

# California State Board of EducationPolicy # 14-01

Date: September 3, 2014

## Waiver Guidelines:

Class Size Penalties, Kindergarten and Grades One through Three

## References:

Authority: *Education Code* Section 41382

Purpose: To waive provisions of *Education Code* sections 41376 and 41378

## Historical Notes:

Created September 2014

## Background

The purpose of the class size penalty statute for kindergarten and grades one through three (K–3) is to reduce state funding to a school district when the average class size of an individual class exceeds 33 in kindergarten or 32 in grades one through three, or when the average of all classes exceeds 31 in kindergarten or 30 in grades one through three. The statutes were added in the 1960s and were related to an increase in the foundation grant funding that was provided at the time. The foundation grants were eliminated with the creation of the revenue limit model, which was replaced with the Local Control Funding Formula (LCFF) commencing with 2013–14.

California *Education Code (EC)* Section 41382 provides the State Board of Education (SBE) waiver authority for K–3 class size penalties if the SBE finds that the class size provisions prevent the development of more effective educational programs to improve instruction in reading and mathematics.

## Evaluation Guidelines

The purpose of a request to waive portions of *EC* sections 41376 and 41378 related to class sizes in K–3 is if the class size provisions prevent the development of more effective educational programs to improve instruction in reading and mathematics.

In order to evaluate these waiver requests and determine whether alternate means exist of developing more effective educational programs to improve instruction in reading and mathematics in class without expanding class sizes, the SBE asks that districts applying for K–3 class size penalty waivers provide the following documentation and that the California Department of Education (CDE) use this documentation in reviewing and making recommendations about the request:

1. Discussion of the extraordinary or atypical circumstances that prevent the school district from meeting the class size thresholds. If the reasons are financial, the district should explain why LCFF funds cannot be used to reduce class sizes.
2. Demonstration that the increased class size is consistent with the school district’s goals and actions in its Local Control and Accountability Plan (LCAP).
3. Explanation of how the district is addressing the educational needs of pupils to mitigate potential consequences of increased class sizes.
4. Remediation plan that describes how and when the district will return to the statutory levels.
5. Statement by the district that the class size provisions prevent the development of more effective educational programs to improve instruction in reading and mathematics.
6. An estimate of the financial impact if the class size penalty was assessed by the CDE.
7. The requested new maximum individual and overall class size averages.
8. The position of the exclusive representative of employees, if any, as provided in Chapter 10.7 of Division 4 of Title 1 of the *Government Code*. If the representative is opposed, include a written summary of any objections to the request.

## Statutory Provisions Related to K–3 Class Size Penalties

### *EC* Section 41376

The Superintendent of Public Instruction, in computing apportionments and allowances from the State School Fund for the second principal apportionment, shall determine the following for the regular day classes of the elementary schools maintained by each school district:

(a) For grades 1 to 3, inclusive, he shall determine the number of classes, the number of pupils enrolled in each class, the total enrollment in all such classes, the average number of pupils enrolled per class, and the total of the numbers of pupils which are in excess of thirty (30) in each class.

For those districts which do not have any classes with an enrollment in excess of 32 and whose average size for all the classes is 30.0 or less, there shall be no excess declared. For those districts which have one or more classes in excess of an enrollment of 32 or whose average size for all the classes is more than 30, the excess shall be the total of the number of pupils which are in excess of 30 in each class having an enrollment of more than 30.

(b) For grades 4 to 8, inclusive, he shall determine the total number of pupils enrolled, the number of full-time equivalent classroom teachers, and the average number of pupils per each full-time equivalent classroom teacher. He shall also determine the excess if any, of pupils enrolled in such grades in the following manner:

(1) Determine the number of pupils by which the average number of pupils per each full-time equivalent classroom teacher for the current fiscal year exceeds the greater of the average number of pupils per each full-time equivalent classroom teacher in all the appropriate districts of the state, as determined by the Superintendent of Public Instruction, for October 30, 1964, or the average number of pupils per each full-time equivalent classroom teacher which existed in the district on either October 30, 1964 or March 30, 1964, as selected by the governing board.

(2) Multiply the number determined in (1) above by the number of full-time equivalent classroom teachers of the current fiscal year.

(3) Reduce the number determined in (2) above by the remainder which results from dividing such number by the average number of pupils per each full-time equivalent teacher for October 30, 1964, as determined by the Superintendent of Public Instruction in (1) above.

(c) He shall compute the product obtained by multiplying the excess number of pupils, if any, under the provisions of subdivision (a) of this section by ninety-seven hundredths (0.97), and shall multiply the product so obtained by the ratio of statewide change in average daily attendance to district change in average daily attendance. Change in average daily attendance shall be determined by dividing average daily attendance in grades 1, 2 and 3 reported for purposes of the first principal apportionment of the current year by that reported for purposes of the first principal apportionment of the preceding year.

(d) If the school district reports that it has maintained, during the current fiscal year, any classes in which there were enrolled pupils in excess of thirty (30) per class pursuant to subdivision (a) of this section, and there is no excess number of pupils computed pursuant to subdivision (b) of this section, he shall decrease the average daily attendance reported under the provisions of Section 41601 by the product determined under subdivision (c) of this section.

(e) If the school district reports that it has maintained, during the current fiscal year, no classes in which there were enrolled pupils in excess of thirty (30) per class determined pursuant to subdivision (a) of this section, and there is an excess number of pupils computed pursuant to subdivision (b) of this section, he shall make the following computation:

He shall compute the product obtained by multiplying the excess number of pupils computed pursuant to subdivision (b) of this section by ninety-seven hundredths (0.97) and shall multiply the product so obtained by the ratio of statewide change in average daily attendance to the district change in average daily attendance. He shall decrease the average daily attendance reported under the provisions of Section 41601 by the resulting product.

(f) If the school district reports that it has maintained, during the current fiscal year, any classes in which there were enrolled pupils in excess of thirty (30) per class determined pursuant to subdivision (a) of this section, and there is an excess number of pupils computed pursuant to subdivision (b) of this section, he shall make the following computation:

He shall add to the product determined under subdivision (c) of this section, the product determined under subdivision (e) of this section and decrease the average daily attendance reported under the provisions of Section 41601 by this total amount.

The governing board of each school district maintaining elementary schools shall report for the fiscal year 1964–65 and each year thereafter the information required for the determination to be made by the Superintendent of Public Instruction under the provisions of this section in accordance with instructions provided on forms furnished and prescribed by the Superintendent of Public Instruction. Such information shall be reported by the school district together with, and at the same time as, the reports required to be filed for the second principal apportionment of the State School Fund. The forms on which the data and information is reported shall include a certification by each school district superintendent or chief administrative officer that the data is correct and accurate for the period covered, according to his best information and belief.

For purposes of this section, a “full-time equivalent classroom teacher” means an employee of an elementary, high school, or unified school district, employed in a position requiring certification qualifications and whose duties require him to teach pupils in the elementary schools of that district in regular day classes for the full time for which he is employed during the regular schoolday. In reporting the total number of full-time equivalent classroom teachers, there shall be included, in addition to those employees defined above, the full-time equivalent of all fractional time for which employees in positions requiring certification qualifications are required to devote to teaching pupils in the elementary schools of the district in regular day classes during the regular schoolday.

For purposes of this section, the number of pupils enrolled in each class means the average of the active enrollment in that class on the last teaching day of each school month which ends prior to April 15th of each school year.

The provisions of this section are not applicable to school districts with less than 101 units of average daily attendance for the current fiscal year.

Although no decreases in average daily attendance shall be made for the fiscal year 1964–65, reports are required to be filed under the provisions of this section, and the Superintendent of Public Instruction shall notify each school district the amount of the decrease in state allowances which would have been effected had such decrease in average daily attendance been applied.

The Superintendent of Public Instruction shall adopt rules and regulations which he may deem necessary for the effective administration of this section. Such rules and regulations may specify that no decrease in average daily attendance reported under the provisions of Section 41601 shall be made for a school district on account of large classes due to instructional television or team teaching, which may necessarily involve class sizes at periods during the day larger than the standard set forth in this section.

### *EC* Section 41376.1

(a) Commencing with the 2013–14 fiscal year, until the Superintendent determines that a school district is funded pursuant to Section 42238.02 in the prior fiscal year, and notwithstanding the requirement to decrease average daily attendance pursuant to subdivisions (d), (e), and (f) of Section 41376 and subdivision (e) of Section 41378, the Superintendent shall compute a reduction to the school district local control funding formula entitlement pursuant to Section 42238.02, as implemented by Section 42238.03, for the specified school year by the sum of the following:

(1) (A) Multiply the sum of the products obtained in subdivision (e) of Section 41378 and subdivision (d) of Section 41376 by the grade span adjusted base grant specified in subparagraph (A) of paragraph (1) of subdivision (d) of Section 42238.02, as annually adjusted for cost of living pursuant to paragraph (2) of subdivision (d) of Section 42238.02.

(B) Multiply the product obtained in subparagraph (A) by the sum of the entitlements computed pursuant to paragraphs (1) to (4), inclusive, of subdivision (a) of Section 42238.03 and paragraph (3) of subdivision (b) of Section 42238.03 for all school districts, divided by the sum of the local control funding formula entitlements computed pursuant to Section 42238.02 for all school districts.

(2) (A) Multiply the product obtained pursuant to subdivision (e) of Section 41376 by the funded average daily attendance for grades 4 to 6, inclusive, reported by the school district pursuant to Section 42238.05 for the specified school year divided by the funded average daily attendance for grades 4 to 8, inclusive, reported by the school district pursuant to Section 42238.05 for the specified school year.

(B) Multiply the product obtained in subparagraph (A) by the grade span adjusted base grant specified in subparagraph (B) of paragraph (1) of subdivision (d) of Section 42238.02, as annually adjusted for cost of living pursuant to paragraph (2) of subdivision (d) of Section 42238.02.

(C) Multiply the product obtained in subparagraph (B) by the sum of the entitlements computed pursuant to paragraphs (1) to (4), inclusive, of subdivision (a) of Section 42238.03 and paragraph (3) of subdivision (b) of Section 42238.03 for all school districts, divided by the sum of the local control funding formula entitlements computed pursuant to Section 42238.02 for all school districts.

(3) (A) Multiply the product obtained pursuant to subdivision (e) of Section 41376 by the funded average daily attendance for grades 7 and 8 reported by the school district pursuant to Section 42238.05 for the specified school year divided by the funded average daily attendance for grades 4 to 8, inclusive, reported by the school district pursuant to Section 42238.05 for the specified school year.

(B) Multiply the product obtained in subparagraph (A) by the grade span adjusted base grant specified in subparagraph (C) of paragraph (1) of subdivision (d) of Section 42238.02, as annually adjusted for cost of living pursuant to paragraph (2) of subdivision (d) of Section 42238.02.

(C) Multiply the product obtained in subparagraph (B) by the sum of the entitlements computed pursuant to paragraphs (1) to (4), inclusive, of subdivision (a) of Section 42238.03 and paragraph (3) of subdivision (b) of Section 42238.03 for all school districts, divided by the sum of the local control funding formula entitlements computed pursuant to Section 42238.02 for all school districts.

(b) Commencing with the 2013–14 fiscal year, if the Superintendent determines that a school district is funded pursuant to Section 42238.02 in the prior fiscal year, and notwithstanding the requirement to decrease average daily attendance pursuant to subdivisions (d), (e), and (f) of Section 41376 and subdivision (e) of Section 41378, the Superintendent shall compute a reduction to the school district local control funding formula entitlement pursuant to Section 42238.02 for the specified school year by the sum of the following:

(1) Multiply the sum of the products obtained in subdivision (e) of Section 41378 and subdivision (d) of Section 41376 by the grade span adjusted base grant specified in subparagraph (A) of paragraph (1) of subdivision (d) of Section 42238.02, as annually adjusted for cost of living pursuant to paragraph (2) of subdivision (d) of Section 42238.02.

(2) (A) Multiply the product obtained pursuant to subdivision (e) of Section 41376 by the funded average daily attendance for grades 4 to 6, inclusive, reported by the school district pursuant to Section 42238.05 for the specified school year divided by the funded average daily attendance for grades 4 to 8, inclusive, reported by the school district pursuant to Section 42238.05 for the specified school year.

(B) Multiply the product obtained in subparagraph (A) by the grade span adjusted base grant specified in subparagraph (B) of paragraph (1) of subdivision (d) of Section 42238.02, as annually adjusted for cost of living pursuant to paragraph (2) of subdivision (d) of Section 42238.02.

(3) (A) Multiply the product obtained pursuant to subdivision (e) of Section 41376 by the funded average daily attendance for grades 7 and 8 reported by the school district pursuant to Section 42238.05 for the specified school year divided by the funded average daily attendance for grades 4 to 8, inclusive, reported by the school district pursuant to Section 42238.05 for the specified school year.

(B) Multiply the product obtained in subparagraph (A) by the grade span adjusted base grant specified in subparagraph (C) of paragraph (1) of subdivision (d) of Section 42238.02, as annually adjusted for cost of living pursuant to paragraph (2) of subdivision (d) of Section 42238.02.

### *EC* Section 41378

The Superintendent of Public Instruction, in computing apportionments and allowances from the State School Fund for the second principal apportionment, shall determine the following for the kindergarten classes maintained by each school district maintaining kindergarten classes.

(a) The number of pupils enrolled in each kindergarten class, the total enrollment in all such classes, and the average number of pupils enrolled per class.

(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).

(c) The total number of pupils by which the average class size in the district exceeds 31.

(d) The greater number of pupils as determined in (b) or (c) above.

(e) He shall compute the product obtained by multiplying the excess number of pupils computed pursuant to subdivision (d) of this section by ninety-seven hundredths (0.97). He shall decrease the average daily attendance reported under the provisions of Section 41601 by the resulting product.

### *EC* Section 41382

The principal of any elementary school maintaining kindergarten classes or regular day classes in grades 1 to 3, inclusive, may recommend to the governing board of the school district, or the governing board may adopt a resolution determining, that an exemption should be granted from any of the provisions of Section 41376, 41378, or 41379 with respect to such classes on the basis that such provisions prevent the school and school district from developing more effective educational programs to improve instruction in reading and mathematics for pupils in the specified classes. Upon approval of such recommendation, or the adoption of such resolution, the governing board shall make application to the State Board of Education on behalf of the school for an exemption for such classes from the specified provisions. The State Board of Education shall grant the application if it finds that the specified provisions of Section 41376, 41378, or 41379 prevent the school from developing more effective educational programs to improve instruction in reading and mathematics for pupils in the specified classes and shall, upon granting the application, exempt the school district from the penalty provision of such sections.

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