State of California **Department of Education**

Information Memorandum

Date: **August 1, 2003**

To: **MEMBERS, STATE BOARD OF EDUCATION**

From: **Judy Pinegar, Manager**
Waiver Office

Subject: **2001 Annual Report of Waiver Activity**

Attached is a copy of the 2001 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 avaiblale to the superintendent and board president of each school district and county office 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 withdrawls or requests on which no action was taken.

Attachment: Annual Report of Waiver Activity January 2001 - December 2001

Annual Report
of
Waiver Activity

January 2001 – December 2001

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
July, 2003

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Annual Report of Waiver Activity

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, 2001 until December 31, 2001, including for the first time, the various specific waiver requests heard by the State Board of Education (SBE). 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/disapproved by the SBE, returned to the district for one reason or another, or withdrawn by the district.

Waiver Requests Received for 2001:

372	Number of General Waivers
405	Number of Specific Waivers
599	Number of Waivers Approved
60	Number of Waivers Denied
39	Number of Waivers Withdrawn
79	Number of Waivers with No Formal Action Taken[1]
777	**Total Number Received**

The percentage of waivers approved by the SBE was 77 percent that is equivalent to the number approved in 2000 of 75 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 60 and represents .08 percent of the total waivers received. Some waivers are brought forward to the SBE with a recommendation by CDE 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. All general waivers must be denied for one of seven reasons found in

[1] This includes five Superintendent's Waiver Requests forwarded to the proper office

Education Code Section 33051(a). 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 2001 dropped. No action was taken on 79 waivers or 10 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.

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 usually indicate a need to correct an oversight of legislation and bring awareness to both CDE and the SBE of changes that need to be addressed. 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 33053. 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 – Saturday Schools and Summer School Session

The Waiver Office received 211 requests from school districts to waive the meal requirement for Saturday school and summer school session. Seven of these were under the general waiver authority for requests to waive meals during Saturday School sessions,

and three of those seven were withdrawn. The remaining requests were under the specific waiver authority to waive serving meals to needy students during summer school sessions. Most of those waivers were approved with only nine withdrawals and one request with no action taken.

Special Education

Special Education waivers were the next largest category of requests, totaling 102. All of these are specific waivers under the waiver authority of *Education Code* Section 56101. This is the first 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 1999, the Waiver Office received 101 requests for Special Education waivers. In 2001, out of the 102 received, 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. Seventy-three of these waivers were approved, twelve were denied, three were withdrawn and fourteen had no action, all others were approved by the SBE.

Mathematics Professional Development

The Waiver Office received ninety-two general waiver requests of a requirement of AB 1331, the Mathematics Professional Development grant program. These requests were needed to allow the use of AB 1331 grant funds to pay for substitute teachers for release time, the payment of stipends for teachers and other such related training expenditures. This is a good example of a waiver that revealed a problem with a law and by using the waiver process, participant agencies were able to pay staff to attend training sessions related to the grant program. Only one waiver for this category had no action, all others were approved by the SBE.

Academic Performance Index

Eighty-three general waiver requests were submitted to waive some portion of the Title 5 Regulations regarding the Academic Performance Index (API) and the Governor's Awards processes. In 2001, thirty-six of these waivers were denied, seven were withdrawn and eighteen were approved and twenty had no action, one of these waivers was not necessary as the district got relief through changes in the governing regulations and the other nineteen requests not were not waiveable. The high denial rate of this category of waiver requests reverses the general trend in waiver requests. The largest number of denials in this category, twenty-three, was for schools asking for a valid API in spite of "parental opt-outs" of pupil testing. There is a ten percent limit for parents to opt-out their children of testing in the Title 5 Regulations. Eight denials were for requests to allow schools to qualify for the Certificated Staff Incentive Award Program

by waiving the decile rank attained in the base year of the awards program. And the rest of these waiver requests were returned to the local educational agency as not being able to be waived. Several of these waiver issues became court cases and assistance is given to CDE legal as needed for depositions.

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, of the forty-eight waivers submitted to waive *E.C.* Section 60119, all were approved except for one waiver request that was returned to the district because they were not on the list of local education agencies that needed to apply for a waiver for fiscal relief. Auditors cite local educational agencies in violation of *E.C.* 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.

The numbers of waivers regarding these findings dropped significantly from 535 in 1999 to eight in 2000 but increased again in 2001 to forty-eight, an increase of forty requests. The reason is that these waivers could not be processed because on July 7, 1999, as *E.C.* Section 41344 was added to the Education Code eliminating the retroactive waiver authority of the SBE when a waiver involves an "apportionment significant audit exception." SB 273, Karnett, chaptered in 2001, again authorized the SBE to consider and waive provisions of *Education Code* Section 60119 after its approval in 2001. Legislative clean up to change the provision of *E.C.* Section 60119 to allow local educational agencies to post the required public notices for the same number of days that the agencies posts all public hearing notices would eliminate most of these waivers and has been requested of the CDE Governmental Affairs office.

Schiff-Bustamante

The CDE received thirty-six requests to use the general waiver requirements of the Schiff-Bustamante legislation. Only one such request was denied while twelve were withdrawn with a total of twenty-three that were approved. Local educational agencies requested to use Schiff-Bustamante Standards Based Instructional Materials funds to purchase non-adopted instructional materials.

Immediate Intervention/Underachieving Schools Program (II/USP)

The Immediate Intervention/Underperforming Schools Program (II/USP) is one of the major provisions of California's Public Schools Accountability Act (PSAA) of 1999. This program is in the second year. In 2000, this category of application timeline waivers created the most requests. In 2001, we received significantly less. The II/USP grant awards provide selected schools in California an opportunity to participate in planning and implementation activities for improved student achievement. Of the twenty-three requests for waivers of this category, twenty were for the extension of the timeline for LEA's for contracting with an external evaluator. Only one district requested a waiver of the timeline compared to the many received in the first year of the program. Two of these waiver requests were found to be not necessary and returned to the district.

Other Waivers

In 2001, the waiver office received sixteen waivers that do not fall into another classification. 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.

Instructional Time Audit Penalty

The Waiver Office received twelve requests for the Longer Day Incentive Program audit penalties. These are specific waivers of the penalties, not the basic time requirements. The Education Code allows the SBE to waive fiscal sanctions against school districts and county offices of education that fall short of their required number of instructional minutes during the school year. Waivers granted to rescind the fiscal penalties contain conditions for approval such as taking up twice the minutes of lost instructional time over the next two school years and reporting the number of minutes in the annual audit report. Reasons for such findings include construction projects, minimum days schedules, miscalculation of bell schedules, etc. The Education Code is very specific to the requirement of annual instructional minutes offered by school districts and county offices of education in each grade.

Charter School Attendance Calculations

Twelve of these waiver requests were received and only one was denied and one had no action. Ten of these waivers were to count the attendance at the charter school like the attendance is counted at a regular school, allowing the charter school to collect more revenue as a result if they run year-round schedules. This has been a consistent number of requests of this waiver from year to year.

Community Day Schools

There were twelve waivers received for Education Codes related to Community Day Schools. These requests were for: collocation on facilities, commingling grade levels and both collocation and commingling. Nine of those waiver requests were approved with no denials, one withdrawal and four with no action taken. In January 2000, *E.C.* Sections 48660, 48661 and 48916.1 (d) were amended to give more local flexibility, particularly for K – 8 districts, decreasing the need for many waivers.

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 Regulations.

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 *E.C.* 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 that allows 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 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 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.

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, waivers requesting a change in an API score would be assigned to the staff in the department responsible for API scores, 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. 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.

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 for waivers that have met all of the above criteria, except in cases where any of the following are found (this allows for only seven reasons not to approve a request for waiver):

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 of the Administrative Calendar. 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." When present at the formal board meeting, each waiver presented must be voted a formal disposition by a majority of the attending Board members. Presentations or comments from CDE staff, the local educational agency requesting the waiver, and/or anyone opposed to the waiver request can be made. SBE members vote to make the final decisions on waiver disposition. After the final vote, 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.

Appendix A

Summary of Actions Taken on Waivers by the State Board of Education during the calendar year 2001.