

California Department of Education

Executive Office

SBE-005 (REV. 1/2018)

General Waiver

# California State Board of Education November 2023 AgendaItem #W-08

## Subject

Request by **Needles 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

10-6-2023

## 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 Needles Unified School District (USD) is a small school district (approximately 1,000 students) with a seven-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. This has led to a persistent problem with recruiting candidates for all seven trustee areas. Currently, the board has two persistent vacancies that have gone beyond the 60-day appointment period.

The district has two open seats with one vacant since 2018, and the other since June 2023. The trustee area it represents has only 27 total residents, none of whom has expressed a willingness to serve. While it represents a larger pool of residents, the entire community has only 2,500 total residents, and the district has rarely had a full 7 member board in recent years. Often, the board has not even been able to maintain 6 sitting members. The district is actively recruiting for both vacancies, but has also decided to consider both a reduction in size, as well as alternative election methods that might better meet its needs.

It should be noted that it is unusual for a district of this size to have a seven-member board. This is due to the geographic extent of the district, which is one of the largest districts in the United States in terms of area. The district is about 6,000 square miles, making it larger than three states in the United States. The district has indicated that, in addition to time for recruitment, this extension will provide them with time to consider the appropriateness of continuing with a seven-member board structure.

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 San Bernardino County Superintendent. Because of this effect, the California Department of Education (CDE) requested that the San Bernardino County Superintendent provide his position regarding this waiver request. His response indicates support for the district’s efforts to determine the best path forward for its board, including submittal of the waiver request.

Given the expense of a special election in such a geographically expansive district, the uncertainty over the prospect of such an election attracting any candidates, 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 Needles 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 Needles USD has a student population of 981 and is located in a rural eastern area of San Bernardino county, along the Arizona and Nevada borders.

**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 September 2023 SBE meeting for Big Sur Unified School District (Monterey 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:** Needles Unified School District General Waiver Request 10-6-2023 (2 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** |
| --- | --- | --- | --- | --- | --- |
| 10-6-2023 | Needles Unified School District | **Requested:** June 28, 2023, to June 5, 2024**Recommended:** June 28, 2023, to June 5, 2024 | California School Employees Association, NeedlesNancy Guffey, Local President6/21/2023**Support** | June 28, 2023 | District Advisory Committee6/22/2023**No objections** |

Created by California Department of Education
November 2023

# Attachment 2: Needles Unified School District General Waiver Request 10-6-2023

**California Department of Education**

**WAIVER SUBMISSION - General**

CD Code: 3667801

Waiver Number: 10-6-2023

Active Year: 2023

Date In: 6/29/2023 12:57:26 PM

Local Education Agency: Needles Unified

Address: 1900 Erin Dr.

Needles, CA 92363

Start: 6/28/2023

End: 6/5/2024

Waiver Renewal: No

Waiver Topic: School District Reorganization

Ed Code Title: 60 day Requirement to Fill Board Vacancy

Ed Code Section: Portions of 5091

Ed Code Authority: 33050-33053

*Education Code* or *CCR* to Waive: Please see Attachment A, attached hereto and incorporated herein by reference.

Outcome Rationale: Needles Unified School District is a relatively small, rural school district with fewer than 1,000 students enrolled. With our seven-member board, there is often one or more vacancies at a time, and we struggle to find qualified candidates. The district will continue to attempt to fill open seats, but it is challenging in the summer. The District remains active in its search and additional time is needed to continue to advertise, review, and approve an appointee. This summer, the District may also contemplate whether a seven member board remains the best system for our District.

Student Population: 981

City Type: Rural

Public Hearing Date: 6/28/2023

Public Hearing Advertised: Newspaper, internet, district office and school sites.

Local Board Approval Date: 6/28/2023

Community Council Reviewed By: District Advisory Committee

Community Council Reviewed Date: 6/22/2023

Community Council Objection: No

Audit Penalty Yes or No: No

Categorical Program Monitoring: No

Submitted by: Dr. Garry Cameron

Position: Superintendent

E-mail: garry\_cameron@needlesusd.org

Telephone: 760-903-6749

Bargaining Unit Date: 06/21/2023
Name: California Schools Employee Association – Needles
Representative: Nancy Guffey
Title: Local President
Phone: 760-577-4210
Position: Support