

California Department of Education

Executive Office

SBE-005 (REV. 1/2021)

General Waiver

# California State Board of Education July 2023 Agenda Item #W-10

## Subject

Request by **Fremont Union High School District** to waive *California Code of Regulations,* Title 5, Section 3043(d), which requires a minimum of 20 school days for an extended school year (summer school) for students with disabilities.

## Waiver Number

9-3-2023

## Type of Action

Action, Consent

## Summary of the Issue(s)

The local educational agency (LEA) requested to provide instruction in fewer than the 20 school days required by law for extended school year (ESY). The LEA had an alternate schedule that allowed them to provide the minimum number of hours required, but in fewer days.

ESY is the term for the education of students with disabilities “between the close of one academic year and the beginning of the next,” similar to a summer school. The ESY must be provided for each student with a disability whose individualized education program (IEP) requires it. LEAs may request a waiver to provide an ESY program for fewer days than the traditional mode.

## Authority for Waiver

*Education Code (EC)* Section 33050

## Recommendation

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

The California Department of Education (CDE) recommends the State Board of Education (SBE) approve the request from the LEA to provide ESY services for fewer than 20 days, from June 14, 2023, to July 5, 2023. The CDE recommends no conditions at this time since this waiver is retroactive and the LEA met all the conditions that the CDE would have recommended as a condition of approval of the waiver, as described below. Specifically, CDE has verified that school day hours were consistent with those provided to the general education enrollment at the same grade level unless an IEP specifies otherwise, and that special education and related services offered during the ESY period were comparable in standards, scope, and quality to the special education program offered during the regular academic year as required by *CCR,* Title 5, Section 3043.

## Summary of Key Issues

### Fremont Union High School District (FUHSD)

The FUHSD requested a reduced Extended School Year Program schedule that allowed the district to operate their program for a total of 15 days in June and July 2023, from June 14, 2023 to July 5, 2023. The FUHSD stated that the ESY schedule provided more continuity for delivery of instruction, promoted community based instruction, and allowed students and families the flexibility to plan extended vacation breaks without interrupting the students' educational program. Additionally, FUHSD reported that this schedule increased the opportunities for teachers to participate in more expansive training programs.

CDE verified that FUHSD’s ESY program operated for 5.5 hours per day, five days per week (Monday through Friday, exclusive of the July 4th holiday), totaling 82.5 hours. This is more hours than if FUHSD provided the ESY program for 20 days. CDE verified that the 5.5 hours per day of the ESY program aligned with FUHSD’s general education summer school program hours.

**Demographic Information**: The Fremont Union High School District has a student population of 10,836 and is located in an urban area in Santa Clara County.

**Because these are general waivers, if the SBE decides to deny the waivers, it must cite one of the seven reasons in *EC* Section 33051(a), available on the California Legislation Information web page at** <http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=33051.&lawCode=EDC>.

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

In the past, the SBE approved waivers to allow school districts to provide the required minimum amount of instruction in fewer days during the ESY for students with disabilities.

## Fiscal Analysis (as appropriate)

There is no statewide fiscal impact of waiver approval. However, in order for an LEA to qualify for average daily attendance (ADA) revenues for extended year pupils, LEAs must comply with the ADA requirements in *California Code of Regulations (CCR)*, Title 5, Section 3043(f).

## Attachment(s)

* **Attachment 1:** Summary Table (1 page)
* **Attachment 2:** Fremont Union High School District General Waiver Request 9-3-2023 (2 pages). (Original waiver request is signed and on file in the Waiver Office.)

# Attachment 1: Summary Table

*California Code of Regulations,* Title 5, Section 3043(d)

| Waiver Number | District | Period of Request | District’s Request | CDE Recommendation | Bargaining Unit Representatives Consulted, Date and Position | Local Board and Public Hearing Approval | Penalty Without Waiver |
| --- | --- | --- | --- | --- | --- | --- | --- |
| 9-3-2023 | Fremont Union High School District | **Requested:**  June 14, 2023, to July 5, 2023  (Monday through Friday, excluding July 4th)  **Recommended:**  June 14, 2023, to July 5, 2023  (Monday through Friday, excluding July 4th) | To provide a 15-day extended school year (ESY) program instead of a 20-day ESY program | Approval with conditions to allow the local educational agency (LEA) to provide a 15-day ESY program instead of a 20-day ESY program | Jason Heskett/ President  Fremont Education Association  Support  2/1/2023 | 2/14/2023 | The LEA may not provide a 15-day ESY program |

Created by the California Department of Education

May 2023

# Attachment 2: Waiver 9-3-2023 Fremont Union High School District

**California Department of Education**

**WAIVER SUBMISSION - General**

CD Code: 4369468

Waiver Number: 9-3-2023

Active Year: 2023

Date In: 3/9/2023 2:04:35 PM

Local Education Agency: Fremont Union High

Address: 589 West Fremont Ave.

Sunnyvale, CA 94087

Start: 6/14/2023

End: 7/5/2023

Waiver Renewal: Yes

Previous Waiver Number: 6-1-2022-W-03

Previous SBE Approval Date: 5/18/2022

Waiver Topic: Special Education Program

Ed Code Title: Extended School Year (Summer School)

Ed Code Section: CCR, Title 5, Section 3043 (d)

Ed Code Authority: 33050

Education Code or CCR to Waive: An extended year program shall be provided for a minimum of 20 instructional days, including holidays

Outcome Rationale: Provide more continuity for delivery of instruction and promotion of community based instruction and increase the opportunities for travel training. Additionally, this would allow students and families the flexibility to plan extended vacation breaks without interrupting the students' educational program. Facilitate cost effective services within classrooms and reduce related cots for transportation, electricity, custodial services, food services, administration, etc.

Expand uninterrupted opportunities for school staff to improve facilities before school re-opens in the Fall.

Student Population: 150

City Type: Urban

Public Hearing Date: 2/8/2023

Public Hearing Advertised: There were email notifications/flyers to parents within our district and local SELPA inviting them to the Community Advisory Committee (CAC) meeting where the ESY waiver would be discussed.

Local Board Approval Date: 2/14/2023

Community Council Reviewed By: District Board Members and district administrative team.

Community Council Reviewed Date: 2/13/2023

Community Council Objection: No

Audit Penalty Yes or No: No

Categorical Program Monitoring: No

Submitted by: Ms. Roxy Machuca

Position: Coordinator of Special Services

E-mail: [roxy\_machuca@fuhsd.org](mailto:roxy_machuca@fuhsd.org)

Telephone: 408-366-7771

Bargaining Unit Date: 02/01/2023

Name: Fremont Educaiton Association

Representative: Jason Heskett

Title: President

Phone: 650-269-3077

Position: Support