
California Department of Education
WAIVER SUBMISSION -General

CD Code: 3767983
2016

Waiver Number: 34-12-2016

Active Year:

Date In: 12/16/2016 11:06:16 AM

Local Education Agency: Borrego Springs Unified School District
Address: 2281 Diegueno Rd.
Borrego Springs, CA 92004

Start: 7/1/2016

End: 7/1/2018

Waiver Renewal: N

Previous Waiver Number:

Previous SBE Approval Date:

Waiver Topic: Charter School Program

Ed Code Title: Geographic Limitations - Non-classroom Based

Ed Code Section: Portions of California *Education Code* Sections 47605(a)(1), 47605(a)(5),
and 47605.1(d)

Ed Code Authority: 33050

Ed Code or *CCR* to Waive: *Education Code* section 47605:

(a) (1) Except as set forth in paragraph (2), a petition for the establishment of a charter school [within a school district] may be circulated by one or more persons seeking to establish the charter school. A petition for the establishment of a charter school shall identify a single charter school [that will operate within the geographic boundaries of that school district]. A charter school may propose to operate at multiple sites within the school district if each location is identified in the charter school petition.

(5) [A charter school that is unable to locate within the jurisdiction of the chartering school district may establish one site outside the boundaries of the school district, but within the county in which that school district is located, if the school district within the jurisdiction of which the charter school proposes to operate is notified in advance of the charter petition approval, the county superintendent of schools and the Superintendent are notified of the location of the charter school before it commences operations, and either of the following circumstances exists:]

Education Code Section 47605.1:

(d)[Notwithstanding subdivision (a) or subdivision (a) of Section 47605, a charter school that is unable to locate within the geographic boundaries of the chartering school district may establish one site outside the boundaries of the school district, but within the county within which that school district is located, if the school district in which the charter school proposes to operate is notified in advance of the charter petition approval, the county superintendent of schools is notified of the location of the charter school before it commences operations, and either of the following circumstances exist:

- (1) The school has attempted to locate a single site or facility to house the entire program, but such a facility or site is unavailable in the area in which the school chooses to locate.
- (2) The site is needed for temporary use during a construction or expansion project}.

Outcome Rationale: Diego Springs Academy (Diego Springs) has been authorized by Borrego Springs Unified School District (BSUSD) since 2014, having received a five-year term from July 1, 2014 to June 30, 2019. Diego Springs is a non-classroom based/independent study charter school program offering personalized learning education programs for grades **K-12**.

Diego Springs is specifically designated as an Alternative School Accountability Model (ASAM) serving high-risk pupils and drop-outs. The State recognizes that Diego Springs' population has an extremely high turnover rate. As such, Diego Springs may serve an entirely new group of students every 12 months.

Diego Springs primarily serves 9th-12th grade students who are considered "highly at-risk". This includes students who are pregnant, significantly credit deficient, have medical problems that prevent regular attendance in a comprehensive program, and are on probation for criminal offenses. At-risk youth typically come from single-parent homes, have a low socioeconomic status, and experience a high degree of transiency in their living situations. Despite these barriers to achievement, Diego Springs continues to help these students succeed and graduate from high school.

Diego Springs serves approximately 625 students annually with 86% of the population eligible for free- and reduced-price meals (Socioeconomically Disadvantaged). The population includes 62% English Learner population and 10% SPED students. Many of Diego Springs' students have previously dropped out of high school and enroll at Diego Springs with an average of 50 credits deficient.

Diego Springs students with special needs are served in accordance with their Individualized Education Programs ("IEPs,") including but not limited to special education and related services provided by a Specialized Academic Instructor, who provides one-on-one instruction, along with accommodations and modifications. Diego Springs is part of the El Dorado County Charter SELPA.

Diego Springs also provides instruction to meet the educational needs of federally funded learn-and-work or learn-and-earn programs, including but not limited to the federal Workforce Investment Act pursuant to *Education Code* Section 47605.1(g). Diego Springs' year-round program emphasizes attainment of basic skill competencies, enhancing opportunities for academic and occupational training, and providing exposure to the job market and employment. Activities may include instruction leading to completion of secondary school, tutoring, internships, job shadowing, work experience, adult mentoring and comprehensive guidance and counseling. The program emphasizes services for out-of-school youth.

The Borrego Springs Unified School District has provided supervisory oversight and performance monitoring services for the Charter School, including monitoring school and student performance data, reviewing the school's audit reports, performing annual visits to the school facilities and resource centers, and considering charter amendment and renewal requests. To the best of BSUSD's knowledge, Diego Springs has operated its resource centers

consistent with the advice and written guidance issued by the California Department of Education since 2002 (see Attachment).

On October 16, 2016, the 3rd District Court of Appeal ruled in AUHSD v. Shasta Secondary Home School that under *Education Code* Section 47605(a), independent study charter schools may not have resource centers outside of the boundaries of the school district in which the charter school is authorized, but within the same county.

Currently, Diego Springs has one (1) resource center located within San Diego County that may be affected by the ruling. This waiver is necessary to protect the continued operation of Diego Springs' existing resource centers where special education services, English Language Development, and intervention services are provided. Diego Springs operates a total of two resources centers, one within the Borrego Springs School District boundaries, and one outside the District boundaries, but within San Diego County.

The ruling impacts approximately 625 students annually with 86% of the population Socioeconomically Disadvantaged, 62% English Learners and 10% SPED students. Also impacted are the 38 Diego Springs employees.

Diego Springs current staffing includes, but is not limited to, Certificated Teachers, Special Education Teachers, Counselor, School Psychologist, Tutors, Student Relation Technician, Student Relations Manager, Registrar, Student Retention Support Specialist, Principal, Assistant Principal, Community Liaison, Instructional Specialists for Professional Development and Teacher Training, Program Specialist, Curriculum Instructional Specialist, Career Technical Education Instructional Specialist, and an Online Instructional Specialist.

As a non-classroom based charter school, Diego Springs is not eligible for Proposition 39 funding so each initial build out and start up is directly funded by the charter school. In addition, each resource center lease agreement does not have a termination "out clause" allowing the schools to release them of their long term financial liability. Furthermore, despite Diego Springs' high free and reduced-price lunch ratio, it is not eligible for rental reimbursement under SB 740 as a nonclassroom based charter school.

Diego Springs created these resource centers in alignment with the direction provided by the California Department of Education as provided in the letter dated November 14, 2002 from Janet Sterling, Director, School Fiscal Services Division, updating Charter School Administrators, County and District Superintendents and Chief Business Officials on recent charter legislation, including AB 1994 (attached).

The impact of the court's ruling in Shasta may result in the closing of these resource centers impacting 625 highly at-risk students who are now engaged in school and on a path towards graduation and the employment of 38 school employees. The result may cause Diego Springs to become insolvent and force it to file for bankruptcy. In addition to the impact on students being displaced, staff's loss of employment and school closure costs, local communities and the state of California will be affected by the loss of the societal benefit of each high school dropout recovered through Diego Springs' educational program. On average each high school dropout costs the state of California \$209,200.¹ The dropout recovery of Diego Springs' educational program has a potential savings of \$130,750,000 for the state California. For many of these students, Diego Springs' program is their best opportunity to obtain a high school diploma.

¹Source: Levin. et. al.

This waiver is necessary to protect the continued operation of Diego Springs' existing resource centers that provide the services and resources required under *Education Code* Section 51746, intervention support for all students, and direct instruction opportunities for all students. These resource centers also provide a location for Federally mandated special education services to students who qualify under the Individuals with Disabilities in Education Act ("IDEA"), UCOP approved A-G coursework including hands on science labs with equipment and manipulatives and state mandated testing as required of charter schools pursuant to *Education Code* Section 47605(c).

Student Population: 625

City Type: Rural

Public Hearing Date: 12/14/2016

Public Hearing Advertised: Notice posted at the Borrego Springs Unified School District main office and Diego Springs Academy main office, resource center and website.

Local Board Approval Date: 12/14/2016

Community Council Reviewed by: Diego Springs Academy Board of Directors

Community Council Reviewed Date: 11/17/2016

Community Council Objection: N

Community Council Objection Explanation:

Audit Penalty YN: N

Categorical Program Monitoring: N

Submitted by: Mr. Mark Stevens

Position: Superintendent

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Bargaining Unit Date: 12/09/2016

Name: Borrego Springs Charter #464 California School Employees Association

Representative: Lisa Zierath,

Title: President

Position: Neutral

Comments: