

Address: 19550 South Highway 1

Manchester, CA 95459

Start: 6/21/2021

End: 11/30/2021

Waiver Renewal: N

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

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

Outcome Rationale: A vacancy on the Manchester Union Elementary governing board occurred December 11, 2020 when no candidates filed for the board seat up for election November 3, 2020. The district has actively advertised and has been unable to find a prospective candidate within the school district boundary. At this time, the 60 day timeline to appoint has passed for both the district and county superintendent. The cost of a special election is estimated at $5,000 which would be prohibitively expensive for a district with an ADA of 42. the next regularly scheduled election is November 2022. A waiver of the 60 day time limit would allow the district to make a provisional appointment without incurring the cost of a special election.

Student Population: 43

City Type: Rural

Public Hearing Date: 5/11/2021

Public Hearing Advertised: Posted in three locations in the community.

Local Board Approval Date: 5/11/2021

Community Council Reviewed By: Manchester Union Elementary Board of Trustees

Community Council Reviewed Date: 5/11/2021

Community Council Objection: N

Community Council Objection Explanation:

Audit Penalty Yes or No: N

Categorical Program Monitoring: N

Submitted by: Ms. Cynthia Gonzalez

Position: Superintendent/Principal

E-mail: [mansupt@mcn.org](mailto:mansupt@mcn.org)

Telephone: 707-882-2374

Fax: 707-882-3106

Bargaining Unit Date: 05/11/2021

Name: Manchester Union Teachers Association

Representative: Tansy Leiser

Title: Teacher

Phone: 7078822374

Position: Support

Comments:

# Attachment 3 California Education Code Sections Proposed for Waiver

Request to waive portions of California *Education Code* Section 5091, which will allow a school district board of trustees to make a provisional appointment to a vacant board position past the 60-day statutory deadline. Language proposed to be waived is bracketed and in italics below:

## § 5091. Provisional appointment or special election; petition; requirements

(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.

(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.