

California Department of Education

Executive Office

SBE-005 (REV. 1/2018)

General Waiver

# California State Board of Education July 2019 Agenda Item #W-16

## Subject

Request by the **Natomas Unified School District** to waive California *Education Code* Section 56195.1 (a) regarding size and scope requirements of a special education local plan area.

## Waiver Number

12-1-2019

## Type of Action

Action

## Summary of the Issue(s)

The Natomas Unified School District (NUSD) is currently a member of the Sacramento County Special Education Local Plan Area (SELPA). This local educational agency (LEA) is proposing to pursue single-district SELPA status. Staff of the Special Education Division reviewed the request and determined the NUSD does not meet the size and scope requirements set forth by the State Board of Education (SBE). This waiver is being brought before the SBE to determine whether to waive size and scope requirements to allow the NUSD to operate as a single-district SELPA.

## Authority for Waiver

California *Education Code (EC)* Section 33050

## Recommendation

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

The California Department of Education (CDE) recommends the SBE approve, with conditions, the request by the NUSD to waive the size and scope requirement to qualify as a single-district SELPA, pursuant to *EC* Section 56195.1. During the May 2019 SBE meeting, size and scope waivers for two LEAs were approved for a one year period pending additional recommendations from CDE to review the current size and scope policy. To remain consistent with the SBE’s decision on the May waiver, the CDE is further recommending that this waiver be also be approved for one year only. The SBE is authorized under *EC* Section 56100(b) to adopt criteria and procedures for the review and approval of the special education local plans. In 1983, the SBE adopted size and scope requirements for determining the efficacy of local plans submitted by SELPAs to the CDE, pursuant to *EC.* To be consistent with previous waivers, the CDE is recommending approval with conditions.

The NUSD does not meet the size and scope requirements to be considered a single-district SELPA; however, under current policies adopted by the SBE for determining the efficacy of local plans submitted by SELPAs to the CDE, the CDE has no basis for recommending denial.

If the SBE supports the CDE recommendation to approve the waiver, the CDE requests the approval be made with the following condition:

* Upon approval of the waiver, the CDE will require, at a minimum, a final copy of the Interagency Agreement for Part C, Early Intervening Services as follows:
* Per the requirements of implementing Title 17 *California Code of Regulations* (17 *CCR*) sections 52000–52175 pertaining to the provision of services for infants and toddlers with special needs, the local plan should include a current Interagency Agreement for Part C, Early Intervening Services. This interagency agreement must describe the policies and procedures related to the implementation of California’s Early Intervening Services and must contain the components necessary to ensure effective cooperation and coordination between the SELPA and the regional center. The specific requirements of this interagency agreement are described in 17 *CCR* Section 52140. The NUSD has submitted an unsigned draft copy of this agreement, and letters of intent from both the NUSD and the Sacramento Alta Regional Center stating they intend to sign the agreement upon approval of the waiver.

## Summary of Key Issues

### Background

California Master Plan for Special Education

* Adopted by the SBE (1974)
* Assembly Bill 4040 (Chapter 1532, Statutes of 1974) implemented a pilot project of the Master Plan in no more than 10 local comprehensive plan areas during fiscal years (FYs) 1975–76, 1976–77, and 1977–78. The pilot regions included single district schools, multiple district schools, and the county office of education (COE).
* AB 1250 (Chapter 1247, Statutes of 1977) was based on the results obtained through the pilot program, and called for a systematic phase-in of the Master Plan statewide.
* Senate Bill 1870 (Chapter 797, Statutes of 1980):
	+ Implemented the Master Plan statewide
	+ Brought California into compliance with Public Law (P.L.) 94–142 (eligibility for federal funding), better known as the Individuals with Disabilities Education Act (IDEA) which was enacted in 1975
	+ Required special education service regions (SESRs) to develop a local plan
	+ Revised the role of the COE so that all local comprehensive plans within the county go through the COE to either approve or disapprove based on the described ability of the plan to ensure special education services are provided to all individuals with exceptional needs
* SB 1345 (Chapter 1201, Statutes of 1982) revised SB 1870 to rename SESRs to SELPAs
* The SBE adopted size and scope requirements for SELPAs (1983)

AB 602 (Chapter 854, Statutes of 1997)

* Established annual budget and service plans that are adopted at SELPA public hearings.

### Analysis

The NUSD is currently a member of the Sacramento County SELPA. The NUSD sent notification dated February 13, 2018, to the CDE, the Sacramento County Office of Education, and impacted SELPAs of their intent to explore alternate options to the current SELPA configuration, including, but not limited to, becoming a single-district SELPA effective July 1, 2019.

The review of the district’s size and scope, as adopted by the SBE, resulted in the following determination:

* According to the totals populated by Dataquest for 2018–19, the NUSD had 15,290 students across 36.98 square miles and therefore had a student population density of 413.47 students per square mile, defining it as a metropolitan area. The NUSD does not meet the SBE’s size and scope requirements (adopted in November 1983) for a metropolitan area single-district SELPA (kindergarten through grade twelve and 30,000 or more pupils). The NUSD has seen an annual increase in enrollment since 2014–15, rising gradually from 13,630 to 15,290 in the 5-year span.

As current policies provide very few and specific criteria beyond size and scope for the CDE to evaluate the efficacy of local plans submitted, and to recommend approval or denial, the CDE wanted to provide context to the SBE for the LEAs seeking waivers that may be considered when evaluating their ability to ensure special education and services are provided to all students with disabilities (SWDs). The CDE looked at both state and federal data to provide additional information.

For state performance level categories, the CDE looked at the SWDs student-group performance levels as measured by the California School Dashboard for 2018. CDE’s analysis of these data indicate NUSD’s SWDs are performing in the yellow, orange, and red categories for chronic absenteeism and suspension rates as well as English Language Arts, Mathematics (Math) and College/Career indicators. The NUSD’s SWDs are performing in the green for the graduation rate indicator.

For federal data, the CDE looked at the Special Education Annual Performance Report (APR) Measures for the years 2015–16, 2016–17, and 2017–18. The APR is required for each LEA under the IDEA and reported on an annual basis to the U. S. Department of Education, Office of Special Education Programs. Each year, 14 indicators and targets are used to measure the performance and compliance status of each LEA as required by IDEA.

Most APR indicator targets were met or improvement was shown, however, they have not met their targets in the graduation, math achievement rate, and preschool assessment indicators. Further, the NUSD has data identified noncompliance in two areas: rate of timely individualized education programs and rate of timely triennials.

In addition to the state and federal data, the CDE reviewed the Natomas Teachers’ Association’s (NTA) opposition to the NUSD waiver of size and scope to become a single district SELPA. Specifically, the NTA stated “teacher attrition, lack of classroom services, and negative district culture” as the reason for their opposition. In response, the CDE reviewed the last three years of special education complaints for NUSD and found there were five complaints filed. Only one complaint led to a finding of noncompliance and the corrective actions were completed.

**Demographic Information:** The NUSD has a student population of 15,290 and is located in an urban area in Sacramento County.

**Because this is a general waiver, if the SBE 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>.

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

The SBE is authorized under *EC* Section 56100 (b) to adopt criteria and procedures for the review and approval of the special education local plans. In 1983, the SBE adopted size and scope requirements for determining the efficacy of local plans submitted by SELPAs to the CDE, pursuant to *EC* Section 56195.1 (a). (See the CDE Web page at <https://www.cde.ca.gov/sp/se/lr/szscpselpa.asp>.)

Special education local plans are submitted for approval to the CDE who reviews the plans and recommends approval or disapproval to the SBE. In January 2000, the SBE voted to approve the criteria for the development and approval (*EC* Section 56100 (b)) of the local plans, and delegate the actual approval of SELPA local plans to the CDE.

Most recently, in May of 2019, a waiver of size and scope was presented to the SBE to dissolve the Puente Hills Service Area SELPA and create two new single-district SELPAs of the Hacienda La-Puente Unified School District (HLPUSD) and the Rowland Unified School District (RUSD). (See Waiver Item W-12 on the CDE web page at <https://www.cde.ca.gov/be/ag/ag/yr19/agenda201905.asp>.)

Neither the HLPUSD nor the RUSD met size and scope requirements for enrollment in a metropolitan area single-district SELPA, and their proposed local plans were denied by the CDE based on this criteria. Both districts chose to pursue single-district SELPA status, and each submitted a waiver of size and scope. They were heard together as the outcome would dissolve an active multi-district SELPA. Due to the current lack of robust criteria for determining the future success of a proposed SELPA, CDE staff recommended approval with conditions. A motion was made by a member of the SBE to approve the waiver with conditions for a period of one year, which was approved by all members. Several members expressed a need for the SBE to update and explore the relevance and efficacy of the size and scope requirements in the current SELPA climate.

In January of 2017, a waiver of size and scope was presented to the SBE to allow the Ontario-Montclair School District (OMSD) to split from the West End SELPA and pursue single-district SELPA status. (See Waiver Item W-13 on the CDE web page at <https://www.cde.ca.gov/be/ag/ag/documents/agenda201701.pdf>.)

The specifics of this waiver were unique in that the West End SELPA had voted to terminate the OMSD from their governance structure, effective June 30, 2017. As opposed to seeking membership in an alternate SELPA, the OMSD chose to pursue single-district SELPA status. They did not meet size and scope standards, both in enrollment and in grade range, and their proposed local plan was denied by the CDE based on these factors. However, based on their unique circumstances, CDE staff recommended approval of the waiver of size and scope for a period of two years with conditions.

A motion was made by a member of the SBE to approve the waiver requests with the conditions for a period of two years and that the CDE report back on any compliance issues. The motion was approved by all members.

A similar item was presented to the SBE in July 2014. The ABC Unified School District (ABCUSD) and the Norwalk-La Mirada Unified School District (NLMUSD) comprised the Norwalk-La Mirada/ABC Unified SELPA located in Los Angeles County. Both Districts submitted requests to the CDE to become single-district SELPAs. (See Item W-17 on the CDE Web page at <https://www.cde.ca.gov/be/ag/ag/documents/agenda201407.pdf>.) The CDE staff determined that neither district met the SBE’s size and scope requirements. The ABCUSD and the NLMUSD then requested waivers to the size and scope requirements. A motion was made by a member of the SBE to approve the waiver requests with the condition that the waivers be reviewed in one year and that the CDE report back on any compliance issues. The motion was approved by all members.

## Fiscal Analysis (as appropriate)

The following calculations are based upon funding allocations to the Sacramento County SELPA from FY 2018–19 as it is the most current year funding information available.

The CDE allocates state special education funds to SELPAs on the basis of AB 602. Based on FY 2018–19 AB 602 allocation for the Sacramento County SELPA, the NUSD allocation would have been approximately $6,346,611. This calculation does not take into account the application of property taxes shared by the Sacramento County SELPA, which will lessen the allocation estimate for state aid.

The CDE grants federal IDEA funds to SELPAs based on the federally required formula. The FY 2018–19 IDEA flow through grants for the Sacramento County SELPA was approximately $11,535,522. If the NUSD had been their own SELPA, the IDEA grant awards for Sacramento County SELPA would have been approximately $9,615,127 and the allocations for the NUSD would have been approximately $1,920,393.

In addition, the Sacramento County SELPA receives annual IDEA Part C funding in the amount of $165,914 to serve solely-low incidence (SLI) infants and toddlers for all current district members of the SELPA. If the NUSD were to become a single-district SELPA, they would receive funding based on their total funded SLI infant counts in proportion to the total funded SLI infant counts of the current SELPA structure. However, the Part C funding is a set amount and new SELPAs will not receive any additional funding beyond what has already been allocated to the existing SELPA.

## Attachment(s)

* **Attachment 1:** Summary Table (1 page).
* **Attachment 2:** Natomas Unified School District Waiver 12-1-2019 (2 pages). (Original waiver request is signed and on file in the Waiver Office.)

# Attachment 1: Summary Table

California *Education Code* Section 56195.1

| Waiver Number | District | Period of Request | District’s Request | CDE Recommends | Bargaining Unit Representatives Consulted, Date and Position | Local Board and Public Hearing Approval | Penalty Without Waiver |
| --- | --- | --- | --- | --- | --- | --- | --- |
| 12-1-2019 | Natomas Unified School District | **Requested:**July 1, 2019, through June 30, 2021Recommended:July 1, 2019, through June 30, 2020 | To waive the special education local plan area (SELPA) size and scope requirement to become a Single-district SELPA | Approval with conditions | Natomas Teacher’s Association, Brenda BorgePresident12/18/18OpposeCalifornia School Employees Association, Pamela RothwellPresident12/07/18Support | 1/18/19 | The local educational agency may not become a Single-district SELPA |

Created by California Department of Education
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# Attachment 2: Waiver 12-1-2019 Natomas Unified School District

**California Department of Education**

**WAIVER SUBMISSION - General**

CD Code: 3475283

Waiver Number: 12-1-2019

Active Year: 2019

Date In: 1/22/2019 8:27:41 AM

Local Education Agency: Natomas Unified School District

Address: 1901 Arena Blvd.

Sacramento, CA 95834

Start: 7/1/2019

End: 6/30/2021

Waiver Renewal: No

Waiver Topic: Special Education

Ed Code Title: One year notice to change SELPA

Ed Code Section: 56195.1

Ed Code Authority: 33050

*Education Code* or *CCR* to Waive: The governing board of a district shall elect to do one of the following: (a) [if of sufficient size and scope, under standards adopted by the board,] submit to the superintendent a local plan for education of all individuals with exceptional needs residing in the district in accordance with Chapter 3 (commencing with Section 56205).

Outcome Rationale: Rationale for Waiver of SBE Size and Scope Standards is attached.

Student Population: 15000

City Type: Urban

Public Hearing Date: 1/18/2019

Public Hearing Advertised: Public notice posted at each school site in district, on the district website, and published in the Sacramento Bee newspaper.

Local Board Approval Date: 1/18/2019

Community Council Reviewed By: Community Advisory Committee

Community Council Reviewed Date: 12/14/2018

Community Council Objection: No

Community Council Objection Explanation:

Audit Penalty Yes or No: No

Categorical Program Monitoring: No

Submitted by: Mr. Josh Harris

Position: Assistant Superintendent, Student Services

E-mail: [joharris@natomasunified.org](file:///C%3A%5CUsers%5CDbabyak%5CAppData%5CLocal%5CMicrosoft%5CWindows%5CINetCache%5CContent.Outlook%5C6FCUPCJR%5Cjoharris%40natomasunified.org)

Telephone: 916-567-5434

Fax: 916-567-5441

Bargaining Unit Date: 12/07/2018

Name: CSEA

Representative: Pamela Rothwell

Title: CSEA President

Position: Support

Bargaining Unit Date: 12/18/2018

Name: Natomas Teachers Association (NTA)

Representative: Brenda Borge

Title: NTA President

Position: Oppose

Comments: Teacher attrition, lack of classroom services, and negative district culture.