

California Department of Education

Executive Office

SBE-005 (REV. 1/2018)

General Waiver

# California State Board of Education March 2024 Agenda Item #W-04

## Subject

Request by **Vallecitos 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

14-5-2023

## 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 Vallecitos Elementary School District (ESD) is a small, rural 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. Due to its size, the district has consistently struggled to fill vacancies on the school board since transitioning to trustee area elections in November of 2020. After its decennial redistricting, two seats were left vacant. One of these seats was subsequently filled in the November 2022 election, leaving an additional vacancy in Trustee Area 5. Recruitment avenues include the school district’s website, physical postings in high traffic areas around the community, and annoucements to parents. The district remains active in its search and additional time is needed to continue to advertise, review, and approve an appointee.  
   
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 Diego County Superintendent. Because of this effect, the California Department of Education (CDE) requested that the San Diego County Superintendent provide his position regarding this waiver request. His response indicates support for the district’s efforts to fill the vacancy on its board, including submittal of the waiver request.

Given the expense of a special election, the uncertainty over the prospect of such an election attracting any candidates, the lack of local opposition, 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.

**Demographic Information:** The Vallecitos ESD has a student population of 187, served by a single elementary school, and is located in the community of Rainbow, in a rural northern 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. The most recent approval was at the May 2023 SBE meeting for Hughes-Elizabeth Lakes Union Elementary 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:** Vallecitos Elementary School District General Waiver Request 14-5-2023 (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** |
| --- | --- | --- | --- | --- | --- |
| 14-5-2023 | Vallecitos Elementary School District | **Requested:**  May 9, 2023, to November 9, 2024  **Recommended:** May 9, 2023, to November 9, 2024 | Vallecitos Educators Association, Christine Kara, President 1/18/2023  **Support** | May 9, 2023 | Vallecitos District School Site Council  5/17/2023  **No objections** |

Created by California Department of Education  
March 2024

# Attachment 2 Vallecitos Elementary School District General Waiver Request 14-5-2023

**California Department of Education**

**WAIVER SUBMISSION - General**

CD Code: 3768437

Waiver Number: 14-5-2023

Active Year: 2023

Date In: 5/25/2023 12:51:52 PM

Local Education Agency: Vallecitos Elementary

Address: 5211 Fifth St.

Rainbow, CA 92028

Start: 5/9/2023

End: 11/9/2023

Waiver Renewal: Yes

Previous Waiver Number: 7-9-2021-W-06

Previous SBE Approval Date: 01/12/2022

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:

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: Vallecitos Elementary School District is a small, rural district with fewer than 200 students enrolled. 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 district is attempting to fill the open seat, however due to the small applicant pool, additional time is needed to advertise, review, and approve an appointee

Student Population: 187

City Type: Rural

Public Hearing Date: 5/9/2023

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

Local Board Approval Date: 5/9/2023

Community Council Reviewed By: Vallecitos District School Council Site

Community Council Reviewed Date: 5/17/2023

Community Council Objection: No

Audit Penalty Yes or No: No

Categorical Program Monitoring: No

Submitted by: Ms. Cheri Wheeler

Position: Business Manager

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

Telephone: 760-728-7092 x230

Bargaining Unit Date: 05/11/2023  
Name: Vallecitos Educators Association  
Representative: Christine Kara  
Title: Union President  
Phone: 7607287092  
Position: Support