

California Department of Education

Executive Office

SBE-005 (REV. 1/2018)

General Waiver

# California State Board of Education January 2023 Agenda Item #W-05

## Subject

Request by **Columbia Elementary 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

5-9-2022

## 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 which the district was unable to meet.

## 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 Columbia Elementary School District (ESD) is a small, rural district in Shasta county. They recently experienced a vacancy on their school board. The seat became vacant effective March 31. The board responded proactively, advertising in their local newspaper, on the district website, and in public postings at the district’s three school sites beginning on April 1. Despite these recruiting efforts, no qualified candidates expressed interest in the position. This district board then ordered the vacancy to be filled at the November election along with two regularly-scheduled board vacancies. Three candidates filed for election and took office in December 2022.

The district made a good-faith effort to comply with their statutory obligation to fill their vacant seat either by appointment or election. In order to ensure that they are in compliance with all appropriate statutes, they are requesting a waiver of the 60-day limit to fill a vacancy.

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 also would affect a statutory responsibility of the Shasta County Superintendent. Because of this effect, the California Department of Education (CDE) requested that the Shasta County Superintendent provide her position regarding this waiver request. The Shasta County Superintendent, Judy Flores, responded with an email confirming support for the district’s efforts to fill the vacancy on its board, including submittal of the 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 Columbia 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.

Demographic Information: The Columbia ESD has a student population of 668 and is located near the city of Redding in Shasta 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 July 2022 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 costs if the recent election to fill the vacancy is successfully challenged.

## Attachment(s)

* **Attachment 1:** Summary Table (1 page)
* **Attachment 2:** Columbia Elementary School District General Waiver Request 5-9-202 (2 pages). (Original waiver request is signed and on file in the Waiver Office.)

# 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** |
| --- | --- | --- | --- | --- | --- |
| 5-9-2022 | Columbia Elementary School District | **Requested:**  April 1, 2022, to November 1, 2022  **Recommended:** April, 2022, to November 8, 2022 | Columbia Teachers Association  Marci Duff  President  8/12/2022  **Support** | 6/23/2022 | School Site Council 9/6/2021  **No objections** |

Created by California Department of Education  
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# Attachment 2 Columbia Elementary School District General Waiver Request 5-9-2022

**California Department of Education**

**WAIVER SUBMISSION - General**

CD Code: 4569948

Waiver Number: 5-9-2022

Active Year: 2022

Date In: 9/7/2022 9:28:39 AM

Local Education Agency: Columbia Elementary

Address: 10140 Old Oregon Trail

Redding, CA 96003

Start: 4/1/2022

End: 11/1/2022

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: 33050-33053

*Education Code* or *CCR* to Waive: 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 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 resignation for more than 60 days after he 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 to fill the vacancy]

Outcome Rationale: Columbia is a rural school district. The board vacancy was advertised in the newspaper, on our district website, and posted at our school sites. No one applied for the vacancy and no one came forward showing interest to be appointed.

Student Population: 743

City Type: Rural

Public Hearing Date: 6/23/2022

Public Hearing Advertised: The public notice was posted in 3 business locations within our district and posted on the homepage of our website.

Local Board Approval Date: 6/23/2022

Community Council Reviewed By: School Site Council

Community Council Reviewed Date: 9/6/2022

Community Council Objection: N

Community Council Objection Explanation:

Audit Penalty Yes or No: N

Categorical Program Monitoring: N

Submitted by: Ms. Brandy Thornton-McDaniel

Position: Administrative Assistant

E-mail: [bmcdaniel@columbiasd.com](mailto:bmcdaniel@columbiasd.com)

Telephone: 530-223-1915 x103

Fax:

Bargaining Unit Date: 08/12/2022

Name: Columbia Teachers Association

Representative: Marci Duff

Title: CTA President

Phone: 530-223-1915

Position: Support

Comments: