

California Department of Education

Executive Office

SBE-005 (REV. 1/2018)

General Waiver

# California State Board of Education January 2022 Agenda Item #W-06

## Subject

Request by **Vallecitos 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

7-9-2021

## 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 removes the 60-day time limit and provides additional time to the Vallecitos Elementary School District (ESD) 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 and provide the Vallecitos ESD additional time to make a provisional appointment to a vacant governing board seat.

The Vallecitos ESD changed to a by-trustee-area method of election for the November 2020 governing board election.[[1]](#footnote-1) Two governing board members, whose terms expired in 2020, were unable to run for reelection in the November 2020 board election due to the trustee-area residency requirements. The result was that there were two trustee areas that were unrepresented by a board member at that time. These two unrepresented trustee-area positions were on the November 2020 ballot. Only one of these unrepresented trustee area positions was filled at the election, which resulted in one remianing vacancy on the board. No qualified candidates applied when the governing board first sought to make a provisional appointment to fill this vacancy.

The Vallecitos ESD governing board then submitted a request to the SBE to waive the 60-day time limit in order to provide the district additional time to fill the vacancy. The SBE approved this request at its May 2021 meeting. However, that waiver expired on August 31, 2021, without the district making a provisional appointment.

The district submitted the current waiver to allow it to continue its attempts to fill the vacancy. After this submittal, the board did find qualified candidates and made a provisional appointment at its November 2021 meeting. Although the governing board now has a full complement of members, it still needs retrocative approval of its waiver request since the provisional appointment was made after the period of request for the waiver previously approved by the SBE had expired.

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. Approval of this waiver also would affect a statutory responsibility of the San Diego County Superintendent. Because of this effect, the California Department of Education (CDE) requested that the San Diego County Superintendent provide his position regarding the Vallecitos ESD waiver request. The Superintendent’s response indicates support for the district’s efforts to fill the vacancy on its board, including submittal of the waiver request. The San Diego County Superintendent similarly supported the district’s initial waiver request.

Given the lack of local opposition to the waiver request, and the CDE determination that none of the reasons for denial in *EC* Section 33051(a) exist, the CDE recommends that the SBE approve the Vallecitos ESD 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. Approval of the waiver will extend the time period for the Vallecitos ESD to fill the vacancy on its board. This extended time period will encompass the date at which the governing board made the provisional appointment to fill the vacancy.

**Demographic Information:** The Vallecitos ESD has a student population of 189 and is located in a rural area 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 similar waiver requests in the past, including a waiver for the Vallecitos ESD at its May 2021 meeting.

## 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 election costs for the Vallecitos ESD.

## Attachment(s)

* **Attachment 1:** Summary Table (1 page)
* **Attachment 2:** Vallecitos Elementary School District General Waiver Request 7-9-2021 (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** |
| --- | --- | --- | --- | --- | --- |
| 7-9-2021 | Vallecitos Elementary School District | **Requested:**  September 1, 2021, to March 1, 2022  **Recommended:** September 1, 2021, to March 1, 2022 | Vallecitos Educators Association Erica Rivera Union President 9/9/2021 **Support**  The Vallecitos ESD has no classified bargaining unit. | September 14, 2021 | Vallecitos District School Site Council 9/9/2021  **No objections** |

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# Attachment 2: Vallecitos Elementary School District General Waiver Request 7-9-2021

**California Department of Education**

**WAIVER SUBMISSION - General**

CD Code: 3768437

Waiver Number: 7-9-2021

Active Year: 2021

Date In: 9/24/2021 11:13:22 AM

Local Education Agency: Vallecitos Elementary

Address: 5211 Fifth St.

Rainbow, CA 92028

Start: 9/1/2021

End: 3/1/2022

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.

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. State Board of Education (SBE) approval of this waiver request removes the 60-day time limit and provides the Vallecitos Elementary School District additional time to make a provisional appointment.

Outcome Rationale: Vallecitos Elementary School District is a small, rural district with less than 200 student enrollment. Subsequent to the re-districting process, with the completion of established terms, the district lost two board members. Only one trustee area position was filled at the last election, and no other qualified candidates have applied. The only qualified applicant subsequently moved out of the vacant trustee area and District. The district is attempting to fill the open seat, however due to the challenging circumstances, additional time is needed to advertise, review, and approve an appointee. A previous General Waiver Request was submitted in February 2021, however the position is still not filled and the district is continuing to seek qualified candidates. Additional time would be greatly helpful in this process.

Student Population: 189

City Type: Rural

Public Hearing Date: 9/14/2021

Public Hearing Advertised: Posted in three (3) community locations and district website.

Local Board Approval Date: 9/14/2021

Community Council Reviewed By: Vallecitos District School Site Council

Community Council Reviewed Date: 9/9/2021

Community Council Objection: N

Community Council Objection Explanation:

Audit Penalty Yes or No: N

Categorical Program Monitoring: N

Submitted by: Dr. Maritza Koeppen

Position: Superintendent / Principal

E-mail: [mkoeppen@vallecitossd.net](mailto:mkoeppen@vallecitossd.net)

Telephone: 760-728-7092 x229

Fax:

Bargaining Unit Date: 09/09/2021

Name: Vallecitos Educators Association

Representative: Erica Rivera

Title: Union President

Phone: 760-728-7092

Position: Support

Comments:

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

Request to waive portions of *Education Code* Section 5091, subdivisions (a) and (c), that establish a 60-day timeline for a school district governing board to make a provisional appointment to fill a vacancy. Language proposed to be waived is bracketed and in italics below:

***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 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.

1. The SBE, at its January 2020 meeting, approved the request of the Vallecitos ESD to remove the *Education Code* requirement that county approval of the district’s by-trustee-area election plan be submitted to the district’s voters for final approval. [↑](#footnote-ref-1)