

California Department of Education

Executive Office

SBE-005 (REV. 1/2018)

General Waiver

# California State Board of Education September 2021 Agenda Item #W-09

## Subject

Request by **Banta Elementary School District** to waive portions of California *Education Code* Section 35534, regarding effective date of reorganization.

## Waiver Number

3-6-2021

## Type of Action

Action, Consent

## Summary of the Issue(s)

California *Education Code* (*EC*) Section 35534 requires an approved school district reorganization proposal to be filed with the California State Board of Equalization (BOE) by December 1 of any given year in order for the reorganization to be effective for all purposes on July 1 of the subsequent year. The purpose of this deadline is to ensure that the BOE has created new tax rate areas to reflect the reorganization, which allow county agencies to assign collected property taxes to the correct school district.

The San Joaquin County Committee on School District Organization (County Committee) approved the unification of the Banta Elementary School District (ESD) and district voters gave final approval on November 3, 2020. However, the December 1, 2020, deadline to file with the BOE passed while the San Joaquin County Office of Education (COE) was awaiting certification of election results. Because this deadline was missed, the unification cannot be effective for all purposes until July 1, 2022.

The Banta ESD requests that the California State Board of Education (SBE) waive the requirement that timely BOE filing is a prerequisite for an approved school district reorganization proposal to be effective for all purposes. Approval will allow the new Banta Unified School District (USD) to be effective for all purposes as of July 1, 2021.

## Authority for Waiver

*EC* Section 33050

## Recommendation

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

## Summary of Key Issues

*EC* Section 35765 requires the county board of supervisors[[1]](#footnote-1), upon receiving proper certification of a successful school district reorganization, to prepare a reorganization order and file it with the BOE. Pursuant to *EC* Section 35534 and *Government Code* Section 54902, the filing must be completed on or before December 1 of any given year in order for a reorganization to be effective for all purposes on July 1 of the subsequent year. The purpose of this filing timeline is to give the BOE appropriate time to prepare new tax rate areas, which are necessitated by the reorganization, and transmit those new tax rate areas to county officials for utilization when preparing the county tax roll for the next fiscal year.

After conducting public hearings and analyzing the proposal to unify the Banta ESD (a component of the Tracy USD), the County Committee unanimously approved the unification on April 29, 2020. Pursuant to *EC* Section 35710, this approval then required the proposal to be submitted to district voters, who approved the unification with over 75 percent “yes” votes on November 3, 2020.

As indicated previously, this voter approval necessitated the preparation of a reorganization order required to be filed with the BOE by December 1, 2020, in order for the new Banta USD to be effective for all purposes on July 1, 2021. The BOE understands the difficulty that local agencies can have filing by December 1 when reorganizations are approved at a November election—typically, election results are not certified until after the BOE filing deadline. In response to these circumstances, the BOE allows local agencies to file a “placeholder” on or before December 1. The local agency then can file the final certification of the reorganization (i.e., election results) at a later date as long as the “placeholder” contains the reorganization order (including required documentation, maps, and filing fees). The BOE considers this a timely filing.

However, in the midst of the COVID-19 pandemic, nothing was filed with the BOE on or before December 1, 2020. The Banta ESD now is requesting that the SBE waive the *EC* Section 35534 requirement that a timely BOE filing is necessary for the new unified school district to be effective for all purposes on July 1, 2021. Without waiver approval, the new Banta USD will not be effective for all purposes until July 1, 2022.

A new Banta USD governing board was elected at the time district voters approved the unification proposal. This new board can exercise many of the powers typical of a unified school district governing board, including hiring a district superintendent and other management staff, developing policies and procedures, securing funding, approving a budget, and ordering elections for general obligation bonds. However, during the period between approval of the unification proposal and the date the new district is effective for all purposes, the Banta ESD governing board continues to have all of the powers and duties vested in the board of an elementary school district (*EC* Section 35533). Membership on these two boards is very similar; and SBE approval of the waiver request will reduce local confusion regarding the authorities of the boards.

SBE approval, however, will not allow the BOE to prepare appropriate tax rate areas in time for preparation of the San Joaquin County 2021–22 tax roll. San Joaquin COE and district staff will need to work with county officials to ensure that collected property taxes are assigned to the appropriate school district. This is not an uncommon activity. Due to *Education Code* requirements, school district lapsations become effective for all purposes before appropriate filing with the BOE can be accomplished. In past years, many counties in the state (including San Joaquin County) have dealt with lapsations of districts and the subsequent need to ensure that collected property taxes are assigned to the correct districts without BOE-adjusted tax rate areas. Similarly, California Department of Education (CDE) staff with responsibilities for preparing principal apportionments (which includes consideration of district property tax revenue) have experience addressing these issues in the context of a lapsation.

Filing with the BOE still must be completed regardless of waiver approval. The CDE has confirmed that the San Joaquin COE already has filed the Banta USD reorganization order with the BOE—thus, the new tax rate areas will be in place for preparation of the 2022–23 county tax roll.

Given the above circumstances, the support of the San Joaquin County Superintendent, lack of local opposition to the waiver, and the determination of the 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 Banta ESD to waive portions of *EC* Section 35534, which will allow the Banta USD to be effective for all purposes as of July 1, 2021.

**Demographic Information:** The Banta ESD has a student population of 285 and is located in a rural area of San Joaquin 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 a number of similar waiver requests in the past—although the most recent approval was at its January 2014 meeting for the Pleasant Valley ESD and the Ready Springs ESD (Nevada County).

## Fiscal Analysis (as appropriate)

Approval of the waiver request will not have significant fiscal effects on any local or state agency, but will reduce some district-level costs associated with maintaining two separate governing boards for the 2021–22 school year.

## Attachment(s)

* **Attachment 1:** Summary Table (1 page)
* **Attachment 2:** Banta Elementary School District General Waiver Request  
  3-6-2021 (2 pages). (Original waiver request is signed and on file in the Waiver Office.)

# Attachment 1: Summary Table

California *Education Code* Section 35534

| **Waiver Number** | **District** | **Period of Request** | **Bargaining Unit Representatives Consulted** | **Public Hearing and Board Date** | **Advisory Committee Position** |
| --- | --- | --- | --- | --- | --- |
| 3-6-2021 | Banta Elementary School District | **Requested:**  November 1, 2020 to June 30, 2022  **Recommended:** November 1, 2020 to June 30, 2022 | Banta Educators Association, Nadia Robinson, President 5/14/2021 **Neutral**  The Banta ESD has no classified employees bargaining unit. | June 10, 2021 | Local Control and Accountability Plan Advisory Committee 6/1/2021  **No objections** |

Created by California Department of Education  
June 2021

# Attachment 2: Banta Elementary School District General Waiver Request 3-6-2021

**California Department of Education**

**WAIVER SUBMISSION - General**

CD Code: 3968486

Waiver Number: 3-6-2021

Active Year: 2021

Date In: 6/11/2021 9:35:01 AM

Local Education Agency: Banta Elementary

Address: 22375 South El Rancho Rd.

Tracy, CA 95304

Start: 11/1/2020

End: 6/30/2022

Waiver Renewal: N

Previous Waiver Number:

Previous SBE Approval Date:

Waiver Topic: School District Reorganization

Ed Code Title: Timeline Requirements

Ed Code Section: Section 35534

Ed Code Authority: Section 33050

*Education Code* or *CCR* to Waive: *Education Code* section to be waived

*EC* Section 35534: Except as provided in Sections 35536 and 35786[ and subject to compliance with Section 54900 of the Government Code], any action to reorganize a school district shall be effective for all purposes on July 1 of the calendar year[ following the calendar year] in which the action is completed.

Outcome Rationale: Circumstances that brought about the request and why the waiver is necessary:

On November 3, 2020, voters approved the Banta Elementary School District unification. While awaiting the certified results, the December 1 deadline to file the necessary materials with the State Board of Equalization was missed. As a result, the official date of unification could not officially take place on July 1, 2021 and would have to wait until July 1, 2022 when the tax areas were officially implemented. However, through work with the County Office of Education and the California Department of Education through Mr. Larry Shirey, the District learned that a waiver of *Education Code* Section 35534 could be filed. If successful, the waiver would allow for the unification to take place on July 1, 2021, as planned by the District and County Office of Education. The State Board of Equalization has also acknowledged that this date is permissible for all purposes other than tax area allocation, which will take place in 2022.

Student Population: 285

City Type: Rural

Public Hearing Date: 6/10/2021

Public Hearing Advertised: On the District website

Local Board Approval Date: 6/10/2021

Community Council Reviewed By: LCAP / SSC Advisory Committee

Community Council Reviewed Date: 6/1/2021

Community Council Objection: N

Community Council Objection Explanation:

Audit Penalty Yes or No: N

Categorical Program Monitoring: N

Submitted by: Mr. Daniel Moore

Position: Superintendent

E-mail: [dmoore@bantasd.org](mailto:dmoore@bantasd.org)

Telephone: 209-229-4651

Fax:

Bargaining Unit Date: 05/14/2021

Name: Banta Educators Association

Representative: Nadia Robinson

Title: BEA President

Phone: (209) 480-8515

Position: Neutral

Comments:

1. The *Education Code* gives certain school district reorganization authorities to the county board of supervisors. However, the statutory language providing these authorities predates COE ability to become fiscally independent of the county general fund. Almost all COEs currently are fiscally independent and the district reorganization responsibilities assigned in statute to the county board of supervisors now are vested in either the county board of education or the county superintendent of schools. [↑](#footnote-ref-1)