

California Department of Education

Executive Office

SBE-005 (REV. 1/2018)

General Waiver

# California State Board of Education July 2023 Agenda Item #W-14

## Subject

Request by **Santa Clara County Office of Education** to retroactively waive *California Code of Regulations*, Title 5, Section 3051.16(c), the requirement that educational interpreters for Deaf and Hard of Hearing pupils meet minimum qualifications as of July 1, 2009, to accept Diane Dunphy and Sean O’Brien provision of services to students through June 30, 2023, under a remediation plan that was completed throughout the 2022-2023 school year.

## Waiver Number

* Santa Clara County Office of Education: 10-9-2022
* Santa Clara County Office of Education: 11-9-2022

## Type of Action

Action, Consent

## Summary of the Issue(s)

The State Board of Education (SBE) must determine if Diane Dunphy and Sean O’Brien qualify for a retroactive educational interpreter waiver for the provision of educational interpreting services for deaf and hard of hearing students through June 30, 2023. Santa Clara County Office of Education (SCCOE) hired Diane Dunphy in March of 2022, with a pre-hire Educational Interpreter Performance Assessment (EIPA) score of 3.5 that was taken in December 2021. SCCOE hired Sean O’Brien in February of 2022, with a pre-hire EIPA score of 3.2 that was taken in December 2021. Neither person has obtained a waiver of *California Code of Regulations*, Title 5, Section 3051.16(c) requirements to date.

## 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 that the SBE approve the waiver request by the county office of education with the following conditions:

The SCCOE must provide Diane Dunphy and Sean O’Brien with regular access to a lead education interpreter who is Registry Interpreters for the Deaf (RID)-certified holding both National Interpreter Certification (NIC) and Education kindergarten through grade twelve (K–12) certifications. The lead interpreter has been and will continue to offer regular support in the form of:

1. Mentor(s) that meets the certification of an Educational Sign Language Interpreter; the SCCOE is also providing one-on-one mentoring and tutoring on an ongoing basis. The mentor(s) will call Diane Dunphy and Sean O’Brien through videophone to practice active communication with voice, review testing comments and clarify needs, critique, and support videos of them, as well as testing result comments, and observe and support them in their interpreting. The mentor(s) will communicate with them on a weekly basis, as needed.
2. Diane Dunphy and Sean O’Brien shall observe other interpreters during class times and video themselves interpreting lessons for self-evaluation. They will review various blogs and vlogs about American Sign Language (ASL) grammar and syntax, and views practice ASL videos to increase their reception abilities.
3. The SCCOE will provide monthly updates to the CDE for the duration of the waiver.
4. By December 30, 2024, the SCCOE will provide CDE with new assessment scores for Diane Dunphy and Sean O’Brien.
5. SCCOE will submit to CDE copies of any and all policies and procedures regarding (a) the hiring of American Sign Language (ASL) interpreters and (b) for seeking waivers for interpreters from the SBE.
6. The superintendent of SCCOE will submit a notice of assurance that any requested waiver pursuant to California Education Code section 33050, will ensure and assert in the waiver request that none of the exceptions listed in California Education Code section 30351(a) apply. Those exceptions are as follows:  
   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.
7. The CDE shall perform at least one mid-school year review to observe and monitor Diane Dunphy, Sean O’Brien, and the ASL interpreter program to assess the progress on the above conditions and capacity of these interpreters.

## Summary of Key Issues

The Individual with Disabilities Education Improvement Act of 2004 (IDEIA 2004) requires that interpreters for pupils who are Deaf or Hard of Hearing meet state-approved or state-recognized certification, registration, or other comparable requirements, as defined in Title 34 of the *Code of Federal Regulations*, Section 300.156(b)(1).

To meet this federal requirement, the *California Code of Regulations*, Section 3051.16(c) requires the following:

By July 1, 2009, 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 Sign Skills Evaluation-Interpreter/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.

### Assessment Overview:

According to the EIPA Rating System Ms. Dunphy and Mr. O’Brien, whose prior EIPA scores were 3.5 and 3.2, respectively, “needs continued supervision and should be required to participate in continuing education in interpreting.” The EIPA Rating System is described in the policy regarding educational interpreter waiver requests that was approved by SBE in November 2009. The SBE Policy #09-02 can be found at <https://www.cde.ca.gov/re/lr/wr/documents/interpreter.docx>.

As described in the November 2009 SBE policy, according to the EIPA Rating System, Ms. Dunphy’s prior EIPA score of 3.5 and Mr. O’Brien’s current EIPA score of 3.2 indicate that educational interpreters with the same score:

“Demonstrate knowledge of basic vocabulary, but will lack vocabulary for more technical, complex, or academic topics.” The individuals are “able to sign in a fairly fluent manner using some consistent prosody, but pacing is still slow with infrequent pauses for vocabulary or complex structures. Sign production may show some errors but generally will not interfere with communication. Grammatical production may still be incorrect, especially for complex structures, but is in general intact for routine and simple language. Comprehends signed messages but may need repetition and assistance. Voiced translation often lacks depth and subtleties of the original message. An individual at this level would be able to communicate very basic classroom content but may incorrectly interpret complex information resulting in a message that is not always clear.”

Prior to submitting this waiver request, the county office of education informed that Ms. Dunphy took the EIPA examination again in June 2022 and obtained a score of 3.8, which is her most recent assessment. The county office of education has not provided an updated score result for Mr. O’Brien.

#### **Santa Clara County Office of Education**

The SCCOE serves a student population of 1,374 and operates a Deaf and Hard of Hearing (DHH) program. It has been a challenge for the office to recruit and retain the number of certified education interpreters needed to support the student population, resulting in a consistent shortage. This shortage is what has led the SCCOE to request waivers for the following individuals: Ms. Dunphy and Mr. O’Brien. Both interpreters have demonstrated some ASL skills and the desire for certification. Approval of this waiver is sought to help relieve the staffing shortage and allow the county office to support their DHH students while also supporting the employees to prepare for certification.

### Demographic Information:

The SCCOE has a Deaf and Hard of Hearing student population of 1,374 and is in the urban part of San Jose, California.

**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>.

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

In 2002, the SBE approved regulations that required educational interpreters to be certified by the RID, or equivalent, by January 1, 2007. As of July 1, 2009, they have been required to be certified by the RID, or equivalent, or to have achieved a score of 4.0 or better on specified assessments.

In November 2009, the SBE approved a policy regarding educational interpreter waiver requests. The SBE Policy #09-02 can be found at <https://www.cde.ca.gov/re/lr/wr/documents/interpreter.docx>.

## Fiscal Analysis (as appropriate)

There is no statewide fiscal impact of waiver approval.

## Attachment(s)

* **Attachment 1:** Summary Table (1 page)
* **Attachment 2:** Santa Clara County Office of Education General Waiver Request 10-9-2022 (2 pages) (Original waiver request is signed and on file in the Waiver Office.)
* **Attachment 3:** Santa Clara County Office of Education General Waiver Request 11-9-2022 (2 pages) (Original waiver request is signed and on file in the Waiver Office.)
* **Attachment 4:** Santa Clara County Office of Education: Job Description- Education Interpreter I/II (5 pages)

# Attachment 1: Summary Table

California *Education Code (EC)* Section 41402

| **Waiver Number** | **School District** | **Period of Request** | **Local Board Approval Date** | **Public Hearing Date** | **Bargaining Unit Representatives Consulted, Date and Position** |
| --- | --- | --- | --- | --- | --- |
| 10-9-2022 | Santa Clara County Office of Education | **Requested:**  9/30/2022 to 6/30/2023  **Recommended:**  9/30/2022 to 6/30/2023 | 8/30/2022 | June 15, 2023 | Sarah Gianocaro  President  Services Employees International Union (SEIU)  Local #521  8/30/2022  **Support** |
| 11-9-2022 | Santa Clara County Office of Education | **Requested:**  9/30/2022 to 6/30/2023  **Recommended:**  9/30/2022 to 6/30/2023 | 8/30/2022 | June 15, 2023 | Services Employees International Union (SEIU)  Local #521  Sarah Gianocaro  President  8/30/2022  **Support** |

Created by California Department of Education  
June 2023

# Attachment 2: Santa Clara County Office of Education General Waiver Request 10-9-2022

**California Department of Education**

**WAIVER SUBMISSION – General**

CD Code: 4310439

Waiver Number: 10-9-2022

Active Year: 2022

Date In: 9/30/2022 4:12:20 PM

Local Education Agency: Santa Clara County Office of Education

Address: 1290 Ridder Park Dr.

San Jose, CA 95131

Start: 9/30/2022

End: 6/30/2023

Waiver Renewal: No

Waiver Topic: Special Education Program

Ed Code Title: Educational Interpreter for Deaf and Hard of Hearing

Ed Code Section: CCR, Title 5 Section 3051.16(b)(3)

Ed Code Authority: 33050-33053

Education Code or CCR to Waive: (b) Certification requirements for educational interpreters for deaf and hard of hearing pupils. (3) By July 1, 2009, and thereafter, an educational interpreter shall be certified by the national 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 EIPA, the ESSE-I/R, or the NAD/ACCI assessment. If providing Cued Language transliteration, a transliterator shall possess TECUnit certification, or have achieved a score of 4.0 or above on the EIPA - Cued Speech]

Outcome Rationale: The Santa Clara County Office of Education serves a student population of 1,374 and operates a Deaf and Hard of Hearing program. It has been a challenge for our office to recruit and retain the number of certified Education Interpreters needed to support our student population, resulting in a consistent shortage. This shortage it what has led us to request a waiver for the individual named in the submission. This employee has ASL skills and the desire for certification. Approval of this waiver will help relieve the staffing shortage and allow us support our students while also supporting this employee to prepare for certification.

Student Population: 1374

City Type: Urban

Public Hearing Date: 6/15/2023

Public Hearing Advertised: physical posting at main office, local media email distribution, school district email distribution.

Local Board Approval Date: 8/30/2022

Community Council Reviewed By:

Community Council Reviewed Date: 6/15/2023

Community Council Objection: TBD

Community Council Objection Explanation:

Audit Penalty Yes or No: No

Categorical Program Monitoring: No

Submitted by: Ms. Marisa Perry

Position: Director - HR/Classified Personnel Services

E-mail: [mperry@sccoe.org](mailto:mperry@sccoe.org)

Telephone: 408-453-6845 x6845

Bargaining Unit Date: 08/30/2022

Name: Service Employees International Union (SEIU)

Representative: Sarah Gianocaro

Title: SCCOE Chapter President of SEIU Local 521

Phone: 408-392-3998

Position: Support

# Attachment 3: Santa Clara County Office of Education General Waiver Request 11-9-2022

**California Department of Education**

**WAIVER SUBMISSION – General**

CD Code: 4310439

Waiver Number: 11-9-2022

Active Year: 2022

Date In: 9/30/2022 4:34:33 PM

Local Education Agency: Santa Clara County Office of Education

Address: 1290 Ridder Park Dr.

San Jose, CA 95131

Start: 9/30/2022

End: 6/30/2023

Waiver Renewal: No

Waiver Topic: Special Education Program

Ed Code Title: Educational Interpreter for Deaf and Hard of Hearing

Ed Code Section: CCR, Title 5 Section 3051.16(b)(3)

Ed Code Authority: 33050-33053

Education Code or CCR to Waive: (b) Certification requirements for educational interpreters for deaf and hard of hearing pupils. [(3) By July 1, 2009, and thereafter, an educational interpreter shall be certified by the national 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 EIPA, the ESSE-I/R, or the NAD/ACCI assessment. If providing Cued Language transliteration, a transliterator shall possess TECUnit certification, or have achieved a score of 4.0 or above on the EIPA - Cued Speech]

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Local Board Approval Date: 8/30/2022

Community Council Reviewed By: 6/15/2023

Community Council Reviewed Date:

Community Council Objection: TBD

Community Council Objection Explanation:

Audit Penalty Yes or No: No

Categorical Program Monitoring: No

Submitted by: Ms. Marisa Perry

Position: Director - HR/ Classified Personnel Services

E-mail: [mperry@sccoe.org](mailto:mperry@sccoe.org)

Telephone: 408-453-6845 x6845

Bargaining Unit Date: 08/30/2022

Name: Service Employees International Union (SEIU)

Representative: Sarah Gianocaro

Title: SCCOE Chapter President of SEIU Local 521

Phone: 408-392-3998

Position: Support

# Attachment 4: Santa Clara County Office of Education Job Description

**California Department of Education**

**WAIVER SUBMISSION – General**

## SANTA CLARA COUNTY OFFICE OF EDUCATION Personnel Commission

### CLASS TITLE: EDUCATION INTERPRETER I/II

#### **BASIC FUNCTION:**

Under the direction of an assigned supervisor, performs highly specialized language interpretation and translation services for students and staff in the Deaf and Hard of Hearing (DHOH) program; serves as a member of the educational team.

#### **ALTERNATE CLASSIFICATION SERIES SPECIFICATIONS:**

The Education Interpreter I and Education Interpreter II serve as an alternate classification series. Persons may be initially employed in either level, depending on their qualifications.

Persons employed as level I interpreters are not certified by the Registry of Interpreters for the Deaf (RID) and have not achieved a score of 4.0 on an assessment administered through a statewide or nationally recognized organization or certifying body, but possess a waiver from the California State Board of Education allowing them to work as an education interpreter. Employees working as level I interpreters are expected to become certified by RID or achieve a score of 4.0 as outlined below prior to the expiration of their waiver. Employees working as level I interpreters unable to meet this requirement, may be terminated upon expiration of their waiver.

Persons employed as level II interpreters possess a valid certification issued by RID or have achieved a score of 4.0 on an assessment administered by a statewide or nationally recognized organization or certifying body.

#### **REPRESENTATIVE DUTIES:**

The following duties are examples of assignments performed by incumbents in this classification. It is not a totally comprehensive list of duties, nor is it restrictive regarding job assignments.

#### **ESSENTIAL DUTIES:**

Performs specialized duties requiring the application of, and proficiency in, accepted and designated sign languages such as American Sign Language (ASL), Conceptually Accurate Signed English (CASE), Contact Sign Language (PSE), Signing Exact English (SEE II), and finger spelling.

Recognizes and adjusts interpretive language to match the student’s preferred language and language mode to ensure that the student comprehends the interpretation. Interprets/transliterates mainstream and self-contained classroom lectures, group discussions, movies, plays, videotapes, audio recording, guest speakers, general classroom instruction and extra-curricular activities.

Interprets/transliterates informal conversations, telephone calls, and other verbal communications for assigned DHOH students/staff.

Voice interprets for students, staff and parents in the DHOH program.

Assists students in learning/practicing appropriate living/social skills and behaviors such as safety procedures, communication skills, independence, decision-making and problem-solving techniques necessary for mainstreaming and life skills.

Prepares, designs, and develops instructional materials to assist students in a learning environment under the direction of a certificated teacher.

Adheres to RID code of professional conduct.

Participates in ongoing professional development.

Researches specific terminology and signs appropriate to classroom material and lectures.

Interprets/transliterates for assigned student(s), staff, and parents at extracurricular activities, meetings, student orientations, workshops, and other related events.

Trains certificated and other staff members in simple signing methods as directed; enhances communications between students.

Serves as a resource to students and staff on appropriate use of interpreting services; serves as a positive liaison between DHOH program participants and non-program participants.

May tutor and assist students in the DHOH program, individually or in groups, in academic or elective subjects; may assist teachers in self-contained classroom with instruction as assigned.

Assists in ordering appropriate instructional materials for students in the DHOH program.

Accompanies students to and from means of transportation including the supervision of students while loading and unloading buses; supervises students during student unstructured time including recess,

breaks, lunch, between classes and before and after school.

Observes students in the DHOH program on day-to-day basis; provides feedback to staff as necessary.

Orients substitute staff to classroom routines and procedures and individual student's needs as necessary.

May operate specialized communication equipment for students in the DHOH program.

#### **OTHER DUTIES:**

Performs related duties as assigned.

#### **KNOWLEDGE AND ABILITIES:**

##### KNOWLEDGE OF:

Various modes of sign language, finger spelling, and gestures as required by assignment including American Sign Language (ASL), Conceptually Accurate Signed English (CASE), Contact Sign Language (PSE),

Signing Exact English (SEE II) and American Manual Alphabet (finger spelling) methods and techniques used in communicating with persons who are DHOH.

Team interpreting.

Code of Ethics prepared by RID.

Basic child guidance principles and effective management techniques.

Basic social and emotional needs and challenges associated with students who are DHOH.

Deaf culture.

Education Interpreter - I/II

Effective record-keeping practices and procedures.

Proper English usage, spelling, grammar, and punctuation.

##### ABILITY TO:

Effectively and accurately interpret/transliterate classroom lectures/instruction/discussion, videos and other related activities using sign language/voice and appropriate vocabulary.

Voice interpret for students, staff and parents.

Team interpret in a mainstream environment providing support as needed.

Understand and follow both oral and written instructions.

Understand the basic social and emotional needs associated with students who are DHOH.

Effectively work with and tutor students in assigned subject areas.

Accurately analyze situations and adopt an effective course of action under established guidelines.

Operate standard office and specialized equipment including a desktop computer, copier, and communications equipment.

Effectively communicate in both oral and written forms.

Establish and maintain effective work relationships with those contacted in the performance of required duties.

#### **EDUCATION AND EXPERIENCE:**

##### EDUCATION INTERPRETER I:

Any combination equivalent to: High school diploma or equivalent, sufficient related experience to demonstrate the knowledge and abilities listed above, possession of an education interpreter waiver issued by the California State Board of Education.

##### EDUCATION INTERPRETER II:

Any combination equivalent to: High school diploma or equivalent, sufficient related experience to demonstrate the knowledge and abilities listed above, and possession of a certification issued by RID or have achieved a score of 4.0 or above on the Educational Interpreter Performance Assessment (EIPA) or equivalent assessment.

#### **LICENSES AND OTHER REQUIREMENTS:**

A passing score on a proficiency examination for reading, writing and mathematics skills test of the County Office of Education.

#### **WORKING ENVIRONMENT:**

##### ENVIRONMENT:

Indoor and outdoor environments.

##### PHYSICAL DEMANDS:

Hearing and speaking to exchange information.

Seeing to perform assigned duties.

Sitting or standing for extended periods of time.

Dexterity of hands and fingers to effectively sign, operate special equipment and perform the duties of the position.

Kneeling, bending at the waist, and reaching overhead, above the shoulders and horizontally.

Lifting light objects.