

# Special Education

## RSP Caseload and Waivers



**CALIFORNIA DEPARTMENT OF EDUCATION**  
Tony Thurmond, State Superintendent of Public Instruction

The content of this training is to provide general information about the law only. The CDE does not provide legal advice. If you have questions about the application of the law to your specific circumstance or set of facts please consult your agency's legal counsel.

# Resource Specialist Program

- The resource specialist program as outlined in California Education Code (EC) Section 56362(a), must, at least, provide:
  - A resource specialist or specialists who provide instruction and services for individuals with exceptional needs who are assigned by the IEP team to regular classroom teachers for the majority of the school day;
  - information and assistance to individuals with exceptional needs and their parents;
  - consultation, resource information, and material to parents and staff;
  - coordination of special education services with the regular school programs for those students enrolled in RSP;
  - monitoring of pupil progress and participate in the individualized education program; and
  - emphasis at the secondary school level on academic achievement, career and vocational development, and preparation for adult life.

# Resource Specialist

- EC Section 56362(b) requires the resource specialist program be under the direction of a resource specialist who:
  - Is a credentialed special education teacher or who has a clinical services credential with a special class authorizations;
  - has had three or more years of teaching experience, including both regular and special education teaching experience as defined by the Commission on Teacher Credentialing (CTC); and
  - has demonstrated the competencies for a resource specialist, as established by the CTC.

# Resource Specialist Caseload

- The resource specialist caseload is set in EC Section 56362 and is not to exceed 28 pupils.
- Per EC Section 56362.1 the caseload includes, but is not limited to, all the pupils for whom the resource specialist performs any of the services described in subdivision (a) of EC Section 56362.
- Title 5 of the California Code of Regulations (CCR) Section 3100 allows a school district, SELPA, county office of education, or any other public agency providing special education or related services to request the State Board of Education grant a waiver of the maximum resource specialist caseload.

# Speech/Language Caseload

- The average caseload for language, speech, and hearing specialists in SELPAs shall not exceed 55 cases unless the local plan specifies a higher average caseload and the reasons for the increased caseload. See EC Section 56363.3.
- 5 CCR Section 3051.1 states that caseloads shall not exceed a district-wide, SELPA-wide, or county-wide average of 55 individuals unless prior written approval has been granted by the State Superintendent of Public Instruction and states the caseloads shall not be increased by the use of assistants.
- The maximum caseload when exclusively serving students three to five years of age is set in EC Section 56441.7 (a) and shall not exceed 40.
- Guidance on determining caseloads including both preschool and school age students was provided in a December 12, 2009, letter from Mary Hudler, Director of Special Education, California Department of Education, which stated that both caseloads should be prorated.

# RSP Waivers



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## Introduction

The CDE RSP Waiver Presentation will cover the following topics:

- Introduction
- The description of the State Board of Education Waivers
- Who can apply for a Waiver?
- Specific Waivers
- RSP Waivers
- The RSP Waiver Review Process
- The RSP Waiver Approval Process



## Description of State Board of Education Waivers

- A waiver is a grant of authority by the State Board of Education (SBE) to a governing board of a district, county office of education (COE), or special education local plan area (SELPA) to provide an alternative to a legal mandate or prohibition. Authority is granted to the SBE by *California Education Code [EC] sections 33050–33053*).

## Who Can Apply for a Waiver?

- A superintendent of a district or county office, Special Education Local Plan Area (SELPA) Director, or their designee may apply for a waiver.
- Charter schools must have their chartering agency (District or COE) submit their Waiver Application on behalf of the Charter School. Formerly, California *EC* 33054 allowed charter schools to submit a waiver request on their own behalf. However, effective January 7, 2007, that section of the *EC* was repealed.

## Specific Waivers

- The Resource Specialist Program (RSP) Waiver is categorized as a “Specific Waiver.” This type of waiver may be requested because it is necessary or beneficial to the content and implementation of the pupil's individualized education program and does not abrogate any right provided individuals with exceptional needs and their parents or guardians under the federal Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.).

## RSP Waivers

- In addition, an RSP Waiver is a request by a District, County Office, or SELPA to waive *Education Code Section 56362(c)*, waiving the caseload of a resource specialist to exceed the maximum caseload of 28 students by no more than four students (32 maximum).

## RSP Waivers

- The SBE receives several waivers of this type each year, and approximately 90 percent are approved.
- There were 2 RSP Waivers submitted to the CDE in 2022. One was “approved with conditions” by the State Board of Education and one was withdrawn by the LEA.
- You can find additional information regarding Special Education Waiver Data at: [Waiver Reports - Waivers \(CA Dept of Education\)](#)

## The RSP Waiver Review Process

- To begin the Waiver Process, a superintendent of a district or county office, Special Education Local Plan Area (SELPA) Director, or their designee may submit a waiver request online.
- On behalf of the Special Education Division, a CDE Special Education Consultant carefully analyzes each waiver request and after a series of steps, provides a recommendation to the State Board of Education.
- [Link to the CDE Website :Specific Waiver Request - Waivers \(CA Dept of Education\)](#)

## RSP Waivers

- Per California Educational Code 30052, there is an approval timeline for the CDE associated with Specific Waivers.
- If formal action by the State Board of Education on a waiver request is not taken by the second regular meeting of the board following receipt of a **complete** and **documented** waiver request by the State Department of Education, the waiver shall be deemed approved for one year, commencing the first day of the following month.

## The RSP Waiver Review Process

The CDE Consultant will:

- Confirm the demographic information on the waiver submission is accurate.
- Confirm the two PDF Documents linked on the Waiver Website are completed by the Resource Specialist and Administrator and attached to the Waiver Application.
- Contact the resource teacher to confirm that the teacher agreed to the waiver, and the teacher information provided on the waiver submission is accurate, per California Educational Code 33051.



## The RSP Waiver Review Process

- Contact the union representative to confirm that the LEA contacted the representative about the waiver. Under, *EC 56101* and *CCR, Title 5, Section 3100*, the local bargaining unit must be consulted. In addition, the CDE consultant will confirm the name of bargaining unit, date consulted, position on waiver: neutral, support, or oppose.
- Review 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.

## The RSP Waiver Review Process

- Review 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, talk to the designee who submitted the waiver application and gather additional information, as needed.

## The RSP Waiver Review Process

- The Consultant has three options for recommendation:
  - Approval
  - Approval with Conditions
  - Denial

## The RSP Waiver Review Process

- In the review process, the CDE Consultant will consider the following:
  - *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* 3100 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.

## The RSP Waiver Review Process

The requirements in Title 5 CCR 3100 are as follows:

- (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.

## The RSP Waiver Review Process

- (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. *California Code of Regulations Title 5 (5 CCR), Section 3100(d)(2)*.
- (3) The waiver confirms that the students served by an affected resource specialist will receive all the services called for in their IEPs.

## The RSP Waiver Review Process

- (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.

## The RSP Waiver Review Process

- (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 RSP Waiver Approval Process- State Board of Education

- After the CDE Consultant finalizes the Waiver review to ensure all the complete and verified information meets the requirements set forth in Educational Code and related regulations, the waiver request is then scheduled for action at a State Board of Education (SBE) meeting.

## The RSP Waiver Approval Process- State Board of Education

It is most common that the Special Education Division's Consultant will recommend Approval with the following condition:

- The District must provide the 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).

## The RSP Waiver Approval Process- State Board of Education

An additional condition may be recommended for LEAs who have requested multiple waivers within a year's time.

(2) The District must submit to the Special Education Division (SED) of the CDE, documentation of the District's efforts to recruit and employ fully credentialed resource specialists for the school year. The district is to use and document at least two or more different modalities for recruiting qualified personnel, such as:

## The RSP Waiver Approval Process- State Board of Education

- Posting of fliers
- Job listings in newspapers, professional periodicals, or other such listings
- Online job listings such as *EdJoin*, or other education related Web sites
- 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

## The RSP Waiver Approval Process- State Board of Education

- The state board shall approve any and all requests for waivers except in those cases where the board specifically finds any of the following per California Code, Education Code - EDC § 33051:
  - (a)
    - (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.

## The RSP Waiver Approval Process- State Board of Education

- (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.

## The RSP Waiver Approval Process- State Board of Education

(b)

- 1. The governing board of a school district that has requested and received a general waiver under this article for two consecutive years for the same general waiver is not required to reapply annually if the information contained on the request remains current.

## The RSP Waiver Approval Process- State Board of Education

- (b) (1) continued:
- The state board may require updated information for the request whenever it determines that information to be necessary. This section does not prevent the state board from rescinding a waiver if additional information supporting a rescission is made available to the board. This waiver process shall not apply to waivers pertaining to teacher credentialing, which shall be submitted to the state board annually.



## The RSP Waiver Approval Process- State Board of Education

- When the Waiver is heard at the State Board of Education meeting, the waiver must be approved by a majority of board members present, and at least six votes are required.
- If a motion does get the support of at least six votes, the waiver request is deemed approved for one year, commencing the first day of the following month.

Send questions to  
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