

California Department of Education

Executive Office

SBE-006 (REV. 1/2018)

Specific Waiver

# California State Board of Education September 2023 Agenda Item #W-08

## Subject

Request by **Lucerne Elementary School District** to waive *Education Code* Section 56362(c), allowing the caseloads of one resource specialist to exceed the maximum caseload of 28 students by no more than four students (32 maximum).

## Waiver Number

13-2-2023

## Type of Action

Action, Consent

## Summary of the Issue(s)

The Lucerne Elementary School District (LESD) requested 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 District must provide each resource specialist instructional aide time of at least five hours daily whenever the resource specialists’ caseloads exceed 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).

## 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, Special Education Division (SED), completes a thorough review of the resource specialist program (RSP) waiver submissions to develop 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 that the teacher agreed to the waiver, and the teacher information provided on the waiver submission is accurate.
* Reviewing the number of RSP caseload waivers submitted by the local education agency (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.

**Lucerne Elementary School District**

The LESD requested to increase the caseload of Jennifer Adams, resource specialist at LESD to 32 students. Per the LESD, there was an increase in the number of students receiving special education services at Lucerne Elementary School and as a result, the LESD actively worked to hire an additional Special Education teacher at Lucerne Elementary School to absorb part of the current resource specialist’s caseload.

The LESD has received no complaints registered related to the school district exceeding the maximum resource specialist program caseload over the last four years. The resource specialist has agreed to the waiver and has received more than the required amount of instructional aide time. Prior to the increase in caseload, the RSP teacher had the support of four instructional aides as follows: instructional aide 1 (six hours), instructional aide 2 (five hours), instructional aide 3 (three and a half hours), and instructional aide 4 (two and half hours). After the caseload increased, the teacher had an additional five-hour instructional aide. The CDE recommends approval with conditions.

**Demographic Information:** The LESD has a student population of 283 and is located in a rural area in Lake 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:** Lucerne Elementary School District Waiver Request 13-2-2023 (2 pages). (Original waiver request is signed and on file in the Waiver Office.)
* **Attachment 3:** Resource Specialist Caseload Waiver Request, Administrator Supplemental Form (3 pages).
* **Attachment 4:** Resource Specialist Caseload Waiver Request, Teacher Supplemental Form (4 pages).

# 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 |
| --- | --- | --- | --- | --- | --- | --- | --- |
| 13-2-2023 | Lucerne Elementary School District | Jennifer Adams, Yes | No | **Previous:** 17 hours  **Current:** 18 hours | **Requested**  January 31, 2023  to June 2, 2023  **Recommended**  January 31, 2023  to June 2, 2023 | February 8, 2023 | Lucerne Elementary Teachers Association, Karen Glover, President, Support  January 31, 2023 |

Created by California Department of Education: June 2023

# Attachment 2: Waiver 13-2-2023 Lucerne Elementary School District

**California Department of Education**

**WAIVER SUBMISSION – Specific**

CD Code: 1764048

Waiver Number: 13-2-2023

Active Year: 2023

Date In: 2/22/2023 11:23:11 AM

Local Education Agency: Lucerne Elementary

Address: 3351 Country Club Dr.

Lucerne, CA 95458

Start: 1/31/2023

End: 6/2/2023

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: The California *Education Code* Section 56362(c) states that no resource specialist shall have a caseload which exceeds [28] 32 students, per *California Code of Regulations*, Title 5, Section 3100

Outcome Rationale: We had several of our current students qualify for special education services. We also had new students move into the district with IEPs.

Student Population: 283

City Type: Rural

Local Board Approval Date: 2/8/2023

Audit Penalty Yes or No: N o

Categorical Program Monitoring: No

Submitted by: Ms. Megan Grant

Position: Superintendent/ Principal

E-mail: [mgrant@lucerne.k12.ca.us](mailto:mgrant@lucerne.k12.ca.us)

Telephone: 707-274-5578 x111

Bargaining Unit Date: 01/31/2023

Name: Lucerne Elementary Teachers Association

Representative: Karen Glover

Title: President

Phone: (707)274-5578

Position: Support