

California Department of Education

Executive Office

SBE-005 (REV. 1/2018)

General Waiver

# California State Board of Education July 2023 Agenda Item #W-01

## Subject

Request by **Black Oak Mine Unified School District** to waive portions of *California Code of Regulations*, Title 5 Section 11963.6, relating to the submission of and action on a determination of funding request by a charter school offering nonclassroom-based instruction.

## Waiver Number

* 5-4-2023

## Type of Action

Action, Consent

## Summary of the Issue

Black Oak Mine Unified School District (BOMUSD) is requesting, on behalf of American River Charter (ARC) (charter #1176), that the California State Board of Education (SBE) waive portions of *California Code of Regulations*, Title 5 (5 *CCR*) Section 11963.6 in order to allow the charter school to request a nonclassroom-based funding determination after the regulatory deadline.

ARC failed to submit a determination of funding request by the regulatory deadline, therefore necessitating this waiver request and thereby making the request retroactive. If the waiver is approved by the SBE, the SBE may act on the school’s retroactive funding determination request at a separate meeting.

## Authority for Waiver

California *Education Code* (*EC*) Section 33050

## Recommendation

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

The California Department of Education (CDE) recommends that the SBE approve the request by BOMU to waive portions of 5 *CCR* Section 11963.6(c) relating to the submission deadline in order to allow ARC to submit a retroactive determination of funding request for the fiscal years specified in Attachment 1.

Approval of the waiver request will allow the SBE to consider the retroactive determination of funding request from ARC at a separate meeting. Without an approved waiver, a retroactive request may not be considered by the SBE, and a charter school’s nonclassroom-based average daily attendance (ADA) may not be funded for the affected fiscal years.

## Summary of Key Issues

*EC* sections 47612.5 and 47634.2 established the eligibility requirements for apportionment funding for charter schools that offer nonclassroom-based instruction. The statutes specify that a charter school may receive apportionment funding for nonclassroom-based instruction only if a determination of funding is made by the SBE. The CDE reviews a charter school’s determination of funding request and presents it for consideration to the Advisory Commission on Charter Schools, pursuant to relevant 5 *CCR*.

Pursuant to 5 *CCR* Section 11963.6(c), any determination of funding request approved by the SBE for an existing nonclassroom-based charter school must be prospective (not for the current year) and in increments of a minimum of two years and a maximum of five years in length. The funding determination request must be submitted by   
February 1 of the fiscal year prior to the year the funding determination will be effective.

BOMUSD, on behalf of ARC, is requesting to submit a determination of funding request after the regulatory submission deadline, thereby making the request retroactive. Specifically, BOMU has requested for a portion of 5 *CCR* Section 11963.6(c) relating to the submission deadline to be waived. BOMU cites the reason the charter school missed the submission deadline as being the school was unaware of the deadline to submit the nonclassroom-based funding determination request.

### Demographic Information

ARC serves a student population of 250 and is located in a rural city in El Dorado County.

**Because this is a general waiver, if the SBE decides to deny the waiver, it must cite one of the seven reasons in *EC* Section 33051(a), which is available at** <http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=EDC&sectionNum=33051>.

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

The SBE has approved similar waiver requests regarding retroactive funding determination requests for charter schools that offer nonclassroom-based instruction.

## Fiscal Analysis

Approval of this waiver request will allow the SBE to consider the school’s determination of funding request at a separate meeting. Approval of the determination of funding request by the SBE will allow the charter school’s nonclassroom-based ADA to be funded at the specified percentage and for the specified fiscal years.

## Attachments

* **Attachment 1:** Nonclassroom-Based Funding Determination Deadline Waiver (1 Page)
* **Attachment 2:** Black Oak Mine Unified School District General Waiver Request 5-4-2023 (2 Pages) (Original waiver request is signed and on file in the Waiver Office.)

# Attachment 1: Nonclassroom-Based Funding Determination Deadline Waiver

California *Education Code* sections 47612.5 and 47634.2

| Waiver Number | Local Educational Agency (Charter Authorizer) | Charter School and Charter Number | First Year of Operation | Period of Request | Public Hearing and Local Board Approval Date | Public Hearing Advertisement | School Site Council/Advisory Committee Position |
| --- | --- | --- | --- | --- | --- | --- | --- |
| 5-4-2023 | Black Oak Mine Unified School District | American River Charter  1176 | 2010–11 | **Requested:** July 1, 2022 to June 30, 2024  **Recommended:** July 1, 2022 to June 30, 2024 | **Hearing:** 4/1/2023  **Approval:** 4/1/2023 | District website, each of the three main school sites, and post office boards | American River Charter Council and Black Oak Mine Board of Trustees  **No objections** |

Created by California Department of Education  
May 2023

# Attachment 2: Black Oak Mine Unified School District General Waiver Request 5-4-2023

**California Department of Education**

**WAIVER SUBMISSION - General**

CD Code: 0973783

Waiver Number: 5-4-2023

Active Year: 2023

Date In: 4/5/2023 7:46:38 PM

Local Education Agency: Black Oak Mine Unified School District

Address: 6540 Wentworth Springs Rd.

Georgetown, CA 95634

Start: 7/1/2022

End: 6/30/2024

Waiver Renewal: No

Waiver Topic: Charter School Program

Ed Code Title: Nonclassroom-Based Funding

Ed Code Section: CCR, Title 5, Section 11963.6(c)

Ed Code Authority: 33050

*Education Code* or *CCR* to Waive: (c) Any determination of funding request approved by the State Board of Education for an existing nonclassroom-based charter school from the 2006-07 fiscal year forward shall be prospective (not for the current year), in increments of a minimum of two years and a maximum of five years in length. Beginning with the 2007-08 fiscal year, nonclassroom-based charter schools that had a funding determination in the prior year must submit a funding determination request [by February 1 of the fiscal year prior to the year] the funding determination will be effective, when a new request is required under these regulations.

Outcome Rationale: The non-classroom funding determination was not filed in a timely manner as a result of a myriad of reasons. Several natural disasters befell the charter school already during the 2022-23 year. The entire district was evacuated, some for days and others for weeks, for due to the Mosquito fire during September and school was cancelled again for nearly two more weeks in January/February due to untraversable weather conditions. In both instances, emergency was declared. In addition to the multiple times the district was forced to close, the fiscal agent charged with oversight of the charter had never completed a nonclassroom-based funding determination form and failed to realize the deadline was not June 30, which aligned with the fiscal year, but February 1 each year. The waiver is necessary to continue serving the students attending American River Charter without interruption.

Student Population: 250

City Type: Rural

Public Hearing Date: 4/1/2023

Public Hearing Advertised: On the district website, each of the 3 main school sites, and the post office boards in Georgetown, Garden Valley, and Cool.

Local Board Approval Date: 4/1/2023

Community Council Reviewed By: American River Charter Council and Black Oak Mine USD Board of Trustees

Community Council Reviewed Date: 4/1/2023

Community Council Objection: No

Audit Penalty Yes or No: No

Categorical Program Monitoring: No

Submitted by: Ms. Kassidy Salters

Position: Chief Fiscal & Operations Officer

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