

California Department of Education

Executive Office

SBE-005 (REV. 1/2018)

General Waiver

# California State Board of Education January 2024 AgendaItem #W-05

## Subject

Request by the **Inyo County Office of Education** to waive California *Education Code* Sections 44877, 49422, 49423.5, 49426, 49452, and 49480, relating to the credentialed school nurse requirement.

## Waiver Number

2-8-2023

## Type of Action

Action, Consent

## Summary of the Issue(s)

The Inyo County Office of Education (COE) is seeking a waiver of the California *Education Code (EC)* Sections 44877, 49422, 49423.5, 49426, 49452, 49480, which relate to the California Commission on Teacher Credentialing’s requirement for a School Nurse Services credential for credentialed school nurses. This request arises due to the scarcity of credentialed school nurses in Inyo County.

## Authority for Waiver

California *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 Inyo COE’s request for a waiver of *EC* Sections 44877, 49422, 49423.5, 49426, 49452, 49480, relating to the credentialed school nurse requirement, on the grounds that granting the waiver would not adequately address the educational needs of the pupils [*EC* Section 33051(a)(1)] and would jeopardize pupil protections [*EC* Section 33051(a)(4)].

## Summary of Key Issues

Several smaller school districts within rural Inyo County, California, including Lone Pine Unified School District, Big Pine USD, Death Valley USD, and Round Valley Joint Elementary School District, are facing challenges in accessing credentialed school nurse services due to their geographical dispersion and the unavailability of a nurse possessing the specific School Nurse Services Credential from the California Commission on Teacher Credentialing. Inyo COE seeks a waiver to address this issue by enabling the hiring of a registered nurse from the Inyo County Public Health Department, which is also experiencing a nursing shortage, without a School Nurse Services Credential.

Historically, there has been a persistent struggle to employ qualified health professionals in small, rural school districts. Inyo COE’s proposition to waive the credential requirement is an attempt to overcome this obstacle. However, approval of this proposal would compromise established standards of educational requirements of health professionals in schools and undermine the importance of credentials in ensuring the competency of health professionals working with students. Moreover, while Inyo COE is not unique in facing a school nurse shortage, no other school districts to date facing such shortages have requested the SBE’s approval to waive the Education Code requirements in order to hire a nurse without the required credentials as a solution.

The School Nurse Services Credential ensures that credentialed school nurses possess the necessary education and expertise to provide a wide range of comprehensive health services to students, including health screenings, comprehensive health assessments, case management, creation of individualized health care plans, professional development and training to school staff, and more. Without this credential, there is a risk that nurses will lack the specialized knowledge and skills to address complex health issues and emergencies that students may face, which could jeopardize the health and wellbeing of the affected students.

Additionally, this waiver does not provide a solution to the challenge Inyo COE faces in performing hearing screenings. For hearing screenings, the California Code of Regulations (17 CCR § 2950) details specific requirements of a school audiometrist. The Manual for the School Audiometrist, published by the Department of Health Care Services (DHCS), notes that a non-credentialed employee trained under 17 CCR Section 2950 (a) is not qualified to perform hearing screenings or make referrals for follow-up hearing tests. These screenings are crucial in identifying and addressing potential health issues in students. They are mandated in specific grade levels and are a critical component of Individualized Education Plan (IEP) assessments. This waiver would not alter the requirements of who can conduct these health screenings, nor will it excuse compliance with any other legal qualification requirements applicable to school vision and audio testing. According to the Inyo COE Superintendent, the nurse that the COE intends to contract with does not have the necessary credentials or qualifications as stipulated by the DHCS, and therefore would not be qualified to independently perform hearing screenings.

Notably, Assembly Bill (AB) 1722, effective January 1, 2024, would permit registered nurses or licensed vocational nurses (LVNs) to perform vision and hearing screenings without a School Nurse Services Credential, but only under the supervision of a credentialed school nurse. Subject to certain requirements, AB 1722 would authorize LEAs without a credentialed school nurse to enter into an agreement with another LEA with a credentialed school nurse to supervise registered nurses or LVNs.

Education Code 33051(a)(1) permits denial of a waiver request when the SBE specifically finds any of the following:

1. The educational needs of the pupils are not adequately addressed.
2. The waiver affects a program that requires the existence of a school site council and the school site 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.

Here, denial of the waiver is recommended because granting the waiver would not adequately address the educational needs of pupils. In addition, denial of the waiver is recommended because the approval would jeopardize the protection of pupils. Ensuring the health and safety of students is foundational to fulfilling their educational needs. Here, the application fails to address that, lowering the competency standards for healthcare professionals in schools, introducing an unnecessary risk to the well-being of students.

Furthermore, approving this waiver would not alleviate the challenges of fulfilling mandatory health screening requirements for students. CDE staff met with the Inyo COE Superintendent to discuss the COE’s waiver request and proposed contracted nurse who lacks the required credentials, and the options available under the recent passage and enactment of AB 1722. However, the Superintendent was unable to provide a plan to address mandatory health screenings discussed above, as the COE’s proposed contracted nurse lacks the qualifications to supervise or administer them.

**Demographic Information:** The Inyo County Office of Education has a student population of 575 and is located in a rural area of Inyo County.

**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

The SBE has received no previous similar waiver requests.

## Fiscal Analysis (as appropriate)

There is no statewide fiscal impact of waiver denial. There may be a local fiscal impact as Inyo COE will be required to uphold current credential requirements.

## Attachment(s)

* **Attachment 1:** Summary Table (1 page)
* **Attachment 2:** Inyo County Office of Education General Waiver Request Waiver 2-8-2023 (8 pages) (Original waiver request is signed and on file in the Waiver Office.)

# Attachment 1: Summary Table

California *Education Code (EC)* Sections 44877, 49422, 49423.5, 49426, 49452, 49480

| **Waiver Number** | **District** | **Period of Request** | **Bargaining Unit Representatives Consulted** | **Public Hearing and Board Dates** | **Advisory Committee Position** |
| --- | --- | --- | --- | --- | --- |
| 2-8-2023 | Inyo County Office of Education | **Requested:**August 1, 2023, to July 15, 2025 | Inyo County Association of Certificated PersonnelTanya ScottPresidentJune 15, 2023**Support** | Public HearingAugust 4, 2023Local Board Approval August 4, 2023 | Inyo County Special Education Local Plan Area (June 22, 2023)**No objections** |

Created by California Department of Education
January 2024

# Attachment 2: Inyo COE General Waiver Request 2-8-2023

**California Department of Education**

**WAIVER SUBMISSION - General**

CD Code: 1410140

Waiver Number: 2-8-2023

Active Year: 2023

Date In: 8/9/2023 10:38:57 AM

Local Education Agency: Inyo County Office of Education

Address: 166 Grandview Dr.

Bishop, CA 93514

Start: 8/1/2023

End: 7/15/2025

Waiver Renewal: No

Waiver Topic: Other Waivers

Ed Code Title: Other Waivers

Ed Code Section: 44877, 49422, 49423.5, 49426, 49452, 49480

Ed Code Authority: 33050

*Education Code* or *CCR* to Waive: *Education Code* section 44877 – Qualifications for Nurse

The qualifications for a nurse shall be a valid certificate of registration issued by the Board of Nurse Examiners of the State of California or the California Board of Nursing Education and Nurse Registration [and a health and development credential, a standard designated services credential with a specialization in health, or a services credential with a specialization in health].

The services credential with a specialization in health authorizing service as a school nurse shall not authorize teaching services unless the holder also completes the requirements for a special class authorization in health in a program that is approved by the commission.

On and after January 1, 1981, the qualifications for a nurse shall also include proof satisfactory to the school district that the nurse has acquired training in child abuse and neglect detection. This requirement may be satisfied through participation by the nurse in continuing education activities relating to child abuse and neglect detection and treatment.

*Education Code* section 49422 – Health and physical development of pupils; supervision; psychological tests and other psychological activities

(a) No physician, psychiatrist, oculist, dentist, dental hygienist, optometrist, otologist, podiatrist, audiologist, [or nurse] not employed in that capacity by the State Department of Health Services, shall be, nor shall any other person be, employed or permitted to supervise the health and physical development of pupils unless he or she holds a services credential with a specialization in health or a valid credential issued prior to the operative date of Section 25 of Chapter 557 of the Statutes of 1990.

(b) Any psychologist employed pursuant to Section 49400 and this article shall hold a school psychologist credential, a general pupil personnel services credential authorizing service as a school psychologist, a standard designated services credential with a specialization in pupil personnel services authorizing service as a psychologist, or a services credential issued by the State Board of Education or Commission on Teacher Credentialing.

(c) The services credential with a specialization in health authorizing service as a school nurse shall not authorize teaching services unless the holder also completes the requirements for a special class authorization in health in a program that is approved by the commission.

(d) No physician employed by a district to perform medical services pursuant to Section 44873, who meets the requirements of that section, shall be required to hold a credential issued by the State Board of Education or commission.

(e) (1) Notwithstanding Section 2910 of the Business and Professions Code, no person who is an employee of a school district shall administer psychological tests or engage in other psychological activities involving the application of psychological principles, methods, or procedures unless at least one of the following applies:

(A) The person holds a valid and current credential as a school psychologist issued by the Commission on Teacher Credentialing that permits the holder to administer psychological testing to, or engage in psychological activities with, pupils.

(B) Psychological assistants or school psychology interns perform the testing or activities under the supervision of a person who holds a credential described in subparagraph (A).

(C) This section does not preclude appropriately credentialed school personnel including, but not limited to, holders of a pupil personnel services credential, health services credential, or special education personnel, from performing the duties consistent with the training standards established by the Commission on Teacher Credentialing for the credential held.

(2) The application of these principles and methods includes, but is not restricted to, procedures on interviewing, psychoeducational assessment, diagnosis of specific learning and behavioral disabilities, and amelioration of learning and behavioral problems of individuals or groups.

(3) The person conducting a test or other assessment shall be qualified in accordance with the requirements established by the producer of the assessment instrument and shall follow all ethical requirements for the use of the test or assessment as prescribed by the appropriate professional organization.

(f) This section shall not be construed to affect any lawfully contracted mental health professional licensed pursuant to Division 2 (commencing with Section 500) of the Business and Professions Code from performing services within the scope of his or her employment.

*Education Code* section 49423.5 – Specialized physical health care services

(a) Notwithstanding Section 49422, an individual with exceptional needs who requires specialized physical health care services, during the regular schoolday, may be assisted by any of the following individuals:

(1) Qualified persons who [possess an appropriate credential issued pursuant to Section 44267 or 44267.5, or] hold a valid certificate of public health nursing issued by the Board of Registered Nursing.

(2) Qualified designated school personnel trained in the administration of specialized physical health care if they perform those services under the supervision, as defined by Section 3051.12 of Title 5 of the *California Code of Regulations*, of a [credentialed] school nurse, public health nurse, or licensed physician and surgeon and the services are determined by the [credentialed] school nurse or licensed physician and surgeon, in consultation with the physician treating the pupil, to be all of the following:

(A) Routine for the pupil.

(B) Pose little potential harm for the pupil.

(C) Performed with predictable outcomes, as defined in the individualized education program of the pupil.

(D) Do not require a nursing assessment, interpretation, or decisionmaking by the designated school personnel.

(b) Specialized health care or other services that require medically related training shall be provided pursuant to the procedures prescribed by Section 49423.

(c) Persons providing specialized physical health care services shall also demonstrate competence in basic cardiopulmonary resuscitation and shall be knowledgeable of the emergency medical resources available in the community in which the services are performed.

(d) “Specialized physical health care services,” as used in this section, includes catheterization, gastric tube feeding, suctioning, or other services that require medically related training.

(e) Regulations necessary to implement this section shall be developed jointly by the State Department of Education and the State Department of Health Care Services, and adopted by the state board.

(f) This section does not diminish or weaken any federal requirement for serving individuals with exceptional needs under the Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.), and its implementing regulations, and under Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. Sec. 794) and its implementing regulations.

(g) This section does not affect current state law or regulation regarding medication administration.

(h) It is the intent of the Legislature that this section not cause individuals with exceptional needs to be placed at schoolsites other than those they would attend but for their needs for specialized physical health care services.

*Education Code* section 49426 - School nurses; qualifications; services

A school nurse is a registered nurse currently licensed under Chapter 6 (commencing with Section 2700) of Division 2 of the Business and Professions Code, and who has completed the additional educational requirements for[, and possesses a current credential in,] school nursing pursuant to Section 44877.

School nurses strengthen and facilitate the educational process by improving and protecting the health status of children and by identification and assistance in the removal or modification of health-related barriers to learning in individual children. The major focus of school health services is the prevention of illness and disability, and the early detection and correction of health problems. The school nurse is especially prepared and uniquely qualified in preventive health, health assessment, and referral procedures.

Nothing in this section shall be construed to limit the scope of professional practice or otherwise to change the legal scope of practice for any registered nurse or other licensed healing arts practitioner. Rather, it is the intent of the Legislature to provide positively for the health services, many of which may be performed in the public schools only by physicians and school nurses. School nurses may perform, if authorized by the local governing board, the following services:

(a) Conduct immunization programs pursuant to Section 49403 and assure that every pupil’s immunization status is in compliance with the law, including parental or guardian consent, and good health practice.

(b) Assess and evaluate the health and developmental status of pupils to identify specific physical disorders and other factors relating to the learning process, communicate with the primary care provider, and contribute significant information in order to modify the pupils’ educational plans.

(c) Interpret the health and developmental assessment to parents, teachers, administrators, and other professionals directly concerned with the pupil.

(d) Design and implement a health maintenance plan to meet the individual health needs of the students, incorporating plans directed by a physician.

(e) Refer the pupil and his or her parent or guardian to appropriate community resources for necessary services.

(f) Maintain communication with parents and all involved community practitioners and agencies to promote needed treatment and secure reports of findings pertinent to educational planning.

(g) Interpret medical and nursing findings appropriate to the student’s individual educational plan and make recommendations to professional personnel directly involved.

(h) Consult with, conduct in-service training to, and serve as a resource person to teachers and administrators, and act as a participant in implementing any section or sections of a comprehensive health instruction curriculum for students by providing current scientific information regarding nutrition, preventive dentistry, mental health, genetics, prevention of communicable diseases, self-health care, consumer education, and other areas of health.

(i) Counsel pupils and parents by:

(1) Assisting children and youth, parents, and school personnel in identifying and utilizing appropriate and mutually acceptable private and community health delivery services for professional care and remediation of defects.

(2) Counseling with parents, pupils and school staff regarding health-related attendance problems.

(3) Helping parents, school personnel and pupils understand and adjust to physical, mental and social limitations.

(4) Exploring with families and pupils, attitudes, information and values which affect their health behavior.

(j) Assist parents and pupils to solve financial, transportation and other barriers to needed health services.

The holder of a services credential with a specialization in health for a school nurse who also completes the requirements for a special class authorization in health in a program that is approved by the commission is authorized to teach classes on health in a preschool, kindergarten, grades 1 to 12, inclusive, and classes organized primarily for adults.

*Education Code* section 49452 – Site and hearing test

The governing board of any school district shall, subject to Section 49451, provide for the testing of the sight and hearing of each pupil enrolled in the schools of the district. The test shall be adequate in nature and shall be given only by duly qualified supervisors of health employed by the district; or by certificated employees of the district or of the county superintendent of schools who possess the qualifications prescribed by the Commission for Teacher Preparation and Licensing; or by contract with an agency duly authorized to perform those services by the county superintendent of schools of the county in which the district is located[, under guidelines established by the State Board of Education]; or accredited schools or colleges of optometry, osteopathic medicine, or medicine. The records of the tests shall serve as evidence of the need of the pupils for the educational facilities provided physically handicapped individuals. The equipment necessary to conduct the tests may be purchased or rented by governing boards of school districts. The state, any agency, or political subdivision thereof may sell or rent any such equipment owned by it to the governing board of any school district upon terms as may be mutually agreeable.

*Education Code* section 49480 – Continuing medication regimen for nonepisodic condition; required notice to school employees

The parent or legal guardian of any public school pupil on a continuing medication regimen for a nonepisodic condition, shall inform the school nurse or other designated [certificated school] employee of the medication being taken, the current dosage, and the name of the supervising physician. With the consent of the parent or legal guardian of the pupil, the school nurse may communicate with the physician and may counsel with the school personnel regarding the possible effects of the drug on the child’s physical, intellectual, and social behavior, as well as possible behavioral signs and symptoms of adverse side effects, omission, or overdose. The superintendent of each school district shall be responsible for informing parents of all pupils of the requirements of this section.

Outcome Rationale: Desired Outcome/Rationale:

The larger school districts in Inyo County (County) share a full-time school nurse, but the school nurse does not have the capacity to serve the four smaller rural school districts in the County. For the last four years the Inyo County Office of Education (Inyo COE) has been unable to hire a part-time credentialed nurse to serve the County’s four smaller school districts, which are: (1) Lone Pine Unified School District (USD); (2) Big Pine USD; (3) Death Valley USD; and (4) Round Valley Joint Elementary School District. These school districts are geographically spread out from each other; for instance, Round Valley Joint Elementary School District, located north of Bishop, and Death Valley USD, located in Shoshone, are over 4 hours apart by car. These four school districts are in need of a part-time registered nurse to provide mandatory vision, hearing, and other health screenings, monitor vaccinations, and confirm prescriptions for medications dispensed at school, among other things. The Inyo County Public Health Department employs a registered nurse who is willing and available to work a 30-40 day contract for the Inyo COE, but the nurse does not have a credential from the California Commission on Teacher Credentialing, as required by the California *Education Code*. The Inyo COE is asking that this credential requirement be waived so that they may enter into a contract with Inyo County Public Health Department for part-time nursing services to serve these four small school districts.

Student Population: 575

City Type: Rural

Public Hearing Date: 8/4/2023

Public Hearing Advertised: (1) Notice published in the newspaper, The Inyo Register, on July 13 and July 20, 2023; (2) formal notice on the Inyo COE website; and (3) formal notice posted in three public places.

Local Board Approval Date: 8/4/2023

Community Council Reviewed By: Inyo County Special Education Local Plan Area (SELPA)

Community Council Reviewed Date: 6/22/2023

Community Council Objection: No

Audit Penalty Yes or No: No

Categorical Program Monitoring: No

Submitted by: Mr. Barry Simpson

Position: Inyo County Superintendent of Schools

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Bargaining Unit Date: 06/15/2023
Name: Inyo County Association of Certificated Personnel
Representative: Tanya Scott
Title: President
Phone: 760-873-3262 Ext. 2113
Position: Support