

California Department of Education

Executive Office

SBE-006 (REV. 1/2018)

Specific Waiver

# California State Board of Education September 2019 Agenda Item #W-13

## Subject

Request by **Dublin Unified School District** 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

9-5-2019

## Type of Action

Action, Consent

## Summary of the Issue(s)

The Dublin Unified School District (DUSD) requests to increase the caseload of one resource specialist 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 conditions: (1) The DUSD must provide the resource specialist instructional aide time of at least five hours daily whenever the resource specialist’s caseload exceeds 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); (2) The DUSD must submit to the Special Education Division (SED) of the CDE, documentation of the District’s efforts to recruit and employ fully credentialed resource specialists for the 2019–20 school year. The district is to use and document at least two or more different modalities for recruiting qualified personnel, such as:

* Posting of fliers
* Job listings in newspapers, professional periodicals, or other such listings
* Online job listings such as EdJoin, or other education related websites
* Participation in career or employment fairs
* Active recruitment at universities and other institutions of higher learning
* Involvement with institutions of higher learning for programs on teacher training
* Use of LEA based teacher training, or use of career ladders for current staff.

## 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 that the teacher agreed to the waiver, and the teacher information provided on the waiver submission is accurate.
* Contacting the union representative to confirm that 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.

The DUSD requests to increase the caseload of Erin Mann, resource specialist at Dublin High School. 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 DUSD applied for a waiver within the previous two years. The resource specialist agreed to the waiver and received the required amount of instructional aide time.

The DUSD stated in their waiver submission that a resource specialist position was approved and posted for applicants. As of the date of their waiver submission, the position remained open with no viable applicants.

The CDE is recommending an additional waiver condition to require the DUSD to provide the CDE with information about their recruitment efforts for the 2019–20 school year due to the DUSD’s recruitment difficulties.

As part of the waiver review, the CDE contacted the Dublin Teachers Association (DTA) and the DUSD to confirm information on the waiver. The DTA asserted the process for union participation in the development of the waiver was not followed, therefore they oppose the waiver. The DUSD stated they had not received a response from the DTA regarding the development of the waiver upon the date of their waiver submission. As a result they listed the DTA’s position on the waiver as “Neutral”.

**Demographic Information:** The DUSD has a student population of 12,224, and is located in a suburban area in Alameda 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 (1 page)
* **Attachment 2:** Dublin Unified School District Waiver 9-5-2019 (2 pages). (Original waiver request is signed and on file in the Waiver Office.)
* **Attachment 3:** Resource Specialist Caseload Waiver Request, Administrator Supplemental Form (Waiver 23-4-2019) (3 pages).
* **Attachment 4:** Resource Specialist Caseload Waiver Request, Teacher Supplemental Form (Waiver 22-4-2019) (4 pages).

# 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 |
| --- | --- | --- | --- | --- | --- | --- | --- |
| 9-5-2019 | Dublin Unified School District, Dublin High School | Erin MannYes | No | Previous:6 hours per dayCurrent:6 hours per day | Requested:December 12, 2018, to May 31, 2019Recommended: December 12, 2018, to May 31, 2019 | April 23, 2019 | Dublin Teachers Association (DTA), Roberta (Robbie) Kreitz, President8/20/2019Oppose(The DTA asserts the process for union participation in the development of the waiver was not followed.) |

Created by California Department of Education
June 2019

# Attachment 2: Waiver 9-5-2019 Dublin Unified School District

**California Department of Education**

**WAIVER SUBMISSION – Specific**

CD Code: 0175093

Waiver Number: 9-5-2019

Active Year: 2019

Date In: 5/14/2019 12:08:57 PM

Local Education Agency: Dublin Unified School District

Address: 7471 Larkdale Ave.

Dublin, CA 94568

Start: 12/6/2018

End: 5/31/2019

Waiver Renewal: No

Previous Waiver Number:

Previous SBE Approval Date:

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: Dublin Unified School District is experiencing significant growth and despite careful planning for the appropriate number of resource specialists at the comprehensive high school, the number of eligible students increased significantly over the summer of 2018 and in the first few months of the 2017-18 school year. A new resource position was approved and posted for applicants in January of 2019. The position has remained open with no viable applicants as of the date of this waiver application. Without a new resource specialist, one resource specialist's caseload has increased to 32 with all 3 others at 28.

Student Population: 12224

City Type: Suburban

Local Board Approval Date: 4/23/2019

Audit Penalty Yes or No: No

Categorical Program Monitoring: No

Submitted by: Ms. Tara Kyle

Position: Assistant Director of Special Education

E-mail: [kyletara@dublinusd.org](file:///%5C%5CCDE.Cal%5CDATA%5CSEDATA%5CCENTRAL%5CDivision-wide%5CWAIVERS%5CWaiver%20Items%5C2019%5C09-September%20SBE%20Meeting%5Ckyletara%40dublinusd.org)

Telephone: 925-828-2551 x8014

Fax:

Bargaining Unit Date: 04/23/2019

Name: Dublin Teacher's Association

Representative: Roberta (Robbie) Kreitz

Title: President

Position: Neutral

Comments: