

California Department of Education

Executive Office

SBE-006 (REV. 1/2018)

Specific Waiver

# California State Board of Education September 2018 Agenda Item #W-14

## Subject

Request by two local educational agencies to waive *Education Code* Section 56362(c), allowing the caseloads of resource specialists to exceed the maximum caseload of 28 students by no more than four students (32 maximum).

## Waiver Number

* Tehama County Office of Education 2-5-2018
* Waterford Unified School District 12-5-2018

## Type of Action

Action, Consent

## Summary of the Issue(s)

Two local educational agencies (LEAs) request to increase the caseloads of three resource specialists from the maximum allowed caseload of 28 students to 32 students.

## Authority for Waiver

*Education Code (EC)* Section 56101

## Recommendation

* Approval: No
* Approval with conditions: Yes
* Denial: No

The California Department of Education (CDE) recommends approval with the following condition: The LEAs must provide each resource specialist instructional aide time of at least five hours daily whenever the resource specialists’ caseloads exceed the statutory maximum caseload of 28 students by no more than 4 students (32 maximum), during the waiver's effective period, per *California Code of Regulations* Title 5 (5 *CCR*), Section 3100(d)(2).

## Summary of Key Issues

A resource specialist is a credentialed teacher providing instruction and services to children with individualized education programs (IEPs) that are assigned to general education teachers for the majority of the school day. Resource specialists coordinate special education services with general education programs as well as provide direct instruction and consultation for students with IEPs.

The CDE, Special Education Division (SED), completes a thorough review of the components of the resource specialist program (RSP) caseload waiver submissions to develop waiver recommendations and conditions including, but not limited to the following:

* Confirming the demographic information on the waiver submission is accurate.
* Contacting the resource teacher to confirm the teacher agreed to the waiver, and the teacher information provided on the waiver submission is accurate.
* Contacting the union representative to confirm the LEA contacted the representative about the waiver.
* Reviewing the number of RSP caseload waivers submitted by the LEA over the last two school years to ensure the number of requests are reasonable based on the size of the LEA.
* Reviewing the SED compliance complaint database for any RSP caseload complaints filed against the LEA. If a complaint has been filed, the SED follows up on any determinations of noncompliance and corresponding corrective actions.
* If necessary, talking to the LEA administrator to gather additional information.

Any relevant information obtained from this review is included in the description below.

**Tehama County Office of Education**

The Tehama County Office of Education (TCOE) requests to increase the caseload of Karen Reno, resource specialist at Tehama eLearning Academy and Lincoln Street Independent schools. The CDE recommends approval with conditions. There have been no prior documented complaints registered with the CDE related to this school district exceeding the maximum RSP caseload of 28 students, nor has the TCOE applied for a waiver within the previous two years. The resource specialist agrees to the waiver and is receiving the required amount of instructional aide time.

The information provided on TCOE’s waiver submission supplemental forms stated the resource specialist receives 18 hours of instructional aide support. The resource specialist provides services to students enrolled in an independent study program, and provides on-site instruction to students approximately three days a week. She receives six hours of instructional aide support on the days she provides on-site instruction.

**Demographic Information:** The TCOE has a student population of 244 and is located in a small city in Tehama County.

**Waterford Unified School District**

The Waterford Unified School District (WUSD) requests to increase the caseload of Mark Partin, resource specialist at Richard Moon Primary School. There have been no prior documented complaints registered with the CDE related to this school district exceeding the maximum RSP caseload of 28 students, nor has the WUSD applied for a waiver within the previous two years. The resource specialist agrees to the waiver and is receiving instructional aide time in excess of the required amount.

**Demographic Information:** The WUSD has a student population of 3,989 and is located in an urban area in Stanislaus County.

## Summary of Previous State Board of Education Discussion and Action

*EC* Section 56101 allows the State Board of Education (SBE) to waive any provision of *EC* or regulation if the waiver is necessary or beneficial when implementing a student’s IEP. Title 5 *CCR* specifically allows the SBE to approve waivers for RSP caseloads to exceed the maximum caseload of 28 students by no more than 4 students. However, there are specific requirements in regulations which must be met for approval, and if requirements are not met, the waiver must be denied:

(1) The requesting agency demonstrates to the satisfaction of the SBE: (a) that the excess resource specialist caseload results from extraordinary fiscal and/or programmatic conditions; and (b) that the extraordinary conditions have been resolved or will be resolved by the time the waiver expires.

(2) The waiver stipulates that an affected resource specialist will have the assistance of an instructional aide at least five hours daily whenever that resource specialist's caseload exceeds the statutory maximum during the waiver's effective period.

(3) The waiver confirms that the students served by an affected resource specialist will receive all of the services called for in their IEPs.

(4) The waiver was agreed to by any affected resource specialist, and the bargaining unit, if any, to which the resource specialist belongs participated in the waiver's development.

(5) The waiver demonstrates to the satisfaction of the SBE that the excess caseload can be reasonably managed by an affected resource specialist in particular relation to: (a) the resource specialist's student contact time and other assigned duties; and (b) the programmatic conditions faced by the resource specialist, including, but not limited to, student age level, age span, and the behavioral characteristics; number of curriculum levels taught at any one time or any given session; and intensity of student instructional needs.

The SBE receives several waivers of this type each year, and approximately 90 percent are approved. Due to the nature of this type of waiver, RSP waivers are almost always retroactive.

## Fiscal Analysis (as appropriate)

There is no statewide fiscal impact of waiver(s) approval.

## Attachment(s)

* **Attachment 1:** Summary Table (2 pages)
* **Attachment 2:** Tehama County Office of Education Waiver 2-5-2018

(6 pages). (Original waiver request is signed and on file in the Waiver Office.)

* **Attachment 3:** Waterford Unified School District Waiver 12-5-2018 (6 pages). (Original waiver request is signed and on file in the Waiver Office.)

# Attachment 1: Summary Table

California *Education Code* Section 56101

| Waiver Number | School District, School | Name of Teachers, Agrees to Excess Caseload? | Over Statutory Caseload for More Than Two Years? | Previous Aide Time (prior to increased caseload), Current Aide Time (with increased caseload) | Period of Request | Local Board Approval Date | Bargaining Unit, Representative, Consulted, Date, and Position |
| --- | --- | --- | --- | --- | --- | --- | --- |
| 2-5-2018 | Tehama County Office of Education, Tehama eLearning Academy and Lincoln Street Independent | Karen Reno**Yes** | No | **Previous:**6 hours per day**Current:**6 hours per day(The SED contacted TCOE about the daily aide time as they indicated 18 hours per week on the waiver submission.) | **Requested**March 1, 2018,to June 1, 2018**Recommended** March 1, 2018,to June 1, 2018 | April 12, 2018 | Tehama County Certificated Employees Organization, David TorgersrudUnit President 5/24/2018 Support(SED obtained the bargaining unit information from the TCOE.) |
| 12-5-2018 | Waterford Unified School District, Richard Moon Primary | Mark Partin**Yes** | No | **Previous:** 5.75 hours per day**Current:**11.5 hours per day  | **Requested**February 9, 2018, to May 25, 2018**Recommended**February 9, 2018, to May 25, 2018 | May 10, 2018 | Waterford Teachers Association, Michael Dehn Chief Negotiator3/9/2018 Support |

Created by California Department of Education
June 2018

# Attachment 2: Waiver 2-5-2018 Tehama County Office of Education

**California Department of Education**

**WAIVER SUBMISSION – Specific**

CD Code: 5210520

Waiver Number: 2-5-2018

Active Year: 2018

Date In: 5/3/2018 9:50:18 AM

Local Education Agency: Tehama County Department of Education

Address: 1135 Lincoln St.

Red Bluff, CA 96080

Start: 3/1/2018

End: 6/1/2018

Waiver Renewal: No

Waiver Topic: Special Education Program

Ed Code Title: Resource Teacher Caseload

Ed Code Section: 56362 (c)

Ed Code Authority: 56101 and 5 *CCR* Section 3100

Ed Code or *CCR* to Waive: (c) Caseloads for resource specialists shall be stated in the local policies developed pursuant to Section 56195.8 and in accordance with regulations established by the board. [No resource specialist shall have a caseload which exceeds 28 pupils].

Outcome Rationale: Both schools have experienced higher than average enrollment of students with an IEP. We anticipate numbers to average out. It is difficult to fully anticipate upcoming need due to the fluctuation enrollment. Currently two students have exited but not completed the entire exit process.

Student Population: 30

City Type: Rural

Local Board Approval Date: 4/12/2018Audit Penalty Yes or No: No

Categorical Program Monitoring: No

Submitted by: Ms. Michelle Barnard

Position: Principal

E-mail: [mbarnard@tehamaschools.org](file:///%5C%5CCDE.Cal%5CDATA%5CSEDATA%5CCENTRAL%5CDivision-wide%5CWAIVERS%5CWaiver%20Items%5C2018%5CSeptember%20SBE%20Meeting%5Cmbarnard%40tehamaschools.org)

Telephone: 530-527-0188 x413

**California Department of Education**

**Revised 1-19-2018**

## Specific Waiver Request for Resource Specialist Caseload

### To be completed by the Administrator

SELPA / District / COE Name: Tehama County Department of Education/Tehama County SELPA

Name of Resource Specialist: Karen Reno

School / District Assignment: Tehama eLearning Academy and Lincoln Street Independent (both LEA Charters Authorized by Tehama County Department of Education

Status: Permanent, Probation or Temporary: Permanent

Number of Students: 28

Caseload proposed number of students: 30

Full time Equivalent (FTE%): 100% = 1.0 FTE

Number of periods or hours taught by Resource Specialist: 7 hours

Average number of students per hour taught: 3 per hour

Indicate amount of Instructional Aide time hours to be provided to this resource specialist with this waiver: 18

**Note: At least 5 hours of aide time is required when the caseload is over 28, per *CCR*, Title 5, Section 3100(d)(2).**

Provide assurance that the waiver will not hinder the implementation of a student’s individualized educational program (IEP) for all students involved with the waiver or compliance with specified federal law, per *CCR*, Title 5, Section 3100(d):

This waiver will not hinder the implementation of any students individualized education program.

Explain what extraordinary fiscal or program circumstances resulted in this request for excess caseload, per *CCR*, Title 5, Section 3100(d):

Both schools have experienced higher than average enrollment of students with an IEP. We anticipate numbers to average out. It is difficult to fully anticipate upcoming need due to fluctuating enrollment. Currently two students have exited but not completed the entire exit process.

Indicate how your plan of action to resolve conditions by the time the waiver expires or is denied by the SBE, per CCR, Title 5, Section 3100(d)(1):

We anticipate numbers to stabilize; if the trend continues, we will hire additional qualified staff before the waiver expires.

Administrator/Designee Name and title: Michelle Barnard, Principal

Telephone number (and extension): 530.527.0188 X 413

Date: 3/9/18 (revised 6/2018 with SELPA Director consultation)

## Specific Waiver Request for Resource Specialist Caseload

### To be completed by the Resource Specialist (Teacher)

Name: Karen Reno

Assigned at: Tehama eLearning Academy and Lincoln Street Independent

Is the information in Items 1 through 12 on the attached SW \_ RSC \_ Administrator form an accurate reflection of your current assignments, personal data, FTE, your caseload, number of periods taught and average number of students? Yes or No: Yes

If not, please state where you believe these facts or numbers differ: N/A

Will all students served receive all of the services called for in their IEP’s? Can you reasonably manage the excess caseload in relation to the programmatic condition you face, including, but not limited to, student age level, age span, and behavioral characteristics; number of curriculum levels taught at any one time or any given session, and intensity of student instructional needs? Please explain:

All students served will receive all of their services called for in their IEPs. The school I serves are nontraditional and parents have chosen to enroll their child in the school. I can reasonably manage the excess caseload in relation to the resource program I deliver at the schools. The resource program I deliver varies from direct instruction, push-in support, pull-out support, and consultation with the general education teacher.

I serve an independent home school program, at this school I am able to meet with the student and parent weekly to monitor student progress and provide specialized academic service. Some of the students I serve receive resource consultation with the general education teacher and are able to access their education successfully.

During on site instruction I am able to utilize and direct paraprofessional aide time for push-in services, data collection, and monitoring students.

Can you reasonably manage the excess caseload in relation to your student contact time, and other assigned duties? Please explain:

I can reasonably manage the excess caseload in relation to my student contact time and other assigned duties. The students I serve are attending independent schools; I am able to provide services to them in individual and small groups during their weekly onsite school meetings. I am able to budget/mange time in my weekly schedule for office time to prepare for individual student instruction at the varied grade levels, data collection, and IEP monitoring and paperwork.

*EC* Section 56362(c) states that no resource specialist shall have a caseload which exceeds 28 students, per *CCR*, Title 5, Section 3100. Regulations allow your agency to request a waiver of the *EC*, providing certain conditions are met, and that in no circumstance may your caseload be raised to above 32 students.

Indicate your position regarding this waiver request by a check mark next to the correct line:

AGREE X to the increase in my student caseload from 28 students to not more than

32 students.

DISAGREE to an increase in my student caseload over the 28 students. If disagreeing, provide rational below:

Indicate a check mark on the appropriate line:

I did not have a student caseload of more than 28 during the last school year. X

I did have a student caseload of more than 28 during the last school year. If yes, please respond below: N/A

1. Did you have an approved waiver for this caseload? Yes or No:
2. Specify which months / weeks you were over caseload: From/to:
3. Other pertinent information:

I have had a student caseload of more than 28 for more than two consecutive years. Yes or No: No

Instructional Aide time currently receiving: Hours (prior to increased caseload): 18

Any additional Aide time with this waiver? Total hours after increase: 18

I hereby certify that the information provided on this application is true and correct (please initial): KR

Date: 3/9/2018

Telephone number (and extension): 530-527-0188 ext. 415

# Attachment 3: Waiver 12-5-2018 Waterford Unified School District

**California Department of Education**

**WAIVER SUBMISSION – Specific**

CD Code: 5075572

Waiver Number: 12-5-2018

Active Year: 2018

Date In: 5/17/2018 1:13:47 PM

Local Education Agency: Waterford Unified School District

Address: 219 North Reinway Ave., Bldg. 2

Waterford, CA 95386

Start: 2/9/2018

End: 5/25/2018

Waiver Renewal: No

Waiver Topic: Special Education Program

Ed Code Title: Resource Teacher Caseload

Ed Code Section: 56362 (c)

Ed Code Authority: 56101 and 5 *CCR* Section 3100

Ed Code or *CCR* to Waive: Ed Code 56362 (C) (c) Caseloads for resource specialists shall be stated in the local policies developed pursuant to Section 56195.8 and in accordance with regulations established by the board. No resource specialist shall have a caseload which exceeds [28] 32 pupils.

Outcome Rationale: The number of student entered into the special education program have been enrolled with an IEP already in place. In the meantime, there are other students who were identified to be assessed for special education through the SST process. The RSP teacher will have two instructional aides to support student instruction in a pullout setting. While the RSP teacher plans according to the goals/needs, the instructional aides will implement the instructional plan under the supervision of the RSP teacher. By adding the additional instructional aide of 5.75 hours for the remainder of the school year, students will be served as per the goals and offer of FAPE.

Student Population: 520

City Type: Urban

Local Board Approval Date: 5/10/2018

Audit Penalty Yes or No: No

Categorical Program Monitoring: No

Submitted by: Mr. Jose Aldaco

Position: Assistant Superintendent

E-mail: [jaldaco@waterford.k12.ca.us](file:///%5C%5CCDE.Cal%5CDATA%5CSEDATA%5CCENTRAL%5CDivision-wide%5CWAIVERS%5CWaiver%20Items%5C2018%5CSeptember%20SBE%20Meeting%5Cjaldaco%40waterford.k12.ca.us)

Telephone: 209-874-1809 x4

Fax: 209-874-1809

Bargaining Unit Date: 03/09/2018

Name: Waterford Teachers Association

Representative: Michael Dehn

Title: Chief Negotiator

Position: Support

**California Department of Education**

**Revised 1-19-2018**

## Specific Waiver Request for Resource Specialist Caseload

### To be completed by the Administrator

SELPA / District / COE Name: Stanislaus Co/Waterford Unified School District

Name of Resource Specialist: Mark Partin

School / District Assignment: Richard Moon Primary

Status: Permanent, Probation or Temporary: Probation

Number of Students: 28

Caseload proposed number of students: 32

Full time Equivalent (FTE%): 1.0

Number of periods or hours taught by Resource Specialist: 6

Average number of students per hour taught: 5-7

Indicate amount of Instructional Aide time hours to be provided to this resource specialist with this waiver: 5.75

**Note: At least 5 hours of aide time is required when the caseload is over 28, per *CCR*, Title 5, Section 3100(d)(2).**

Provide assurance that the waiver will not hinder the implementation of a student’s individualized educational program (IEP) for all students involved with the waiver or compliance with specified federal law, per *CCR*, Title 5, Section 3100(d):

The number of students entered into the special education program have been enrolled with an IEP already. In the meantime, there are other students who were identified to be assessed for special education through the SST process. The RSP teacher will have two instructional aides to support student instruction in a pullout setting. While the RSP teacher plans according to the goals/needs, the instructional aides will implement the instructional plan under the supervision of the RSP teacher. By adding the additional instructional aide of 5.75 hours for the remainder of the school year, students will be served as per the goals and offer of FAPE.

Explain what extraordinary fiscal or program circumstances resulted in this request for excess caseload, per *CCR*, Title 5, Section 3100(d):

The increase of four additional students has put the program over the 28-student limit. Therefore, to support student learning, an additional 5.75 aide has been hired – this minimizes the financial impact for special education when the district has been unable to find highly qualified credential special education teachers. In the meantime, two instructional aides will be supporting the RSP teacher for the rest of the school year.

Indicate how your plan of action to resolve conditions by the time the waiver expires or is denied by the SBE, per CCR, Title 5, Section 3100(d)(1):

Richard Moon Primary is a TK-3 school and most students on this case load are in 3rd grade, who will be moving on to a smaller 4th -6th grade campus with fewer special education students on the RSP caseload. Although the 4th -6th grade campus with fewer students on the caseload could support students at this campus, both sites would need to reschedule “protected” time for English language are/Reading and English development, which would impact both sites to address the groups.

Administrator/Designee Name and title: Jose M. Aldaco, Assistant Superintendent

Telephone number (and extension): 209-874-1809x4

Date: 5-2-2018

## Specific Waiver Request for Resource Specialist Caseload

### To be completed by the Resource Specialist (Teacher)

Name: Mark Partin

Assigned at: Richard Moon Primary

Is the information in Items 1 through 12 on the attached SW \_ RSC \_ Administrator form an accurate reflection of your current assignments, personal data, FTE, your caseload, number of periods taught and average number of students? Yes or No: Yes

If not, please state where you believe these facts or numbers differ: N/A

Will all students served receive all of the services called for in their IEP’s? Can you reasonably manage the excess caseload in relation to the programmatic condition you face, including, but not limited to, student age level, age span, and behavioral characteristics; number of curriculum levels taught at any one time or any given session, and intensity of student instructional needs? Please explain:

Yes, an additional 5.75 Instructional Assistant has been assigned to my program which will allow me to run additional groups and to help monitor students in the G.E. classrooms. This will help to ensure that we should still be able to meet the needs of the student according to their IEP’s and deal with behavioral challenges as they arise.

Can you reasonably manage the excess caseload in relation to your student contact time, and other assigned duties? Please explain:

Yes, the additional assistant helps to ensure that we are able to meet the number of minutes each student is listed for in the proscribed areas of need. It also helps to free up some time for me to assess students, prepare IEP paperwork, hold IEP meetings, and enter pertinent information into SEIS.

*EC* Section 56362(c) states that no resource specialist shall have a caseload which exceeds 28 students, per *CCR*, Title 5, Section 3100. Regulations allow your agency to request a waiver of the *EC*, providing certain conditions are met, and that in no circumstance may your caseload be raised to above 32 students.

Indicate your position regarding this waiver request by a check mark next to the correct line:

AGREE X to the increase in my student caseload from 28 students to not more than

32 students.

DISAGREE – to an increase in my student caseload over the 28 students. If disagreeing, provide rational below: N/A

Indicate a check mark on the appropriate line:

I did not have a student caseload of more than 28 during the last school year. X

I did have a student caseload of more than 28 during the last school year. If yes, please respond below: N/A

1. Did you have an approved waiver for this caseload? Yes or No:
2. Specify which months / weeks you were over caseload: From/to:
3. Other pertinent information:

I have had a student caseload of more than 28 for more than two consecutive years. Yes or No: No

Instructional Aide time currently receiving: Hours (prior to increased caseload): 5.75

Any additional Aide time with this waiver? 5.75 Total hours after increase: 11.5

I hereby certify that the information provided on this application is true and correct (please initial): M.P.

Date: 0209/2018

Telephone number (and extension): (209)761-1206