**California Department of Education**

# Report to the Governor, the Legislature, and the State Board of Education: 2022 Annual Report of Waiver Activity



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**Waiver Office**

**Executive Branch**

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**California Department of Education**

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**2022 Annual Report of Waiver Activity**

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California Department of Education

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**2022 Annual Report of Waiver Activity**

## 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 *EC* sections or *California Code of Regulations* (CCR) Title 5 adopted by the SBE. In some instances, the law prohibits a statute from being waived. Specific waivers and petitions are authorized as part of a statute for some or all particular sections of the *EC*. The SBE also has the authority to grant certain federal waivers.

This report identifies the total number of waiver requests considered by the SBE from January 1, 2022, until December 31, 2022. 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In 2022, a total of 136 waivers were processed, of which 105 were approved, zero were denied, and 23 were withdrawn. No formal action was taken on a total of eight waivers.

If you have any questions regarding this report, please contact Anne Tracy, by phone at 916-319-0824 or by e-mail at atracy@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**

## 2022 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, 2022, to December 31, 2022. 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.

## Waiver Requests for 2022

90 General Waivers

41 Specific Waivers

5 Federal Waivers

136 Total Waivers

## Dispositions of 2022 Waiver Requests

105 Waivers Approved

0 Waivers Denied

23 Waivers Withdrawn

8 Waivers with No Formal Action Taken

In 2022, 136 waiver requests were received; this represents a 9.93 percent decrease from 2021. Of those, no waiver request was denied. Additionally, 23 of the waivers were withdrawn for various reasons by the requesting district. No action was taken on eight of the submitted 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, incomplete waivers, 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, charter school, 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 or a county board of education may request a waiver of most parts of the EC and California Code of Regulations, Title 5 (5 CCR). Charter schools may request that their authorizing agency submit waivers on their behalf.

Non-waivable sections designated in EC Section 33050(a)(1) through (23) include sections dealing with, among other things, apportionment, school facilities, financial management and control, personnel, and the California Assessment of Student Performance and Progress. 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, charter schools 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 Elementary and Secondary Education 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 the Strengthening Career and Technical Education for the 21st Century Act (Perkins Act), Public Law 115-224, waivers without going through their authorizer.

With the passage of the Every Student Succeeds Act in December 2015, the federal statutory requirement for waivers offered by the State has not changed. However, the language regarding federal approval of State waiver requests has been modified to encourage federal agencies to grant waivers. When a local education agency (LEA) requests a waiver of federal statute, the State must now be asked to approve the waiver request before passing it on to the U.S. Department of Education (ED), rather than merely being allowed to review it. However, the language still strongly encourages States to send these waivers to ED unless there are significant deficiencies.

## Waiver Process

After an LEA enters a waiver request into the CDE’s online waiver 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 action at an 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 2022. A brief analysis related to the reasoning behind a large number of waiver requests is provided, if applicable.

## Sale or Lease of Surplus Property

(*EC* Sections 17385-17561)
Total received: 13

## Notwithstanding any other law, a school district may deposit the proceeds from the sale or lease of surplus real property, together with any personal property located on the property, purchased with nonstate funds, into the general fund of the school district and may use the proceeds for any one-time general fund purpose. If the purchase of the property was made using the proceeds of a local general obligation bond or revenue derived from developer fees, the amount of the proceeds of the transaction that may be deposited into the general fund of the school district may not exceed the percentage computed by the difference between the purchase price of the property and the proceeds from the transaction, divided by the amount of the proceeds of the transaction.

**School Construction Bonds**

(*EC* Sections 15102–15270)

Total received: 8

The *EC* provides limits related to a district’s total bonded indebtedness. *EC* sections 15102 and 15268 limit elementary school, high school, and school facilities improvement districts’ total general obligation (G.O.) bond indebtedness to 1.25 percent of a district’s assessed valuation. *EC* sections 15106 and 15270(a) limit a unified school district’s total G.O. bond indebtedness to 2.5 percent of a district’s assessed valuation.

School districts, with voter authorization, may issue G.O. bonds to raise funds to build or renovate school facilities. This can be done one of two ways: 1) if sought as a two-thirds supermajority, so that a non-tax-rate-restricted bond can be issued; or 2) with a 55 percent majority vote, authorized by Proposition 39 (November 2000), if the district abides by several administrative requirements, including establishing an independent citizens’ oversight committee to oversee the use of the funds. Once G.O. bonds are authorized, school districts issue the bonds in increments, as needed, to fund the identified facility projects. When the voters authorize a local G.O. bond, they are simultaneously authorizing a property tax increase to pay the principal and interest on the bond. For Proposition 39 bonds, *EC* Section 15268 limits the tax rate levy authorized in each election to $30 per $100,000 of taxable property for elementary and high school districts and $60 per $100,000 of taxable property for unified school districts.

Without a waiver, school districts that are close to their bonding capacity must decide whether to issue fewer bonds, to delay the issuance of bonds until their assessed valuation increases, or to obtain other, more expensive, nonbond financing to complete their projects, the costs of which could be paid from district general funds. Therefore, the CDE has historically recommended that the SBE approve related waiver requests with the condition, if applicable, that the statutory tax levies are not exceeded at the time the bonds are issued.

## School District Reorganization

(*EC* Sections 5019–5030)

Total Received: 4

A county committee on school district organization has the authority to approve a change to election methods for school district governing board elections. 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 2001, codified in 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.

To reduce the potential for litigation and to change to CVRA-compliant election methods as expeditiously as possible, almost 250 school districts have requested waivers of the election requirement in EC Section 5020 since the enactment of the CVRA. SBE approval of these waivers allows the 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 has decreased from 11 in 2021 to two in 2022. This decrease in the number of waiver requests is due to the approval of Senate Bill 442 (Chapter 139, Statutes of 2021). This legislation allows the county committee to approve a school district’s proposal to establish a CVRA-compliant election method without the EC Section 5020 requirement that the proposal be submitted to the district’s voters for approval. This eliminates the need for the district to request that the SBE waive that EC Section 5020 requirement.

## Special Education

Total received: 78

There are 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. The three most commonly requested areas in 2022 were:

### Extended School Year (Summer School)

(5 *CCR* Section 3043(d))

Total received: 50

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. ESY 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 than the 20 days required by regulation.

The Special Education Division (SED) at CDE is reviewing the ESY regulations with the goal of allowing LEAs more flexibility and reducing the need for LEAs to submit waivers. It is anticipated that proposed regulations will be considered by the SBE in the 2022–23 school year.

### Nonpublic, Nonsecretarian Schools or Agencies

(*EC* Section 56366)

Total Received: 19

Under the federal Individuals with Disabilities Education Act (IDEA), students with disabilities must be offered a free appropriate public education (FAPE) in the least restrictive environment (LRE). LEAs must offer a full continuum of program options to meet the educational and related service needs of students with disabilities. Each student found eligible for special education and related services is provided with an individualized education program (IEP) which is developed between the LEA and the student’s parent(s) or guardian(s), and others as applicable, to decide what types of instruction and related services are needed to meet the student’s needs in the LRE. One of the placement options available along this continuum are nonpublic, nonsectarian schools (NPSs), which are considered separate schools and highly restrictive placement options.

When an LEA is unable to find an appropriate placement for a student with disabilities in a California public school and/or California state-certified NPS due to the student’s comprehensive, unique needs, the IEP team may deem it necessary for the student to be placed in a non-certified school that is able to meet the student’s needs. As members of the IEP team, the student’s parent(s) or guardian(s) must be included in the decision-making process and must provide written consent to the placement.

Private schools do not necessarily meet the California NPS certification standards. A waiver of the NPS certification requirements authorizes placing LEAs to use federal and state special education funds to finance the placement.

### Educational Interpreter for Deaf and Hard of Hearing

(5 *CCR* Section 3051.16)

Total Received: 5

The *EC* provides specialized services for low-incidence disabilities. Specifically, under 5 *CCR* Section 3051.16(b), certification requirements for educational interpreters for deaf and hard of hearing pupils require that by July 1, 2019, and thereafter, an educational interpreter shall be certified by the national Registry of Interpreters for the Deaf (RID), or equivalent; in lieu of RID certification or equivalent, an educational interpreter must have achieved a score of 4.0 or above on the Educational Interpreter Performance Assessment (EIPA), the Educational Signs Skills Evaluation-Interpreter and Receptive (ESSE-I/R), or the National Association of the Deaf/American Consortium of Certified Interpreters (NAD/ACCI) assessment. If providing Cued Language transliteration, a transliterator shall possess Testing/Evaluation and Certification Unit (TECUnit) certification or have achieved a score of 4.0 or above on the EIPA - Cued Speech.

LEAs are required by 5 *CCR* Section 3051.16(c) to hire educational interpreters for students who are deaf or hard of hearing and meet the specific qualification standards.

Since many educational interpreters throughout the state have found it difficult to meet these standards and approved assessment centers have been closed in response to local health guidelines due to the COVID-19 pandemic, waiver requests continue to be submitted on their behalf. CDE staff continues to work with LEAs to lower this number.

## Results/Conclusions

The waiver process provides flexibility for an LEA without undermining the basic intent of the law. Waivers have decreased significantly over the past few years. This decrease is partly due to the CDE’s identification of EC sections that needed reviewing and updating. Therefore, a legislative solution has addressed the need for certain types of waivers. Additionally, LEAs have exerted greater local control over issues that were previously addressed through the waiver process.