

California Department of Education

Executive Office

SBE-005 (REV. 1/2018)

General Waiver

# California State Board of Education September 2024 Agenda Item #W-05

## Subject

Request by **Travis Unified School District** to waive portions of California *Education Code* section 5091, which requires the board of trustees to make an appointment to fill a vacant board position within 60 days of the position becoming vacant.

## Waiver Number

20-3-2024

## 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 would retroactively remove the 60-day time limit and provide the additional time necessary to make a provisional appointment to fill a governing board vacancy.

## 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.

The Travis Unified School District (USD) is a small school district with a five-member board. The district uses a trustee area election system rather than an at-large system, which complicates recruitment by requiring the district to identify at least one candidate within each trustee area. In Travis USD’s case, this is complicated by the fact that Trustee Area 1 represents Travis Air Force base, which by its nature is a transient community. Due to this complication, the district struggles with recurring vacancies in recruiting an Area 1 trustee.

In August 2023, the current trustee representing Area 1 provided their resignation, creating a vacancy on the board. The board sought to fill this vacancy by appointment. After providing notice of the vacancy and soliciting qualified candidates, no applications were received. As a result, no candidate was appointed by the board by the statutory deadline. The district continued to advertise the vacancy and solicit applications, and a qualified candidate was identified and appointed, effective February 6, 2024. No objections to this appointment were raised by the board of trustees, or members of the public.  
   
As noted previously, a county superintendent must order an election to fill the vacancy if the district governing board does not act within 60 days of the vacancy. Thus, approval of this waiver would also affect a statutory responsibility of the Solano County Superintendent. Because of this effect, the California Department of Education (CDE) requested that the Solano County Superintendent provide her position regarding this waiver request. CDE confirmed that she is aware of the challenges facing the district in seating a new board member, was notified of the request, and has no objections.

Approving the waiver will allow the newly-appointed trustee to serve without concerns over potential legal challenges, the expense of a special election, or the uncertainty over the prospect of such an election attracting any candidates. Given that the CDE has determined that that none of the reasons for denial in *EC* Section 33051(a) exist, the CDE recommends that the SBE approve the Travis USD request to waive portions of *EC* Section 5091, which require a governing board to fill a vacancy on the board within 60 days of the vacancy.

**Demographic Information:** The Travis USD has a student population of 5,340, and serves the cities of Fairfield, Vacaville, and Travis Air Force Base in Solano 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 2024 SBE meeting for Vallecitos Elementary School District (San Diego County).

## Fiscal Analysis (as appropriate)

Approval of the waiver request will not have fiscal effects on any local or state agency. Disapproval of the request may result in additional costs if an appointment or election to fill the vacancy beyond 60 days is successfully challenged.

## Attachment(s)

* **Attachment 1:** Summary Table (1 page)
* **Attachment 2:** Travis Unified School District General Waiver Request 20-3-2024 (4 pages). (Original waiver request is signed and on-file in the Waiver Office.)

# Attachment 1: Summary Table

California *Education Code* Section 5020

| **Waiver Number** | **District** | **Period of Request** | **Bargaining Unit Representatives Consulted** | **Public Hearing and Board Date** | **Advisory Committee Position** |
| --- | --- | --- | --- | --- | --- |
| 20-3-2024 | Travis Unified School District | **Requested:**  October 15, 2023, to February 7, 2024  **Recommended:** October 15, 2023, to February 7, 2024 | California School Employees Association Chapter 454, Nadine Patterson, President 11/20/2023  **Neutral** | November 14, 2023 | Travis Elementary PTO  11/17/2023  **No objections** |

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# Attachment 2: Travis Unified School District General Waiver Request 20-3-2024

**California Department of Education**

**WAIVER SUBMISSION - General**

CD Code: 4870565

Waiver Number: 20-3-2024

Active Year: 2024

Date In: 3/29/2024 5:22:42 PM

Local Education Agency: Travis Unified

Address: 2751 De Ronde Dr.

Fairfield, CA 94533

Start: 10/15/2023

End: 2/7/2024

Waiver Renewal: No

Waiver Topic: Other Waivers

Ed Code Title: Other Waivers

Ed Code Section: 5091

Ed Code Authority: 33050

*Education Code* or *CCR* to Waive: *Education Code* section 5091

(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 the member’s resignation for more than 60 days after the member 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) (A) 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 not less than 88, nor more than 125, days following the order of the election.

(B) Notwithstanding subparagraph (A), the election may be conducted within 180 days after the issuance of the order so that the election may be consolidated with a regularly scheduled election.

(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 that 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 election official’s estimate of the cost of conducting the special election and those estimated costs expressed on a per-pupil or per-student basis.

(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 Article 2 (commencing with Section 7924.100) of Chapter 2 of Part 5 of Division 10 of Title 1 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: Travis Unified School District (“District”) seeks a retroactive waiver of the appointment and election deadlines of *Education Code* section 5091 to extend the deadline to find an appropriate appointment for Trustee Area 1 of the District’s Governing Board (“Board”). In August 2023, the Trustee member representing Trustee Area 1 provided their resignation, creating a vacancy on the Board. The Board sought to fill this vacancy by appointment. After providing notice of the vacancy and soliciting qualified candidates, no applications were received. As a result, no candidate was appointed by the Board by the statutory deadline. The District continued to advertise the vacancy and solicit applications and a qualified candidate was appointed, effective February 6, 2024.

*Education Code* 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. *Education Code* section 5091 also 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, granting the District the additional time that was needed to make the provisional appointment.

Student Population: 5340

City Type: Small

Public Hearing Date: 11/14/2023

Public Hearing Advertised: Posting on November 9, 2023 on the District website and at the District Office and all school sites.

Local Board Approval Date: 11/14/2023

Community Council Reviewed By: PTA, Travis Elementary PTO, Curriculum Council

Community Council Reviewed Date: 11/17/2023

Community Council Objection: No

Audit Penalty Yes or No: No

Categorical Program Monitoring: No

Submitted by: Ms. Jocelyn Pietsch

Position: Special Counsel

E-mail: [jpietsch@dwkesq.com](mailto:jpietsch@dwkesq.com)

Telephone: 415-533-7014

Bargaining Unit Date: 11/20/2023

Name: California School Employees Association Ch. 454

Representative: Nadine Patterson

Title: President

Phone: [npatterson@travisusd.org](mailto:npatterson@travisusd.org)

Position: Neutral

Bargaining Unit Date: 11/20/2023

Name: Travis Unified Teacher Association

Representative: Mark Nowag

Title: President

Phone: [mnowag@travisusd.org](mailto:mnowag@travisusd.org)

Position: Support