

INFORMATION MEMORANDUM

DATE: October 2, 2003

TO: MEMBERS, STATE BOARD OF EDUCATION

FROM: Judy Pinegar, Manager
Waiver Office

SUBJECT: 2002 Annual Report of Waiver Activity

Attached is a copy of the 2002 Annual Report of Waiver Activity as required per *Education Code* Section 33053, "The State Department of Education shall annually submit a report to the Governor, Legislature, State Board of Education, and make the report available to the superintendent and board president of each school district and county of education."

The report includes a description of the number and types of waivers requested of the board, the actions of the board on those requests, as well as withdrawals or requests on which no action was taken.

Attachment: Annual Report on Waiver Activity January 2002 – December 2002

**Annual Report
of
Waiver Activity**

January 2002 – December 2002

Under the General Waiver Authority of the
California State Board of Education
Education Code Sections 33050 – 33053,
and Specific Waiver Authorities within
The *Education Code*

A Report to the
Governor, the Legislature,
And the
California State Board of Education

CALIFORNIA DEPARTMENT OF EDUCATION
Jack O’Connell, State Superintendent of Public Instruction
October 2003

Annual Report of Waiver Activity - 2002 3

 Waiver Requests Received for 2002:..... 3

Purpose and Use of Waivers 4

Analysis of Major Types of Waivers Received..... 5

 State Meal Mandate 5

 Special Education..... 5

 High Priority Schools Grant Program..... 6

 Instructional Materials Funds 6

 Other Waivers 7

 Out-of-State Use of Funds 7

 Equity Length of Time..... 7

 Federal Waivers 7

The Process for Waivers..... 8

 Requirements 8

 Recommendations..... 9

State Board Waiver Policies..... 9

Results/Conclusions 10

Attachment A 10

Appendix A..... 10

Annual Report of Waiver Activity - 2002

Education Code Section 33053 states that the:

“Department of Education shall annually submit a report to the Governor, Legislature, State Board of Education, and make the report available to the superintendent and board president of each school district and county office of education. This report shall include a description of the number and types of waivers requested of the board, the actions of the board on those requests, and sources of further information on existing or possible waivers.”

This report shows the number of waiver requests received from January 1, 2002 until December 31, 2002, including for the first time, the various specific waiver requests heard by the State Board of Education (SBE). In addition, waiver requests for portions of the Federal law, the No Child Left Behind (NCLB) Act, are being presented to the SBE. Federal waiver requests are becoming more frequent. This report describes the types of waivers received, the dispositions of those waivers and brief descriptions of the major type of waiver requests received. Each waiver request submitted from school districts and county office’s of education is logged into the California Department of Education (CDE) Waiver Office database and tracked until the request is either approved or disapproved by the SBE, returned to the district for one reason or another, or withdrawn by the district.

Waiver Requests Received for 2002:

169	Number of General Waivers
515	Number of Specific Waivers
506	Number of Waivers Approved
8	Number of Waivers Denied
47	Number of Waivers Withdrawn
123	Number of Waivers with No Formal Action Taken ¹
684	Total Number Received

For 2002, the percentage of waivers approved by the SBE was 74 percent, roughly equivalent to the number approved in 2001 of 77 percent. The rate of approval for all waivers does not appear to vary much from year to year. The number of waivers denied by the SBE was only eight and represents .01 percent of the total waivers received which

¹ This includes five Superintendent’s Waiver Requests forwarded to the proper office

is fewer waiver requests than were denied in the previous year. In 2001, the percentage of requests denied to the total number received (777) was .08 percent. These percentages of approved, denied and withdrawals reflect the normal trends as in previous years for waiver requests although the number of total waiver requests for 2002 dropped slightly from 777 to 684.

All general waivers must be denied for one of seven reasons found in *Education Code* Section 33051(a). Some waivers are brought forward to the SBE with a recommendation of denial due to the nature and merit of a request and others were denied over CDE recommendation of approval by formal action of the SBE. It is important to note that while the overall trend is a small number of denied waivers year after year, CDE staff prevent many waiver requests from coming to the SBE by offering LEAs alternatives to filing a waiver request, dissuading LEAs from filing waiver requests that will likely be disapproved or explaining to LEAs that their problems do not need a waiver request.

No action was taken on 123 waivers or 18 percent of the total waivers. This number includes Superintendent's waivers, requests for *Education Code* Sections that cannot be waived, waivers that are unnecessary or waivers that are returned to the local educational agency (LEA) for more information. This is an increase in the number of waiver requests in the No Action category in 2001. The reason for this was an increase in the number of waiver requests that were deemed unnecessary and/or returned to the LEA. As explained later in this report, waiver requests received for waiving the timelines for the High Priority Schools Grant Program (HPSGP) were returned to districts after legislation was approved changing the timelines and thereby making the waiver requests unnecessary.

Purpose and Use of Waivers

The purpose of a general waiver is to provide flexibility in a school district or county office of education without undermining the basic intent of the law. Under the SBE's general waiver authority, *Education Code* Sections 33050-33054, the governing boards of school districts and county offices of education as well as charter schools can request a waiver of most parts of the California Education Code and Title 5 Regulations adopted by the SBE. Non-waivable sections designated in E.C. 33050(a)(1)-(20) include items dealing with apportionment, facilities, financial management and control, K-3 class size reduction and school buildings.

While general waivers offer flexibility in the implementation of programs to meet needs of students that cannot be met under mandated statutes and regulations, waivers also tend to highlight changes that need to be made in the law. Waivers that occur over and over in large numbers may indicate a need to correct an oversight of legislation and bring awareness of changes that need to be addressed to both the CDE and the SBE. Both entities work through the waiver process to allow districts and schools flexibility to operate in a way that facilitates a quality education system for the state's school children.

Specific waivers offer the same flexibility to districts but are slightly different in processing and approval. Recommendations of denial for specific waivers do not need one of the seven reasons in *Education Code* Section 33051(a). Specific waivers sometimes do not require the school site council and parental notice for them to be forwarded to the department. Specific waiver authorities are spread throughout the *Education Code* and many are limited in scope to a particular chapter, section or area of the Code. The most frequently used specific waiver authority is *Education Code* Section 56101 for special education waivers to benefit a child's Individual Education Plan (IEP).

Analysis of Major Types of Waivers Received

State Meal Mandate

This category continues to be the largest one for the Waiver Office with 233 received for 2002 from school districts to waive the meal requirement for Saturday school and summer school session. Out of this number, 202 were approved or 86 percent of the total category, one was denied and 30 were withdrawn. Thirteen of these requests were under the general waiver authority for requests to waive meals during Saturday School sessions, nine of which were approved and four were withdrawn by the district. Significantly, 177 of these requests or 78 percent, were for renewal of a previous waiver. This is the most frequent occurrence of renewals for any category of waiver requests. In other words, most districts that apply for a waiver of the state meal mandate have done so before.

Special Education

Special Education waivers were the next largest category, totaling 112. The majority of these are specific waivers under the waiver authority of *Education Code* Section 56101. This is the second time Special Education waivers have been included since previously the report only dealt with general waivers. CDE usually receives a high number of Special Education waivers. For example, in 2001, the Waiver Office received 102 Special Education waivers. In 2002, the requests were for the submission timeline for certification requirements of non public schools and agencies, annual certification renewals, resource teacher caseload waivers and child specific waivers to allow placement of a student in a non-certified facility. Eighty-nine of these waivers were approved, five were denied, three were withdrawn and fifteen had no action.

Under the Special Education category, there were 41 waivers of the California High School Exit Examination (CAHSEE) Waiver of Test Passage for Students With a Disability. Thirty-five were approved, one was withdrawn, and five had no action. *Education Code* Section 60851(a) "...the requirement to successfully pass the exit examination as a condition of receiving a diploma of graduation or a condition of graduation from high school," was a brand new type of waiver for CDE. LEAs had to meet very specific requirements for their students and certified that each student attained

the equivalent of a passing score upon completing the English language arts and/or mathematics sections of the CAHSEE using a modification that was determined to “fundamentally alter what the test measures.” Students were also required to have a current IEP or a Section 504 Plan to be eligible for consideration under this waiver request. Since school districts or county offices of education submit the waiver requests on behalf of more than one student on a single request, groups of students were included on some of the requests, meaning that more than 41 students received waivers for a use of a modification on the CAHSEE. Due to the postponement of the CAHSEE by the SBE until spring of 2006, no further waiver requests are expected. In addition, a new CAHSEE waiver process for local board approval was created, beginning in January 2003, so it is unlikely that the SBE waiver authority will continue to be used in the future.

High Priority Schools Grant Program

The legislature established the High Priority Schools Grant Program (HPSGP) in 2001. In 2002, because of the statutorily established timeline requirements of that legislation, the Waiver Office received 97 requests for waiver of the specific timelines by those districts in the HPSGP. The late budget caused a delay in allocating the grant funds to the LEAs. However, initially, the statutory timelines were not changed to be consistent with the delay. As a result, the first of these waivers were approved by the SBE but then new legislation revised the timeline dates and the remaining eighty-five waiver requests were returned to the district as not necessary/waiver not needed. This significantly increased the number of total waiver requests that had no action, from thirty-eight waiver requests from all other categories to 123 total waiver requests including the eighty-five returned to districts after legislation changed the timeline requirements for the HPSGP.

Instructional Materials Funds

Education Code Section 60119 continues to result in audit findings that generate waiver requests from school districts and county offices of education each year. In 2001, the number of 60119 numbers was 48, and in 2002, fifty-nine of the sixty-one waiver requests received from LEAs to waive EC Section 60119, were approved. Auditors cite districts and county offices of education in violation of EC Section 60119 for the following reasons: failure to hold an annual public hearing to determine the sufficiency of instructional materials for each pupil at each school; failure to post the notice for the public hearing for ten days or failure to post the notice at three public places. The majority of the waiver requests received is failure to post the notice of public hearing for ten days. Most agencies cited for this reason, posted the notice the number of days that the local educational agency uses for all their public hearing notices thus demonstrating a need to change the requirement by legislation.

Legislative clean up would reduce this numbers even further by changing the provision of EC Section 60119.3 to allow LEAs to post the required public notices for the same number of days that the agency posts all public hearing notices, therefore, eliminating

most of these waivers. This revision has been put into bills by the CDE Governmental Affairs office but has been opposed by the Department of Finance, and deleted before the proposed legislation could be carried to fruition for the past two years.

Other Waivers

In 2002, the Waiver Office received twenty-two waivers that did not fall into the other categories listed. This category of waivers is the “catch all” for a wide variety of requests. Waivers in this category range from changing the composition of a school site council to a waiver allowing the lease/purchase of computer equipment by parents to noticing requirements and acceptance of proposals for joint occupancy agreement. Out of this category, only eleven were approved, two were denied and nine had no action.

Out-of-State Use of Funds

The Waiver Office received nineteen requests from LEA’s in the Environmental and Spatial Technology (EAST) Program. The districts participating in this new program were required to send a team of students and teachers to Oklahoma for training in order to receive the funds under the grant. The SBE approved all of these requests.

Equity Length of Time

In 2002, there was a significant increase in the number of waiver requests received for E.C. Section 37202, the equity length of time requirement. This *Education Code* Section requires all districts to offer the same number of minutes to each grade level within the district. For example, all of the kindergarten classes, throughout the district, must be of equal length. Out of the 15 districts that submitted requests for this type of waiver, 11 of them were to extend some number of kindergarten classes within a district. Fourteen of these waiver requests were approved with only one withdrawal. The eleven requests concerning kindergarten were to pilot extended day kindergarten programs. These requests are approved for one year only with the condition that an evaluation of the program is conducted and submitted to CDE before a renewal of the waiver is considered. This expansion in the number of requests for this category indicates district concerns over providing instruction time to pupils at the kindergarten level so that when those children reach the second grade they will be prepared to be successful in the high stakes testing. Parents are very supportive of adding minutes to kindergarten schedules and there have been no negative impacts reported to date in the evaluations.

Federal Waivers

The Waiver Office is now responsible for tracking and processing federal waivers submitted by districts. The department, under the new Federal Law, No Child Left Behind, acting as the State Education Authority (SEA), is allowed to grant waivers. In

2002, one federal waiver of NCLB, Title I, Part A, Section 1116(e), the requirement to provide "supplemental services" to eligible students. Our office is expecting more of these waiver requests in the future.

The Process for Waivers

While it appears that most waivers get approved, there is a series of steps and activities as part of the process before a waiver request reaches the agenda of a State Board of Education meeting. The Waiver Office staff receives many calls from districts for general information on waivers, calls regarding the possibility of a waiver request and issues involving waivers in general. Large numbers of waiver requests are screened out through this step and never recorded or logged. However, all written requests received are recorded and logged into a database and tracked. Requests are then reviewed for completeness, accuracy, appropriateness and legality, meaning researching the applicable *Education Code* or Title 5 Regulation.

Waiver Office staff also maintains an interest in current programmatic or legislative issues that may result in waiver requests forthcoming from local educational agencies, i.e., the EC Section 60119 audit findings. Staff prepare for such situations by gathering information on the topic and researching the underlying issues that create waiver requests in order to be informed and ready to deal with the questions and queries from school districts and county offices of education.

The Waiver Office also maintains a web page as part of the larger CDE site, where general information regarding waiver requests can be found and forms can be downloaded for use to prepare a waiver request. Any other pertinent documents are also included on this site: www.cde.ca.gov/waiver, and the page is regularly updated with current information. This is an important resource for local educational agencies by allowing easy and convenient access to the forms and answers basic questions regarding the waiver process.

Requirements

Requirements for a complete general waiver request are: local board approval with a public hearing notice on the topic; contact with the collective bargaining representative(s) in the district or county office of education to verify that unit's position on the waiver, parental and community input through a review by the School Site Council or other such applicable committee, prior to local board approval. The local superintendent then signs the waiver request form to certify that the local waiver process has been followed and for the accuracy of the information provided. The request contains the *Education Code* Section or Regulation to be waived with a description in detail of what will be accomplished with the waiver and why the waiver is necessary.

The difference between the general waiver request and the specific waiver is: local board approval with no public hearing; and depending on the topic, the need for contact with the local collective bargaining unit for their position on the waiver request. The local superintendent then signs the waiver request form certifying compliance that the correct process was followed. Waiver requests relating to Special Education students may also be requested through the Special Education Local Plan Area (SELPA) administrator.

Once a waiver request is logged in and reviewed, it is assigned to program staff in the subject area addressed by the waiver request. For example, requests for a waiver in the physical education section of the *Education Code* are assigned to the staff in the department responsible for physical education, etc. During this process, staff can request additional information from the LEA or others involved in the waiver request. For waiver requests with an expected fiscal impact, the School Fiscal Services Division is sometimes consulted for their analysis of the request.

Recommendations

The State Superintendent (or designee) approves recommendations made by CDE staff prior to being forwarded to the SBE. The waiver request is then scheduled for a board meeting and a notification letter is sent to the local educational agency with the date of the SBE meeting.

Education Code Section 33051(a) requires that the SBE shall approve all general waiver requests, except in cases where any of the following conditions for denial are found:

1. The educational needs of the pupils are not adequately addressed.
2. The waiver affects a program that requires the existence of a school site council, and the school site council did not approve the request.
3. The appropriate council or advisory committee including bilingual advisory committees, did not have an adequate opportunity to review the request, and the request did not include a written summary of any objection to the request by the council or advisory committees.
4. Pupil or school personnel protections are jeopardized.
5. Guarantees of parental involvement are jeopardized.
6. The request would substantially increase state costs.
7. The exclusive representative of employee, if any, as provided in Chapter 10.7 was not a participant in the development of the waiver.

State Board Waiver Policies

After CDE approves the final recommendation, the waiver is scheduled for the next State Board of Education meeting. Waivers, which have been reviewed using a State Board Policy or Waiver Guideline Criteria, may be scheduled as “Consent Matters,” while all other waivers must go as “Non-consent or Action Matters.”

If the SBE has a policy or guidelines existing on a particular waiver topic, the waiver request is checked against those criteria by staff. These waivers are scheduled to the consent calendar at the SBE if they meet the guidelines while all other waiver must go to the “Action” at the meeting.

When a waiver is presented at the SBE meeting, a motion is made to either approve or deny a waiver request. In order to pass, motions must be approved of by a majority of board members present. Presentations or comments from CDE staff, the local educational agency requesting the waiver, and/or any other interested party can be made just before the motion to approve/disapprove before the waiver request is taken up for a vote. After the meeting, the Waiver Office sends a disposition letter to the requesting agency and a copy is kept on file.

Results/Conclusions

In conclusion, the Waiver Office received and processed as many as sixty-five waiver requests in a month for scheduling to the SBE monthly agenda. The Waiver Office responded to local educational agencies needs promptly and to requests from within the department and while working closely with the State Board of Education staff.

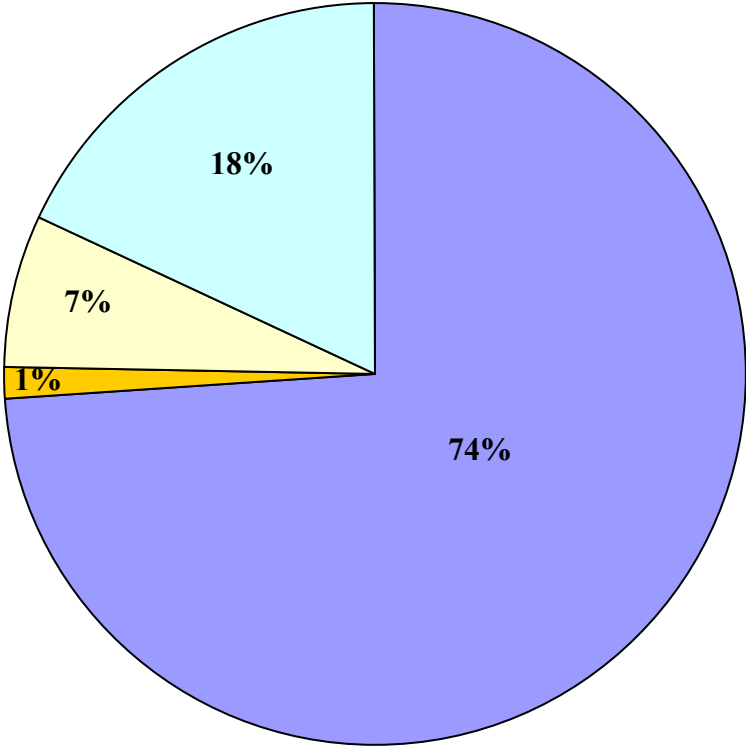
Attachment A

Chart of 2002 Waiver Dispositions

Appendix A

Summary of Actions Taken on Waivers by the State Board of Education during the calendar year 2002.

**2002 State Board of
Education
Waivers**



- Waivers Approved
- Waivers Denied
- Waivers Withdrawn
- No Action Taken

**Summary of Actions Taken on Waivers
by the State Board of Education**

10/8/2003

January 2002 - December 2002

Title/EC Waived/EC Title	Approved	Denied	Withdrawn	No Action	Total
Adult Education - Use of funds	3	0	0	0	3
52522(b)	3	0	0	0	3
API	2	0	2	2	6
52057(a)	0	0	0	1	1
5CCR 1032(f) Adult Testing Irregularities	1	0	0	0	1
5CCR1032(d)(1) Adult Testing Irregularities	1	0	1	0	2
5CCR1032(d)(4) Parent Opt Out	0	0	0	1	1
5CCR1032(g)(h) Less than 80% of schoolwide API goals	0	0	1	0	1
Bond Indebtedness Limit	1	0	0	0	1
15106	1	0	0	0	1
Carl D. Perkins Voc and App. Tech Ed Act	6	0	0	0	6
P.L. 105-332 Section 131(d)(1)	6	0	0	0	6
Charter School Attendance	6	0	0	0	6
Title 5 CCR 11960 Count like a regular school	6	0	0	0	6
Community Day Schools	8	0	2	1	11
1981/1982 County Community School	0	0	1	0	1

**Summary of Actions Taken on Waivers
by the State Board of Education**

10/8/2003

January 2002 - December 2002

Title/EC Waived/EC Title	Approved	Denied	Withdrawn	No Action	Total
48661(a) Collocate on Facilities	8	0	1	0	9
48663(a)	0	0	0	1	1
Equalization of SIP Funds	0	0	1	0	1
62002, 52046(b)(3)	0	0	1	0	1
Equity Length of Time	14	0	1	0	15
37202	12	0	1	0	13
37202 and 46111(a)(1)	2	0	0	0	2
Eval & Assmnt of Performance of Cert. Emp.	3	0	0	0	3
44664(a)	3	0	0	0	3
Federal Waiver	1	0	0	1	2
1116(e) Supplemental Services	1	0	0	0	1
1119(l)	0	0	0	1	1
Grade 9 CSR (Morgan-Hart)	5	0	0	0	5
52082, 52084(a)(b)	1	0	0	0	1
52084(a)	2	0	0	0	2
52084(a), 52086	1	0	0	0	1

**Summary of Actions Taken on Waivers
by the State Board of Education**

10/8/2003

January 2002 - December 2002

Title/EC Waived/EC Title	Approved	Denied	Withdrawn	No Action	Total
52084(a)(c), 52086(a)	1	0	0	0	1
High Priority Schools Grant Program	12	0	0	85	97
52055.610(c)(1-3) Timeline Requirement	12	0	0	85	97
II/USP	1	0	1	1	3
52054	0	0	0	1	1
52054(a)(i)(j)	1	0	0	0	1
52055.5 (b)	0	0	1	0	1
Independent Study	0	0	0	2	2
51745.6	0	0	0	2	2
Instructional Material Funds	59	0	0	2	61
60119 Failed public hearing/10 days/post 3 places	59	0	0	2	61
Instructional Time Audit Penalty	5	0	0	0	5
46201(c) Longer Day Incentive Program	4	0	0	0	4
46201(c) and 46202(a) Falling below the 1982-83 baseline	1	0	0	0	1
Mathematics Professional Development	13	1	0	1	15
44721(a)	12	1	0	1	14

**Summary of Actions Taken on Waivers
by the State Board of Education**

10/8/2003

January 2002 - December 2002

Title/EC Waived/EC Title	Approved	Denied	Withdrawn	No Action	Total
45108(b)(4) Senior Management Employees	1	0	0	0	1
Other Waivers	11	0	2	9	22
34 C.F.R. § 200.63(b)(1)(i)	0	0	0	1	1
18183	0	0	1	0	1
37200	1	0	0	0	1
41404	1	0	0	0	1
41609 Kindergarten retention	0	0	0	2	2
45023 Beginning Teacher Salary	1	0	0	0	1
45134 Retired STRS employee	1	0	0	0	1
48000	0	0	0	1	1
48640	1	0	0	0	1
51220.3	0	0	0	1	1
51745.6	0	0	0	1	1
52260(b)	1	0	0	0	1
54000, 5 CCR §4400	0	0	1	0	1

**Summary of Actions Taken on Waivers
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10/8/2003

January 2002 - December 2002

Title/EC Waived/EC Title	Approved	Denied	Withdrawn	No Action	Total	
58551(d)(3)	1	0	0	0	1	
60451	0	0	0	1	1	
62002.5, Title 5 CCR 4312	1	0	0	0	1	
Title 5 CCR 15443	Budget Reserve Requirement	1	0	0	0	1
45108(b)(4)	Senior Management Employees	1	0	0	0	1
52122(b)(2)(A)	Option 1 LAUSD	1	0	0	0	1
56362.1(a)		0	0	0	1	1
7115(d)		0	0	0	1	1
Out-of-State Use of Funds		19	0	0	0	19
35330(d)	EAST Technology Grant	19	0	0	0	19
Peer Assistance and Review (PAR) Program		1	0	1	0	2
44501(a)		1	0	0	0	1
44504 and 44505		0	0	1	0	1
Petition		11	0	0	2	13
60242(b)		0	0	0	1	1
60450, 60200(g)		0	0	0	1	1

**Summary of Actions Taken on Waivers
by the State Board of Education**

10/8/2003

January 2002 - December 2002

Title/EC Waived/EC Title	Approved	Denied	Withdrawn	No Action	Total
60200	6	0	0	0	6
60242(b) IMF monies	1	0	0	0	1
60242(a)(1), 60422(a)	4	0	0	0	4
Physical Education	1	0	1	0	2
51222	1	0	1	0	2
Physical Fitness Testing	0	1	0	0	1
51210(g), 60800(a)	0	1	0	0	1
ROP	0	0	0	2	2
52301(a)	0	0	0	2	2
ROP % less than age 16	4	0	1	0	5
52314.6	4	0	1	0	5
Sale or Lease of Real Property	1	0	1	0	2
17455-17478 Except: 17459, 17462, 17464(a)	1	0	1	0	2
Schiff Bustamante for Adopted Materials	9	0	1	0	10
60450(b), 60451(b)	9	0	1	0	10
School Based Coordinated Program	7	0	0	0	7

**Summary of Actions Taken on Waivers
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10/8/2003

January 2002 - December 2002

Title/EC Waived/EC Title	Approved	Denied	Withdrawn	No Action	Total
52859(b)	7	0	0	0	7
School Site Council	9	0	0	0	9
52012	2	0	0	0	2
52852	7	0	0	0	7
Special Education	89	5	3	15	112
56836.22(c)	1	0	0	0	1
56155.5(a)(4)	0	1	0	0	1
56207(b) Adaptive PE	0	0	0	2	2
56366.1(a) Child Specific	15	0	0	0	15
56366.1(g) Annual Certification Renewal	18	0	0	1	19
56366.1(i)(1)(2)	0	1	0	1	2
56441.7	0	0	0	1	1
56520(a)(3)	1	0	0	0	1
56836.06(b)	0	0	0	1	1
56836.21	0	0	0	2	2

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10/8/2003

January 2002 - December 2002

Title/EC Waived/EC Title	Approved	Denied	Withdrawn	No Action	Total
56836.22(d)	1	0	0	0	1
60851(a) High School Exit Exam	35	0	1	5	41
56362(c) Resource Teacher Caseload	18	3	1	0	22
56362(e)	0	0	0	1	1
56366.3(a)	0	0	0	1	1
56366.3(a)	0	0	1	0	1
Staff Development Funds - Equalization	3	0	0	0	3
44671(c)	3	0	0	0	3
State Meal Mandate	202	1	30	0	233
49550 Saturday School Session	9	0	4	0	13
49550 Summer School Session	193	1	26	0	220
Totals	506	8	47	123	684