

SPECIFIC WAIVER COVER SHEET
CALIFORNIA STATE BOARD OF EDUCATION
MARCH 2003 AGENDA
Item No. W-6

<p>TITLE: Request by Valley Center-Pauma Unified School District to waive <i>Education Code</i> Section 56520(a)(3), which prohibits the use of aversive procedures to eliminate maladaptive behavior, in order to employ a self-injurious behavior inhibitor system (SIBIS) with James G.</p> <p>CDSIS: 6-8-2002</p>	<p><u> X </u> ACTION <u> </u> INFORMATION <u> </u> PUBLIC HEARING <u> </u> CONSENT</p>
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RECOMMENDATION:

The Department recommends:

X Approval with conditions:

1. The waiver of EC § 56520(a)(3) would be approved, pursuant to EC § 56101, for one final year and would be effective October 1, 2002 through October 1, 2003, with the intent of eliminating use of the SIBIS no later than October 1, 2003.
2. No later than two weeks after notification of the waiver's approval, the Valley Center-Pauma Unified School District and the nonpublic school (NPS) attended by the student would provide the California Department of Education, Special Education Division (CDE/SED) with the name and qualifications of the student's behavioral intervention plan (BIP) case manager, pursuant to 5 CCR §§ 3052(a)(2) and (c).
3. Between the date of approval and October 1, 2003, representatives of the Valley Center-Pauma Unified School District and the NPS attended by the student, including the BIP case manager, would meet no less than monthly to discuss progress toward eliminating use of the SIBIS, pursuant to 5 CCR § 3052(f).

Summary of Previous State Board of Education Discussion and Action:

This is the fourth request since 1997 to waive Education Code section (EC §) 56520(a)(3) as it pertains to James G. The Board approved the three previous requests. The first request was made by the Escondido Union School District and was approved on November 12, 1997, at which time the student was enrolled in an NPS. A requested two-year extension of the waiver was approved on November 13, 1998. The Board approved a second two-year extension on April 11, 2001. The student and his parent no longer reside within the boundaries of the Escondido Union School District. As a result, the current request for a waiver comes from the Valley Center-Pauma Unified School District, where the student and his parent now reside. The student continues to attend the same NPS.

Summary of Key Issue(s):

EC § 56520(a)(3) states, in pertinent part, “The Legislature finds and declares... That procedures for the elimination of maladaptive behaviors shall not include... **those that cause pain or trauma.**”

Title 5 of the California Code of Regulations (5 CCR) § 3052(l) reads, in part, “**Prohibitions. No public education agency, or nonpublic school or agency serving individuals [with exceptional needs] may authorize, order, consent to, or pay for any of the following interventions**, or any other interventions similar to or like the following:

- (1) Any intervention that is designed to, or likely to, **cause physical pain;**
- (3) Any intervention that **denies adequate...physical comfort...**”

5 CCR § 3052(e) states, in part, “Acceptable Responses. When the targeted behavior(s) occurs, positive response options shall include, but are not limited to, one or more of the following:

- (5) a brief, physical prompt is provided to interrupt or prevent aggression, self-abuse, or property destruction.”

The NPS attended by the student has used a SIBIS since 1997 to control the student’s self-injurious behavior. The SIBIS is a device approximately the size of a pound of butter. It has a flat metal disk mounted on one side. The SIBIS is battery-operated and is activated by a hand-held device similar to a television remote control. When the student exhibits self-injurious behavior at school, the SIBIS is attached to the student’s lower leg with the flat metal disk in direct contact with the student’s skin. An NPS staff member then uses the remote control to deliver **a mild electric shock, causing what might be characterized as a vibrating sensation. This found to be a much milder sensation than previously thought by CDE staff.**

The student’s physical response to the SIBIS is unclear. The student’s parent and the NPS report that the stimulus effectively inhibits self-injurious behavior and does not cause the student to cry, shout, or otherwise signal pain, trauma, or physical discomfort pursuant to EC § 56520(a)(3) and 5 CCR § 3052(l). Conversely, electric shock at any level is inherently aversive and is not generally intended to be a positive behavioral intervention pursuant to 5 CCR 3052(e)(5). **The student has very limited communication skills and may not be able to precisely express his reaction.**

The student’s parent uses the SIBIS in the student’s home, but reportedly with much less frequency than the SIBIS is used at the NPS. The student attends an after school recreation program. The agency operating the recreation program refuses to use the SIBIS.

The neurologist treating the student has prescribed the use of a SIBIS since 1995 to control the student’s self-injurious behavior. Use of the SIBIS has been reviewed and

approved by the prescribing neurologist's board of professional ethics. **The SIBIS is used at the NPS with the consent of the student's parent, the NPS, the school district special education director, and the special education local plan area (SELPA) director.** The local Regional Center, however, is philosophically opposed to the use of the SIBIS.

Special Education staff provided much needed on site technical assistance to the district, the NPS staff and the parent in regard to the needs of this severely handicapped, autistic student. **The parent had formerly been very opposed to the discontinuation of the SIBIS device.** However after working with the Special Education staff, on February 5, 2003, the **student's parent wrote** to the California Department of Education, Special Education Division, stating, in part, **"After careful consideration, I think your idea about trying re-direction instead of putting on [the] SIBIS device...has merit...If everyone's main concern is consistently and aggressively preventing my son from suffering pain and trauma due to self-injury, we can significantly reduce the [self-injurious behavior] and consider fading [use of the] SIBIS."**

The district and the Non Public Agency have also been given new skills and are interested in working on discontinuing the use of this device. On this basis the Department recommends approval on the conditions cited above.

Authority for the waiver: *Education Code* section 56101

Bargaining unit(s) consulted on: N/A

Position of bargaining unit (choose only one):

Neutral

Support

Oppose

Name of bargaining unit representative:

Local board approval date: SELPA approved 8-13-02

Effective dates of request: October 1, 2002 to October 1, 2003

Fiscal Analysis (as appropriate): This waiver, if approved, would have no fiscal impact.

Background Information: Documentation is attached to this Summary.