

California Department of Education

Executive Office

SBE-005 (REV. 11/2017)

General Waiver

# California State Board of Education January 2019 Agenda Item #W-02

## Subject

Request by **Stockton** **Unified School District** for a waiver of California *Education Code* Section 48916.1(d), and portions of California *Education Code* Section 48660 to permit a community day school to serve students in kindergarten and grades one through eight, inclusive, and to waive portions of California *Education Code* Section 48661(a) to permit collocation of Marshall K–8 Community Day School on the same site as John Marshall Elementary School.

**Waiver Number**

2-11-2018

## Type of Action

Action, Consent

## Summary of the Issue(s)

Request by Stockton Unified School District (USD) for a waiver of California *Education Code (EC)* Section 48916.1(d), and portions of *EC* Section 48660 to permit a community day school (CDS) to serve students in kindergarten and grades one through eight, inclusive, and to also waive portions of *EC* Section 48661(a) to permit collocation of Marshall K–8 CDS on the same site as John Marshall Elementary School.

## Authority for Waiver

*EC* Section 33050

## Recommendation

* Approval: No
* Approval with conditions: Yes
* Denial: No

The California Department of Education (CDE) recommends approval of this waiver with the following condition:

The CDE recommends approval of the waiver request for this CDS on the condition that the district, in accordance with *EC* Section 48661(b), maintains its certification on the basis of a two-thirds vote for the duration of the waiver of the local governing board that satisfactory alternative facilities are not available for a CDS.

## Summary of Key Issues

*EC* Section 48916.1(a) requires school districts to ensure that each of their expelled students be provided an educational program during the period of expulsion.

*EC* Section 48660 provides that if a school district serves students in kindergarten and grades one through eight, inclusive, but no higher grades, the governing board of the school district may establish a CDS for any of kindergarten through grade eight (K–8), inclusive, upon a two-thirds vote of the board. While this is a unified school district, Stockton USD operates traditional schools within a K–8 framework. The district’s request, through this waiver, is to be similarly authorized to establish a K–8 CDS upon a two-thirds vote of its board. The board has met this standard, with a unanimous vote. *EC* Section 48660 also states that it is the intent of the Legislature, that to the extent possible, a CDS for any of kindergarten and grades one to eight, inclusive, separate younger pupils and older pupils within the CDS. Marshall K–8 CDS will meet this guideline by providing a kindergarten through third grade classroom, a classroom for students in grades four through six, and a classroom for students in grades seven and eight.

*EC* Section 48661(a) states that a CDS shall not be situated on the same site as a comprehensive elementary, middle, or high school, continuation high school, or an opportunity school. *EC* Section 48661(a) authorizes a small school district with 2,500 or fewer students to waive the separation requirement based on an annual certification by at least two-thirds of the local board when separate alternative facilities are not available. The governing board for the Stockton USD is asking for similar authority. Stockton USD enrolls 41,000 students. The governing board voted unanimously in certifying that there are no separate alternative facilities and to request this waiver.

The district has presented a comprehensive plan for maintaining separation and safety for the two schools. A full-time principal is on site (with the exception of meetings and off-site conferences) and is able to provide services for the schools. Other student and staff support is provided by district counselors, a behavior specialist, mental health clinicians, a social services case manager, a truancy outreach specialist, and other agencies and services as outreach efforts and funding can support. The CDS will be operating in separate, currently unused classrooms with a separate entrance/exit, separate playground, and separate administrative offices.

The local board voted unanimously to request the waiver. The Stockton Teachers Association (STA) supports the waiver through its president Erich Myers.

The Marshall Elementary School Site Council expressed strong support for the waiver. Likewise, the Marshall Community Day School Advisory Committee was consulted and had no objections.

**Demographic Information:** Stockton USD has a student population of 41,000 students and is located in a small city in San Joaquin 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 State Board of Education (SBE) has approved several previous waiver requests from unified school districts requesting authorization to permit a CDS to serve students in K–8, inclusive. The SBE has also approved numerous waiver requests from school districts with greater than 2,500 units of average daily attendance to waive the separation requirement based on an annual certification by at least two-thirds of the local board when separate alternative facilities are not available.

## Fiscal Analysis (as appropriate)

There is no statewide fiscal impact of waiver renewal.

## Attachment(s)

* **Attachment 1:** Summary Table of Community Day School State Board of Education Waiver (1 page)
* **Attachment 2:** Stockton Unified School District General Waiver Request

2-11-2018 (3 pages) (Original Waiver request is signed and on file in the Waiver Office.)

# Attachment 1: Summary Table

California *Education Code* Section 48660, 48661 and 48916.1

| WaiverNumber | District Name,Size of District, andLocal BoardApproval Date | Period of Request | If granted, this waiver will be "permanent"per *EC* Section 33501(b) | Bargaining Unit Name and Representative,Date of Action,and Position | Advisory Committee/Schoolsite Council Name,Date of Reviewand Any Objections |
| --- | --- | --- | --- | --- | --- |
| 2-11-2018 | Stockton Unified School District  41,000 Students  60 Students in Community Day School  557 Students in Marshall Elementary School  September 11, 2018 and  November 13, 2018 | **Requested:**  January 29, 2019  through  June 30, 2020  **Recommended:**  January 29, 2019  through  June 30, 2020 | No | Stockton Teachers Association  Erich Meyers,  President  November 2, 2018  **Support**  California Teachers Association  La Nita Dominique-Tate, Representative  November 2, 2018  **Support** | Marshall Elementary School Site Council  October 25, 2018  **Support**  Marshall CDS School Advisory Committee  October 16, 2018  **No Objections** |

Created by California Department of Education

November 16, 2018

# Attachment 2: Stockton Unified School District General Waiver Request 2-11-2018

**California Department of Education**

**WAIVER SUBMISSION - General**

CD Code: 3968676

Waiver Number: 2-11-2018

Active Year: 2018

Date In: 11/2/2018 12:48:25 PM

Local Education Agency: Stockton Unified School District

Address: 701 North Madison St.

Stockton, CA 95202

Start: 1/29/2019

End: 1/29/2020

Waiver Renewal: No

Waiver Topic: Community Day Schools (CDS)

Ed Code Title: Colocate Facilities and Commingle Grade Levels

Ed Code Section: 48916.1(d) and portions of 48660 and 48661(a)

Ed Code Authority: 33050

*Education Code* or *CCR* to Waive:

• 48660. …If a school district is organized as a district that serves kindergarten and grades 1 to 8, inclusive, but no higher grades, the governing board of the school district may establish a community day school for any [of] kindergarten and grades 1 to 8, inclusive, upon a two-thirds vote of the board. It is the intent of the Legislature, that to the extent possible, the governing board of a school district operating a community day school for any of kindergarten and grades 1 to 8, inclusive, separate younger pupils from older pupils within that community day school.

• 48661. (a) A community day school shall not be situated on the same site as an elementary, middle, junior high, comprehensive senior high, opportunity, or continuation school, except as follows:

• (1) When the governing board of a school district with 2,500 or fewer units of average daily attendance reported for the most recent second principal apportionment

certifies by a two-thirds vote of its membership that satisfactory alternative facilities are not available for a community day school.

• (b) A certification made pursuant to this section is valid for not more than one school year and may be renewed by a subsequent two-thirds vote of the governing board.

• 48916.1(d) If the pupil who is subject to the expulsion order was expelled from any of kindergarten or grades 1 to 6, inclusive, the educational program provided pursuant to subdivision (b) shall not be combined or merged with educational programs offered to pupils in any of grades 7 to 12, inclusive.

Outcome Rationale: District deem that there was no facility available for a stand alone program. The District located a school that had unused classrooms with a separate entrance, separate playground, separate administrative office and access to school cafeteria, to meet the needs of this new program.

Student Population: 60

City Type: Small

Public Hearing Date: 10/25/2018

Public Hearing Advertised: Posted on the SUSD website and posted at school sites and at the district office.

Local Board Approval Date: 9/11/2018

Community Council Reviewed By: Marshall Community Day School Advisory Committee

Community Council Reviewed Date: 10/16/2018

Community Council Objection: No

Community Council Objection Explanation:

Audit Penalty Yes or No: No

Categorical Program Monitoring: No

Submitted by: Dr. Reyes Gauna

Position: Assistant Superintendent of Student Support Svc

E-mail: [rgauna@stocktonusd.net](mailto:rgauna@stocktonusd.net)

Telephone: 209-933-7115 x2747

Bargaining Unit Date: 11/2/2018

Name: Stockton Teachers Association (STA)

Representative: Mr. Erich Myers, President, [emyers@stocktonusd.net](mailto:emyers@stocktonusd.net)

Title: President

Position: Support

Contact Number (209) 478-5074

Bargaining Unit Date: 11/2/2018

Name: California Teachers Association (CTA)

Representative: Ms. La Nita Dominique- Tate, (CTA) [LDominique@cta.org](mailto:LDominique@cta.org)

Title: Representative

Position: Support

Contact Number (209) 478-5074

Comments: We had a very productive meeting. They, similar to us, see the value in   
adding this program to our district. They had one request that we allow current teachers to also apply for the teaching positions.