

WAIVERS REQUIRING STATE BOARD OF EDUCATION ACTION

A waiver is a grant of authority issued by the State Board of Education to the governing board of a school district or to a County Board of Education to provide an alternative to a legal mandate or prohibition.

The Monterey County Board of Education (County Board) may request that the State Board of Education (SBE) waive any provision of the Education Code or the California Code of Regulations, Title 5 except those identified by Education Code 33050(a) (1-19). Prior to submitting a waiver request, the MCOE should confirm that it has gathered all the data required and complied with all the legal requirements for the request.

The County Board shall hold a properly noticed public hearing during a County Board meeting to receive public testimony on each proposed waiver request. [Education Code 33050] The notice for the public hearing, which shall state the time, date, location, and subject of the public hearing, and will be distributed in the same manner and timing as is the custom in publicizing regular County Board general meetings.

Education Related Waiver Requests

The County Board shall hold a properly noticed public hearing on all education related waiver requests when required by law or when the County Board desires community participation in the development of the waiver.

Education related waiver requests include, but are not limited to, certain educational programs, school day minutes, meals for needy students, compensatory education, special education, and charter school attendance.

The County Board may recommend that the SBE grant, in whole or in part, any request for a waiver when the facts indicate that failure to grant the waiver would hinder the implementation of a student's individualized education program or compliance with federal mandates for a free and appropriate education for children and youth with disabilities.

General Waiver Requests

The County Board shall hold a properly noticed public hearing on all general waiver requests when required by law. The general waiver requests include, but are not limited to, budget, finance, local taxation and apportionment allowances.

The County Board shall include exclusive employee representatives in the development of waivers that may affect the bargaining unit.

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State Board of Education

Any waiver request to be submitted to the SBE must be approved by the County Board. The County Board shall only approve waiver requests that comply with the requirements of Education Code 33051, which include, but are not limited to, making sure the educational needs of the students are adequately addressed, the appropriate councils or advisory committees were given an opportunity to review the request, and the exclusive representative of employees, if any, was a participant in the development of the waiver. [Education Code 33050]

The SBE must approve requests for waivers except in cases where the SBE specifically finds any of the following: [Ed. Code 33051]

- (1) the educational needs of the students 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;
- (4) student or school personnel protections are jeopardized;
- (5) guarantees of parental involvement are jeopardized;
- (6) the request would substantially increase state costs; or
- (7) the exclusive representative of employees, if any, was not a participant in the development of the waiver.

When the County Board has requested and received the same general waiver from the SBE for two consecutive years, the waiver becomes permanent and the County Board is not required to reapply annually if the information contained on the request remains current. [Education Code 33052]

Legal Reference:EDUCATION CODE

305-311	<i>Structured English immersion program; parental exception waivers</i>
8750-8754	<i>Grants for conservation education</i>
17047.5	<i>Facilities used by special education students</i>
17291	<i>Portable school buildings</i>
33050-33053	<i>General waiver authority</i>
41000-41360	<i>School finance</i>
41381	<i>Minimum school day</i>
41600-41854	<i>Computation of allowances</i>
41920-42842	<i>Budget requirements; local taxation by school districts</i>

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BP 1431

(continued)

44520-44534 *New Careers Program*
44666-44669 *School-Based Management and Advanced Career Opportunities*
44681-44689 *Administrator Training and Evaluation*
48800 *Attendance at community college*
49550-49560 *Meals for needy students*
51224.5 *Algebra instruction*
51745.6 *Charter school independent study ratio*
52160-52178 *Bilingual-Bicultural Education Act of 1976*
52850-52863 *School-Based Program Coordination*
54407 *Waiver for compensatory education programs*
56000-56867 *Special education programs*
60119 *Public hearing on sufficiency of instructional materials*

CODE OF REGULATIONS, TITLE 5

3100 *Resource specialist caseload waivers*
3945 *Cooperative programs*
11960 *Charter school attendance*
13044 *Waivers, compensatory education Professional Development and Improvement Programs*

UNITED STATES CODE, TITLE 20

1400-148 *Individuals with Disabilities Education Act*
7115 *Safe and Drug Free Schools, authorized activities*

Adopted: 01/17/18