

California Department of Education

Executive Office

SBE-005 (REV. 1/2018)

General Waiver

# California State Board of Education September 2018 AgendaItem #W-16

## Subject

Request by **Dehesa Elementary School District**, located in San Diego County, as chartering authority on behalf of Dehesa Charter School, a solely nonclassroom-based charter school, to waive *Education Code* Section 47605.1(c)(2), to permit Dehesa Charter School to operate four otherwise nonconforming resource centers in Riverside and Orange Counties.

## Waiver Number

17-6-2018

## Type of Action

Action, Consent

## Summary of the Issue(s)

A charter school may operate a resource center in a county adjacent to that in which it is authorized, provided, *inter alia*, the majority of its pupils are residents of the county in which the charter school is authorized [*Education Code* (*EC)* Section 47605.1(c)(2)]. The majority of Dehesa Charter School’s (DCS’s) pupils are residents of Riverside and Orange counties, not San Diego County, in which DCS is authorized. Dehesa Elementary School District (DESD), as chartering authority on behalf of DCS, is requesting a waiver of *EC* Section 47605.1(c)(2) to permit DCS to operate three resource centers in Riverside County and one in Orange County.

## Authority for Waiver

*EC* Section 33050

## Recommendation

* Approval: No
* Approval with Conditions: No
* Denial: Yes

The California Department of Education (CDE) recommends that the State Board of Education (SBE) deny the DESD’s request to permit DCS’s resource centers to operate in Riverside and Orange Counties *on the grounds that the educational needs of the pupils are not adequately addressed* [*EC* Section 33051(a)(1)].

## Summary of Key Issues

In *Anderson Union High School District v. Shasta Secondary Home School* (2016) 4 Cal. App. 5th 262 (*Anderson*), the Third District Court of Appeal held that the geographic restrictions in *EC* sections 47605(a) and 47605.1(d) apply to nonclassroom-based charter schools operating resource centers. Thus, in order to ensure compliance with *Anderson*, a nonclassroom-based charter school resource center must operate within the boundaries of its authorizing school district. Under *EC* Section 47605.1(c), charter schools may establish a resource center, meeting space, or other satellite facility located in a county adjacent to that in which the charter school is authorized, if the following conditions are met:

1. The facility is used exclusively for the educational support of pupils who are enrolled in nonclassroom-based independent study of the charter school.
2. The charter school provides its primary education services in, and a majority of the pupils it serves are residents of, the county in which the school is authorized.

In March 2017, the SBE adopted Board Policy #17-01 entitled, “Nonclassroom-Based Charter School Resource Center Location,” in response to *Anderson*. That policy authorized waivers for resource centers operating outside of an authorizer’s district boundaries but within the county. DESD on behalf of DCS was granted a waiver under the policy, which expired June 30, 2018. This waiver covered the resource centers in San Diego County, but not the centers located in Riverside County and Orange County.

DCS was established in 2001 as a nonclassroom-based school providing instruction to grades Kindergarten (K)–12. The school enrolled approximately 947 pupils and operated the following resource centers: one resource center located within the boundaries of its authorizer DESD, serving 30 pupils; six resource centers located outside of DESD but within San Diego County, serving 497 pupils; three resource centers operating in Riverside County, serving 300 pupils; and one resource center in Orange County, serving 150 pupils, under the provisions of *EC* Section 47605.1(c).

| School and Resource Centers | District | County | Total Enrollment | K | 1–2 | 3–4 | 5–6 | 7 | 8 | 9–12 |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| Resource center at: 4612 Dehesa Road, El Cajon | DESD | San Diego | 30 | N/A | N/A | N/A | N/A | N/A | N/A | 30 |
| Resource center at: 24750 Lincoln Avenue, Murrieta | Murrieta USD | Riverside | 132 | 9 | 14 | 17 | 15 | 19 | 11 | 47 |
| \*\*526 E. Magnolia Avenue, Corona | Corona-Norco USD | Riverside | N/A | N/A | N/A | N/A | N/A | N/A | N/A | N/A |
| Resource center at: 8223 California Avenue, Riverside | Riverside USD | Riverside | 170 | 5 | 36 | 22 | 24 | 15 | 17 | 51 |
| Resource center at: 1011 Camelback Street, Newport Beach | Newport-Mesa USD | Orange | 125 | 4 | 25 | 19 | 25 | 22 | 16 | 14 |
| **Dehesa Charter School Totals** | **DESD** | **San Diego** | **457** | **18** | **75** | **58** | **64** | **56** | **44** | **112** |

In response to *Anderson*, Element Education (DCS’s Charter Management Organization) sought and on December 13, 2017, was granted a countywide benefit charter by the San Diego County Office of Education for three years effective July 1, 2018, through June 30, 2021. The new charter school, Dimensions Collaborative, has opened for the 2018–19 school year and enrolled all but 30 of the 547 San Diego pupils previously enrolled at DCS, and served by the six resource centers located outside of DESD but within San Diego County. DCS’ current enrollment is 457, however all but 30 students are served outside of San Diego County, placing DCS out of compliance with *EC* Section 47605.1(c)(2) with respect to its Riverside and Orange County resource centers, as 427 of the 457 pupils DCS serves are not residents of San Diego County in which DCS is authorized.

**Dehesa Charter School Enrollment by Resource Center and Grade**

\*\*Lease at current location for resource center indicated below was dissolved by building owner.

N/A = Not Applicable

K = Kindergarten

On January 22, 2018, Element Education submitted a petition for a countywide benefit charter school to the Riverside County Office of Education (RCOE). The proposed charter school would have served the 302 pupils at the existing resource centers within Riverside County and the 125 pupils at the Orange County resource center. The Riverside County Board of Education denied the petition on April 11, 2018. It is worth noting that DCS was granted the first waiver in May 2017. However, DCS waited until January 2018 to submit the charter petition to RCOE, an 8 month gap before DCS took steps towards becoming compliant with *Anderson*.

In the fall of 2018, DCS plans to submit charter school petitions to the two districts within Riverside County where the existing resource centers are located for a planned opening date of July 1, 2019. In the meantime, the school plans to continue operating DCS, which will include the single resource center in DESD, as well as the three resource centers in Riverside County and one in Orange County, enrolling a total of 427 pupils.

DESD for DCSis requesting to waive *EC* 47605.1(c)(2) [the charter school provides its primary education services in, and a majority of the pupils it serves are residents of, the county in which the school is authorized] and continue to serve pupils enrolled from Riverside and Orange counties for the 2018–19 school year. The waiver request is because the vast majority of the pupils enrolled in the school are residents in Riverside County, not San Diego County.

According to the Frequently Asked Questions on the DCS website, if the waiver is not granted, DCS plans to continue operating and serving pupils in the counties of Riverside and Orange, but will close the resource centers located in Riverside and Orange counties.

**Because this is a general waiver, if the State Board of Education decides to deny the waiver, it must cite one of the seven reasons in *EC* 33051(a), available at** <http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=EDC&sectionNum=33051>.

## CDE Recommendation

The CDE recommends that the SBE deny the request based on the grounds that the educational needs of the pupils would not be adequately addressed if the waiver is granted [*EC* Section 33051(a)(1)].

### Academic Performance

CDE staff reviewed the current assessment data for pupils attending DCS compared to DESD, Orange, Riverside and San Diego counties and have concluded that results for English Language Arts and Mathematics are below the county averages.

| Subject | Dehesa Charter School | Dehesa Elementary School District | Orange County | Riverside County | San Diego County |
| --- | --- | --- | --- | --- | --- |
| English Language Arts (3–8) | 25.1% | 22.9% | 29.8% | 28.7% | 30.7% |
| Mathematics (3–8) | 12.6% | 20.0% | 22.3% | 19.7% | 22.0% |

**2017 Academic Performance Comparisons**

In response to the Riverside County petition, RCOE staff also noted that, compared with Riverside County and San Diego County, the academic performance of DCS pupils scored below county averages on state testing, and had not improved over the history of the administration of the California Assessment of Student Performance and Progress. These findings were magnified for pupils classified as socioeconomically disadvantaged. The petition also contained no goals for some state priorities, and goals aligned with state priorities were either not measurable or not tailored to the priority.

### Ability to Serve Pupils

As set forth in the chart on page 4, DCS is only serving 30 remaining 11–12 grade pupils within San Diego County. The remaining 427 pupils, 93 percent of the pupils served by DCS, are being served outside the county within Riverside and Orange counties. CDE staff is concerned about the charter school’s ability to serve all 457 pupils given the majority of the pupils will attend resource centers in adjacent counties. In addition, staff is concerned with the level of involvement and supervision DCS personnel will provide in operating the charter school, and their ability to exercise appropriate oversight of the resource centers located outside of San Diego County.

RCOE staff also expressed concern about the charter petition’s lack of detail as to the degree of teacher supervision of pupils required for independent study, given that a teacher was only available if requested by a parent. This lack of supervision is magnified in the context of this waiver request, given that DCS gives no explanation as to how it intends, from San Diego County, to supervise 427 pupils in Riverside and Orange counties.

There are also concerns about DCS’ financial ability to operate the proposed resource centers. RCOE staff noted that the petition did not include any detailed lease or breakdown of facility costs with reference to the three resource centers in Riverside County which are now the subject of this waiver request. DCS states that it intends to seek charter school authorizations from the two school districts in which the resource centers are located. However, there is no guarantee that either petition will be granted. In its statutory notice of the Riverside County petition to affected school districts in the county, Element Education admitted it was seeking a countywide charter because the school would not serve enough pupils from one school district to be financially viable.

If the waiver is approved, it would only be a temporary solution to DCS’ compliance problem. DCS stated they are planning to submit charter petitions to Alvord Unified, which would serve students currently using the locations in Corona and Riverside, as well as to Murrieta Valley in August 2018. If these petitions are approved, the schools would open during the 2019-20 school year. However, there is no mention of any contingency plans if the individual petitions are denied and the waiver has expired.

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

DESD submitted a waiver on behalf of DCS under the SBE Waiver Policy #17-01. The waiver was approved at the May 2017 SBE Meeting <https://www.cde.ca.gov/be/ag/ag/yr17/agenda201705.asp> (Item W-21) and expired on June 30, 2018.

## Fiscal Analysis (as appropriate)

There is no statewide fiscal impact of waiver approval.

## Attachment

* **Attachment 1**: Dehesa Charter School Waiver Information (1 Page)
* **Attachment 2:** Dehesa Elementary School District General Waiver Request 17-6-2018 (3 Pages). (Original waiver request is signed and on file in the Waiver Office.)

# Attachment 1: Dehesa Charter School Waiver Information

| Waiver Number | Local Educational Agency (Charter Authorizer) | Charter School and Charter Number | Date School Opened | Waiver Period | Public Hearing and Local Board Approval Date | Public Hearing Advertisement | School Site Council/Advisory Committee Position |
| --- | --- | --- | --- | --- | --- | --- | --- |
| 17-6-2018 | Dehesa Elementary School District | Dehesa Charter School0419 | 10/15/2001 | 7/1/2018 – 6/30/2019 | 2/27/2018 | Publicized in conjunction with the Board of Trustees Meeting | School District Board of Trustees **No objections** |

# Attachment 2: Dehesa Elementary School District General Waiver Request 17-6-2018

**California Department of Education**

**WAIVER SUBMISSION - General**

CD Code: 3768049

Waiver Number: 17-6-2018

Active Year: 2018

Date In: 6/25/2018 2:55:44 PM

Local Education Agency: Dehesa Elementary School District

Address: 4612 Dehesa Rd.

El Cajon, CA 92019

Start: 9/1/2018

End: 9/1/2019

Waiver Renewal: No

Waiver Topic: Charter School Program

Ed Code Title: Geographic Limitations - Non-classroom Based

Ed Code Section: 47605.1(c)(2)

Ed Code Authority: 33050

*Education Code* or *CCR* to Waive: Notwithstanding any other provision, a charter school may establish a resource center, meeting space, or other satellite facility located in a county adjacent to that in which the charter school is authorized if the following conditions are met: 1. The facility is used exclusively for the educational support of pupils who are enrolled in non-classroom based independent study of the charter school. 2. [The charter school provides its primary education services in, and a majority of the pupils it serves are residents of, the county in which the school is authorized.]

Outcome Rationale:

Education code: 47605.1(c)

Dehesa Charter School established in 2001 and authorized by Dehesa School District, has been operating resource centers in San Diego, Riverside and Orange counties since 2003. In response to the Shasta-Anderson appeal, the administration sought and was granted a county-wide benefit charter with the San Diego County Office of Education. The new school, Dimensions Collaborative, is opening July 1, 2018 and most of the Dehesa Charter pupils of San Diego county have enrolled in the new charter school. The drop in San Diego enrollment has impacted the in-county majority that Dehesa has maintained since AB 1994.

In response, the administration of Dehesa Charter School sought, and was denied, a county-wide benefit charter with the Riverside County Office of Education (even though it was the same situation and an even stronger petition than was the case in San Diego County). RCOE directed the school to seek authorization from District offices. However, districts had closed the window to submit by then. When the window opens again in August, even if approved, the districts will not permit charter schools to open for another year.

Dehesa Charter School has a petition ready to submit to Riverside county districts when the window opens again; however, resource centers will be out of compliance until they can be transferred to a new school. As such, Dehesa Elementary is requesting that E.C. 47605.1(c) be waived for the resource centers listed below which provide specialized and mandatory services to pupils enrolled in the school. The resource centers operate two days per week and serve 300 pupils in Riverside county and 150 in the Newport Beach area.

24750 Lincoln Ave, Murrieta, CA 92562

526 E. Magnolia Ave, Corona, CA 92879

8223 California Ave, Riverside, CA 92504

1011 Camelback St, Newport Beach, CA 92879

The organization will submit a petition to Alvord Unified which would serve pupils currently using the location in Corona and Riverside. In addition, a petition will be submitted to Murrieta Valley to operate a center within the district and another one outside the county.

Student Population: 450

City Type: Suburban

Public Hearing Date: 2/27/2018

Public Hearing Advertised: agenda posting

Local Board Approval Date: 4/19/2018

Community Council Reviewed By: Superintendent, Board of Trustees

Community Council Reviewed Date: 2/27/2018

Community Council Objection: No

Community Council Objection Explanation:

Audit Penalty Yes or No: No

Categorical Program Monitoring: No

Submitted by: Ms. Nancy Hauer

Position: Superintendent

E-mail: nancy.hauer@dehesasd.net

Telephone: 619-444-2161 x13

Fax: 619-444-2105

Bargaining Unit Date: April 17, 2018

Name: Dehesa Teachers Association (DTA)

Representative: Christine Lavigne

Title: President

Position: Support

Contact Number: 619-444-2161

Comments: The bargaining unit was made aware prior to the board approval. They were in complete support of us proceeding with the waiver.