

California Department of Education

Executive Office

SBE-005 (REV. 1/2018)

General Waiver

# California State Board of Education March 2022 Agenda Item #W-03

## Subject

Request by **Los Angeles Unified School District** to waive portions of California *Education Code* Section 45272(a), to allow the appointment of applicants from outside the top three ranks on the eligibility lists to classified positions.

## Waiver Number

9-12-2021

## Type of Action

Action, Consent

## Summary of the Issue(s)

The Los Angeles Unified School District (LAUSD) is requesting a waiver of California *Education Code* (*EC*) Section 45272(a), to allow the district to fill classified, school-based positions with candidates on the eligibility lists who are outside the top three ranks. The process under *EC* 45272(a) requires that offers of employment be made to candidates from the top three ranks before offers of employment can be made to any other candidates on the list.

## Authority for Waiver

*Education Code (EC)* Section 33050

## Recommendation

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

The California Department of Education (CDE) recommends that California *Education Code* (*EC*) Section 45272(a) be waived for the LAUSD with the following conditions:

* Appointments pursuant to this waiver are limited to the following school-based, entry level positions: Food Service Worker, Building & Grounds Worker, and Special Education Trainee/Assistant.
* Appointees shall be on the eligibility lists and meet all other minimum qualifications for the position, including but not limited to, criminal background checks.
* The period of the waiver shall be from March 11, 2022 through June 30, 2023. If desired, LAUSD may submit a request for a renewal of the waiver with an analysis of the effectiveness of the flexibility.

## Summary of Key Issues

Approval of this waiver request would waive a portion of California *Education Code* (*EC*) Section 45272(a), which in turn would allow LAUSD to fill classified, school-based positions with candidates from outside the top three ranks on the eligibility lists.

The process required by *Education Code* Section 45272(a) requires that offers of employment be made to candidates in the top three ranks on any eligibility list before offers of employment can be made to any other candidates on the list. According to LAUSD, this process results in numerous vacancies waiting to be filled at school sites because the top three ranks of candidates on the eligibility list are often not available or have interviewed at other schools and accepted offers.

LAUSD has requested a waiver to allow schools to make appointments to any candidate on the eligibility list no matter the rank. This waiver would not allow LAUSD to make offers of employment to individuals who are not on the eligibility list.

As part of their documentation regarding the waiver request, LAUSD has estimated the waiver would impact over 1,400 vacancies for the three job titles listed in the table below, for which the number of available positions exceeds the number of candidates on the eligibility list.

| Job Title | # Positions | Vacancies | # Candidates On Eligibility List |
| --- | --- | --- | --- |
| Food Service Worker | 2,590 | 227 | 145 |
| Building & Grounds Worker | 3,057 | 875 | 362 |
| Special Education Trainee/Assistant | 6,676 | 349 | 78 |

\*LAUSD data as of 2-11-22

The SBE has not previously considered a waiver of an employee appointment requirement for entire classifications of employees or a waiver of this section of the Education Code. Previous waivers regarding the eligibility process for appointment have been limited to the appointment to a specific position, see “Summary of Previous State Board of Education Discussion and Action,” below.

While the scope of this waiver is unprecedented, school districts are also facing unprecedented staffing challenges as a result of the COVID-19 pandemic. The LAUSD Personnel Commission, bargaining units and SEIU Local 99 are in support of this waiver request as a way to help fill the large number of vacancies in the district in a more timely manner. LAUSD staff estimates granting principals access to the entire eligibility list may speed up the hiring process by three to four weeks for some schools, and reduce the risk of losing candidates who are outside of the first three ranks but otherwise eligible.

**Demographic Information:** The Los Angeles USD has a student population of 574,996 and is located in an urban area of Los Angeles County.

**Because this is a general waiver, if the State Board of Education 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 approved a previous request from the Manhattan Beach USD in March 2004 (Item W-09, <https://www.cde.ca.gov/be/ag/ag/documents/agenda0304.pdf>) to employ a substitute assistant who was not in the top three ranks.

At its March 2007 meeting the SBE denied a request from the San Bernardino City USD (Item W-13, <https://www.cde.ca.gov/be/ag/ag/documents/agenda0304.pdf>), to allow the district to appoint a specified person to perform the duties of the Personnel Director and Commission.

## Fiscal Analysis (as appropriate)

There is no statewide fiscal impact of waiver approval (or denial).

## Attachment(s)

* **Attachment 1:** Summary Table (1 page)
* **Attachment 2:** Los Angeles Unified School District General Waiver Request 9-12-2021 (3 pages). (Original waiver request is signed and on file in the Waiver Office.)

# Attachment 1: Summary Table

California *Education Code (EC)* Section 45272(a)

| **Waiver Number** | **District** | **Period of Request** | **Bargaining Unit Representatives Consulted, Date and Position** | **Public Hearing and Board Date** | **Advisory Committee Position** |
| --- | --- | --- | --- | --- | --- |
| 9-12-2021 | Los Angeles Unified School District | **Requested:** August 1, 2020, to January 1, 2024  **Recommended:** March 11, 2022 to June 30, 2023 | California School Employees Association  Letetsia Fox, President  Chapter 500  December 7, 2021  **Neutral**  Service Employees International Union  Lester Garcia, Political Director  December 3, 2021  **Support** | Approved:  December 7, 2021 | Parent Advisory Committee  November 18, 2021  **No objections** |

Created by California Department of Education  
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**Attachment 2: Los Angeles Unified School District General Waiver Request 9-12-2021**

**California Department of Education**

**WAIVER SUBMISSION - General**

CD Code: 1964733

Waiver Number: 9-12-2021

Active Year: 2021

Date In: 12/13/2021 9:05:14 PM

Local Education Agency: Los Angeles Unified

Address: 333 South Beaudry Ave.

Los Angeles, CA 90017

Start: 1/1/2020

End: 1/1/2024

Waiver Renewal: N

Previous Waiver Number:

Previous SBE Approval Date:

Waiver Topic: Other Waivers

Ed Code Title: Other Waivers

Ed Code Section: 45272(a)

Ed Code Authority: 33050

*Education Code* or *CCR* to Waive: *Education Code* 45272(a) reads: (a) All vacancies in the classified service shall be filled pursuant to this article and the rules of the commission, from applicants on eligibility lists which, wherever practicable, as determined by the commission, shall be made up from promotional examinations, or appointments may be made by means of transfer, demotion, reinstatement, and reemployment in accordance with the rules of the commission. All applicants for promotional examinations shall have the required amount of service in classes designated by the commission or meet the minimum qualifications of education, training, experience, and length of service, which shall be determined by the commission to be appropriate for the class for which they have applied. Any promotional applicant who has served the required amount of time in a designated class or who meets the minimum qualifications for admission to a promotional examination shall be admitted to the examination. The commission shall place applicants on the eligibility lists in the order of their relative merit as determined by competitive examinations. The final scores of candidates shall be rounded to the nearest whole percent for all eligibles. All eligibles with the same percentage score will be considered as having the same rank. [Appointments shall be made from the eligibles having the first three ranks on the list who are ready and willing to accept the position.]

Outcome Rationale: LAUSD seeks a waiver through January 1, 2024, to a portion of *Education Code* 45272(a), so that appointments may be made by schools from other than the first three ranks of eligible applicants on the eligibility list for classified school-based entry level positions. Currently, vacancies in crucial entry-level classified positions typically exceed the number of candidates on eligibility lists. The process required by *Education Code* 45272(a) requires that offers of employment be made to the top three candidates on any such eligibility list before any other candidates on the list can be made offers of employment. The process of doing so results in numerous vacancies waiting to be filled at various school sites if the top three ranks of candidates are not available or have interviewed at other schools and accepted offers. As such, we are seeking a waiver to a portion of *Education Code* 45272 (a), so that appointments may be made by schools from other than the first three ranks of eligible applicants on the eligibility list. This request would be limited to school-based, entry level positions. Thereby, school-based, entry-level vacancies such as Building & Grounds Worker, Food Service Worker, and Office Technician may be filled simultaneously at various schools throughout the District. Staff estimates granting principals access to the entire eligibility list may speed up the hiring process by three to four weeks for some schools, and reduce the risk of losing candidates at the middle or bottom of the list because of extended waiting periods on the eligibility list.

Student Population: 535967

City Type: Urban

Public Hearing Date: 12/7/2021

Public Hearing Advertised: District Website

Local Board Approval Date: 12/7/2021

Community Council Reviewed By: Parent Advisory Committee

Community Council Reviewed Date: 11/18/2021

Community Council Objection: N

Community Council Objection Explanation:

Audit Penalty Yes or No: N

Categorical Program Monitoring: N

Submitted by: Ms. Colleen Pagter

Position: Legislative Liaison

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Bargaining Unit Date: 12/07/2021

Name: CSEA

Representative: Letetsia Fox

Title: President Chapter 500

Phone: (800) 834-9959

Position: Neutral

Comments:

Bargaining Unit Date: 12/03/2021

Name: SEIU

Representative: Lester Garcia

Title: Political Director

Phone: 213.387.8393

Position: Support

Comments: