

California Department of Education

Executive Office

SBE-006 (REV. 1/2018)

Specific Waiver

# California State Board of Education November 2021 Agenda Item #W-01

## Subject

Request by the **Manteca Unified School District** under the authority of California *Education Code* (*EC*) Section 41382, to waive portions of *EC* Section 41378, relating to class size penalties for Kindergarten. Allowable districtwide class size average is 31 with no individual class larger than 33 students for Kindergarten. The district wishes to increase its individual class size to 40 students for Kindergarten classes.

## Waiver Numbers

* 13-6-2021

## Type of Action

Action, Consent

## Summary of the Issue(s)

The Manteca Unified School District (USD) is requesting a waiver of portions of *EC* Section 41378 relating to class size penalties for Kindergarten for fiscal year 2020–21. As a result of the pandemic, Manteca USD entered into a memorandum of understanding (MOU) with the Manteca Educator’s Association to provide an online K–12 distance learning academy with a student to teacher ratio of 40 to one. The MOU expired on June 30, 2021. The online academy was offered to parents as an option for their children. The district also offered the option of a hybrid in-person learning environment to all students or a more traditional independent study program. During the 2020–21 school year, the district exceeded the maximum individual class size of 33 in two Kindergarten classes in the online academy. The district states that the online academy met annual instructional minutes requirements and that teacher support was also provided in small groups online.

In the Spring of 2021, the district surveyed parents about the interest in continuing the online academy for the 2021–22 school year. With more lead time to plan staffing levels and determine student interest, the district is now staffing classes in the online academy at the statutory level for the 2021–22 school year.

The district will incur a penalty of $92,424 for fiscal year 2020–21 if this waiver is not granted. The district states that without an approved waiver, the district would not have been able to provide the highest level of instruction to high need students in reading and math.

## Authority for Waiver

*EC* Section 41382

## Recommendation

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

The California Department of Education (CDE) recommends the California State Board of Education (SBE) approve the request by the Manteca USD to waive the class size penalty for Kindergarten for the recommended period shown on Attachment 1.

The CDE also recommends that the SBE find that the class size penalty provisions of *EC* section 41378 will, if not waived, prevent the district from developing more effective educational programs to improve instruction in reading and mathematics for students in the classes specified in the district’s application.

## Summary of Key Issues

There are two different requirements regarding kindergarten through grade three (K–3) class sizes. The first requirement has been in law since the mid-1960s and is the subject of this waiver. This law requires the CDE to apply a financial class size penalty to a school district’s Local Control Funding Formula (LCFF) entitlement if any of the following occur:

* A single kindergarten class exceeds an average enrollment of 33.
* The average enrollment of all kindergarten classes in the district exceeds 31.
* A single class in grades one through three exceeds an average enrollment of 32.
* The average enrollment of all grades one through three classes in the district exceeds 30.

School districts report their average class enrollment information to the CDE in the spring of the applicable year. If a school district does not meet the requirements, the CDE reduces the district’s final payment for the year. Generally, the penalty is equal to a loss of all funding for enrollment above 31 in kindergarten classes or 30 in grades one through three classes. *EC* Section 41382 allows the SBE to waive this penalty if the associated class size requirements prevent the school and school district from developing more effective education programs to improve instruction in reading and mathematics.

The second requirement, which began in fiscal year 2013–14, is related to the K–3 grade-span adjustment (GSA) that increases the LCFF base grant funding for the

K–3 grade span by 10.4 percent, resulting in an adjusted base grant amount. In order to receive this adjustment, school districts must meet one of the following conditions at each school site:

* Maintain at that school site an average class enrollment in K–3 of not more than 24 pupils.
* Agree to a collectively-bargained alternative to the statutory K–3 GSA requirements.

If an independent auditor finds that a school district did not meet one of the conditions, the CDE must retroactively remove the K–3 GSA from the district’s LCFF entitlement. *EC* Section 42238.02(d)(3)(E) does not allow the SBE to waive the adjustment.

These two statutes operate independently. It is possible that a district could comply with the ostensibly more restrictive conditions for the K–3 GSA and be out of compliance with the K–3 class size penalty statutes. For instance, the district could have negotiated an alternative to the K–3 GSA class size average that exceeds the class size penalty levels.

In September 2014, the SBE adopted Policy #14-01, which requires districts to provide certain types of information with their waiver requests commencing with fiscal year 2014–15. The district’s waiver included the information required by the SBE’s Policy #14-01.

## Summary of Previous State Board of Education Discussion and Action

Before September 2009, no class size penalty waivers had been submitted since 1999. Due to the state budget crisis and resulting significant reduction in funding, the SBE began receiving a large number of waiver requests beginning in 2009. As a result, the SBE approved all class size penalty waiver requests through fiscal year 2013–14. In September 2014, the SBE adopted a policy for the type of information districts should provide when submitting a class size penalty waiver request for fiscal years beginning with 2014–15. The policy is available at [https://www.cde.ca.gov/re/lr/wr/waiverpolicies.asp](http://www.cde.ca.gov/re/lr/wr/waiverpolicies.asp), under Class Size Penalties for Grades Kindergarten and Grades One through Three.

## Fiscal Analysis (as appropriate)

See Attachment 1 for actual penalty amounts should the waiver request be denied.

## Attachment(s)

* **Attachment 1:** Summary Table (1 page)
* **Attachment 2:** Manteca USD Specific Waiver Request 13-6-2021 (2 pages) (Original waiver request is signed and on file in the Waiver Office.)

# Attachment 1: Summary Table

California *Education Code (EC)* Section 41378

| **Waiver Number** | **District** | **Period of Request** | **District’s Request** | **CDE Recommendation** | **Local Board and Public Hearing Approval** | **Bargaining Unit Position** | **Penalty Without Waiver** | **Previous Waivers** |
| --- | --- | --- | --- | --- | --- | --- | --- | --- |
| 13-6-2021 | Manteca Unified School District | **Requested:** July 1, 2020, to June 30, 2021  **Recommended:** July 1, 2020, to June 30, 2021 | Overall average 31; no class larger than 40 | Overall average 31; no class larger than 40 | Local Board Approval  June 8, 2021 | Manteca Educator’s Association,  Rob Vannoord, President,  **Support**  January 6, 2021 | $92,424 | N/A |

Created by California Department of Education   
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**Attachment 2: Manteca Unified School District Specific Waiver Request 13-6-2021**

**California Department of Education**

**WAIVER SUBMISSION – Specific**

CD Code: 3968593

Waiver Number: 13-6-2021

Active Year: 2021

Date In: 6/18/2021 2:28:31 PM

Local Education Agency: Manteca Unified

Address: 2271 W. Louise Ave.

Manteca, CA 95337

Start: 7/1/2020

End: 6/30/2021

Waiver Renewal: N

Previous Waiver Number:

Previous SBE Approval Date:

Waiver Topic: Class Size Penalties

Ed Code Title: Over Limit on Kindergarten

Ed Code Section: portions of 41378 (a) through (e)

Ed Code Authority: 41382

Ed Code or *CCR* to Waive: 41378 (b) The total number of pupils which are in excess of thirty-three (33) in each class having an enrollment of more than thirty-three (33). Two kindergarten classes over were in the independent study academies. Normally regulations require full-time independent study to be excluded from the calculation, however, because this independent study was through the AB77 requirements, it wasn't clear that they should be excluded.

Outcome Rationale: Due to the covid pandemic, MUSD Board of Education approved an online academy June 6, 2020 to support educational learning via online. The Manteca Educator's Association entered into an MOU with MUSD on January 6, 2021 to hold K-12 Independent Study with student class size at 40 to 1 (The MOU shall expire on June 30, 2021-attached doc). Pre-covid pandemic an MOU Sept. 12, 2019 Kindergarten class size is 24 to 1-attached MOU.

Yes. A principal may recommend to the governing board or the governing board of the school district may adopt a resolution determining that an exemption should be granted from any of the provisions of Section 41376 and 41378, with respect to such core classes on the basis that such provisions prevent the school and school district from developing more effective education programs to improve instruction in reading and mathematics. (Required see *EC* 41382) A potential penalty of $ could be incurred by the district without this waiver.

Student Population: 7702

City Type: Rural

Local Board Approval Date: 6/8/2021

Audit Penalty Yes or No: Y

Categorical Program Monitoring: N

Submitted by: Ms. Jacqui Breitenbucher

Position: Chief Business Officer

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Bargaining Unit Date: 01/06/2021

Name: Manteca Educator's Association

Representative: Rob Vannoord

Title: President

Phone: 209-858-0742

Position: Support

Comments: