

California Department of Education

Executive Office

SBE-006 (REV. 1/2018)

Specific Waiver

# California State Board of Education September 2018 Agenda Item #W-15

## Subject

Request by **Turlock 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

6-6-2018

## Type of Action

Action, Consent

## Summary of the Issue(s)

The Turlock Unified School District 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 Turlock Unified School District (TUSD) 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 TUSD must complete all corrective actions required by findings of noncompliance regarding resource specialist’s caseloads and appropriate credentialing; (3)The TUSD must submit to the Special Education Division (SED) of the CDE, documentation of efforts to recruit and employ fully credentialed resource specialists for the 2018–19 school year. The TUSD 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, 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 the teacher agreed to the waiver, and the teacher information provided on the waiver submission is accurate.
* Contacting the union representative to confirm the local education agency 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 TUSD requests to increase the caseload of Gina Habit, resource specialist at Brown Elementary School. The CDE recommends approval with conditions as the waiver meets the RSP caseload waiver requirements specified in 5 *CCR*, Section 3100. The resource specialist agreed to the waiver and will receive instructional aide time of 9 hours and 45 minutes and the bargaining unit participated in the development of the waiver.

The TUSD has not applied for a waiver within the previous two years. However, there have been complaints filed with CDE within the last year related to this school district exceeding the maximum RSP caseload of 28 students resulting in opposition from the Turlock Teachers Association (TTA). The TTA’s letter of opposition was provided with the waiver request. The letter states the TTA recognized the TUSD implemented monitoring procedures of the complaints, but corrective steps have not been fully implemented. They indicated corrective steps are needed to remedy RSP caseload overages for teachers who declined voluntary RSP waivers, and the use of substitute teachers without appropriate credentials.

The CDE completed investigations, reports, and corrective actions for the complaints and the TUSD was found to be out of compliance. Specifically, complainants alleged the District failed to adhere to state requirements for RSP caseload, in violation of *EC* Sections 56362(c), when the District RSP caseloads exceeded 28 students at elementary school sites and at Turlock Junior High School during the 2017–18 school year. Further, the complaints alleged the District failed to comply with requirements pertaining to preparation for teachers who work with student with disabilities as set forth in Code of Federal Regulations, Title 34, Section 300.156(c), when it did not ensure all staff assigned to be caseload managers for RSP students had appropriate special education credentials.

As a result of the finding of noncompliance, the TUSD was given specific corrective actions and evidence necessary to ensure compliance. Such actions include TUSD providing evidence all permanent, probationary credentialed teachers, interns, and substitute teachers providing RSP services have caseloads not exceeding 28 students; provide the CDE with weekly caseload counts and statements (for a specified time period); a presentation to the school board of the findings of the investigation, the history of cases, and the required corrective actions related to reducing the RSP caseloads to bring the District into compliance for the 2018–19 school year; and provide evidence of the continuation of the monitoring of RSP caseloads and the implementation of the District’s recruitment plan.

The corrective actions outlined above address the TTA’s opposition to the waiver. In addition, the waiver will require TUSD to document and submit recruitment efforts to hire qualified resource specialists for the 2018–19 school year as outlined in condition (3). If this waiver is denied, similar conditions and corrective actions would be applied.

**Demographic Information:** The TUSD has a student population of 14,671 and is located in an urban area in Stanislaus 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:** Turlock Unified School District Waiver 6-6-2018

(7 pages). (Original waiver request is signed and on file in the Waiver Office.)

# 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 |
| --- | --- | --- | --- | --- | --- | --- | --- |
| 6-6-2018 | Turlock Unified School District, Brown Elementary School | Gina Habit  **Yes** | No | **Previous:**  6 hours per day  **Current:**  9 hours and 45 minutes per day | **Requested**  March 1, 2018,  to June 1, 2018  **Recommended** March 1, 2018,  to June 1, 2018 | June 5, 2018 | Turlock Teachers Association, Christine Rowell  President 5/23/2018 Oppose |

Created by California Department of Education   
July 2018

# Attachment 2: Waiver 6-6-2018 Turlock Unified School District

**California Department of Education**

**WAIVER SUBMISSION – Specific**

CD Code: 5075739

Waiver Number: 6-6-2018

Active Year: 2018

Date In: 6/12/2018 3:06:39 PM

Local Education Agency: Turlock Unified School District

Address: 1574 East Canal

Turlock, CA 95380

Start: 3/1/2018

End: 6/1/2018

Waiver Renewal: No

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: Code Authority: 56101 and 5 *CCR* Section 3100

Outcome Rationale: Due to an increase in total student enrollment, we have experienced an increase in the number of students with disabilities. We believe it is always best to keep students at their home school, whenever possible, and to provide the necessary services utilizing existing school staff. Increasing the Resource Specialist's caseload will allow us to do this. If a Resource Specialist's caseload exceeds 28, the District is providing an additional 3.75 hour paraprofessional to support the teacher's caseload. The District currently has advertisement for Resource Specialists. Once hired the Resource Specialists will be able to provide support to caseloads that exceed 28.

Student Population: 14671

City Type: Urban

Local Board Approval Date: 6/5/2018

Audit Penalty Yes or No: No

Categorical Program Monitoring: No

Submitted by: Ms. Alice Solis

Position: Director of Special Education

E-mail: [asolis@turlock.k12.ca.us](file:///\\CDE.Cal\DATA\SEDATA\CENTRAL\Division-wide\WAIVERS\Waiver%20Items\2018\September%20SBE%20Meeting\asolis@turlock.k12.ca.us)

Telephone: 209-667-8519

Fax: 209-667-6520

Bargaining Unit Date: 05/23/2018

Name: Turlock Teachers Association

Representative: Christine Rowell

Title: President

Position: Oppose

Comments: see attachment

**California Department of Education**

**Revised 1-19-2018**

## Specific Waiver Request for Resource Specialist Caseload

### To be completed by the Administrator

SELPA / District / COE Name: Stanislaus County/Turlock Unified School District

Name of Resource Specialist: Gina Habit

School / District Assignment: Brown Elementary School

Status: Permanent, Probation or Temporary: Permanent

Number of Students: 32

Caseload proposed number of students: 32

Full time Equivalent (FTE%): 1.0%

Number of periods or hours taught by Resource Specialist: 6.5 hours

Average number of students per hour taught: 4

Indicate amount of Instructional Aide time hours to be provided to this resource specialist with this waiver: 9.75 hours

**Note: At least 5 hours of aide time is required when the caseload is over 28, per *CCR*, Title 5, Section 3100(d)(2).**

Provide assurance that the waiver will not hinder the implementation of a student’s individualized educational program (IEP) for all students involved with the waiver or compliance with specified federal law, per *CCR*, Title 5, Section 3100(d):

All students can be served with the increase caseload of 32 students.

Explain what extraordinary fiscal or program circumstances resulted in this request for excess caseload, per *CCR*, Title 5, Section 3100(d):

There has been an unavailability of qualified Resource Specialists.

Indicate how your plan of action to resolve conditions by the time the waiver expires or is denied by the SBE, per CCR, Title 5, Section 3100(d)(1):

The District will continue to monitor caseloads and hire additional staff when needed/available.

Administrator/Designee Name and title: Alice Solis, Director of Special Education

Telephone number (and extension): (209) 667-8519

Date: 3/12/18

## Specific Waiver Request for Resource Specialist Caseload

### To be completed by the Resource Specialist (Teacher)

Name: Gina Habit

Assigned at: Brown Elementary

Is the information in Items 1 through 12 on the attached SW \_ RSC \_ Administrator form an accurate reflection of your current assignments, personal data, FTE, your caseload, number of periods taught and average number of students? Yes or No: Yes

If not, please state where you believe these facts or numbers differ: N/A

Will all students served receive all of the services called for in their IEP’s? Can you reasonably manage the excess caseload in relation to the programmatic condition you face, including, but not limited to, student age level, age span, and behavioral characteristics; number of curriculum levels taught at any one time or any given session, and intensity of student instructional needs? Please explain:

With the support of paraprofessional staff I will be able to meet the needs of the student’s IEP.

Can you reasonably manage the excess caseload in relation to your student contact time, and other assigned duties? Please explain:

I will be able to meet the minutes required to address IEP goals.

*EC* Section 56362(c) states that no resource specialist shall have a caseload which exceeds 28 students, per *CCR*, Title 5, Section 3100. Regulations allow your agency to request a waiver of the *EC*, providing certain conditions are met, and that in no circumstance may your caseload be raised to above 32 students.

Indicate your position regarding this waiver request by a check mark next to the correct line:

AGREE X to the increase in my student caseload from 28 students to not more than

32 students.

DISAGREE to an increase in my student caseload over the 28 students. If disagreeing, provide rational below:

Indicate a check mark on the appropriate line:

I did not have a student caseload of more than 28 during the last school year. X

I did have a student caseload of more than 28 during the last school year. If yes, please respond below: N/A

1. Did you have an approved waiver for this caseload? Yes or No:
2. Specify which months / weeks you were over caseload: From/to:
3. Other pertinent information:

I have had a student caseload of more than 28 for more than two consecutive years. Yes or No: No

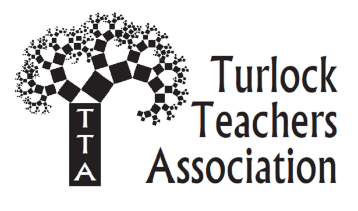
Instructional Aide time currently receiving: Hours (prior to increased caseload): 6.0

Any additional Aide time with this waiver? Total hours after increase: 9.75

I hereby certify that the information provided on this application is true and correct (please initial): GH

Date: 3/12/2018

Telephone number (and extension): 209-634-7231

*”Turlock Teachers Sow the Seeds of Success”*

**Christine Rowell**

President

June 12, 2018

To: Alice Solis, Director, Office of Special Education

Position of Bargaining Unit Neutral Support X Oppose If oppose, comments:

Turlock Teachers Association (TTA) opposes the request by Turlock Unified School District (TUSD) to temporarily waive the caseloads for Resource Specialists in the district. The complaint filed last year was upheld by CDE and although TTA recognizes that TUSD has implemented monitoring procedures, the remainder of the corrective steps have not been fully implemented.

For instance, voluntary waivers were offered to teachers throughout the school year, but were not presented to the school board until March. Toward the end of the school year, following our second complaint that was upheld by CDE, the district began transferring students onto substitute teachers caseloads, although it was not proven to our satisfaction that the substitutes had the credentials or certification to fully provide adequate services to the students placed on their caseloads.

The majority of Resource Specialists with caseloads at 28 or over declined

to accept a voluntary increase to the number of students on their caseload and are the best judges of the quality of services they can provide to students.

Respectfully,

Christine Rowell TTA President

P.O. Box 1963, Turlock, CA 95381 (209) 648-6914