**California Department of Education**

**Report to the Governor, the Legislature, and the State Board of Education: 2016 Annual Report of Waiver Activity**



**Prepared by:**

**Waiver Office**

**Executive Branch**

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**Table of Contents**

[Executive Summary 2](#_Toc477177558)

[2016 Annual Report of Waiver Activity 3](#_Toc477177559)

[Waiver Requests for 2016 3](#_Toc477177560)

[Total Number Received 3](#_Toc477177561)

[Dispositions of 2016 Waiver Requests 3](#_Toc477177562)

[Total Number 3](#_Toc477177563)

[Purpose and Types of Waivers 4](#_Toc477177564)

[Waiver Descriptions and Analysis 5](#_Toc477177565)

[Equity Length of Time 5](#_Toc477177566)

[School District Reorganization 6](#_Toc477177567)

[Class Size Penalties 8](#_Toc477177568)

[Results/Conclusions 8](#_Toc477177569)

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# Executive Summary

California *Education Code (EC)* Section 33053 requires the California Department of Education (CDE) to submit an Annual Report of Waiver Activity to the Governor, the Legislature, and the State Board of Education (SBE) and make the report available to local agencies.

A waiver is an alternative to a legal requirement or prohibition for which no other remedy is apparent. General waivers are authorized by *EC* sections 33050–33053 and permit the SBE to waive most *EC* sections or *California Code of Regulations*, Title 5. Specific waivers and petitions are authorized as part of a statute for some or all particular sections of the *EC*. The SBE also has some authority to grant federal waivers of parts of the federal No Child Left Behind Act.

The report shows the total number of waiver requests received from January 1, 2016, until December 31, 2016. The report also describes the types of waivers received, the dispositions of those waivers, and brief descriptions of the major type of waiver requests received.

In 2016, a total of 288 waivers were processed, of which 256 were approved, 5 were denied, and 20 were withdrawn. No formal action was taken on a total of 8 waivers.

If you have any questions regarding this report, please contact Stephanie Papas, Administrator, Executive Office, by phone at 916-319-0209 or by e-mail at spapas@cde.ca.gov.

You will find this report on the CDE Waiver Reports Web page at <http://www.cde.ca.gov/re/lr/wr/waiverreports.asp>. If you need a copy of this report, please contact the Waiver Office by phone at 916-319-0824 or by e-mail at waiver@cde.ca.gov.

**California Department of Education**

**Report to the Governor, the Legislature, and the State Board of Education:**

# 2016 Annual Report of Waiver Activity

California *Education Code* *(EC)* Section 33053 states:

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 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 identifies the number of general and specific waiver requests received from January 1, 2015, to December 31, 2015. These waiver requests are for both state and federal statutes and state regulations. Waiver requests are heard by the State Board of Education (SBE) during regularly scheduled meetings.

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| Waiver Requests for 2016 |
| 187 | General Waivers |
| 82 | Specific Waivers |
| 19 | Federal Waivers |
| **288** | Total Number Received |
|  |  |
| Dispositions of 2016 Waiver Requests | **Percentage** |
| 257 | Waivers Approved | 88% |
| 5 | Waivers Denied |  2% |
| 20 | Waivers Withdrawn | 7% |
| 7 | Waivers with No Formal Action Taken |  3% |
| **288** | Total Number  |

In 2016, 288 waiver requests were received; this represents an 8 percent decrease from 2015.

In 2016, the SBE received 187 general waiver requests. Of those, five were denied. Additionally, 20 of the waivers were withdrawn for various reasons by the requesting district. No action was taken on seven of the waiver requests because they included requests to waive *EC* sections that cannot be waived by statute, waivers that were unnecessary due to a permissive statute, or the existence of formerly approved waivers that attained permanent status.

# Purpose and Types of Waivers

**General Waivers**

The purpose of a general waiver is to provide flexibility to a school district or County Office of Education (COE) without undermining the basic intent of the law. Under the SBE’s general waiver authority, *EC* sections 33050–33053, the governing board of a school district and COE may request a waiver of most parts of the *EC* and *California Code of Regulations,* Title 5 (5 *CCR)*. Charter schools are required to go through their authorizing agency to request waivers under the current statute.

Non-waivable sections designated in *EC* Section 33050(a)(1) through (20) include sections dealing with apportionment, school facilities, financial management and control, and kindergarten through grade three (K–3) class size reduction. Other sections of the *EC* are also explicitly excluded from the SBE waiver authority through specific language within the same section or article. In order to deny a general waiver, the SBE must cite one of seven reasons found in *EC* Section 33051(a):

The state board shall approve any and all requests for waivers except in those cases where the board specifically finds any of the following: (1) The educational needs of the pupils are not adequately addressed. (2) The waiver affects a program that requires the existence of a schoolsite council and the schoolsite council did not approve the request. (3) The appropriate councils or advisory committees, 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 objections to the request by the councils 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 employees, if any, as provided in Chapter 10.7 (commencing with Section 3540) of Division 4 of Title 1 of the Government **Code**, was not a participant in the development of the waiver.

**Specific Waivers**

A specific waiver offers the same flexibility to districts and COEs but has a different

process for approval. Some specific waiver requests do not require a school site council meeting, collective bargaining unit participation, or parental notice to be included in the waiver request. Spread throughout the *EC*, specific waiver authorities are limited in scope to a particular chapter, section, or area of the code.

**Federal Waivers**

Since 2002, the federal No Child Left Behind (NCLB) Act, Title I, has allowed the SBE to grant waivers of portions of that federal statute. The SBE has been designated as the state educational agency for purposes of these waivers. These waiver authorities are found throughout the entire federal statute, similar to the specific waivers of California statute. Charter schools may also submit Carl Perkins Career and Technical Education Improvement Act of 2006 (Public Law 109-270) waivers without going through their authorizing district.

With the passage of the Every Student Succeeds Act in December 2015, the federal statute subject to waivers may change.

**Waiver Process**

After a local educational agency (LEA) or COE enters a waiver request into the online database system, the CDE analyzes each waiver request and provides a recommendation to the SBE: approval, approval with conditions, or denial. The waiver request is then scheduled for the next SBE meeting. In order for any motion on a waiver request to be acted upon, the waiver must be approved by a majority of board members present, and at least six votes are required. If a motion does not get the support of at least six votes to support or deny it, the waiver request is automatically rescheduled to the next SBE meeting. If action is not taken by the second regular meeting for general waivers only, pursuant to *EC* Section 33052, the waiver request is deemed approved for one year, commencing the first day of the following month.

# Waiver Descriptions and Analysis

Below is a brief description of waiver topics with the largest number of requests throughout 2016. A brief analysis related to the reasoning behind a large number of waiver requests is provided, if applicable.

## Equity Length of Time

(*EC* Section 37202)

Total Received: 50

*EC* Section 37202(a): Except if a school has been closed by order of a city or a county board of health, or of the State Board of Health, on account of contagious disease, or if the school has been closed on account of fire, flood, or other public disaster, the governing board of a school district shall maintain all of the elementary day schools established by it for an equal length of time during the school year and all of the day high schools established by it for an equal length of time during the school year.

Equity length of time waivers have been requested if the instructional minutes for a transitional kindergarten program are not the same number of instructional minutes as for the kindergarten program at each school site. If the number of minutes are not the same, a waiver is needed.

**Schoolsite Council**

(*EC* Section 52852)

Total Received: 39

*EC* 52852 requires schools that must maintain a schoolsite council must have a specific size and composition. The requirement is 12 members for a school serving grades nine through twelve and 10 members for elementary schools with the composition of either half school staff and half students and parents or community members.

There are a number of small, rural, isolated, or alternative type schools for which this requirement is problematic. Most commonly, waivers were sought to combine schoolsite councils with another school, reduce the total number of members required, or a combination of these two requests.

## School District Reorganization

**Selections to Change District Governing Board Election Methods**

(*EC* Sections 5019–5030)

Total Received: 9

A county committee on school district organization has the authority to approve a change to election methods for school district governing board elections (*EC* Section 5019 et seq.). Pursuant to *EC* Section 5020, County Committee approval of election methods constitutes an order of election; thus, voters in the districts have the final approval to change election methods.

As a result of the California Voting Rights Act (CVRA) of 2002, codified at sections 14025–14032 of the California *Elections Code*, many school districts have faced litigation (or have been exposed to potential litigation) because of their “at-large” election methods. The CVRA enables challenges to “at-large” election methods in which elections are characterized by “racially-polarized voting.” As importantly, the CVRA authorizes mandatory attorneys’ fee and expert fee awards to successful plaintiffs, with such fee awards reaching as high as seven figures.

To reduce the potential for litigation and to change to CVRA-compliant election methods as expeditiously as possible, over 125 school districts have requested waivers of the election requirement in *EC* Section 5020 since enactment of the CVRA. Some waiver requests are a result of stipulated court orders from current litigation while others are efforts by districts to avoid potential litigation. SBE approval of these waivers allows establishment of CVRA-compliant election methods to be adopted upon review and approval of the County Committee. Only the elections to establish the election methods are eliminated by approval of the waiver requests—voters in school districts continue to elect all governing board members. Moreover, approval of the waiver requests does not eliminate any existing legal rights of currently seated board members.

The number of CVRA-related waivers submitted has steadily decreased from a high of 29 in 2011 to nine in 2016. This decrease in the number of waiver requests is due to the steady reduction of school districts facing potential CVRA litigation as more and more districts establish CVRA-compliant election methods.

**Special Education**

Total received: 65

Districts have many federal and state requirements throughout the *EC* and Title 5 Regulations related to Special Education. For the waiver process, Special Education is considered a waiver topic area, and there are six *EC* sections that are requested to be waived. The two most common are:

**Educational Interpreter Regulations**

(5 *CCR* Section 3051.16(b)(3))

Total received: 11

Local Education Agencies (LEA) are required by current state regulations, 5 *CCR* Section 3051.16(b)(3), to hire educational interpreters for deaf and hard of hearing students who meet the specific qualification standards. Since many educational interpreters throughout the state have found it difficult to meet these standards, waiver requests continue to be submitted on their behalf. CDE staff continues to work with LEAs and COEs to lower this number after multiple waiver requests in 2009 and 2010. Of the six waivers requests of this type, four were approved, one was denied, and one was withdrawn.

**Extended School Year (Summer School)**

(5 *CCR* Section 3043(d))

Total received: 26

Extended School Year (ESY) is the term for the education of special education students “between the close of one academic year and the beginning of the next,” similar to a summer school. It must be provided for each individual with exceptional needs whose Individualized Education Program requires it. LEAs may request a waiver to provide an ESY program for fewer days, but with longer hours than the traditional model.

## Class Size Penalties

(*EC* sections 41376 and 41378)

Total received: 1

The statute, written in 1964, included penalties for LEAs if class size goes above certain levels in kindergarten through grade eight (K–8). This law requires the CDE to apply a financial penalty to a district’s funding (class size penalties) if any of the following occur:

* A single kindergarten class exceeds an average enrollment of 33.
* The average of all kindergarten classes exceeds 31.
* A single class in grades one through three exceeds an average enrollment of 32.
* The average of all classes in grades one through three exceeds 30.
* Class size exceeds the greater of the 1964 statewide grades four through eight class size average of 29.9 or the district’s grades four through eight class size average in 1964.

School districts report their average class enrollment information to the CDE in the spring of the applicable year. If a school district does not meet the requirements, the CDE reduces the district’s final payment for the year. Generally, the penalty is equal to a loss of all funding for enrollment above 31 in kindergarten classes or 30 in grades one through three classes. *EC* Section 41382 allows the SBE to approve an exemption to this penalty if the associated class size requirements prevent the school and school district from developing more effective education programs to improve instruction in reading and mathematics.

The number of class size penalty waivers submitted decrease to 1 in 2016 from 14 in 2015. The number of waiver requests were due to two major factors: an increase in revenues and the implementation of the new Local Control Funding Formula.

# Results/Conclusions

The waiver process provides flexibility for a school district or COE without undermining the basic intent of the law. The implementation of an online waiver intake system in 2012 significantly improved efficiency and accuracy, streamlining the process for both LEAs and the CDE. This change allows the CDE’s Waiver Office to promptly respond to requests for assistance from the field and from program offices within the Department.

This report covers the time period of January 1, 2016, until December 31, 2016, and shows the total number of waiver requests and their disposition.