California State Board of Education

Meeting Agenda Items for March 12-13, 2014

Vision, Mission, and Goals

California State Board of Education vision, mission, and goals statement.

VISION

All California students of the 21st century will attain the highest level of academic knowledge, applied learning and performance skills to ensure fulfilling personal lives and careers and contribute to civic and economic progress in our diverse and changing democratic society.

MISSION

Create strong, effective schools that provide a wholesome learning environment through incentives that cause a high standard of student accomplishment as measured by a valid, reliable accountability system.

GOALS

1. *Standards.* Adopt and support rigorous academic content and performance standards in the four core subjects for kindergarten and grades 1 through 12.
2. *Achievement.* Ensure that all students are performing at grade level or higher, particularly in reading and math, at the end of each school year, recognizing that a small number of exceptional needs students must be expected, challenged, and assisted to achieve at an individually determined and appropriately high level. Advocate for mandatory intervention for every child not at grade level. Do everything possible to ensure that "the job is done right in the first place".
3. *Assessment.* Maintain policies assuring that all students receive the same nationally normed and standards-based assessments, grades 2 through 11, again recognizing that a small number of exceptional needs students must be separately and individually assessed using appropriate alternative means to determine achievement and progress.

Questions: State Board of Education | 916-319-0827

Bylaws

For the California State Board of Education, Amended January 16, 2013.

ARTICLE I

Authority

The California State Board of Education is established in the Constitution of the State of California and empowered by the Legislature through the California *Education Code*.

ARTICLE II

Powers and Duties

The Board establishes policy for the governance of the state's kindergarten through grade twelve public school system as prescribed in the *Education Code*, and performs other duties consistent with statute.

ARTICLE III

Members

APPOINTMENT

Section 1.

The State Board of Education consists of 11 members who are appointed by the Governor with the advice and consent of two-thirds of the Senate.

CC, Art. IX, Sec. 7
EC 33000 and 33000.5

TERM OF OFFICE

Section 2.

a. The term of office of the members of the Board is four years, except for the student member whose term is one year.
b. Except for the student member, who serves a one-year term, terms expire on January 15 of the fourth year following their commencement. Members, other than the student member, continue to serve until the appointment and qualification of their successors to a maximum of 60 days after the expiration of their terms. If the member is not reappointed and no successor is appointed within that 60-day period, the member may no longer serve and the position is deemed vacant. The term of the student member begins on August 1 and ends on July 31 of the following year.
c. If the Senate refuses to confirm, the person may continue to serve until 60 days have elapsed since the refusal to confirm or until 365 days have elapsed since the person first began performing the duties of the office, whichever occurs first.
d. If the Senate fails to confirm within 365 days after the day the person first began performing the duties of the office, the person may not continue to serve in that office following the end of the 365-day period.

EC 33001; 33000.5
GC 1774

VACANCIES

Section 3.

Any vacancy shall be filled by appointment by the Governor, subject to confirmation by two-thirds of the Senate. The person appointed to fill a vacancy shall hold office only for the balance of the unexpired term.

EC 33002

STUDENT MEMBER

Section 4.

Finalists for the student member position shall be selected and recommended to the Governor as prescribed by law.

EC 33000.5

COMPENSATION AND EXPENSES

Section 5.

Members of the Board shall receive their actual and necessary travel expenses while on official business. Each member shall also receive one hundred dollars ($100) for each day he or she is acting in an official capacity.

EC 33006
GC 11564.5

CONFLICT OF INTEREST CODE

Section 6.

Board members shall file statements of economic interest as required by the Fair Political Practices Commission. The terms of a standard Conflict of Interest Code, adopted by the Commission and as may be amended, are incorporated by reference and constitute the Conflict of Interest Code of the Board.

2 CCR 18730
5 CCR 18600

ARTICLE IV

Officers and Duties

PRESIDENT, VICE PRESIDENT

Section 1.

Officers of the Board shall be a president and a vice president. No member may serve as both president and vice president at the same time.

Section 2.

a. The president and vice president shall be elected annually in accordance with the procedures set forth in this section.
b. At the January meeting, the State Superintendent of Public Instruction shall ask members to nominate individuals for the office of president. At that same meeting, the president shall ask Board members to nominate individuals for the office of vice president. Any nomination for office must be seconded. No member may nominate or second the nomination for himself or herself for either office.
c. Six votes are necessary to elect an officer, and each officer elected shall serve for one year or until his or her successor is elected.
d. If, in the Board's judgment, no nominee for the office of president or vice president can garner sufficient votes for election to that office at the January meeting, a motion to put the election over to a subsequent meeting is in order.
e. Newly elected officers shall assume office immediately following the election.

f. In the event a vacancy occurs in the office of president or vice president during a calendar year, an election shall be held at the next meeting. Any member interested in completing the one-year term of an office that has become vacant may nominate himself or herself, but each nomination requires a second.
g. The State Superintendent of Public Instruction shall preside only during the election proceedings for the office of president and for the conduct of any other business that a majority of the Board members may direct.

EXECUTIVE OFFICER

Section 3.

The State Superintendent of Public Instruction shall be secretary and shall act as executive officer of the Board.

EC 33004

DUTIES OF THE PRESIDENT

Section 4.

The president shall:

- serve as spokesperson for the Board;
- represent the position of the Board to the State Superintendent of Public Instruction;
- appoint members to serve on committees and as liaisons, as prescribed in these Bylaws, and as may be needed in his or her judgment properly to fulfill the Board's responsibilities;
- serve as an ex officio voting member of the Screening Committee and any ad hoc committees, either by substituting for an appointed member who is not present with no change in an affected committee's quorum requirement, or by serving as an additional member with the affected committee's quorum requirement being increased if necessary;
- preside at all meetings of the Board and follow-up with the assistance of the executive director to see that agreed upon action is implemented;
- serve, as necessary, as the Board's liaison to the National Association of State Boards of Education, or designate a member to serve in his or her place;
- serve, or appoint a designee to serve, on committees or councils that may be created by statute or official order where required or where, in his or her judgment, proper carrying out of the Board's responsibility demands such service;
- keep abreast of local, state, and national issues through direct involvement in various conferences and programs dealing with such issues, and inform Board members of local, state, and national issues;
- participate in selected local, state, and national organizations, which have an impact on public education, and provide to other members, the State Superintendent, and the staff of the Department of Education the information gathered and the opinion and perspective developed as the result of such active personal participation;
- provide direction for the executive director;
- and, along with the executive director, direct staff in preparing agendas for Board meetings, in consultation with other members as permitted by law, and determine priorities for the expenditure of board travel funds.

DUTIES OF THE VICE PRESIDENT

Section 5.

The vice president shall:

- preside at Board meetings in the absence of the president;
- represent the Board at functions as designated by the president; and
- fulfill all duties of the president when he or she is unable to serve.

DUTIES OF COMMITTEE CHAIR

Section 6.

The chair of the Screening Committee or any ad hoc committee shall:

- preside at meetings of the committee he or she chairs, except that he or she shall yield the chair to another committee member in the event he or she will be absent or confronts a conflict regarding any matter coming before the committee, and may yield the chair to another committee member for personal reasons; and
- in consultation with the president, other committee members, and appropriate staff, assist in the preparation of committee agendas and coordinate and facilitate the work of the committee in furtherance of the Board's goals and objectives.

DUTIES OF LIAISON OR REPRESENTATIVE

Section 7.

A Board member appointed as a liaison or representative shall:

- serve as an informal (non-voting) link between the Board and the advisory body or agency (or function) to which he or she is appointed as liaison or representative; and
- reflect the position of the Board, if a position is known to him or her, on issues before the advisory body or agency (or within the function) to which he or she is appointed as liaison or representative and keep the Board appropriately informed.

DUTIES OF A BOARD MEMBER APPOINTED TO ANOTHER AGENCY

Section 8.

The member shall:

- to every extent possible, attend the meetings of the agency and meet all responsibilities of membership; and
- reflect through his or her participation and vote the position of the Board, if a position is known to him or her, and keep the Board informed of the agency's activities and the issues with which it is dealing.

ARTICLE V

Meetings

REGULAR MEETINGS

Section 1.

Generally, regular meetings of the Board shall be held on the Wednesday and Thursday preceding the second Friday of each of the following months: January, March, May, July, September, and November. However, in adopting a specific meeting schedule, the Board may deviate from this pattern to accommodate state holidays and special events. Other regularly noticed meetings may be called by the president for any stated purpose.

EC 33007

SPECIAL MEETINGS

Section 2.

Special meetings may be called to consider those purposes specified in law if compliance with the 10-day notice would impose a substantial hardship on the board or if immediate action is required to protect the public interest.

OPEN MEETINGS

Section 3.

a. All meetings of the Board, except the closed sessions permitted by law, and all meetings of Board committees, to the extent required by law, shall be open and public.
b. All meetings shall conform to the Bagley-Keene Open Meeting Act, including requirements for notices of meetings, preparation and distribution of agendas and written materials, inspection of public records, closed sessions and emergency meetings, maintenance of records, and disruption of a public meeting. Those

provisions of law which govern the conduct of meetings of the Board are hereby incorporated by reference into these Bylaws.

c. Unless otherwise provided by law, meetings of any advisory body, committee or subcommittee thereof, created by statute or by formal action of the Board, which is required to advise or report or recommend to the Board, shall be open to the public.

GC 11120 et seq.

NOTICE OF MEETINGS

Section 4.

a. Notice of each regular meeting shall be posted at least 10 days prior to the time of the meeting and shall include the time, date, and place of the meeting and a copy of the meeting agenda.
b. Notice of any meeting of the Board shall be given to any person so requesting. Upon written request, individuals and organizations wishing to receive notice of meetings of the Board will be included on the mailing list for notice of regular meetings.

SPECIAL MEETINGS (ADDITIONAL PROVISIONS)

Section 5.

a. Special meetings may be called by the president or by the secretary upon the request of any four members of the board for the purposes specified in law if compliance with the 10-day notice requirements would impose a substantial hardship on the board or if immediate action is required to protect the public interest.
b. Notice of special meetings shall be delivered in a manner that allows it to be received by the members and by newspapers of general circulation and radio or television stations at least 48 hours before the time of the special meeting. Notice shall also be provided to all national press wire services. Notice to the general public shall be made by placing it on appropriate electronic bulletin boards if possible.
c. Upon commencement of a special meeting, the board shall make a finding in open session that giving a 10-day notice prior to the meeting would cause a substantial hardship on the board or that immediate action is required to protect the public interest. The finding shall be adopted by a two-thirds vote of the board or a unanimous vote of those members present if less than two-thirds of the members are present at the meeting.

EC 33008
GC 11125

EMERGENCY MEETINGS

Section 5.

a. An emergency meeting may be called by the president or by the secretary upon the request of any four members without providing the notice otherwise required in the case of a situation involving matters upon which prompt action is necessary due to the disruption or threatened disruption of public facilities and which is properly a subject of an emergency meeting in accordance with law.
b. The existence of an emergency situation shall be determined by concurrence of six of the members during a meeting prior to an emergency meeting, or at the beginning of an emergency meeting, in accordance with law.
c. Notice of an emergency meeting shall be provided in accordance with law.

GC 11125.5
EC 33008
EC 33010

CLOSED MEETINGS

Section 6.

Closed sessions shall be held only in accordance with law.

GC 11126

QUORUM

Section 7.

a. The concurrence of six members of the Board shall be necessary to the validity of any of its acts. *EC 33010*
b. A quorum of any Board committee shall be a majority of its members, and a committee may recommend actions to the Board with the concurrence of a majority of a quorum.

ORDER OF BUSINESS

Section 8.

The order of business for all regular meetings of the Board shall generally be:

- Call to Order
- Salute to the Flag
- Communications
- Announcements
- Report of the State Superintendent of Public Instruction
- Special Presentations
- Agenda Items
- Adjournment

CONSENT CALENDAR

Section 9.

a. Non-controversial matters and waiver requests meeting established guidelines may be presented to the Board on a consent calendar.
b. Items may be removed from the consent calendar upon the request of an individual Board member or upon the request of Department staff authorized by the State Superintendent of Public Instruction to submit items for consideration by the Board.
c. Items removed from the consent calendar shall be referred to a standing committee or shall be considered by the full Board at the direction of the president.

ARTICLE VI

Committees and Representatives

SCREENING COMMITTEE

Section 1.

a. The president shall appoint a Screening Committee composed of at least three Board members to screen and interview applicants for appointment to Board advisory bodies and other positions as necessary; participate, as directed by the president, in the selection of candidates for the position of student Board member in accordance with law; and recommend appropriate action to the Board. The president shall designate one Board member as Chair of the Screening Committee.
b. In consultation with the chair, the president may appoint additional Board members, such as the appointed Board liaison, to serve as voting members of the Screening Committee on a temporary basis. In accordance with Section 4 of these bylaws, the president may also serve as an ex officio member of the Screening Committee. The quorum requirement shall be increased as necessary to include the total number of Board members, including temporary members, appointed to serve on the Committee for that purpose.
c. As necessary, the chair may create an ad hoc subcommittee of the Screening Committee to assist the Screening Committee with its duties.

AD HOC COMMITTEES

Section 2.

From time to time, the president may appoint ad hoc committees for such purposes as he or she deems necessary. Ad hoc committees shall remain in existence until abolished by the president.

REPRESENTATIVES

Section 3.

From time to time, the president may assign Board members the responsibility of representing the State Board in discussions with staff (as well as with other individuals and agencies) in relation to such topics as assessment and accountability, legislation, and implementation of federal and state programs. The president may also assign Board members the responsibility of representing the Board in ceremonial activities.

ARTICLE VII

Public Hearings: General

SUBJECT OF A PUBLIC HEARING

Section 1.

a. The Board may hold a public hearing regarding any matter pending before it after giving notice as required by law.
b. The Board may direct that a public hearing be held before staff of the Department of Education, an advisory commission to the Board, or a standing or ad hoc committee of the Board regarding any matter which is or is likely to be pending before the Board. If the Board directs that a public hearing be held before staff, then a recording of the public hearing and a staff-prepared summary of comments received at the public hearing shall be made available in advance of the meeting at which action on the pending matter is scheduled in accordance with law.

5 CCR 18460
EC 33031
GC 11125

TIME LIMITS FOR THE PRESENTATION OF PUBLIC TESTIMONY

Section 2.

At or before a public hearing, the presiding individual shall (in keeping with any legal limitation or condition that may pertain) determine the total amount of time that will be devoted to hearing oral comments, and may determine the time to be allotted to each person or to each side of an issue.

5 CCR 18463
EC 33031

WAIVER BY PRESIDING INDIVIDUAL

Section 3.

At any time, upon a showing of good cause, the presiding individual may waive any time limitation established under Section 3 of this article.

5 CCR 18464
EC 33031

ARTICLE VIII

Public Hearings: School District Reorganization

SUBMISSION OF PROPOSALS AND PETITIONS

Section 1.

A proposal by a county committee on school district organization or other public agency, or a petition for the formation of a new district or the transfer of territory of one district to another shall be submitted to the executive officer of the Board. The executive officer of the Board shall cause the proposal or petition to be:

- reviewed and analyzed by the California Department of Education;
- set for hearing before the Board (or before staff if so directed by the Board) at the earliest practicable date; and
- transmitted together with the report and recommendation of the Department of Education to the Board (or to the staff who may be directed by the Board to conduct the hearing) and to such other persons as is required by law not later than ten days before the date of the hearing.

CCR 18570

ARGUMENTS PRESENTED AT THE PUBLIC HEARING: ORIGINAL SUBMISSION

Section 2.

At the time and place of hearing, the Board (or staff if so directed by the Board) will receive oral or written arguments on the proposal or petition. The presiding individual may limit the number of speakers on each side of the issue, limit the time permitted for the presentation of a particular view, and limit the time of the individual speakers. The presiding individual may ask that speakers not repeat arguments previously presented.

CCR 18571

RESUBMISSION OF THE SAME OR ESSENTIALLY IDENTICAL PROPOSAL OR PETITION

Section 3.

If the same or an essentially identical proposal or petition has been previously considered by the Board, the documents constituting such a resubmission shall be accompanied by a written summary of any new factual situations or facts not previously presented. In this case, any hearing shall focus on arguments not theretofore presented and hear expositions of new factual situations and of facts not previously entered into the public record.

CCR 18572

ARTICLE IX

Public Records

Public records of the Board shall be available for inspection and duplication in accordance with law, including the collection of any permissible fees for research and duplication.

GC 6250 et seq.

ARTICLE X

Parliamentary Authority

RULES OF ORDER

Section 1.

Debate and proceedings shall be conducted in accordance with Robert's Rules of Order (Newly Revised) when not in conflict with rules of the Board and other statutory requirements.

Section 2.

Members of the public or California Department of Education staff may be recognized by the president of the Board or other presiding individual, as appropriate, to speak at any meeting. Those comments shall be limited to the time determined by the president or other presiding individual. All remarks made shall be addressed to the president or other presiding individual. In order to maintain appropriate control of the meeting, the president or other presiding individual shall determine the person having the floor at any given time and, if discussion is in progress or to commence, who may participate in the discussion.

Section 3.

All speakers shall confine their remarks to the pending matter as recognized by the president or other presiding individual.

Section 4.

Public speakers shall not directly question members of the Board, the State Superintendent, or staff without express permission of the president or other presiding individual, nor shall Board members, the State Superintendent, or staff address questions directly to speakers without permission of the president or other presiding individual.

Section 5.

The Chief Counsel to the Board or the General Counsel of the California Department of Education, or a member of the Department's legal staff in the absence of the Board's Chief Counsel, will serve as parliamentarian. In the absence of legal staff, the president or other presiding individual will name a temporary replacement if necessary.

ARTICLE XI

Board Appointments

ADVISORY BODIES

Section 1.

Upon recommendation of the Screening Committee as may be necessary, the Board appoints members to the following advisory bodies for the terms indicated:

a. Advisory Commission on Special Education. The Board appoints five of 17 members to serve four-year terms.
   EC 33590
b. Instructional Quality Commission. The Board appoints 13 of 18 members to serve four-year terms.
   EC 33530
c. Child Nutrition Advisory Council. The Board appoints 13 members, 12 to three-year terms and one student representative to a one-year term. By its own action, the Council may provide for the participation in its meetings of non-voting representatives of interest groups not otherwise represented among its members, such as school business officials and experts in the area of physical education and activity.
   EC 49533
d. Advisory Commission on Charter Schools. The Board appoints eight members to two-year terms.
   EC 47634.2(b)(1)
   State Board of Education Policy 01-04

OTHER APPOINTMENTS

Section 2.

On the Board's behalf, the president shall make all other appointments that are required of the Board or require Board representation, including, but not limited to: WestEd (Far West Laboratory for Educational Research and

Development), Trustees of the California State Summer School for the Arts and the California Subject Matter Projects.

SCREENING AND APPOINTMENT

Section 3.

Opportunities for appointment shall be announced and advertised as appropriate, and application materials shall be made available to those requesting them. The Screening Committee shall paper-screen all applicants, interview candidates as the Committee determines necessary, and recommend appropriate action to the Board.

ARTICLE XII

Presidential Appointments

LIAISONS

Section 1.

The president shall appoint one Board member, or more where needed, to serve as liaison(s) to:

a. The Advisory Commission on Special Education.
b. The Instructional Quality Commission.
c. The Advisory Commission on Charter Schools.
d. The National Association of State Boards of Education, if the Board participates in that organization.
e. The Commission on Teacher Credentialing.

OTHER

Section 2.

The president shall make all other appointments that may be required of the Board or that require Board representation.

ARTICLE XIII

Amendment to the Bylaws

These Bylaws may be amended at any regular meeting of the Board, provided that the amendment has been submitted in writing to the Board and members of the public with the meeting notice.

Abbreviations

Abbreviations used in these Bylaws, citing Board authority, are:

Abbreviation	Description
CC	Constitution of the State of California
CCR	California Code of Regulations
EC	California *Education Code*
GC	California *Government Code*
CFR	Code of Federal Regulations
JPA-FWL	Joint Powers Agreement Establishing the Far West Laboratory for Educational Research and Development, originally entered into by the State Board of Education on February 11, 1966, and subsequently amended

Dates of Adoption and Amendment

Status	Date
Adopted	April 12, 1985
Amended	February 11, 1987
Amended	December 11, 1987
Amended	November 11, 1988
Amended	December 8, 1989
Amended	December 13, 1991
Amended	November 13, 1992
Amended	February 11, 1993
Amended	June 11, 1993
Amended	May 12, 1995
Amended	January 8, 1998
Amended	April 11, 2001
Amended	July 9, 2003
Amended	January 16, 2013

Questions: State Board of Education | 916-319-0827

SBE Agenda for March 2014

Agenda for the California State Board of Education (SBE) meeting on March 12-13, 2014.

State Board Members

- Michael W. Kirst, President
- Ilene W. Straus, Vice President
- Sue Burr
- Carl Cohn
- Bruce Holaday
- Aida Molina
- Patricia A. Rucker
- Niki Sandoval
- Trish Williams
- Jesse Y. Zhang, Student Member
- *Vacancy*

Secretary & Executive Officer

- Hon. Tom Torlakson

Executive Director

- Karen Stapf Walters

The Local Control Funding Formula (LCFF) Items 1, 2, and 30 will be heard Wednesday, March 12, 2014, commencing at 8:30 a.m.

- **Item 1 – Information**
  Local Control Funding Formula: Update on California's Local Educational Agency and School Planning and Accountability System.

- **Item 2 – Action, Information**
  Local Control Funding Formula, Kindergarten and Grades One through Three Grade Span Adjustment: Approve the Finding of Emergency and Proposed Emergency Regulations for Amendments to the *California Code of Regulations*, Title 5, Sections 15498, 15498.1, 15498.2, and 15498.3.

- **Item 30 – Action, Information**
  Local Control Funding Formula, Kindergarten and Grades One through Three Grade Span Adjustment: Approve Commencement of the Rulemaking Process for Amendments to the *California Code of Regulations*, Title 5, Sections 15498, 15498.1, 15498.2, and 15498.3.

Schedule of Meeting	Location
Wednesday, March 12, 2014 8:30 a.m. Pacific Time ± STATE BOARD OF EDUCATION **Public Session, adjourn to Closed Session – IF NECESSARY.**	**California Department of Education** 1430 N Street, Room 1101 Sacramento, California 95814 916-319-0827

Please see the detailed agenda for more information about the items to be considered and acted upon. The public is welcome.

Schedule of Meeting	Location

Thursday, March 13, 2014 8:30 a.m. Pacific Time ± STATE BOARD OF EDUCATION **Public Session. The Closed Session will take place at approximately 11:30 a.m**. (The Public may not attend.)	**California Department of Education** 1430 N Street, Room 1101 Sacramento, California 95814 916-319-0827

The Closed Session (1) may commence earlier than 11:30 a.m.; (2) may begin at or before 11:30 a.m., be recessed, and then be reconvened later in the day; or (3) may commence later than 11:30 a.m.

CLOSED SESSION AGENDA

Conference with Legal Counsel – Existing Litigation: Under *Government Code* sections 11126(e)(1) and (e)(2)(A), the State Board of Education hereby provides public notice that some or all of the pending litigation follows will be considered and acted upon in closed session:

- *Alejo, et al. v. Jack O'Connell, State Board of Education, et al.,* San Francisco County Superior Court, Case No. CPF-09-509568, CA Ct. of Appeal, 1st Dist., Case No. A130721
- *California School Boards Association, et al. v. California State Board of Education* and *Aspire Public Schools, Inc.,* Alameda County Superior Court, Case No. 07353566, CA Ct. of Appeal, 1st Dist., Case No. A122485, CA Supreme Court, Case No. S186129
- *California School Boards Association and its Education Legal Alliance, et al. v. The California State Board of Education, et al.*, Sacramento County Superior Court, Case No. 34-2008-00021188-CU-MC-GDS, CA Ct. of Appeal, 3rd Dist., Case No. No. C060957
- *D.J. et al. v. State of California, California Department of Education, Tom Torlakson, the State Board of Education,* Los Angeles Superior Court, Case No. BS142775.
- *Emma C.*, *et al. v. Delaine Eastin, et al.*, USDC (No.Dist.CA), Case No. C-96-4179
- *EMS-BP, LLC, Options for Youth Burbank, Inc., et al. v. California Department of Education, et al.*, Sacramento County Superior Court, Case No. 03CS01078 and 03CS01079 and related appeal
- *Graham et al. v the State Board of Education, the California Department of Education, Jack O'Connell, Fred Balcom, Tom Torlakson,* Los Angeles County Superior Court, Case No. BC482694, 2nd Dist., Case No. B245288
- *K.C. et al. v. Jack O'Connell, et al*., U.S. District Court, Northern District of California, Case No. C054077 MMC
- *Opportunity for Learning – PB, LLC; Opportunities Learning – C, LLC, and Opportunities for Learning WSH, LLC*, Notice of Appeal Before the Audit Appeals Panel
- *Options for Youth, Burbank, Inc., San Gabriel, Inc. Upland, Inc. and Victor Valley*, Notice of Appeal Before the Education Audit Appeals Panel, OAH Case No. 2006100966
- *Options for Youth-Victor Valley, et al. v. California Department of Education, et al.*, Los Angeles County Superior Court, Case No. BC347454
- *Perris Union High School District v. California State Board of Education, California Department of Education, et al.*, Riverside County Superior Court, Case No. RIC520862, CA Ct. of Appeal, 4th District, Case No. E055856
- *Porter, et al.,* v. *Manhattan Beach Unified School District, et al.*, United States District Court, Central District, Case No. CV-00-08402
- *Reed v. State of California, Los Angeles Unified School District, State Superintendent of Public Instruction, Jack O'Connell, California Department of Education,* and *State Board of Education, et al.*,
  Los Angeles County Superior Court, Case No. BC432420, CA Ct. of Appeal, 2nd Dist., Case No. B230817,
  CA Supreme Ct., Case No. 5191256
- *Shabazz, et al. v. Governor Edmund G. Brown Jr., California Attorney General Kamala Harris, Superintendent of Public Instruction Tom Torlakson, President California State Board of Education Dr. Michael Kirst, Does 1-50,* Alameda County Superior Court, Case No. RG12636192
- *Stoner Park Community Advocates v. City of Los Angeles, Department of Planning of the City of Los Angeles, Department of Transportation City of Los Angeles, New West Charter Middle School, and State Board of Education*, Los Angeles County Superior Court, Case No. BS138051
- *Today's Fresh Start, Inc. v. Los Angeles County Office of Education, et al.*, Los Angeles County Superior Court, Case No. BS112656, CA Ct. of Appeal, 2nd Dist., Case Nos. B212966 and B214470
- *Vergara et al. v. State of California, Governor Edmund G. Brown, Tom Torlakson, the California Department of Education, the State Board of Education,* Los Angeles County Superior Court, Case No. BC484642

Conference with Legal Counsel – Anticipated Litigation: Under *Government Code* sections 11126(e), the State Board of Education

hereby provides public notice that it may meet in Closed Session to decide whether there is a significant exposure to litigation, and to consider and act in connection with matters for which there is a significant exposure to litigation. Under *Government Code* sections 11126(e)(1) and (e)(2), the State Board of Education hereby provides public notice that it may meet in Closed Session to decide to initiate litigation and to consider and act in connection with litigation it has decided to initiate.

Under *Government Code* Section 11126(c)(14), the State Board of Education hereby provides public notice that it may meet in Closed Session to review and discuss the actual content of pupil achievement tests (including, but not limited to, the High School Exit Exam) that have been submitted for State Board approval and/or approved by the State Board.

Under *Government Code* Section 11126(a), the State Board of Education hereby provides public notice that it may meet in Closed Session regarding the appointment, employment, evaluation of performance, or dismissal, discipline, or release of public employees, or a complaint or charge against public employees. Public employees include persons exempt from civil service under Article VII, Section 4(e) of the California Constitution.

ALL TIMES ARE APPROXIMATE AND ARE PROVIDED FOR CONVENIENCE ONLY

ALL ITEMS MAY BE HEARD IN A DIFFERENT ORDER THAN HOW THEY ARE LISTED ON THE AGENDA ON ANY DAY OF THE NOTICED MEETING

THE ORDER OF BUSINESS MAY BE CHANGED WITHOUT NOTICE

Time is set aside for individuals desiring to speak on any topic **not** otherwise on the agenda. Please see the detailed agenda for the Public Session. In all cases, the presiding officer reserves the right to impose time limits on presentations as may be necessary to ensure that the agenda is completed.

REASONABLE ACCOMMODATION FOR ANY INDIVIDUAL WITH A DISABILITY

Pursuant to the *Rehabilitation Act of 1973* and the *Americans with Disabilities Act of 1990*, any individual with a disability or any other individual who requires reasonable accommodation to attend or participate in a meeting or function of the California State Board of Education (SBE), may request assistance by contacting the SBE Office at 1430 N Street, Room 5111, Sacramento, CA 95814; by telephone at 916 319-0827; or by facsimile at 916 319-0175.

CALIFORNIA STATE BOARD OF EDUCATION

FULL BOARD AGENDA
Public Session

March 12, 2014

Wednesday, March 12, 2014 – 8:30 a.m. Pacific Time ±
California Department of Education
1430 N Street, Room 1101
Sacramento, California 95814

- Call to Order
- Salute to the Flag
- Communications
- Announcements
- Report of the State Superintendent of Public Instruction
- Special Presentations
  Public notice is hereby given that special presentations for informational purposes may take place during this session.
- Agenda Items
- Adjournment

AGENDA ITEMS

Item 1 (DOC)

Subject: Local Control Funding Formula: Update on California's Local Educational Agency and School Planning and Accountability System.

Type of Action: Information

- Item 1 Attachment 1 (DOC; Posted 03-Mar-2014)

Item 1 Attachment 2 (DOC; Posted 03-Mar-2014)
- Item 1 Attachment 3 (DOC; Posted 03-Mar-2014)
- Item 1 Attachment 4 (DOC; Posted 03-Mar-2014)

Item 2 (DOC)

Subject: Local Control Funding Formula, Kindergarten and Grades One through Three Grade Span Adjustment: Approve the Finding of Emergency and Proposed Emergency Regulations for Amendments to the *California Code of Regulations*, Title 5, Sections 15498, 15498.1, 15498.2, and 15498.3.

Type of Action: Action, Information

- Item 2 Attachment 1 (DOC; 1MB)
- Item 2 Attachment 2 (DOC)
- Item 2 Attachment 3 (DOC)
- Item 2 Attachment 4 (DOC; Corrected 05-Mar-2014)
- Item 2 Attachment 5 (DOC)

WAIVERS / ACTION AND CONSENT ITEMS

The following agenda items include waivers that are proposed for consent and those waivers scheduled for separate action because CDE staff has identified possible opposition, recommended denial, or determined present new or unusual issues that should be considered by the State Board. Waivers proposed for consent are so indicated on each waiver's agenda item, and public comment will be taken before board action on all proposed consent items; however, any board member may remove a waiver from proposed consent and the item may be heard individually. On a case-by-case basis, public testimony may be considered regarding the item, subject to the limits set by the Board President or by the President's designee; and action different from that recommended by CDE staff may be taken.

Independent Study Program (Pupil Teacher Ratio)

Item W-01 (DOC)

Subject: Request by Capistrano Unified School District for a renewal to waive portions of California *Education Code* Section 51745.6, and *California Code of Regulations*, Title 5, Section 11704, and portions of Section 11963.4(a)(3), related to charter school independent study pupil-to-teacher ratio to allow an increase from 25:1 to a 27.5:1 pupil-to-teacher ratio at Capistrano Connections Academy Charter School.

Waiver Number: 14-12-2013

(Recommended for APPROVAL WITH CONDITIONS)

Open Enrollment (Removal From the List of LEAs)

Item W-02 (DOC)

Subject: Request by Covina-Valley Unified School District to waive California *Education Code* Section 48352(a) and *California Code of Regulations,* Title 5, Section 4701, to remove Lark Ellen Elementary School from the Open Enrollment List of "low-achieving schools" for the 2013–14 school year.

Waiver Number: 13-12-2013

(Recommended for APPROVAL WITH CONDITIONS)

Open Enrollment (Removal From the List of LEAs)

Item W-03 (DOC)

Subject: Request by six school districts to waive California *Education Code* Section 48352(a) and *California Code of Regulations,* Title 5, Section 4701, to remove nine schools from the Open Enrollment List of "low-achieving schools" for the 2014–15 school year.

Waiver Numbers:

- Conejo Valley Unified School District 28-12-2013
- Conejo Valley Unified School District 29-12-2013
- Evergreen Unified School District 21-12-2013
- Evergreen Unified School District 22-12-2013
- Fremont Unified School District 17-12-2013
- Livermore Valley Unified School District 4-12-2013
- Redlands Unified School District 9-12-2013
- Redlands Unified School District 10-12-2013
- Ripon Unified School District 05-12-2013

(Recommended for APPROVAL WITH CONDITIONS)

Physical Education Program (Block Schedules)

Item W-04 (DOC)

Subject: Request by Folsom-Cordova Unified School District to waive portions of California *Education Code* Section 51222(a), related to the statutory minimum requirement of 400 minutes of physical education each ten school days for students in grades nine through twelve in order to implement a block schedule at Vista del Lago High School.

Waiver Number: 26-10-2013

(Recommended for APPROVAL)

Special Education Program (Educational Interpreter for Deaf and Hard of Hearing)

Item W-05 (DOC)

Subject: Request by Lindsay Unified School District to waive *California Code of Regulations,* Title 5, Section 3051.16(b)(3), the requirement that educational interpreters for deaf and hard of hearing pupils meet minimum qualifications as of July 1, 2009, to allow Katie Holland and Jessica Torres to continue to provide services to students until June 30, 2014, under a remediation plan to complete those minimum requirements.

Waiver Numbers:

- 13-11-2013
- 14-11-2013

(Recommended for APPROVAL WITH CONDITIONS)

Special Education Program (Resource Teacher Caseload)

Item W-06 (DOC)

Subject: Request by Moreland School District, under the authority of California *Education Code* Section 56101 and *California Code of Regulations*, Title 5, Section 3100 to waive *Education Code Section* 56362(c), allowing the caseload of the resource specialist to exceed the maximum caseload of 28 students by no more than 4 students (32 maximum). Donna Wohltmann assigned at Payne Elementary School.

Waiver Number: 10-10-2013

(Recommended for APPROVAL WITH CONDITIONS)

Administrator/Teacher Ratio (Administrator/Teacher Ratio in Elementary School District)

Item W-07 (DOC)

Subject: Request by Mupu Elementary School District to waive California *Education Code* Section 41402(a), the requirement which sets the ratio of administrators to teachers for elementary schools at nine for every 100 teachers. Mupu Elementary School District would like to temporarily increase the ratio during the transition of training a new superintendent.

Waiver Number: 31-12-2013

(Recommended for APPROVAL)

Sale or Lease of Surplus Property (Sale of Surplus Property)

Item W-08 (DOC)

Subject: Request by Gilroy Unified School District to waive portions of California *Education Code* sections 17466, 17472, and 17475, and all of 17473 and 17474, specific statutory provisions for the sale and lease of surplus property. Approval of the waiver would allow the district to sell two pieces of property using a broker and a "request for proposal" process, thereby maximizing the proceeds from the sale. The district properties for which the waiver is requested are the Wren Avenue Property and the Grove Property, both located in the city of Gilroy.

Waiver Number: 16-11-2013

(Recommended for APPROVAL WITH CONDITIONS)

School District Reorganization (60-day Requirement to Fill Board Vacancy)

Item W-09 (DOC)

Subject: Request by Union Hill Elementary School District to waive portions of California *Education Code* Section 5091, which will allow the board of trustees to make a provisional appointment to a vacant board position past the 60-day statutory deadline.

Waiver Number: 11-12-2013

(Recommended for APPROVAL)

School District Reorganization (Election of Governing Board)

Item W-10 (DOC)

Subject: Request by South Monterey County Joint Union High School District to waive California *Education Code* Section 5020, and portions of sections 5019, 5021, and 5030, that require a districtwide election to establish a by-trustee-area method of election.

Waiver Number: 2-12-2013

(Recommended for APPROVAL)

School District Reorganization (Elimination of Election Requirement)

Item W-11 (DOC)

Subject: Request by six school districts to waive California *Education Code* Section 5020, and portions of sections 5019, 5021, and 5030, that require a districtwide election to establish a by-trustee-area method of election.

Waiver Numbers:

- Beaumont Unified School District 20-1-2014
- Desert Sands Unified School District 24-1-2014
- Linden Unified School District 20-12-2013
- Palm Springs Unified School District 22-1-2014
- Stanislaus Union Elementary School District 15-12-2013
- Waterford Unified School District 7-11-2013

(Recommended for APPROVAL)

School District Reorganization (Lapsation of a Small District)

Item W-12 (DOC)

Subject: Request by Green Point Elementary School District for a renewal to waive California *Education Code* Section 35780(a), which requires lapsation of a district with an average daily attendance of less than six.

Waiver Number: 32-12-2013

(Recommended for APPROVAL)

School District Reorganization (Lapsation of a Small District)

Item W-13 (DOC)

Subject: Request by two districts to waive portions of California *Education Code* sections 35534, 35780, and 35782, and all of Section 35786, regarding district lapsation and date of effectiveness of lapsation.

Waiver Numbers:

- Cox Bar Elementary School District 24-12-2013
- Trinity Alps Unified School District 23-12-2013

(Recommended for APPROVAL)

Schoolsite Council Statute (Number and Composition of Members)

Item W-14 (DOC)

Subject: Request by 11 local educational agencies, under the authority of California *Education Code* Section 52863 for waivers of *Education Code* Section 52852, relating to schoolsite councils regarding changes in shared, composition, or shared and composition members.

Waiver Numbers:

- Caruthers Unified School District 25-10-2013
- Chawanakee Unified School District 7-12-2013
- El Dorado County Office of Education 2-11-2013
- Golden Feather Union Elementary School District 1-12-2013
- Hilmar Unified School District 19-10-2013
- Los Angeles County Office of Education 3-10-2013
- Marysville Joint Unified School District 12-11-2013
- Mountain Valley Unified School District 6-12-2013
- Mountain Valley Unified School District 8-12-2013
- Placer County Office of Education 27-12-2013
- Pomona Unified School District 3-12-2013
- Santa Barbara County Office of Education 3-11-2013

(Recommended for APPROVAL WITH CONDITIONS)

Special Education Program (Extended School Year [Summer School])

Item W-15 (DOC)

Subject: Request by four local educational agencies to waive *California Code of Regulations,* Title 5, Section 3043(d), which requires a minimum of 20 school days of attendance of four hours each for an extended school year (summer school) for special education students.

Waiver Numbers:

- Madera County Office of Education 30-12-2013
- Paradise Unified School District 19-12-2013
- South Whittier Elementary School District 18-10-2013
- Visalia Unified School District 11-11-2013

(Recommended for APPROVAL WITH CONDITIONS)

Open Enrollment (Removal From the List of LEAs)

Item W-16 (DOC)

Subject: Request by Covina-Valley Unified School District for a renewal to waive California *Education Code* Section 48352(a) and *California Code of Regulations,* Title 5, Section 4701, to remove Manzanita Elementary School from the Open Enrollment List of "low-achieving schools" for the 2013–14 school year.

Waiver Number: 12-12-2013

(Recommended for DENIAL)

Open Enrollment (Removal From the List of LEAs)

Item W-17 (DOC)

Subject: Request by Fowler Unified School District to waive California *Education Code* Section 48352(a) and *California Code of Regulations,* Title 5, Section 4701, to remove Fremont Elementary School from the Open Enrollment List of "low-achieving schools" for the 2014–15 school year.

Waiver Number: 10-11-2013

(Recommended for DENIAL)

School District Reorganization (Elimination of Election Requirement)

Item W-18 (DOC)

Subject: Request by San Joaquin County Office of Education to waive California *Education Code* Section 5020, and portions of sections 5019, 5021, and 5030, that require a districtwide election to establish a by-trustee-area method of election.

Waiver Number: 27-10-2013

(Recommended for DENIAL)

TEACHER EVALUATION AND ASSESSMENT (Probationary Status)

Item W-19 (DOC)

Subject: Request by San Jose Unified School District to waive California *Education Code* Section 44929.21(b), to enable both the granting of permanent status after the first year of probationary status and the granting of a third year of probationary status as deemed necessary.

Waiver Number: 39-1-2014

(Recommended for DENIAL)

Class Size Penalties (Over Limit on Grades 1-3)

Item W-20 (DOC)

Subject: Request by Stanislaus Union Elementary School District, under the authority of California *Education Code* Section 41382, for a renewal to waive portions of *Education Code* sections 41376(a), (c), and (d) and/or 41378(a) through (e), relating to class size penalties for kindergarten through grade three. For kindergarten, the overall class size average is 31 to one with no class larger than 33. For grades one through three, the overall class size average is 30 to one with no class larger than 32.

Waiver Number: 9-11-2013

(Recommended for APPROVAL WITH CONDITIONS)

Class Size Penalties (Over Limit on Grades 4-8)

Item W-21 (DOC)

Subject: Request by Redwood City Elementary School District to waive portions of California *Education Code* Section 41376(b) and

(e), relating to class size penalties for grades four through eight. A district's current class size maximum is the greater of the 1964 statewide average of 29.9 to one or the district's 1964 average.

Waiver Number: 28-10-2013

(Recommended for APPROVAL WITH CONDITIONS)

Quality Education Investment Act (Class Size Reduction Requirements)

Item W-22 (DOC)

Subject: Request by six local educational agencies to waive portions of California *Education Code* Section 52055.740(a), regarding class size reduction requirements under the Quality Education Investment Act.

Waiver Numbers:

- Mt. Diablo Unified School District 25-12-2013
- Mt. Diablo Unified School District 26-12-2013
- Oakland Unified School District 4-1-2014
- Oakland Unified School District 5-1-2014
- Oakland Unified School District 6-1-2014
- Oakland Unified School District 7-1-2014
- Oakland Unified School District 8-1-2014
- Oakland Unified School District 9-1-2014
- Oakland Unified School District 10-1-2014
- Oakland Unified School District 11-1-2014
- Oakland Unified School District 12-1-2014
- Oakland Unified School District 13-1-2014
- Oakland Unified School District 14-1-2014
- Oakland Unified School District 15-1-2014
- Oakland Unified School District 16-1-2014
- Oakland Unified School District 17-1-2014
- San Jose Unified School District 33-12-2013
- San Jose Unified School District 34-12-2013
- Santa Ana Unified School District 35-12-2013
- Santa Ana Unified School District 36-12-2013
- Santa Ana Unified School District 37-12-2013
- Santa Ana Unified School District 38-12-2013
- Santa Maria-Bonita School District 18-12-2013
- Santa Paula Unified School District 16-12-2013

(Recommended for APPROVAL WITH CONDITIONS)

Quality Education Investment Act (Highly Qualified Teachers and Williams)

Item W-23 (DOC)

Subject: Request by Oakland Unified School District to waive portions of California *Education Code* Section 52055.740(a), regarding Highly Qualified Teachers and/or the *Williams* case settlement requirements under the Quality Education Investment Act.

Waiver Numbers:

- 19-1-2014
- 21-1-2014

(Recommended for APPROVAL WITH CONDITIONS)

END OF WAIVERS

Item 3 (DOC)

Subject: Demonstration of the Quality Schooling Framework.

Type of Action: Information

Item 4 (DOC)

Subject: Approval of 2013–14 Consolidated Applications.

Type of Action: Action, Information

PUBLIC HEARINGS

Public Hearings on the following agenda items will commence no earlier than 1:00 p.m. on March 12, 2014. The Public Hearings will be held as close to 1:00 p.m. as the business of the State Board permits.

Item 5 (DOC)

Subject: Pioneer Union Elementary School District: Consideration of Petition to Renew Districtwide Charter.

Type of Action: Action, Information, Hearing

Item 6 (DOC)

Subject: Kings River-Hardwick Union Elementary School District**:** Consideration of Petition to Renew Districtwide Charter.

Type of Action: Action, Information, Hearing

Item 7 (DOC)

Subject: Ridgecrest Charter School: Consideration of Petition to Renew Charter Currently Authorized by the State Board of Education.

Type of Action: Action, Information, Hearing

Item 8 (DOC)

Subject: Barack Obama Charter School: Consideration of Petition to Renew Charter Currently Authorized by the State Board of Education.

Type of Action: Action, Information, Hearing

END OF PUBLIC HEARINGS

Item 9 (DOC; 1MB)

Subject: Charter Revocation: Approve Commencement of the Rulemaking Process to Repeal *California Code of Regulations*, Title 5, Section 11968.5.

Type of Action: Action, Information

- Item 9 Attachment 4 (PDF)
- Accessible Alternative Version (AAV) of Item 9 Attachment 4

PUBLIC HEARING

A Public Hearing on the following agenda item will commence no earlier than 1:30 p.m. on March 12, 2014. The Public Hearing will be held as close to 1:30 p.m. as the business of the State Board permits.

Item 10 (DOC)

Subject: Recommendations Regarding Revocation of Charter Schools Identified Pursuant to *California Code of Regulations*, Title 5, Section 11968.5.

Type of Action: Action, Information, Hearing

END OF PUBLIC HEARING

Item 11 (DOC)

Subject: STATE BOARD PROJECTS AND PRIORITIES. Including, but not limited to, future meeting plans; agenda items; and officer nominations and/or elections; State Board office budget, staffing, appointments, and direction to staff; declaratory and commendatory resolutions; Bylaw review and revision; Board policy; approval of minutes; Board liaison reports; training of Board members; and other matters of interest.

Type of Action: Action, Information

ADJOURNMENT OF DAY'S SESSION

FULL BOARD AGENDA
Public Session

March 13, 2014

Thursday, March 13, 2014 – 8:30 a.m. Pacific Time ±
California Department of Education
1430 N Street, Room 1101
Sacramento, California 95814

- Call to Order
- Salute to the Flag
- Communications
- Announcements
- Report of the State Superintendent of Public Instruction
- Special Presentations
  Public notice is hereby given that special presentations for informational purposes may take place during this session.
- Agenda Items
- Adjournment

AGENDA ITEMS

Item 12 (DOC)

Subject: Alternative High School Equivalency Test Request for Information: List of Respondent-Vendors for Consideration and Approval.

Type of Action: Action, Information

Item 13 (DOC)

Subject: Update on California Assessment of Student Performance and Progress Activities, Including, but not limited to, the Smarter Balanced Digital Library, Spring 2014 Smarter Balanced Field Test, National Center and State Collaborative Activities, and Planning of the Science Assessment Stakeholder Meetings.

Type of Action: Information

Item 14 (DOC)

Subject: Update on Issues Related to California's Implementation of the Elementary and Secondary Education Act and Other Federal Programs, Including but Not Limited to, California's Notice of Request to Waive Current Academic Assessments and Accountability from States that Participate in Field Testing of New State Assessments During the 2013–14 School Year Under the Elementary and Secondary Education Act Section 9401.

Type of Action: Action, Information

Item 15 (DOC)

Subject: Calculation of the 2014 Growth and Base and 2015 Growth Academic Performance Indexes During the Transition to the California Assessment of Student Performance and Progress.

Type of Action: Action, Information

Item 16 (DOC)

Subject: Elementary and Secondary Education Act: Proposed Amendments to California's Consolidated State Application Accountability Workbook for 2014.

Type of Action: Action, Information

Item 17 (DOC)

Subject: Update on the Activities of the California Department of Education and State Board of Education Regarding Implementation of Common Core State Standards Systems.

Type of Action: Action, Information

Item 18 (DOC)

Subject: 2015 English Language Arts/English Language Development Instructional Materials Adoption: Approval of the draft Schedule of Significant Events (Timeline) and the draft Instructional Materials Reviewer and Content Review Expert Online Application.

Type of Action: Action, Information

Item 19 (DOC)

Subject: English Language Development Supplemental Instructional Materials Review: Approval of Recommended Supplemental Instructional Materials.

Type of Action: Action, Information

Item 20 (DOC)

Subject: GENERAL PUBLIC COMMENT. Public Comment is invited on any matter **not** included on the printed agenda. Depending on the number of individuals wishing to address the State Board, the presiding officer may establish specific time limits on presentations

Type of Action: Information

Item 21 (DOC)

Subject: Approval of the Charter School Numbers Assigned to Newly Established Charter Schools.

Type of Action: Action, Information

Item 22 (DOC)

Subject: Consideration of Requests for Determination of Funding as Required for Nonclassroom-based Charter Schools Pursuant to California *Education Code* Sections 47612.5 and 47634.2, and Associated *California Code of Regulations,* Title5.

Type of Action: Action, Information

Item 23 (DOC)

Subject: Consideration of a “Reasonable Basis”/Mitigating Circumstances Request for Determination of Funding as Required for Nonclassroom-based Charter Schools Pursuant to California *Education Code* Sections 47612.5 and 47634.2, and Associated *California Code of Regulations,* Title 5.

Type of Action: Action, Information

Item 24 (DOC)

Subject: Elementary and Secondary Education Act: Approval of Local Educational Agency Plans, Title I, Section 1112.

Type of Action: Action, Information

Item 25 (DOC)

Subject: Elementary and Secondary Education Act: Supplemental Educational Services Providers: Approval of Providers, Including Local Educational Agencies Identified for Improvement as Providers Based on a Waiver Granted Under Title I, Part A Section 9401 of the Elementary and Secondary Education Act to the 2014–16 State Board of Education-Approved Supplemental Educational Services Provider List.

Type of Action: Action, Information

- Item 25 Attachment 3 (PDF)
- Accessible Alternative Version (AAV) of Item 25 Attachment 3

Item 26 (DOC; 2MB)

Subject: Elementary and Secondary Education Act: School Improvement Grant: Renewal of Sub-grants Under Section 1003(g) for Year 3 of Cohort 2 Local Educational Agencies and Schools.

Type of Action: Action, Information

Item 27 (DOC)

Subject: California State Plan 1999–2014 for the Workforce Investment Act, Title II: Adult Education and Family Literacy Act: Extension and Updates.

Type of Action: Action, Information

Item 28 (DOC)

Subject: Update of Special Education Regulations— Adopt Proposed *California Code of Regulations,* Title 5, Sections 3001-3088.

Type of Action: Action, Information

- Item 28 Attachment 3 (PDF; 3MB)
- Accessible Alternative Version (AAV) of Item 28 Attachment 3

Item 29 (DOC)

Subject: Civic Center Act: Adopt Proposed Amendments to California Code of Regulations, Title 5, sections 14037-14042.

Type of Action: Action, Information

- Item 29 Attachment 3 (PDF; 1MB; Posted 03-Mar-2014)
- Accessible Alternative Version (AAV) of Item 29 Attachment 3

The Local Control Funding Formula (LCFF) Item 30 will be heard following Items 1 and 2 on Wednesday, March 12, 2014, commencing at 8:30 a.m.

Item 30 (DOC)

Subject: Local Control Funding Formula, Kindergarten and Grades One through Three Grade Span Adjustment: Approve Commencement of the Rulemaking Process for Amendments to the *California Code of Regulations*, Title 5, Sections 15498, 15498.1, 15498.2, and 15498.3.

Type of Action: Action, Information

- Item 30 Attachment 1 (DOC; 1MB)
- Item 30 Attachment 2 (DOC)
- Item 30 Attachment 3 (DOC)
- Item 30 Attachment 4 (DOC; Corrected 05-Mar-2014)
- Item 30 Attachment 5 (DOC)

ADJOURNMENT OF MEETING

This agenda is posted on the State Board of Education's Web site [http://www.cde.ca.gov/be/ag/]. For more information concerning this agenda, please contact the State Board of Education at 1430 N Street, Room 5111, Sacramento, CA, 95814; telephone 916-319-0827; facsimile 916-319-0175. Members of the public wishing to send written comments about an agenda item to the board are encouraged to send an electronic copy to SBE@cde.ca.gov, with the item number clearly marked in the subject line. In order to ensure that comments are received by board members in advance of the meeting, please submit these and any related materials to our office by 12:00 Noon on Friday, March 7, 2014, the Friday prior to the meeting.

Questions: State Board of Education | 916-319-0827

California State Board of Education

Meeting Agenda Items for March 12-13, 2014

ITEM 01

CALIFORNIA STATE BOARD OF EDUCATION

MARCH 2014 AGENDA

SUBJECT	
Local Control Funding Formula: Update on California's Local Educational Agency and School Planning and Accountability System.	☐ Action ☒ Information ☐ Public Hearing

SUMMARY OF THE ISSUE(S)

On July 1, 2013, the Governor signed Assembly Bill 97 (Chapter 47, Statutes of 2013) to enact the Local Control Funding Formula (LCFF). This agenda item is the fifth in a series of regular updates to inform the State Board of Education (SBE) and the public regarding the implementation of the LCFF.

RECOMMENDATION

No specific action is recommended at this time.

BRIEF HISTORY OF KEY ISSUES

On January 16, 2014, the SBE took action to approve emergency regulations of the LCFF expenditure of funds pursuant to the requirements of *Education Code* (*EC*) Section 42238.07 and the Local Control and Accountability Plan (LCAP) template pursuant to *EC* Section 52064, available on the CDE LCFF Web page at http://www.cde.ca.gov/re/lr/rr/lcffemergencyregs.asp.

In addition, the SBE approved a proposal to commence the regular rulemaking process. This process is required to adopt permanent regulations and provides a period of 45 days for written comments followed by a public hearing to receive verbal and written testimony. Additional information about the submission of written comments and participation in the scheduled public hearing to submit official verbal testimony can be found in the LCFF Notice of Proposed Rulemaking document at http://www.cde.ca.gov/re/lr/rr/documents/lcffnotice.doc.

Please note, discussion of the LCFF regulations is not included in this agenda item, and any public testimony made on this agenda item specific to the regulations will not be submitted to the Office of Administrative Law (OAL). Those who wish to comment on the permanent regulations may submit written comments or attend the scheduled hearing and provide oral comments.

At the January meeting, the SBE heard over five hours of public testimony on the proposed regulations. Many comments indicated support of the proposed regulations but raised certain issues related to the implementation of the regulations once adopted. The SBE acknowledged that LCFF is intended to be an iterative, data-driven, and pupil-centered local control and responsibility process. Further, the board clarified that as the regulations move through the regular rulemaking process, ongoing stakeholder outreach and submission of written comments will be critical to the development and successful implementation of these regulations.

Therefore, the SBE directed staff to provide status updates on the regular rulemaking schedule and to inform the board on the development of guidance resources that will be made available to local educational agencies (LEAs) in order to support the implementation of LCFF. The SBE synthesized the public comments from the January meeting into a few key topics and requested a status update on these topics at the March SBE meeting (see Attachment 1). The status update will become a consistent feature of the LCFF update item, intended to inform the SBE of progress made on developing resources as well as to feature local perspectives on the planning process.

SUMMARY OF PREVIOUS STATE BOARD OF EDUCATION DISCUSSION AND ACTION

July 2013: The California Department of Education (CDE) and WestEd presented to the SBE an informational update on the implementation of the LCFF (http://www.cde.ca.gov/be/ag/ag/yr13/documents/jul13item07.doc).

September 2013: The CDE and WestEd presented to the SBE an informational update that provided an overview of the process used to guide the LCFF stakeholder engagement activities. Included was a summary of the preliminary themes that emerged from stakeholders that related to the LCFF spending regulations and LCAP templates (http://www.cde.ca.gov/be/ag/ag/yr13/documents/sep13item06.doc).

November 2013: The CDE and WestEd presented to the SBE an informational update that outlined a preliminary draft of the expenditure of funds regulations and a concept for the LCAP template.
(http://www.cde.ca.gov/be/ag/ag/yr13/documents/nov13item13.doc).

January 2014: The SBE took action and approved Item 20, the expenditure of funds and LCAP template emergency regulations
(http://www.cde.ca.gov/be/ag/ag/yr14/documents/jan14item20.doc).
The SBE also took action on Item 21 to approve the commencement of the regular rulemaking process in order to adopt permanent regulations
(http://www.cde.ca.gov/be/ag/ag/yr14/documents/jan14item21.doc). The item included an overview of the key issues that were identified from the public comment, the responses to these comments, and the rationale for the potential changes incorporated into the regulations based on this feedback.

FISCAL ANALYSIS (AS APPROPRIATE)

The 2013 Budget Act appropriated $2.067 billion for allocation to school districts and charter schools and $32 million for allocation to county offices of education for the first year of LCFF implementation. The budget also provided $2 million to the Governor's Office of Planning and Research to provide assistance to the SBE to develop and adopt specified regulations, evaluation rubrics, and local control and accountability plan templates. The Governor's 2014–15 Budget proposes an increase of $4.5 billion to school districts and charter schools and an increase of $25.9 million for county offices of education to support the second year of LCFF implementation.

ATTACHMENT(S)

Attachment 1: Update on Local Control Funding Formula Resources (6 Pages)

Attachment 2: Promising Practices: Local Educational Agencies Community Outreach and Engagement Examples (1 Page)

Attachment 3: Local Control and Accountability Planning Resources (2 Pages)

Attachment 4: Local Control Funding Formula Updates at Future State Board of Education Meetings (1 Page)

Update on Local Control Funding Formula Resources

Overview

Below is a summary of the key themes that emerged from the public testimony and were identified by the State Board of Education (SBE) as priority topics for further discussion or clarification. Each topic is introduced, followed by a brief description of the issue and suggested resources to support local planning activities. These topics will be updated and new topics will be added as local educational agencies (LEAs) transition through the Local Control and Accountability Plan (LCAP) implementation phases.

Coordination of Local Plans

The SBE requested that staff develop and highlight resources that support an integrated and coordinated planning process. In addition to the LCAP, LEAs are responsible for completing and submitting school level plans and reports (e.g., Single Plan for Student Achievement and School Accountability Report Card) and district level plans and reports (e.g., LEA Plan) per existing statutory requirements.

When developing the LCAP template, the SBE was required to minimize duplication of effort at the local level to the greatest extent possible. To support the coordination of plans, the LCAP template that will be used for the 2014–15 plan includes the following instructions:

> The LCAP template is a comprehensive planning tool that allows LEAs to reference and describe actions and expenditures in other plans and funded by a variety of other fund sources when detailing goals, actions and expenditures in other plans (including the LEA plan pursuant to Section 1112 of Subpart 1 of Part A of Title I of Public Law 107-110) that are incorporated and referenced as relevant to this document.

Further, school district superintendents shall review school level plans referred to as the Single Plan for Student Achievement (*Education Code* Section 64001) to ensure specific actions included in the LCAP are consistent with strategies in these school plans.

The SBE and California Department of Education (CDE) staff are continuing to explore the relationships between the LCAP and other plans and any changes will be reflected in future versions of the LCAP template as adopted by the SBE. In the meantime, SBE and CDE staff, in collaboration with WestEd, are working on crosswalk documents to showcase the overlap of LCAP requirements with other state and federal plans (e.g., the Single Plan for Student Achievement and School Accountability Report Card). Other areas that are being explored include:

- The interaction between Title I Federal School Improvement Grants (SIG) and LCAPs

- Coordination of federal reporting (e.g., Titles I, II, III, IV, and V) with LCAP requirements

These resources, and others, to facilitate good comprehensive planning will be available online prior to the submission of LCAPs for 2014–15.

Existing Program and Fiscal Management Requirements

The SBE requested further clarification of the interaction between the requirements set forth in the LCFF statute with requirements of other existing state and federal law. The regulations as specified in the Elementary and Secondary Education Act (ESEA) have not changed as a result of the LCFF, and LEAs are still required to follow federal program and financial management rules. LEAs should continue to prepare federally-required improvement plans (e.g., Titles I and III Corrective Action plans) and meet federal maintenance of effort, comparability, and supplement-not-supplant requirements. Staff have identified many areas that may need additional clarification and are currently collecting and reviewing questions from LEAs. Common themes that have emerged are:

- The interaction between Federal Title I, Title III, and LCFF expenditures
- The appropriate use of federal funds

The SBE and CDE staff, in consultation with WestEd, are reviewing and developing resources around these questions. Information on this topic will be available online prior to the submission of LCAPs for 2014–15.

Creation of Electronic LCAP Template

The emergency regulations adopted by the SBE on January 16, 2014, were approved by the Office of Administrative Law (OAL) on February 6, 2014. The LCAP template is now codified in the *California Code of Regulations*, Title 5 (5 *CCR*) Section 15497. An electronic Microsoft Word version of the approved template is posted on the CDE LCFF Legislation and Regulations Web page (http://www.cde.ca.gov/fg/aa/lc/documents/lcaptemplate021814.doc).

LEAs are required to use the version that was adopted by the SBE and approved by OAL. All content and required elements that are featured in the template must remain intact unless otherwise noted in the LCAP instructions; LEAs may resize pages or attach additional pages as necessary to facilitate the completion of the LCAP.

The SBE and CDE staff are collaborating on the creation of an electronic template and an online process for LCAP submissions that is potentially integrated with other planning requirements to the extent practicable. Staff anticipate the electronic template will be completed for the 2015–16 LCAP planning cycle and will be available for voluntary use.

Charter School Requirements

The SBE requested information on charter school requirements and how these requirements might differ from district and county office of education requirements when implementing LCFF. The 5 *CCR* Section 15494(b) defines "LEA" as a school district, county office of education, or charter school. The distinct requirements within the LEA are further clarified in the LCAP instructions (5 *CCR* Section 15497). For example, the introduction of the template specifies the following:

> Charter schools, pursuant to Education Code sections 47605, 47605.5, and 47606.5 must describe goals and specific actions to achieve those goals for all pupils and each subgroup of pupils identified in Education Code section 52052, including pupils with disabilities, for each of the state priorities as applicable and any locally identified priorities. For charter schools, the inclusion and description of goals for state priorities in the LCAP **may be modified to meet the grade levels served and the nature of the programs provided, including modifications to reflect only the statutory requirements explicitly applicable to charter schools** in the Education Code.

A first set of Frequently Asked Questions (FAQs) specific to charter school requirements has been developed and posted on the CDE LCFF Web page at http://www.cde.ca.gov/fg/aa/lc/. Staff anticipate that additional FAQs will be posted as topics specific to charter schools emerge throughout the LCAP planning and development process.

Role of County Office of Education

With the onset of LCFF, the county offices of education (COEs) have taken on a dual role in local accountability. County superintendents are responsible for developing county LCAPs for adoption by the county board of education. The county LCAPs will be reviewed for approval status by the State Superintendent of Public Instruction. The COE LCAP must address ten state priorities (*EC* 52066). To accommodate this distinction, COEs are authorized to collaborate with school districts to describe in their LCAPs the services provided to pupils funded by a school district but attending county-operated schools and programs, including special education programs (5 *CCR* 15497).

In addition, the COE is responsible for reviewing for approval the LCAP adopted by the school district governing board in the county. The review of district LCAPs is guided by *EC* Section 52070. Specifically, the following excerpt from *EC* Section 52070(d)(1)–(3) states:

> (d) The county superintendent of schools shall approve a local control and accountability plan or annual update to a local control and accountability plan on or before October 8, if he or she determines all of the following:
>
> (1) The local control and accountability plan or annual update to the local control and accountability plan adheres to the template adopted by the state board pursuant to Section 52064.
>
> (2) The budget for the applicable fiscal year adopted by the governing board of the school district includes expenditures sufficient to implement the specific actions and strategies included in the local control and accountability plan adopted by the governing board of the school district, based on the projections of the costs included in the plan.
>
> (3) The local control and accountability plan or annual update to the local control and accountability plan adheres to the expenditure requirements adopted pursuant to Section 42238.07 for funds apportioned on the basis of the number and concentration of unduplicated pupils pursuant to Sections 42238.02 and 42238.03.

Furthermore, 5 *CCR* Section 15496(c) clarifies the role of the county superintendent in providing oversight of the demonstration of proportionality that may be described in the school district LCAP per the requirements set forth in 5 *CCR* Section 15496(a)–(b).

As COEs begin to work with local school districts to refine the process to review district LCAPs, more information will be made available. Specifically, the May LCFF update item will feature a presentation on the LCAP support, review, and oversight process.

Promising Practices

LEAs have initiated the planning process in preparation to submit LCAPs for review. The SBE requested to hear from LEAs and members from local educational communities to understand how the planning process is evolving. Beginning with the March SBE meeting, a regular component of the SBE status update will feature promising practices from LEAs and educational stakeholders. This update will include presentations that showcase local perspectives and planning tools that can be used to facilitate meaningful student, parent, and community engagement.

LEAs will share tools and resources that can be used to strengthen outreach and involvement among the local educational community. Given the diversity of the state (e.g., small rural districts, large urban districts, and charter schools), the SBE is requesting that a variety of models are made available for LEAs to have as resources. Further, the SBE is requesting that these resources highlight student perspectives to allow students to have a direct role in the development of the LCAP.

LEAs that have effective strategies to strengthen parent and community engagement to support the unique needs of student subgroups (e.g., foster youth, English learners, and low income) will be invited to share their experiences with the planning process and use of resources. Attachment 2 includes example resources developed and implemented by a local district and county office of education that may be useful to other LEAs as the LCAP planning progresses.

In addition to featuring promising practices, the update will also showcase resources that feature curricula and student support services aligned to one or more of the eight state priorities. Attachment 3 provides an overview of planning resources that can provide assistance for LEAs when developing LCAPs.

Posting and Sharing of LCFF/LCAP Resources

Ongoing communication with the field continues to be a major priority for the CDE and the SBE staff with support from WestEd. This includes statewide outreach through correspondences and webinars, conference presentations, information updates, and public comment opportunities at meetings of the SBE. The purpose of showcasing various LEA perspectives on the LCAP planning process and highlighting program resources is to share lessons learned with the SBE and the broader educational community.

- The online posting of resources specific to LCFF information and implementation is located on the CDE LCFF Web page at http://www.cde.ca.gov/fg/aa/lc/index.asp.

- The LCFF Channel was created to provide informational videos on LCFF implementation and is located on the WestEd Web page at http://lcff.wested.org/lcff-channel/Information.

- LEA lessons learned, toolkits, and tips for planning will be posted on the WestEd LCFF Web page at http://lcff.wested.org/.

- Regular information updates are distributed to LEAs and interested stakeholders through the CDE LCFF listserv. To receive updates regarding the LCFF via e-mail notification, please subscribe to the LCFF listserv by sending a "blank" e-mail message to join-LCFF-list@mlist.cde.ca.gov.

- Staff representatives from the SBE, CDE, and WestEd have provided panel presentations and information sessions on the LCFF at various conferences throughout the state.

February 28, 2014 [State Board of Education]

Promising Practices: Local Educational Agencies Community Outreach and Engagement Examples

Merced County Office of Education

The Merced County Office of Education (MCOE) is moving forward with implementing the Local Control Funding Formula (LCFF). Dr. Kathy Pon, Assistant Superintendent of Instructional Services at the MCOE, will provide a brief overview of their activities. MCOE operates the Valley Community and Court Schools, which has four sites including Juvenile Hall. In addition, the MCOE coordinates the countywide Foster Youth Services Program and Regional Occupation Program. The MCOE is in its early stages of developing a Local Control and Accountability Plan (LCAP) that reflects the needs, goals, and services that support a vision of providing a world-class education where every student succeeds. The MCOE has engaged employees, students, parents, and other agencies that support students attending the county's Community and Court schools in providing input and feedback to inform the development of the LCAP. The MCOE's instructional and business service leaders are working together to engage stakeholders, write the LCAP, and support implementation of key activities. The MCOE experience reflects a positive start to the LCAP with a strong local commitment to successful implementation of the LCFF. Also, the MCOE has also made a variety of resources available for their local educational agencies (LEAs) to use in completing their LCAPs. More information can be found on the MCOE Web site at: http://www.mcoe.org/deptprog/instruct/LCAP/Pages/default.aspx.

Sylvan Union School District

The Sylvan Union School District (SUSD) is moving forward with implementing LCFF and writing the LCAP. Debra Hendricks, Superintendent, and Yvonne Perez, Assistant Superintendent of Business, will provide a brief overview of the process the district has used. SUSD is located in East Modesto/South Riverbank serving approximately 8,100 students. There are ten elementary sites, serving kindergarten through grade five students, and three middle school sites serving grade six through grade eight students. SUSD is in the process of writing an LCAP that reflects the needs, goals, and services that support a vision of providing a quality educational program that addresses diverse student needs and promotes learning throughout life. SUSD has engaged staff members, students, parents, and community members, including Foster Youth representatives, in multiple meetings in providing feedback to inform the development of the LCAP. Writing of the LCAP is a team process that involves many stakeholders including administrators, teachers, classified staff, Foster Youth agency representatives, and parents. On the district Web site at http://www.sylvan.k12.ca.us/, the community has been invited to provide feedback.

February 28, 2014 [State Board of Education]

Local Control and Accountability Planning Resources

Overview

An outcome of the Local Control Funding Formula (LCFF) is the increased level of local flexibility to determine which programs and/or services have the greatest likelihood of ensuring that each student will succeed in relation to each LCFF state priority. This represents a significant shift from the system of state categorical funding. Previously, local educational agencies (LEAs) received multiple funding streams, each earmarked for specific programs or for specific student groups, and each with a distinct set of accountability requirements.

In exchange for the flexibility, the LCFF model requires greater local responsibility for selecting appropriate and effective programs. This presents an opportunity for LEAs to better integrate programs and services, but it requires the availability of sufficient information to make complex decisions and to plan effectively for implementation and monitoring.

Program advocates have come forward to express concern about how to ensure that LEAs have the information needed to plan effectively. California Department of Education (CDE) staff have begun conversations with various groups to suggest guidance for making information available in formats that will assist LEAs to develop their Local Control and Accountability Plan (LCAP). Generally, the recommended format includes summary information about the effectiveness of programs or strategies relative to one or more state priority, data indicating effectiveness with one or more student groups, and resources of both a scholarly and practical nature.

Arts Education

Malissa Feruzzi Shriver, Director of the Frank Gehry Foundation and former Chair of the California Arts Council (http://www.cac.ca.gov/index.php), and Dr. James S. Catterall, Professor Emeritus from the University of California at Los Angeles and Director of the Centers for Research on Creativity (http://www.croc-lab.org/), will present on ways to integrate arts programming within the LCAP. Furthermore, they will discuss how arts education, as a program and service, engages low-income students.

In addition to the presentation on arts education, supplementary resources developed to support the planning process will be made available. For example, the California Alliance for Arts Education has created a LCFF Toolkit intended to highlight the benefits of arts education and the ways in which local school districts can integrate the arts into their LCFF and LCAP planning activities. The resources provide information about how arts education aligns with the LCFF state priorities and contributes to positive student outcomes.

Specifically, the LCFF Toolkit consists of a customizable PowerPoint and talking points that can be used for a three-minute presentation to a local school board; a sample letter to a local school board that highlights the benefits of arts education and how it can be integrated in the local planning process; and a flyer that can be redistributed to educate parents, students, teachers, administrators, and community members about the benefits of arts education.

The arts education LCFF Toolkit can be retrieved from the California Alliance for the Arts Education Web page at http://www.artsed411.org/action_center/LCFF_Toolkit.

Families in Schools

Parent and community engagement is integral to a successful LCAP process and setting and achieving meaningful goals for student outcomes. Families in Schools is an organization that is working with LEAs and parents to build capacity for successful engagement. They have produced materials to help model what districts can do under LCFF to meet the state priority on parent engagement and support good LCAP engagement processes. Oscar Cruz, the President and CEO of Families in Schools, will speak about their work, recommendations, and materials. Additional information on the Families in Schools organization and access to the LCAP planning resources can be accessed at the following link: http://www.familiesinschools.org/.

February 28, 2014 [State Board of Education]

Local Control Funding Formula Updates at Future State Board of Education Meetings

The State Board of Education (SBE) will be provided with an update on the Local Control Funding Formula (LCFF) implementation activities at each SBE meeting. As part of these regular updates, at least one county office of education and one school district will be featured to present on promising practices that support the Local Control and Accountability Plan (LCAP) planning process within the local educational agencies (LEAs) community. Staff from the SBE and the California Department of Education (CDE) will be requesting suggestions from all education stakeholders to ensure that a wide range of examples from across the state will be shared with board members and the public. In addition, the May LCFF update item will also feature the LCAP support, review, and oversight process.

Future LCFF update items will also include one or more presentations that highlight planning resources. These presentations will showcase a variety of stakeholder groups that have developed materials to support the LCAP planning process and are available for LEAs to use and consider. Potential future topics may include:

- Supporting engagement: parents, students, and the community
- Supporting students in need: English learners, foster youth, low income, and others
- Promising strategies/programs: after school programs, Linked Learning, civics education, and others
- Promising LEA practices: resource alignment and budget transparency
- Performance and accountability: assessment of LEA needs and use of data and metrics

Furthermore, information on the development and progress of the evaluation rubric will be featured at the May SBE meeting. The SBE, CDE, and WestEd staff are working on a plan for a process that pulls together practitioners, experts, and other stakeholders to develop the rubric pursuant to *Education Code* Section 52064.

February 28, 2014 [State Board of Education]

California State Board of Education

Meeting Agenda Items for March 12-13, 2014

ITEM 02

CALIFORNIA STATE BOARD OF EDUCATION

MARCH 2014 AGENDA

SUBJECT	
Local Control Funding Formula, Kindergarten and Grades One through Three Grade Span Adjustment: Approve the Finding of Emergency and Proposed Emergency Regulations for Amendments to the *California Code of Regulations*, Title 5, Sections 15498, 15498.1, 15498.2, and 15498.3.	☒ Action ☒ Information ☐ Public Hearing

SUMMARY OF THE ISSUE(S)

The California Department of Education (CDE) is responsible for calculating Local Control Funding Formula (LCFF) entitlements and apportioning funds to local educational agencies (LEAs). Pursuant to *Education Code (EC)* Section 42238.02, as a condition of receiving a grade span adjustment for kindergarten through grade three (K–3 GSA), school districts must make progress towards or maintain a K–3 class size average of 24 or less at each school site, unless the district agrees to a collectively bargained alternative. If the annual independent audit of a school district shows that a school district did not comply with the conditions, CDE will retroactively reduce the school district's funding.

The adoption of emergency regulations is necessary to define terms in *EC* Section 42238.02, to provide clarity, and to establish a uniform, auditable methodology for calculating the K–3 class size averages and measuring progress. This would enable the CDE to implement the law and school districts to plan for the 2014–15 school year. The adoption of emergency regulations is necessary for the immediate preservation of the public peace, health, safety, or general welfare within the meaning of *Government Code* Section 11346.1.

In addition to approving the emergency regulations, the CDE recommends that the State Board of Education (SBE) commence the regular rulemaking process. This process is required to adopt permanent regulations and provides a period of 45 days for written comments, followed by a public hearing to receive verbal and written testimony (See March Agenda Item 30).

RECOMMENDATION

The CDE recommends that the SBE take the following actions:

- Approve the Finding of Emergency;
- Adopt the proposed emergency regulations;

- Direct the CDE to circulate the required notice of proposed emergency action, and then submit the emergency regulations to the Office of Administrative Law (OAL) for approval; and

- Authorize the CDE, in consultation with SBE staff, to take any necessary action, consistent with the SBE's direction, to respond to any direction or concern expressed by the OAL during its review of the Finding of Emergency and proposed emergency regulations.

BRIEF HISTORY OF KEY ISSUES

In June 2013, Governor Brown signed Assembly Bill 97 (Chapter 47, Statutes of 2013) to enact the LCFF, which eliminated and replaced the decades old revenue limit formula and dozens of categorical programs. LEAs are funded through LCFF commencing with the 2013–14 school year. However, the Department of Finance (DOF) estimates that full funding levels will not be reached until 2020–21. In the intervening years, LCFF funding levels will be phased-in, whereby the CDE will raise an LEA's funding level in order to decrease the gap between the funding the LEA would have received under the legacy funding formula and the LEA's "LCFF target".

The LCFF target represents what an LEA would receive if LCFF were fully funded. Its main components are a base grant, a supplemental grant, and a concentration grant. Additionally, the LCFF target for school districts and charter schools includes the K–3 GSA that increases the base grant for K–3 by 10.4 percent. Pursuant to *EC* Section 42238.02, as a condition of receiving this adjustment, school districts must meet one of the following conditions:

- If a school site's average class enrollment in K–3 was more than 24 pupils in the prior year, make progress toward maintaining, at that school site, an average class enrollment in K–3 of not more than 24 pupils.

- If a school site's average class enrollment in K–3 was 24 pupils or less in the prior year, 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.

The conditions for the K–3 GSA are subject to the annual audit process and will be recommended for inclusion in the audit guide followed by independent auditors, commencing with audits of the 2014–15 school year. If a school district is found out of compliance with the conditions of apportionment, CDE will retroactively reduce the school district's funding. These conditions may not be waived by the State Superintendent of Public Instruction (SSPI) or the SBE.

Other Funding Laws Related to K–3 Class Sizes

In addition to the class size requirements that school districts must meet in order to receive the K–3 GSA, *EC* sections 41376 and 41378 provide for class size penalties if individual classes or district averages exceed certain levels. These class size penalties have been in existence since the late 1960s, before revenue limits. Title 5 of the *California Code of Regulations* defines the terms and sets the methodology for calculating the averages. The following table summarizes the two K–3 requirements.

	K–3 Grade-Span Adjustment (At full-implementation of LCFF)	**K–3 Class Size Penalties**
Applicability	Applies to all district schools unless the district has collectively bargained an alternative.	Applies to all district schools except very small districts or schools.
Requirement	Maintain at each school site an average K–3 class size of 24 or less.	Individual class requirement: Average for class not to exceed • 33 in kindergarten • 32 in grades 1 through 3 Districtwide requirements: Average of all individual classes not to exceed • 31 in kindergarten • 30 in grades 1 through 3
Penalty	Loss of grade span adjustment, which will also reduce supplemental and concentration grant funding.	Generally, the penalty is equal to the loss of all funding for ADA above 31 in kindergarten classes or above 30 in first through third grade classes.
Waiver	May not be waived by SBE or SSPI.	May be waived.

The *EC* also includes requirements related to the K–3 Class Size Reduction Program. However, this program was eliminated with LCFF and the statutes no longer apply.

Purpose of Regulations for the K–3 GSA

Regulations are necessary to define terms and to establish a uniform, auditable methodology for calculating the K–3 class size averages and for measuring progress. Specifically, the proposed regulations establish the timing and frequency of class size counts, specify the classes or students that are included in the counts, establish how combination classes are counted, and set rules for rounding.

The DOF estimates that LCFF funding will not be fully phased-in until the 2020–21 fiscal year. Until that time, school sites with K–3 class size averages above 24 may close the gap between their prior year class size and 24 in proportion to the percentage of gap funding that they receive. For purposes of this calculation, the regulations establish rules for new school sites that do not have a prior year class size average and establish

that districts may use the gap funding percentage estimated by the DOF in its May revision, since the actual percentage will not be known until the school year is done.

To minimize administrative burden on LEAs, the proposed regulations model as closely as possible the methodology for K–3 class size penalties. Attachment 4 is a crosswalk between the desired outcomes and the proposed regulations, which are in Attachment 2. Attachment 5 is provided to illustrate how a sample district might calculate its K–3 average class enrollment at one of its school sites following the proposed regulations and how the district would demonstrate progress towards an average class enrollment in K–3 of not more than 24 pupils.

SUMMARY OF PREVIOUS STATE BOARD OF EDUCATION DISCUSSION AND ACTION

The SBE has not discussed or taken action on the K–3 GSA.

FISCAL ANALYSIS (AS APPROPRIATE)

A Fiscal Impact Statement will be provided as an Item Addendum.

ATTACHMENT(S)

Attachment 1: Finding of Emergency (6 pages)

Attachment 2: Emergency Regulations (4 pages)

Attachment 3: Notice of Proposed Emergency Action (1 page)

Attachment 4: Crosswalk Summary of Objectives and the Proposed Regulations in Attachment 2 (2 pages)

Attachment 5: Example of the Class Size Average Calculation and Progress Calculation for a Sample School Site (1 page)

Attachment 6: Economic and Fiscal Impact Statement (STD. 399) will be added as an Item Addendum (4 pages)

FINDING OF EMERGENCY

LOCAL CONTROL FUNDING FORMULA KINDERGARTEN AND GRADES ONE THROUGH THREE GRADE SPAN ADJUSTMENT

The State Board of Education (SBE) finds that an emergency exists and that the emergency regulations adopted are necessary to avoid serious harm to the public peace, health, safety, or general welfare.

SPECIFIC FACTS DEMONSTRATING THE EXISTENCE OF AN EMERGENCY AND THE NEED FOR IMMEDIATE ACTION

Overview

The proposed regulations must be adopted on an emergency basis in order for school districts to implement Education Code section 42238.02, and for the State Superintendent of Public Instruction (SSPI) to properly compute apportionments and allowances from the State School Fund. Assembly Bill (AB) 97 (Chapter 47, Statutes of 2013), enacted the Local Control Funding Formula (LCFF). The LCFF replaces most state funded programs for school districts, and it is in effect beginning fiscal year 2013–14. The LCFF authorizes an additional 10.4 percent adjustment to a school district's kindergarten through grade three base grant, provided conditions stated in the LCFF are met. As a condition of receiving this kindergarten through grades three grade span adjustment (K–3 GSA), school districts must make progress towards or maintain a class size average of 24 or less at each school site in grades K–3 (including transitional kindergarten), unless an alternative average annual average class enrollment for each school site is collectively bargained and agreed to by the school district.

In addition, Education Code section 52060, enacted as part of LCFF, requires school districts to engage in comprehensive planning through the adoption of a Local Control and Accountability Plan (LCAP). Education Code section 52060 requires school districts to adopt an LCAP by July 1, 2014. Prior to adopting the local LCAP, Education Code section 52062 requires school districts to present their LCAP to the parent advisory and English learner parent advisory committees, provide public notification, and hold a public hearing before the district's governing board of education. The board of education must then adopt the LCAP at a public meeting held after the public hearing. Education Code section 52070 requires a district's LCAP be approved by the county superintendent of schools. The county superintendent of schools may not approve an LCAP if the school district's budget does not include expenditures sufficient to implement the strategies included in the LCAP.

The proposed emergency regulations define terms in Education Code section 42238.02(d), provide clarity, and establish a uniform, auditable methodology for calculating class size averages and measuring progress towards the required average. These calculations form the basis for determining whether a school district is eligible to

receive the K–3 GSA and the amount of such funds available to budget and include in its LCAP.

If these regulations are not placed into effect, there will be immediate serious harm to the general welfare, and particularly to the welfare of pupils attending California's low-achieving public schools because the regulations will direct school districts in meeting the requirements for receiving the K–3 GSA and in determining funding available for the district to address the needs of pupils in the state priority areas outlined in Education Code sections 52060(d). These priorities include increasing pupil achievement; improving student engagement, school climate and pupil and staff safety; and ensuring school facilities are maintained in good repair. Without the regulations, school districts may not be eligible to receive the K–3 GSA funding, and members of the public will lack accurate information concerning this funding as the content of the LCAP is developed. As a result, the additional funding will not be directed toward reducing class size for pupils in K–3, and improving education outcomes for these students, resulting in diminishing their life opportunities and in serious harm to pupils and the general public. Emergency regulations are necessary to determine eligibility accurately and in time for school districts to meet the statutory requirements for public participation and the July 1, 2014, deadline for adoption of the LCAP.

Background

In June 2013, Governor Brown signed AB 97 (Chapter 47, Statutes of 2013) to enact the LCFF, which eliminated and replaced the decades-old revenue limit formula and dozens of categorical programs. School districts are funded through LCFF commencing with the 2013–14 school year. However, the Department of Finance (DOF) estimates that full funding levels will not be reached until 2020–21. In the intervening years, LCFF funding levels will be phased in.

The California Department of Education (CDE) is responsible for calculating LCFF entitlements and apportioning funds to LEAs. For school districts and charter schools, the LCFF includes a K–3 GSA equal to 10.4 percent of the base LCFF grant for that grade span. Pursuant to Education Code section 42238.02, as a condition of receiving the K–3 GSA, school districts must meet one of the following conditions:

- If a school site's average class enrollment in K–3 was more than 24 pupils in the prior year, make progress toward maintaining, at that school site, an average class enrollment in K–3 of not more than 24 pupils.

- If a school site's average class enrollment in K–3 was 24 pupils or less in the prior year, 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.

The conditions for the K–3 GSA are subject to the annual independent audit process required by Education Code section 14501. These conditions may not be waived by the SSPI or the SBE, according to Education Code section 42239.02(d)(3)(E). The Controller is required, by Education Code section 42238.02(d)(3)(F), to include procedures necessary to enforce the conditions for the K–3 GSA in the annual audit guide pursuant to Education Code section 14502.1. If an annual audit of a school district finds the district is out of compliance with the K–3 GSA conditions of apportionment, the CDE will retroactively reduce the school district's funding, pursuant to Education Code section 41344.

Regulations are necessary to define terms and to establish a uniform, auditable methodology for calculating the class size average and for measuring progress. Specifically, the proposed regulations establish the timing and frequency of class size counts, specify the classes or pupils that are included in the counts, establish how combination classes are counted, and set rules for rounding. Additionally, for purposes of demonstrating progress towards an average class enrollment in K–3 of not more than 24, the regulations establish rules for new school sites that do not have a prior year class size average, and specify that districts may use the gap funding percentage estimated by the DOF in its May revision to the Governor's annual budget proposal, since the actual percentage will not be known until the school year is finished.

Specific Basis for the Finding of Emergency

The LCFF is intended to provide a funding mechanism that is simple and transparent, while providing additional funding to school districts that make progress towards or maintain a class size average of 24 or less at each school site in grades K–3, (including transitional kindergarten) or agree to a collectively bargained alternative for each school site. These emergency regulations are necessary for school districts to successfully implement the LCFF. Since enactment of the LCFF, the CDE has received numerous questions related to the K–3 GSA conditions including: identifying classes and pupils to be included or excluded from the counts, how to count combination classes and classes that open mid-year, determining a baseline for new schools to demonstrate progress towards maintaining an average class size enrollment of 24, and rules for rounding. The regulations are necessary to make the K–3 GSA specific and uniform and to affect the purposes of the LCFF in addressing the needs of pupils, particularly in grades K–3.

School district planning for the 2014–15 school year is currently underway. In order to facilitate that planning for the 2014–15 school year, these regulations must be in place immediately. School districts must adopt an LCAP by July 1, 2014. Education Code section 52060 requires school districts to engage in comprehensive planning prior to adopting the local LCAP. School districts must consult with school personnel, their local bargaining units, parents and pupils in developing the LCAP. Education Code section 52062 also requires school districts to present the LCAP to the parent advisory and English learner parent advisory committees, provide public notification, and hold a public hearing before the governing board or county board of education. The district

governing board of education must then adopt the LCAP at a public meeting held after the public hearing.

The LCAP must address the needs of pupils in the state priority areas outlined in Education Code section 52060(d). These priorities include increasing pupil achievement; improving student engagement, school climate and pupil and staff safety; and ensuring school facilities are maintained in good repair. Without these regulations, school districts, school personnel, local bargaining units, parents and pupils will lack necessary critical information regarding funds available to meet pupil needs as the LCAP and school district budget are developed. As a result, members of the public will be limited in their ability to have meaningful input into the content of the LCAP, and school district governing boards will be hampered in developing the annual budget. Education Code section 52070 requires a district's LCAP be approved by the county superintendent of schools. The county superintendent of schools may not approve an LCAP if the school district's budget does not include expenditures sufficient to implement the strategies included in the LCAP.

In addition, it could be determined pursuant to audit that a school district is not eligible to receive the K–3 GSA funding. Pursuant to Education Code section 42238.02(d)(3), school districts must comply with the conditions of the K–3 GSA, otherwise the CDE will retroactively remove the adjustment from the district's LCFF funding. Without these regulations that specify conditions under which school districts are eligible for the K–3 GSA, school districts will be unable to ensure that LCFF funds, including the K–3 GSA, will be available to address pupil needs in the critical state priority areas, including increasing pupil achievement, improving student engagement, school climate and pupil and staff safety, and other state priorities identified in Education Code section 52060(d). As a result, pupils, particularly in grades K–3, will not receive the benefits of actions and expenditures to address their needs in the priority areas, and they, along with the general public, will suffer serious immediate harm to their life opportunities, academic achievement, safety and well-being.

These Issues Could Not Be Addressed Through Nonemergency Regulations

To allow sufficient time for school districts to appropriately plan for the 2014–15 school year consistent with the statutory requirements of broad stakeholder engagement and the adoption of a school district LCAP by July 1, 2014, the regulations must be in place well before the start of the 2014–15 school year. This does not allow for sufficient time to complete the regular rulemaking process.

NON-DUPLICATION

Government Code section 11349 prohibits unnecessary duplication of state or federal statutes in regulation. In this case, duplication of certain state statutes in the proposed emergency regulations is necessary in order to provide additional specific detail not included in state statute.

AUTHORITY AND REFERENCE

Authority: Section 33031, Education Code.

Reference: Section 42238.02, 52060, 52062, 52063 and 52070, Education Code.

INFORMATIVE DIGEST

In June 2013, Governor Brown signed AB 97 (Chapter 47, Statutes of 2013) to enact the LCFF, which eliminated and replaced the decades-old revenue limit formula and dozens of categorical programs. The DOF estimates that the formula will be fully funded in the 2020–21 school year. However, school districts are funded through LCFF commencing with the 2013–14 school year and are expected to begin operating under the formula immediately.

The CDE is responsible for calculating LCFF entitlements and apportioning funds to LEAs. Pursuant to Education Code section 42238.02, as a condition of receiving a grade span adjustment for kindergarten through grade three (K–3 GSA), school districts must make progress towards or maintain a K–3 class size average of 24 or less at each school site, unless the district agrees to a collectively bargained alternative. If the annual independent audit of a school district shows that a school district did not comply with these conditions, the CDE will retroactively reduce the school district's funding.

The adoption of emergency regulations is necessary to define terms in Education Code section 42238.02, to provide clarity, and to establish a uniform, auditable methodology for calculating the averages and measuring progress. This would enable school districts to plan for the 2014–15 school year, and the CDE to implement the law. The adoption of emergency regulations is necessary for the immediate preservation of the public peace, health, safety, or general welfare within the meaning of Government Code section 11346.1.

The CDE reviewed all state regulations relating to computing apportionments and allowances from the State School Fund and found that none exist that are inconsistent or incompatible with these regulations.

SPECIFIC BENEFITS ANTICIPATED BY THE PROPOSED REGULATIONS

The benefit of enacting the proposed regulations will be to provide direction and definitions that school districts can follow for purposes of complying with conditions of LCFF.

TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORTS, OR DOCUMENTS

The SBE did not consider any technical, theoretical, empirical studies, reports, or other documents in the drafting of these regulations.

MANDATE ON LOCAL AGENCIES OR SCHOOL DISTRICTS

The proposed regulations do not impose a mandate on LEAs.

COSTS OR SAVINGS TO ANY STATE AGENCY

These emergency regulations will not result in any additional costs or savings to local educational agencies, state agencies, or federal funding to the State.

NON-DISCRETIONARY COSTS OR SAVINGS IMPOSED UPON LOCAL AGENCIES

These emergency regulations will not result in any additional non-discretionary costs or savings upon local agencies.

2-27-14 [California Department of Education]

- The State Board of Education has illustrated changes to the original text in the following manner: text originally proposed to be added is underlined.

Title 5. EDUCATION

Division 1. California Department of Education

Chapter 14.6. Local Control Funding Formula Kindergarten and Grades One Through Three Grade Span Adjustment

Article 1. Apportionments and Allowances

§ 15498. Purpose.

The Superintendent of Public Instruction (SSPI) deems this chapter necessary for the effective administration of the kindergarten and grades one through three grade span adjustment as specified in Education Code section 42238.02(d)(3), and for the determinations thereby required of the SSPI in computing apportionments and allowances from the State School Fund.

NOTE: Authority cited: Section 33031, Education Code. Reference: Section 42238.02, Education Code.

§ 15498.1. Definitions.

For the purposes of administering the provisions of this chapter and the provisions of Education Code section 42238.02(d)(3), the following definitions apply:

(a) “Class” means a group of pupils scheduled to report regularly at a particular time to a particular teacher during the regular school day as defined by the school district governing board, excluding special day classes. Classes in the evening and summer schools are not classes for purposes of this section.

(b) Where the type of teaching in kindergarten and grades 1, 2, and 3 is other than in self-contained classes, the “class” is the basic homeroom where all of the following applies for a pupil:

(1) Attendance is recorded and investigation of absences is instigated.

(2) The pupil has his or her desk, locker, or drawer.

(3) The teacher handles the administrative routines such as keeping cumulative records, collecting basic data about the pupil, distributing items to go home, collecting meal money, and distributing and collecting report cards.

(4) The teacher is the usual contact with the pupil's parents.

(5) Some planned instruction is given.

(c) "Kindergarten" includes transitional kindergarten as defined by Education Code section 48000.

(d) "Active enrollment count" for purposes of subdivision (e) means the count of pupils enrolled in the class on the first day of the school year on which the class was in session, plus all later enrollees, minus all withdrawals since that first day. A pupil who is enrolled in independent study pursuant to Article 5.5 of Chapter 5 of Part 28 of the Education Code for the full regular school day shall not be included. An active enrollment count shall be made on the last teaching day of each school month that ends prior to April 15 of the school year.

(e) The "average number of pupils enrolled per class" for kindergarten and grades 1, 2, and 3 is the number obtained by dividing the sum of the active enrollment counts made under subdivision (d) for each of the classes in those grades, by the total number of those active enrollment counts.

(f) "Average class enrollment" means the sum of the average number of pupils enrolled per class determined pursuant to subdivision (e) for all kindergarten and grades 1, 2, and 3 classes at a school site, divided by the number of classes, then rounded to the nearest half or whole integer.

(g) "Maximum average class enrollment" for purposes of section 15498.3 means the amount determined by subtracting the current year average class enrollment adjustment pursuant to Education Code section 42238.02(d)(3)(B)(v) from the prior year average class enrollment pursuant to Education Code section 42238.02(d)(3)(B)(i), then rounded to the nearest half or whole integer. Commencing with the 2014-15 school year, the prior year average class enrollment for purposes of Education Code section 42238.02(d)(3)(B)(i) is the maximum average class enrollment in the prior year.

NOTE: Authority cited: Section 33031, Education Code. Reference: Sections 37201 and 42238.02, Education Code.

§ 15498.2. Combined Grades.

For the purposes of this chapter, any class combining pupils in any grade other than kindergarten or grades 1, 2, or 3 with pupils in kindergarten or grades 1, 2, or 3, shall be considered a class of kindergarten and grades 1, 2, and 3. All of the pupils in said classes shall be included in an active enrollment count.

NOTE: Authority cited: Section 33031, Education Code. Reference: Section 42238.02, Education Code.

§ 15498.3. Class Size Requirements Until Full Implementation of the Local Control Funding Formula.

For purposes of determining if a school district meets the conditions for receiving the kindergarten and grades one through three grade span adjustment, pursuant to Education Code section 42238.02(d)(3)(B), the following shall apply:

(a) Every school district that elects to receive the kindergarten and grades one through three grade span adjustment shall calculate the maximum average class enrollment for each school site.

(b) A district's average class enrollment at each school site shall not exceed the maximum average class enrollment for each school site, unless the school district has agreed to a collectively bargained alternative annual average class enrollment for each school site pursuant to Education Code section 42238.02(d)(3)(B) for the applicable year.

(c) The prior year average class enrollment for a school site that did not exist in the prior year shall be the median prior year average class enrollment in kindergarten and grades 1, 2, and 3 of the other school sites in the district.

(d) In the case of a school district that reorganizes subsequent to fiscal year 2012-13, the provisions of Education Code section 42238.02(d)(3)(C) shall not apply unless all school sites in the reorganized school districts were at or below an average class enrollment of 24 in kindergarten and grades 1, 2, and 3.

(e) A school district may determine the percentage of need met as specified in Education Code section 42238.02(d)(3)(B)(iii) utilizing the estimated percentage of statewide funded need for the applicable year as calculated by the Department of

Finance (DOF) based on its estimate of statewide need and the amount that it proposes to appropriate to the SSPI for allocation pursuant to Education Code section 42238.03(b) and stated in DOF's May revision to the Governor's Budget.

(f) This section is in effect until full implementation of the local control funding formula as referenced in Education Code section 42238.02(d)(3)(D).

NOTE: Authority cited: Section 33031, Education Code. Reference: Section 42238.02, Education Code.

2-28-14 [California Department of Education]

CALIFORNIA DEPARTMENT OF EDUCATION
TOM TORLAKSON, State Superintendent of Public Instruction
916-319-0800

CALIFORNIA STATE BOARD OF EDUCATION
MICHAEL W. KIRST, President
916-319-0827

1430 N Street Sacramento, CA 95814-5901

March 13, 2014

NOTICE OF PROPOSED EMERGENCY ACTION
Local Control Funding Formula, Kindergarten and Grades One through Three Grade Span Adjustment

Pursuant to the requirements of Government Code section 11346.1(a)(1), the State Board of Education (SBE) is providing notice of proposed emergency action with regards to the above-entitled emergency regulation.

SUBMISSION OF COMMENTS

Government Code section 11346.1(a)(2) requires that, at least five working days prior to submission of the proposed emergency action to the Office of Administrative Law (OAL), the adopting agency provide a Notice of the Proposed Emergency Action to every person who has filed a request for notice of regulatory action with the agency. After submission of the proposed emergency to the OAL, the OAL shall allow interested persons five calendar days to submit comments on the proposed emergency regulations as set forth in Government Code section 11349.6.

Any interested person may present statements, arguments or contentions, in writing, submitted via U.S. mail, e-mail or fax, relevant to the proposed emergency regulatory action. Written comments submitted via U.S. mail, e-mail or fax must be received at the OAL within five days after the SBE submits the emergency regulations to the OAL for review.

Please reference submitted comments as regarding “Local Control Funding Formula, Kindergarten and Grades One through Three Grade Span Adjustment” addressed to:

Mailing Address:	Reference Attorney Office of Administrative Law 300 Capitol Mall, Suite 1250 Sacramento, CA 95814	Debra Thacker, Reg Coordinator California Department of Education Administrative Support & Regulations Adoption 1430 N Street, Suite 5319 Sacramento, CA 95814
E-mail Address:	staff@oal.ca.gov	regcomments@cde.ca.gov
Fax No.:	916-323-6826	916-319-0155

For the status of the SBE submittal to the OAL for review, and the end of the five-day written submittal period, please consult the Web site of the OAL at http://www.oal.ca.gov under the heading “Emergency Regulations.”

CROSSWALK SUMMARY OF OBJECTIVES AND THE PROPOSED REGULATIONS

	Objective	Solution (Section References are to Regulations in Attachment 2)
Definitions		
1.	Define class. The definition should do the following: • Accommodate learning in something other than a self-contained classroom • Accommodate for combination classes with grades other than K–3 • Be consistent with other definitions related to class size	• Section 15498.1 (b)- Definition establishes “homeroom” as the class for this purpose • Section 15498.2- Treats all of the pupils combined with K–3 and the class as K-3 • Section 15498.1 (a)- Models class size penalty (CSP) definition
	Define average class enrollment.	Section 15498.1 (f)- Average class enrollment is the sum of the average number of pupils per class, for all K–3 classes at a school site, divided by the number of classes.
	Define prior year average class enrollment used for purposes of demonstrating progress towards an average class enrollment of not more than 24 pupils.	Section 15498.3 (b)- Clarifies that the prior year average class enrollment is the maximum average class enrollment for the school site in the prior year.
Methodology		
2.	Ensure that the class size average is maintained over the preponderance of the year.	Section 15498.1 (d)- Enrollment count is done monthly over the course of the year (typically six months, but depends on the school calendar), instead of a one-time count.
3.	Establish timing and frequency of counts.	Section 15498.1 (d)- The last day of each school month ending before April 15, which is the same as the second period average daily attendance calculation.
4.	Specify the students and teachers that are included or not included in the calculation of the average, such as itinerant teachers, and students on independent study.	Section 15498.1 (d)- Excluded independent study from the enrollment count consistent with the former K–3 class size reduction program. Defining teacher is not necessary under this method due to definition of class.
5.	Provide rules for rounding.	Section 15498.1 (f)- Round the final calculation to the nearest half or whole

		integer.
6.	Allow school districts to use an estimate of “need” that is funded pursuant to *EC* 42238.02(d)(3)(B)(iii) since the actual amount will not be known until the applicable year is over.	Section 15498.3 (e)- Allows districts to use Department of Finance’s May revision estimate of the percentage of statewide funded need.
7.	Establish rules for new school sites, which is necessary for the transition period.	Section 15498.3 (c)- Proposed the median annual average of all the school sites that did exist in the prior year.
8.	Establish rules for school sites in reorganized districts.	Section 15498.3 (d)- School sites will typically stay the same in a reorganization, unless there is a new one in which Section 15498.3 (c) applies. However, clarity is provided in case there occurs a reorganization where one or more but not all of the affected districts are exempt from the phase-in requirements.

2-26-14 [California Department of Education]

EXAMPLE OF CLASS SIZE AVERAGE CALCULATION AND PROGRESS CALCULATION FOR A SAMPLE SCHOOL SITE

Sample Unified School District- Sample Elementary School

"Active Enrollment Count"

Class	Grade	Month 1	Month 2	Month 3	Month 4	Month 5	Month 6	Total	Number of Counts (Divisor)	"Average Number of Pupils Enrolled Per Class"
One	Kindergarten	26	25	25	26	27	26	155	6	25.83
Two	Kindergarten	27	27	26	26	26	26	158	6	26.33
Three	First	28	28	29	29	28	27	169	6	28.17
Four	First	28	26	26	26	27	27	160	6	26.67
Five	Second	28	28	29	30	30	29	174	6	29
Six	Second	29	29	29	29	30	30	176	6	29.33
Seven	Third	27	26	26	29	29	29	166	6	27.67
Eight	Third	28	28	28	28	28	28	168	6	28

Total (sum of the average number of pupils enrolled per class)	221
Number of classes (divisor)	8
"Average Class Enrollment"	27.625
"Average Class Enrollment" Rounded to Nearest Half or Whole Integer	**27.5**

Required Average Class Enrollment for Purposes of Demonstrating Progress

Prior Year Average Class Enrollment at School	33
Minus Target Class Enrollment	24
Equals	9
Gap Percentage (May Use Department of Finance Estimate)	11.78%
Minimum Required Reduction over Prior Year Average	1.06
Prior Year Average Class Enrollment at School	33
Minus Minimum Required Reduction over Prior Year Average	-1.06
Maximum Average Class Enrollment (Rounded to Nearest Half or Whole Integer)	32.0

2-26-14 [California Department of Education]

California State Board of Education

Meeting Agenda Items for March 12-13, 2014

WAIVER ITEM W-01

ITEM #W-01

CALIFORNIA STATE BOARD OF EDUCATION

MARCH 2014 AGENDA

☒ **General Waiver**

SUBJECT	
Request by **Capistrano Unified School District** for a renewal to waive portions of California *Education Code* Section 51745.6, and *California Code of Regulations*, Title 5, Section 11704, and portions of Section 11963.4(a)(3), related to charter school independent study pupil-to-teacher ratio to allow an increase from 25:1 to a 27.5:1 pupil-to-teacher ratio at Capistrano Connections Academy Charter School. Waiver Number: 14-12-2013	☒ **Action** ☒ **Consent**

SUMMARY OF THE ISSUES

On December 1, 2013, Capistrano Unified School District (USD) submitted a renewal waiver request to the State Board of Education (SBE) to increase the pupil-to-teacher ratio from 25:1 to 27.5:1 at Capistrano Connections Academy Charter School (CapoCA). CapoCA states that an increase in the pupil-to-teacher ratio will allow cost savings while maximizing the resources that a virtual school can offer to students. The SBE approved the previous waiver renewal for this school on March 14, 2013, for a period of two years less one day, 2012–13 and 2013–14.

Authority for Waiver: California *Education Code (EC)* Section 33050

RECOMMENDATION

☐ **Approval** ☒ **Approval with conditions** ☐ **Denial**

The California Department of Education (CDE) recommends approval of this waiver request with conditions for a period of two years less one day. Therefore, *EC* Section 33051(b) will not apply, and the district will need to reapply if they wish to renew the waiver.

Additionally, Capistrano USD will spend all excess funds generated by the increased pupil-to-certificated-employee ratio on students enrolled in CapoCA.

SUMMARY OF KEY ISSUES

EC Section 51745.6 and *California Code of Regulations*, Title 5, Section 11704, and portions of Section 11963.4(A)(3), establish minimum requirements for average daily attendance (ADA)-to-teacher ratios in independent study that apply to non-classroom-

based charter schools. In essence, these sections require that the ratio meet the following criteria:

- The ratio cannot exceed the equivalent ratio of ADA-to-full-time certificated employees for all other educational programs operated by the high school or USD with the largest ADA of pupils in that county.

- In a charter school, the ratio may be calculated by using a fixed ADA-to-certificated-employee ratio of 25:1, or by a ratio of less than 25 pupils per certificated employee.

CapoCA is an existing virtual school in the Capistrano USD. The school has a 2012 Base of 786 and a 2013 Growth Academic Performance Index (API) of 791. The school experienced an increase in the 2012–13 growth target of 5 points. For additional information, see Attachment 3.

The rationale provided by CapoCA for raising the ADA ratio is as follows:

- All revenues will be used to support student services such as enhanced curricular offerings, increased test preparation services, increased remediation and interventions for struggling students, and increased access to technology tools.

- An increase in the pupil-to-teacher ratio will allow cost savings while maximizing the resources that this virtual school can offer to students.

Capistrano USD's CapoCA has a student population of 1,843 and is located in a suburban community in Orange 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* 33051(a), available at http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=EDC&sectionNum=33051.

SUMMARY OF PREVIOUS STATE BOARD OF EDUCATION DISCUSSION AND ACTION

The SBE first approved a waiver for the Capistrano USD's CapoCA on July 13, 2011, for 2010–11 and 2011–12 school years, with the conditions that if the school does not meet its API growth target for these two years, the waiver will not be recommended for renewal.

Upon renewal, the Capistrano USD's CapoCA did not meet the API growth targets for 2010–11 and 2011–12 school years. On March 14, 2013, the CDE recommended denial of this waiver request based on *EC* Section 33051(a)(1): The educational needs of the pupils are not adequately addressed. However, the SBE approved the waiver renewal request for a period of two years less one day, 2012–13 and 2013–14.

This is a request for a renewal of the waiver to raise the pupil-to-teacher ratio of this charter school to 27.5:1. The requested waiver falls within the SBE Independent Study

ADA-to-teacher ratio policy 01-03 (http://www.cde.ca.gov/be/ms/po/policy01-03-apr2001.asp). This SBE policy states that a waiver shall not be greater than 10 percent above the ratio that would be applicable absent the waiver, and this agreed-upon "new maximum ratio" will be maintained in all future years of the waiver.

FISCAL ANALYSIS (AS APPROPRIATE)

The increased pupil-to-teacher ratio would result in cost savings for the charter school and increased ADA claims from the state.

ATTACHMENT(S)

Attachment 1: Summary Table of Independent Study State Board of Education Waiver for March 2014 (1 Page)

Attachment 2: Capistrano Unified School District; General Waiver Request 14-12-2013 (2 Pages) (Original waiver request is signed and on file in the Waiver Office.)

Attachment 3: Capistrano Unified School District: Academic Performance Index Data Table for Capistrano Connections Academy Charter School (2 Pages)

Summary Table of Independent Study State Board of Education Waiver for March 2014

Waiver Number	County Office of Education/ District Name, Size of District, and Approval Date	Pupil to Teacher Ratio Requested (if waiver of *Education Code* Section 51745.6 and *California Code of Regulations*, Title 5, Section 11704 and portions of Section 11963.4(a)(3))	Period of Request	Renewal Waiver?	Certificated Bargaining Unit Name and Representative, Date of Action, and Position	Advisory Committee/ Schoolsite Council Name, Date of Review, and any Objections
14-12-2013	Capistrano Unified School District 1,843 Total Students December 11, 2013	Increase from 25:1 to 27.5:1. Independent study charter; no teacher will experience 27.5:1 at any given time.	**Requested:** July 1, 2014, through June 29, 2016 **Recommended:** July 1, 2014, through June 29, 2016	Yes	No Bargaining Unit	Board of Directors of Capistrano Connections Academy Charter School September 24, 2013 No objections

California Department of Education
WAIVER SUBMISSION - General

CD Code: 3066464 Waiver Number: 14-12-2013 Active Year: 2013

Date In: 12/12/2013 7:45:22 AM

Local Education Agency: Capistrano Unified School District
Address: 33122 Valle Rd.
San Juan Capistrano, CA 92675

Start: 7/1/2014 End: 6/29/2016

Waiver Renewal: Y
Previous Waiver Number: 14-3-2012 Previous SBE Approval Date: 3/14/2013

Waiver Topic: Independent Study Program
Ed Code Title: Pupil Teacher Ratio
Ed Code Section: 51745.6 and CCR Title 5, Sections 11704 and portions of 11963.4(a)(3)
Ed Code Authority: 33050-33053

Ed Code or CCR to Waive: …and the ratio of average daily attendance for independent study pupils to full-time certificated employees responsible for independent study does not exceed a pupil-teacher ratio of [25:1] 27.5:1

Outcome Rationale: Capistrano Connections Academy (CapoCA) provides a high quality virtual education to students in Southern California. Teachers work primarily from the school office but serve students in a large geographic area using a variety of technological tools. An increase in the pupil to teacher ratio will allow cost savings while maximizing the resources that a virtual school can offer to students. Given the budget constraints caused by the ongoing financial crisis, CapoCA proposes to implement needed budget savings by fully utilizing such efficiencies offered by on-line education. Despite fiscal challenges, if any additional revenue results from the increased ratio, it will be directed back to services which support student learning in the virtual environment, such as enhanced curricular offerings, increased test preparation services, increased remediation and intervention services for struggling students, and/or increased access to technology tools.

Student Population: 1843

City Type: Suburban

Public Hearing Date: 12/11/2013
Public Hearing Advertised: Notice posted in a newspaper and notice posted at each school

Local Board Approval Date: 12/11/2013

Community Council Reviewed By: Charter School Board of Directors
Community Council Reviewed Date: 9/24/2013
Community Council Objection: N
Community Council Objection Explanation:

Audit Penalty YN: N

Categorical Program Monitoring: N

Submitted by: Dr. Frances Sassin
Position: Business Manager, Capistrano Connections Academy
E-mail: fsassin@connectionseducation.com
Telephone: 949-306-8498
Fax: 949-425-8791

Capistrano Connections Academy Charter, Capistrano

CDS Code: 30-66464-

Table 1: Academic Performance Index (API) Data

	2011						2012						2013					
Student Subgroups	Number Of Students	2010 Base	2011 Growth	2010-11 Growth Target	2010-11 Growth	Met Growth Target	Number Of Students	2011 Base	2012 Growth	2011-12 Growth Target	2011-12 Growth	Met Growth Target	Number Of Students	2012 Base	2013 Growth	2012-13 Growth Target	2012-13 Growth	Met Growth Target
African American or Black	80	728	724				91	724	703				109	712	714			
American Indian or Alaska Native	1						3						4					
Asian	35	922	923				33	921	850				40	859	913			
Filipino	11		895				16	895	873				24	877	900			
Hispanic or Latino	208	768	740	5	-28	No	259	741	743	5	2	No	336	754	746	5	-8	No
Native Hawaiian or Pacific Islander	2						2						1					
White	330	809	796	A	-13	No	429	799	806	1	7	Yes	472	814	821	A	7	Yes
Two or More Races	97	793	799				135	802	771				146	779	801	5	22	Yes
Socioeconomically Disadvantaged	234	741	742	5	1	No	354	742	721	5	-21	No	417	732	741	5	9	Yes
English Learners	11	634	562				18	562	548				27	560	664			
Students with Disabilities	49	714	668				55	667	683				64	696	718			
Schoolwide	766	794	779	5	-15	No	968	782	777	5	-5	No	1132	786	791	5	5	Yes
Statewide/Similar Schools Rank	**7 / 9**						**7 / 7**											

(blank) : The API is not displayed when there are less than 11 valid scores.

(--) : Targets are not calculated for subgroups that are not numerically significant.

Statewide/Similar Schools Rank Codes:

I - Invalid Data
B - District or ASAM school
C - Special Education School
S - Schools whose School Characteristics Index (SCI) and similar schools rank also changed.
O - Schools whose SCI changed because of data change, but similar schools rank did not change.

Base, Growth and Target Codes:

A - Met Interim Performance Target of 800.
B - School did not have a valid API Base and there is no Growth or target information.
C - School had significant demographic changes and there is no Growth or target information.
D - There is no growth target for districts, or Special Education schools.

California State Board of Education

Meeting Agenda Items for March 12-13, 2014

WAIVER ITEM W-02

ITEM #W-02

CALIFORNIA STATE BOARD OF EDUCATION

MARCH 2014 AGENDA

☒ **General Waiver**

SUBJECT	
Request by **Covina-Valley Unified School District** to waive California *Education Code* Section 48352(a) and *California Code of Regulations,* Title 5, Section 4701, to remove Lark Ellen Elementary School from the Open Enrollment List of "low-achieving schools" for the 2013–14 school year. Waiver Number: 13-12-2013	☒ **Action** ☒ **Consent**

SUMMARY OF THE ISSUES

Covina-Valley Unified School District is requesting the removal of Lark Ellen Elementary from the 2013–14 Open Enrollment List. The State Board of Education (SBE) must take action to approve or deny removal of a school from the Open Enrollment List.

Authority for Waiver: *Education Code* (*EC*) Section 33050

RECOMMENDATION

☐ **Approval** ☒ **Approval with conditions** ☐ **Denial**

The California Department of Education (CDE) recommends approval of one waiver request from the Covina-Valley Unified School District for a school on the 2013–14 Open Enrollment List (Attachment 1) that meets the criteria for the SBE Streamlined Waiver Policy (available at http://www.cde.ca.gov/re/lr/wr/documents/sbestreamlined.doc). This waiver is recommended for approval on the condition that the local educational agency (LEA) granted this waiver must honor any transfer requests pursuant to the Open Enrollment Act. Granting this waiver would allow the school to have their name removed from the 2013–14 Open Enrollment List as requested. This waiver does not affect the standing of any other schools, as this waiver is specific to the individual schools named in the attached waiver.

SUMMARY OF KEY ISSUES

The methodology used in creating the list of 1,000 lowest achieving schools, per the statute, resulted in some higher achieving schools being placed on the list while at the same time some schools with lower APIs were not included on the list. This was primarily due to the statutory provision that an LEA can have no more than 10 percent

of its schools on the list.

Identification as a “low-achieving” school can have a significant educational, economic, and political impact on the school community. The label of “low-achieving” does not take into account the API scores for schools whose scores have risen or are maintained closer to the higher levels of achievement. The perception that the school is “low-achieving” may cause unwarranted flight from the school community and may negatively impact fiscal issues.

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

Demographic Information: Lark Ellen Elementary School has a student population of 414 and is located in Los Angeles County.

Authority for Waiver: *EC* Section 33050

Period of request: July 1, 2014, to June 30, 2015

Period of recommendation: July 1, 2013, to June 30, 2014

Local board approval date(s): November 18, 2013

Public hearing held on date(s): November 18, 2013

Bargaining unit(s) consulted on date(s): California State Employees Association Representative: Shannon Medrano, consulted on November 14, 2013, and the Covina Unified Education Association Representative: Adam Hampton consulted on November 14, 2013

Public hearing advertised by (choose one or more): Notice posted at each school and on district Web site.

Advisory committee(s) consulted: Lark Ellen Elementary Schoolsite Council

SUMMARY OF PREVIOUS STATE BOARD OF EDUCATION DISCUSSION AND ACTION

This is the fifth time the SBE has heard a request from an LEA that meets the SBE streamlined waiver criteria to be removed from the 2013–14 Open Enrollment List. The SBE has approved all previous 2013–14 Open Enrollment streamlined waiver requests.

FISCAL ANALYSIS (AS APPROPRIATE)

There is no statewide fiscal impact of waiver approval or denial.

ATTACHMENT(S)

Attachment 1: Schools Requesting a General Waiver from the 2013–14 Open Enrollment List (1 page).

Attachment 2: Covina-Valley Unified School District General Waiver Request 13-12-2013 (2 pages) (Original waiver request is signed and on file in the Waiver Office.)

Schools Requesting a General Waiver from the 2013–14 Open Enrollment List

Waiver #	County District School	2012 District Growth API	2012 School API Growth*		2012 API Target Met?	Met API Growth Targets (3 of last 5 yrs)	Decile, Similar Schools Rank	Current PI Status	Position of Bargaining Unit/Date Consulted	Period of Request	Recommend for Approval (Yes/No)
13-12-2013	Los Angeles Covina-Valley Unified Lark Ellen Elementary	797	Schoolwide Hispanic or Latino SED English Learners	771 769 755 766	No No No Yes	Yes	5, 3	Not in PI	Support 11/14/2013	**Requested:** 07/01/2014 to 06/30/2015 **Recommended:** 07/01/2013 to 06/30/2014	Yes

*Only student groups that are numerically significant are included in this column.
SED – Socioeconomically Disadvantaged

California Department of Education
WAIVER SUBMISSION - General

CD Code: 1964436 Waiver Number: 13-12-2013 Active Year: 2013

Date In: 12/11/2013 2:45:57 PM

Local Education Agency: Covina-Valley Unified School District
Address: 519 East Badillo St.
Covina, CA 91723

Start: 7/1/2013 End: 6/30/2014

Waiver Renewal: N
Previous Waiver Number: Previous SBE Approval Date:

Waiver Topic: Open Enrollment
Ed Code Title: Removal From the List of LEAs
Ed Code Section: 48352(a) and *CCR* Title 5 Section 4701
Ed Code Authority: 33050

Ed Code or *CCR* to Waive: ((a) "Low-achieving school" means any school identified by the Superintendent pursuant to the following:
(1) Excluding the schools, and taking into account the impact of the criteria in paragraph (2), the Superintendent annually shall create a list of 1,000 schools ranked by increasing API with the same ratio of elementary, middle, and high schools as existed in decile 1 in the 2008-09 school year.
(2) In constructing the list of 1,000 schools each year, the Superintendent shall ensure each of the following:
(A) A local educational agency shall not have more than 10 percent of its schools on the list. However, if the number of schools in a local educational agency is not evenly divisible by 10, the
Superintendent shall round up to the next whole number of schools.
(B) Court, community, or community day schools shall not be included on the list.
(C) Charter schools shall not be included on the list.)

Outcome Rationale: Covina-Valley Unified School District is requesting the removal of Lark Ellen Elementary from the 2013-14 Open Enrollment – Low Achieving Schools List. The inclusion of Lark Ellen on this list is inappropriate because Lark Ellen Elementary is not a low achieving school. Lark Ellen has a 2013 growth API of 800, exhibiting a 20-point gain. The Hispanic subgroup grew 25 pts, Hispanic EL grew 66 points, Socio-Economically Disadvantaged grew
35 points, and the EL subgroup grew 53 points in two years. Lark Ellen Elementary is NOT and has never been a Program Improvement School. Since 2008, they have met all of their AYP subgroup targets.

Student Population: 414

City Type: Suburban

Public Hearing Date: 11/18/2013

Public Hearing Advertised: Notice posted at each school and District website

Local Board Approval Date: 11/18/2013

Community Council Reviewed By: Lark Ellen Schoolsite Council
Community Council Reviewed Date: 11/18/2013
Community Council Objection: N
Community Council Objection Explanation:

Audit Penalty YN: N

Categorical Program Monitoring: N

Submitted by: Ms. Alanna Arranaga
Position: Administrative Secretary
E-mail: aarranaga@cvusd.k12.ca.us
Telephone: 626-974-7000 x2071
Fax: 626-974-7061

Bargaining Unit Date: 11/14/2013
Name: California State Employees Association (CSEA)
Representative: Shannon Medrano
Title: President
Position: Support
Comments:

Bargaining Unit Date: 11/14/2013
Name: Covina Unified Education Association (CUEA)
Representative: Adam Hampton
Title: President
Position: Support
Comments:

California State Board of Education

Meeting Agenda Items for March 12-13, 2014

WAIVER ITEM W-03

ITEM #W-03

CALIFORNIA STATE BOARD OF EDUCATION

MARCH 2014 AGENDA

☒ **General Waiver**

SUBJECT	
Request by six school districts to waive California *Education Code* Section 48352(a) and *California Code of Regulations,* Title 5, Section 4701, to remove nine schools from the Open Enrollment List of "low-achieving schools" for the 2014–15 school year. Waiver Numbers: Conejo Valley Unified School District 28-12-2013 Conejo Valley Unified School District 29-12-2013 Evergreen Unified School District 21-12-2013 Evergreen Unified School District 22-12-2013 Fremont Unified School District 17-12-2013 Livermore Valley Unified School District 4-12-2013 Redlands Unified School District 9-12-2013 Redlands Unified School District 10-12-2013 Ripon Unified School District 05-12-2013	☒ **Action** ☒ **Consent**

SUMMARY OF THE ISSUES

Requests from six school districts to remove nine schools from the 2014–15 Open Enrollment List. The State Board of Education (SBE) must take action to approve or deny removal of a school from the Open Enrollment List.

Authority for Waiver: *Education Code* (*EC*) Section 33050

RECOMMENDATION

☐ **Approval** ☒ **Approval with conditions** ☐ **Denial**

The California Department of Education (CDE) recommends approval of nine waiver requests for schools on the 2014–15 Open Enrollment List (Attachment 1) that meet the criteria for the SBE Streamlined Waiver Policy (available at http://www.cde.ca.gov/re/lr/wr/documents/sbestreamlined.doc). These waivers are recommended for approval on the condition that the local educational agencies (LEAs) granted these waivers must honor any transfer requests pursuant to the Open Enrollment Act. Granting these waivers would allow the schools to have their names removed from the 2014–15 Open Enrollment List as requested. These waivers do not affect the standing of any other schools, as these waivers are specific to the individual schools named in the attached waivers.

SUMMARY OF KEY ISSUES

The methodology used in creating the list of 1,000 lowest achieving schools, per the statute, resulted in some higher achieving schools being placed on the list while at the same time some schools with lower APIs were not included on the list. This was primarily due to the statutory provision that an LEA can have no more than 10 percent of its schools on the list.

Identification as a "low-achieving" school can have a significant educational, economic, and political impact on the school community. The label of "low-achieving" does not take into account the API scores for schools whose scores have risen or are maintained closer to the higher levels of achievement. The perception that the school is "low-achieving" may cause unwarranted flight from the school community and may negatively impact fiscal issues.

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

Demographic Information: See individual waivers

Authority for Waiver: *EC* Section 33050

Period of request: See Attachment 1

Period of recommendation: July 1, 2014, to June 30, 2015

Local board approval date(s): See Attachment 1

Public hearing held on date(s): See Attachment 1

Bargaining unit(s) consulted on date(s): See Attachment 1

Public hearing advertised by (choose one or more): See Attachment 1

Advisory committee(s) consulted: See Attachment 1

SUMMARY OF PREVIOUS STATE BOARD OF EDUCATION DISCUSSION AND ACTION

This is the first time the SBE has heard a request from an LEA that meets the SBE streamlined waiver criteria to be removed from the 2014–15 Open Enrollment List.

FISCAL ANALYSIS (AS APPROPRIATE)

There is no statewide fiscal impact of waiver approval or denial.

ATTACHMENT(S)

Attachment 1: Schools Requesting a General Waiver from the 2014–15 Open Enrollment List (2 pages).

Attachment 2: Conejo Valley Unified School District General Waiver Request 28-12-2013 (2 pages) (Original waiver request is signed and on file in the Waiver Office.)

Attachment 3: Conejo Valley Unified School District General Waiver Request 29-12-2013 (2 pages) (Original waiver request is signed and on file in the Waiver Office.)

Attachment 4: Evergreen Unified School District General Waiver Request 21-12-2013 (3 pages) (Original waiver request is signed and on file in the Waiver Office.)

Attachment 5: Evergreen Unified School District General Waiver Request 22-12-2013 (3 pages) (Original waiver request is signed and on file in the Waiver Office.)

Attachment 6: Fremont Unified School District General Waiver Request 17-12-2013 (2 pages) (Original waiver request is signed and on file in the Waiver Office.)

Attachment 7: Livermore Valley Unified School District General Waiver Request 4-12-2013 (3 pages) (Original waiver request is signed and on file in the Waiver Office.)

Attachment 8: Redlands Unified School District General Waiver Request 9-12-2013 (3 pages) (Original waiver request is signed and on file in the Waiver Office.)

Attachment 9: Redlands Unified School District General Waiver Request 10-12-2013 (3 pages) (Original waiver request is signed and on file in the Waiver Office.)

Attachment 10: Ripon Unified School District General Waiver Request 5-12-2013 (3 pages) (Original waiver request is signed and on file in the Waiver Office.)

Schools Requesting a General Waiver from the 2014–15 Open Enrollment List

Waiver #	County District School	2013 District Growth API	2013 School API Growth*		2013 API Target Met?	Met API Growth Targets (3 of last 5 yrs)	Decile, Similar Schools Rank	Current PI Status	Position of Bargaining Unit/Date Consulted	Period of Request	Recommend for Approval (Yes/No)
28-12-2013	Ventura Conejo Valley Unified Conejo Elementary	884	Schoolwide Hispanic or Latino SED English Learners	745 715 714 706	No No No No	No	3, 2	Year 5	Support 11/18/2013	**Requested:** 07/01/2013 to 06/30/2015 **Recommended:** 07/01/2014 to 06/30/2015	Yes
29-12-2013	Ventura Conejo Valley Unified Glenwood Elementary	884	Schoolwide Hispanic or Latino SED English Learners	808 796 795 788	Yes Yes Yes Yes	No	4, 4	Year 3	Support 11/18/2013	**Requested:** 07/31/2013 to 06/30/2015 **Recommended:** 07/01/2014 to 06/30/2015	Yes
21-12-2013	Santa Clara Evergreen Elementary O.B. Whaley Elementary	886	Schoolwide Asian Hispanic or Latino SED English Learners	800 889 760 784 810	Yes Yes No No Yes	No	5, 8	Year 2	Support 11/21/2013	**Requested:** 07/01/2014 to 06/30/2015 **Recommended:** 07/01/2014 to 06/30/2015	Yes
22-12-2013	Santa Clara Evergreen Elementary Katherine R. Smith Elementary	886	Schoolwide Asian Hispanic or Latino SED English Learners	678 821 619 663 657	No Yes No No No	No	4, 6	Year 4	Support 11/20/2013	**Requested:** 07/01/2014 to 06/30/2015 **Recommended:** 07/01/2014 to 06/30/2015	Yes
17-12-2013	Alameda Fremont Unified Cabrillo Elementary	891	Schoolwide Hispanic or Latino SED English Learners	811 787 800 769	Yes No Yes No	No	5, 7	Year 1	Support 11/14/2013	**Requested:** 07/01/2014 to 06/30/2016 **Recommended:** 07/01/2014 to 06/30/2015	Yes

Waiver #	County District School	2013 District Growth API	2013 School API Growth*		2013 API Target Met?	Met API Growth Targets (3 of last 5 yrs)	Decile, Similar Schools Rank	Current PI Status	Position of Bargaining Unit/Date Consulted	Period of Request	Recommend for Approval (Yes/No)
4-12-2013	Alameda Livermore Valley Joint Unified Junction Avenue K-8	840	Schoolwide Hispanic or Latino White SED English Learners SWD	776 739 861 735 661 685	Yes Yes Yes Yes Yes Yes	Yes	3, 5	Year 5	Support 09/24/2013	**Requested:** 07/01/2014 to 06/30/2015 **Recommended:** 07/01/2014 to 06/30/2015	Yes
9-12-2013	San Bernardino Redlands Unified Lugonia Elementary	831	Schoolwide Hispanic or Latino SED English Learners	809 798 804 810	Yes Yes Yes Yes	Yes	4, 5	Year 3	Support 12/02/2013	**Requested:** 07/01/2014 to 06/30/2015 **Recommended:** 07/01/2014 to 06/30/2015	Yes
10-12-2013	San Bernardino Redlands Unified Victoria Elementary	831	Schoolwide Asian Hispanic or Latino SED English Learners SWD	778 873 761 777 792 636	Yes Yes Yes Yes Yes Yes	No	2, 3	Year 4	Support 12/02/2013	**Requested:** 07/01/2014 to 06/30/2015 **Recommended:** 07/01/2014 to 06/30/2015	Yes
5-12-2013	San Joaquin Ripon Unified Ripon Elementary	821	Schoolwide Hispanic or Latino White SED English Learners	834 797 854 802 779	Yes Yes Yes Yes Yes	No	5, 3	Year 3	Support 11/04/2013	**Requested:** 07/01/2014 to 06/30/2015 **Recommended:** 07/01/2014 to 06/30/2015	Yes

*Only student groups that are numerically significant are included in this column.
SED – Socioeconomically Disadvantaged
SWD – Students with Disabilities

California Department of Education
WAIVER SUBMISSION - General

CD Code: 5673759 Waiver Number: 28-12-2013 Active Year: 2013

Date In: 12/18/2013 3:02:43 PM

Local Education Agency: Conejo Valley Unified School District
Address: 1400 East Janss Rd.
Thousand Oaks, CA 91362

Start: 7/1/2013 End: 6/30/2015

Waiver Renewal: Y
Previous Waiver Number: 96-1-2012-W-2 Previous SBE Approval Date: 5/9/2012

Waiver Topic: Open Enrollment
Ed Code Title: Removal From the List of LEAs
Ed Code Section: 48352(a) and *CCR,* Title 5, Section 4701
Ed Code Authority: 33050

Ed Code or *CCR* to Waive: California *Education Code* (*EC*) 48350 et seq and *California Code of Regulations* Title 5 Section 4701 are not excluded from general waiver authority, *EC* Section 33050 et seq; therefore, they can be waived.

Outcome Rationale: The Open Enrollment formula that was used to create the 1000 school list is flawed and does not represent the lowest performing schools in the state. In fact, there are many schools just in our county of Ventura with far greater deficits that are not named in the list of 1000. Conejo Elementary has demonstrated a solid performance with a strong 2013 Academic Performance Index of 745. This past year, Conejo staff received professional development in the areas of Reading/Language Arts and Math. Additionally, a new ELA series was piloted. Despite taking a dip in the API score, many changes took place in the 2012-13 school year to improve the instructional focus at Conejo Elementary.

Conejo has a durable tradition of serving all students as evidenced by sustained student achievement over time. See attached longitudinal data; API / AYP– 2008-2013 (school wide with pertinent subgroups). The data will show that Conejo has and will continue to outperform most schools in the state with similar demographics

Student Population: 402

City Type: Suburban

Public Hearing Date: 12/16/2013
Public Hearing Advertised: Notice posted at each school and the district office

Local Board Approval Date: 12/16/2013

Community Council Reviewed By: District Instructional Goals Committee and Conejo Schoolsite Council
Community Council Reviewed Date: 11/20/2013

Community Council Objection: N
Community Council Objection Explanation:

Audit Penalty YN: N

Categorical Program Monitoring: N

Submitted by: Ms. Carol Boyan-Held
Position: Director of Elementary Education
E-mail: cboyanheld@conejousd.org
Telephone: 805-497-9511 x245
Fax:

Bargaining Unit Date: 11/18/2013
Name: Conejo Valley Pupil Personnel Association
Representative: Susan Kunz
Title: President
Position: Support
Comments:

Bargaining Unit Date: 11/18/2013
Name: United Association of Conejo Teachers
Representative: Colleen Briner-Schmidt
Title: President
Position: Support
Comments:

California Department of Education
WAIVER SUBMISSION - General

CD Code: 5673759 Waiver Number: 29-12-2013 Active Year: 2013

Date In: 12/18/2013 3:10:22 PM

Local Education Agency: Conejo Valley Unified School District
Address: 1400 East Janss Rd.
Thousand Oaks, CA 91362

Start: 7/31/2013 End: 6/30/2015

Waiver Renewal: Y
Previous Waiver Number: 95-1-2012-W-2 Previous SBE Approval Date: 5/9/2012

Waiver Topic: Open Enrollment
Ed Code Title: Removal From the List of LEAs
Ed Code Section: 48352(a) and *CCR,* Title 5, Section 4701
Ed Code Authority: 33050

Ed Code or *CCR* to Waive:
California *Education Code* (*EC*) 48350 et seq and *California Code of Regulations* Title 5 Section 4701 are not excluded from general waiver authority, *EC* Section 33050 et seq; therefore, they can be waived

Outcome Rationale: The Open Enrollment formula that was used to create the 1000 school list is flawed and does not represent the lowest performing schools in the state. In fact, there are many schools just in our county of Ventura with far greater deficits that are not named in the list of 1000. Glenwood Elementary continues to achieve at high levels, and this year met the California Academic Performance Index target with a score of 808. API scores increased in major subgroups in 2013; Hispanic 779-796, Econ. Disadvantaged 777-795 and English Learners 774-788. Likewise, AYP percentage proficiency rates increased from 2011-2013; Hispanic 42.2%-46.6%, Econ. Disadvantaged 40.4%-47.3% and English Learners 39.1%-44.4%. Glenwood has consistently outperformed most Title 1 schools in our county and continues to demonstrate high levels of success in advancing students through CST performance bands. It should be noted Glenwood continues to experience demographic shifts. For two consecutive years, Glenwood does not qualify with a significant White/non-Hispanic subgroup. The number of ELL students has increased as native English speakers have significantly decreased since 2008 from 35% to 14%.

Glenwood has a strong tradition of serving all students as evidenced by the outstanding, sustained achievement. See attached longitudinal data; API / AYP 2007-2011 (school wide with pertinent subgroups). The data will show that Glenwood out performs most schools in the state with similar demographics.

Student Population: 386

City Type: Suburban

Public Hearing Date: 12/16/2013

Public Hearing Advertised: Notice posted at each school and the district office

Local Board Approval Date: 12/16/2013

Community Council Reviewed By: District Instructional Goals Committee and Conejo Schoolsite Council
Community Council Reviewed Date: 11/20/2013
Community Council Objection: N
Community Council Objection Explanation:

Audit Penalty YN: N

Categorical Program Monitoring: N

Submitted by: Ms. Carol Boyan-Held
Position: Director of Elementary Education
E-mail: carolboyan@gmail.com
Telephone: 805-231-1171 x245
Fax:

Bargaining Unit Date: 11/18/2013
Name: Conejo Valley Pupil Personnel Association
Representative: Susan Kunz
Title: President
Position: Support
Comments:

Bargaining Unit Date: 11/18/2013
Name: United Association of Conejo Teachers
Representative: Colleen Briner-Schmidt
Title: President
Position: Support
Comments:

California Department of Education
WAIVER SUBMISSION - General

CD Code: 4369435 Waiver Number: 21-12-2013 Active Year: 2013

Date In: 12/17/2013 2:31:09 PM

Local Education Agency: Evergreen Elementary School District
Address: 3188 Quimby Rd.
San Jose, CA 95148

Start: 7/1/2014 End: 6/30/2015

Waiver Renewal: Y
Previous Waiver Number: 105-12-2012-W-04 Previous SBE Approval Date: 3/14/2013

Waiver Topic: Open Enrollment
Ed Code Title: Removal From the List of LEAs
Ed Code Section: 48352(a) and *CCR* Title 5 Section 4701
Ed Code Authority: 33050

Ed Code or *CCR* to Waive: [(a) "Low-achieving school" means any school identified by the Superintendent pursuant to the following:

(1) Excluding the schools, and taking into account the impact of the criteria in paragraph (2), the Superintendent annually shall create a list of 1,000 schools ranked by increasing API with the same ratio of elementary, middle, and high schools as existed in decile 1in the 2008-09 school year.

(2) In constructing the list of 1,000 schools each year, the Superintendent shall ensure each of the following:
(A) A local educational agency shall not have more than 10 percent of its schools on the list. However, if the number of schools in a local educational agency is not evenly divisible by 10, the Superintendent shall round up to the next whole number of schools.
(B) Court, community, or community day schools shall not be included on the list.
(C) Charter schools shall not be included on the list.]
(b) "Parent" means the natural or adoptive parent or guardian of a dependent child.
(c) "School district of enrollment" means a school district other than the school district in which the parent of a pupil resides, but in which the parent of the pupil nevertheless intends to enroll the pupil pursuant to this article.
(d) "School district of residence" means a school district in which the parent of a pupil resides and in which the pupil would otherwise be required to enroll pursuant to Section 48200.

Title 5 *CCR* 4701. Identification of Open Enrollment Schools.

[a) The State Superintendent of Public Instruction (SSPI) shall annually construct a list of 1,000 schools for the Open Enrollment Act that maintains the same ratio of elementary, middle, and high schools as existed in decile 1 of the 2009 Base Academic Performance Index (API) file and retains only "10 percent" of a local educational agency's (LEA's) schools pursuant to the following methodology:

(1) the list of 1,000 schools shall include 687 elementary schools, 165 middle schools, and 148 high schools;

(2) the list of 1,000 schools shall exclude the following:
(A) schools that are court, community, or community day schools;
(B) schools that are charter schools;
(C) schools that are closed; and
(D) schools that have fewer than 100 valid test scores.

(3) an LEA shall have on the list no more than 10 percent of its total number of schools that are not closed. However, when that total number of schools is not evenly divisible by 10, the 10 percent number of the LEA's schools shall be rounded up to the next whole number; and

(4) to produce the final list of 1,000 schools, the SSPI shall apply the following process: (A) create a pool of schools: 1. for the purpose of constructing the Open Enrollment Schools List for transfer during the 2010-2011 school year, this pool shall be created by selecting all schools from the 2009 Base API file.]

Outcome Rationale: O.B. Whaley Elementary School appears on the SPI's list of Open Enrollment Schools in 2014-2015. The State of California has set an API goal of 800 for all schools. Because O.B. Whaley Elementary School met this goal and has remained a performing school, the school should not be considered a California "lowest achieving" school. O.B. Whaley School received a 2013 "performing" API score of 800. Having this school identified as an Open Enrollment School is detrimental to the students, teachers, parents and overall community and has the potential to undermine the positive momentum that is underway in terms of student achievement expectations and outcomes.

Student Population: 13245

City Type: Urban

Public Hearing Date: 12/12/2013
Public Hearing Advertised: Notice posted at each school and 3 public places

Local Board Approval Date: 12/12/2013

Community Council Reviewed By: O.B. Whaley Schoolsite Council
Community Council Reviewed Date: 12/10/2013
Community Council Objection: N
Community Council Objection Explanation:

Audit Penalty YN: N

Categorical Program Monitoring: N

Submitted by: Mr. Dan Deguara
Position: Director, Educational Services
E-mail: ddeguara@eesd.org
Telephone: 408-270-6800
Fax: 408-274-3894

Bargaining Unit Date: 11/21/2013
Name: California School Employees Association
Representative: Ginny Gomez
Title: President, CSEA Chapter 432
Position: Support
Comments:

Bargaining Unit Date: 11/20/2013
Name: Evergreen Teachers Association
Representative: Brian Wheatley
Title: President, Evergreen Teachers Association
Position: Support
Comments:

California Department of Education
WAIVER SUBMISSION - General

CD Code: 4369435 Waiver Number: 22-12-2013 Active Year: 2013

Date In: 12/17/2013 2:41:53 PM

Local Education Agency: Evergreen Elementary School District
Address: 3188 Quimby Rd.
San Jose, CA 95148

Start: 7/1/2014 End: 6/30/2015

Waiver Renewal: N
Previous Waiver Number: Previous SBE Approval Date:

Waiver Topic: Open Enrollment
Ed Code Title: Removal From the List of LEAs
Ed Code Section: 48352(a) and *CCR* Title 5 Section 4701
Ed Code Authority: 33050

Ed Code or *CCR* to Waive: *Education Code* 48352. For purposes of this article, the following definitions apply:

[(a) “Low-achieving school” means any school identified by the Superintendent pursuant to the following:

(1) Excluding the schools, and taking into account the impact of the criteria in paragraph (2), the Superintendent annually shall create a list of 1,000 schools ranked by increasing API with the same ratio of elementary, middle, and high schools as existed in decile 1in the 2008-09 school year.

(2) In constructing the list of 1,000 schools each year, the Superintendent shall ensure each of the following:
(A) A local educational agency shall not have more than 10 percent of its schools on the list. However, if the number of schools in a local educational agency is not evenly divisible by 10, the Superintendent shall round up to the next whole number of schools.
(B) Court, community, or community day schools shall not be included on the list.
(C) Charter schools shall not be included on the list.]
(b) “Parent” means the natural or adoptive parent or guardian of a dependent child.
(c) “School district of enrollment” means a school district other than the school district in which the parent of a pupil resides, but in which the parent of the pupil nevertheless intends to enroll the pupil pursuant to this article.
(d) “School district of residence” means a school district in which the parent of a pupil resides and in which the pupil would otherwise be required to enroll pursuant to Section 48200.

Title 5 *CCR* 4701. Identification of Open Enrollment Schools.

[a) The State Superintendent of Public Instruction (SSPI) shall annually construct a list of 1,000 schools for the Open Enrollment Act that maintains the same ratio of elementary, middle, and high schools as existed in decile 1 of the 2009 Base Academic Performance Index (API) file and

retains only “10 percent” of a local educational agency’s (LEA’s) schools pursuant to the following methodology:

(1) the list of 1,000 schools shall include 687 elementary schools, 165 middle schools, and 148 high schools;

(2) the list of 1,000 schools shall exclude the following:
(A) schools that are court, community, or community day schools;
(B) schools that are charter schools;
(C) schools that are closed; and
(D) schools that have fewer than 100 valid test scores.

(3) an LEA shall have on the list no more than 10 percent of its total number of schools that are not closed. However, when that total number of schools is not evenly divisible by 10, the 10 percent number of the LEA’s schools shall be rounded up to the next whole number; and

(4) to produce the final list of 1,000 schools, the SSPI shall apply the following process: (A) create a pool of schools: 1. for the purpose of constructing the Open Enrollment Schools List for transfer during the 2010-2011 school year, this pool shall be created by selecting all schools from the 2009 Base API file.]

Outcome Rationale: In 2012, Katherine R. Smith Elementary School began the challenging task of implementing more rigorous Common Core national standards with embedded 21st century learning skills of communication, collaboration, creativity, and critical thinking into the curriculum. Additionally, while transforming their learning climate to empower students, Katherine R. Smith Elementary saw drops in discipline referrals and suspensions by 90%. Unfortunately, California’s 2013 assessment system was not aligned to the new adopted Common Core standards and did not measure the depth and rigor of the learning students accomplished. There was a mismatch between the Common Core State Standards and the STAR test and, as such, the full potential of Katherine R. Smith Elementary School students was not appropriately gauged. Having this school identified as an Open Enrollment School is detrimental to the students, teachers, parents and overall community and has the potential to undermine the positive momentum that is underway in terms of student achievement expectations and outcomes.

Student Population: 13245

City Type: Urban

Public Hearing Date: 12/12/2013
Public Hearing Advertised: Notice posted at each school and 3 public places

Local Board Approval Date: 12/12/2013

Community Council Reviewed By: Katherine R. Smith Schoolsite Council
Community Council Reviewed Date: 12/10/2013
Community Council Objection: N
Community Council Objection Explanation:

Audit Penalty YN: N

Categorical Program Monitoring: N

Submitted by: Mr. Dan Deguara
Position: Director, Educational Services
E-mail: ddeguara@eesd.org
Telephone: 408-270-6800
Fax: 408-274-3894

Bargaining Unit Date: 11/21/2013
Name: California School Employees Association
Representative: Ginny Gomez
Title: President, CSEA Chapter 432
Position: Support
Comments:

Bargaining Unit Date: 11/20/2013
Name: Evergreen Teachers Association
Representative: Brian Wheatley
Title: President, Evergreen Teachers Association
Position: Support
Comments:

California Department of Education
WAIVER SUBMISSION - General

CD Code: 0161176 Waiver Number: 17-12-2013 Active Year: 2013

Date In: 12/13/2013 10:44:16 AM

Local Education Agency: Fremont Unified School District
Address: 4210 Technology Dr.
Fremont, CA 94538

Start: 7/1/2014 End: 6/30/2016

Waiver Renewal: Y
Previous Waiver Number: 41-10-2010 Previous SBE Approval Date: 2/10/2011

Waiver Topic: Open Enrollment
Ed Code Title: Removal From the List of LEAs
Ed Code Section: 48352(a) and *CCR* Title 5 Section 4701
Ed Code Authority: 33050

Ed Code or *CCR* to Waive: 48352. For purposes of this article, the following definitions apply:
[(a) "Low-achieving school" means any school identified by the Superintendent pursuant to the following:
(1) Excluding the schools, and taking into account the impact of the criteria in paragraph (2), the Superintendent annually shall create a list of 1,000 schools ranked by increasing API with the same ratio of elementary, middle, and high schools as existed in decile 1 in the 2008-09 school year.
(2) In constructing the list of 1,000 schools each year, the Superintendent shall ensure each of the following:
(A) A local educational agency shall not have more than 10 percent of its schools on the list. However, if the number of schools in a local educational agency is not evenly divisible by 10, the
Superintendent shall round up to the next whole number of schools.
(B) Court, community, or community day schools shall not be included on the list.
(C) Charter schools shall not be included on the list.]
(b) "Parent" means the natural or adoptive parent or guardian of a dependent child.
(c) "School district of enrollment" means a school district other than the school district in which the parent of a pupil resides, but in which the parent of the pupil nevertheless intends to enroll the pupil pursuant to this article.
(d) "School district of residence" means a school district in which the parent of a pupil resides and in which the pupil would otherwise be required to enroll pursuant to Section 48200.

Outcome Rationale: Fremont Unified is a high-performing district with an API of 891. Since the implementation of the Academic Performance Index accountability system, a “high performing school” has been identified as a school with an API score at or above 800. Schools with an API score close at or above 800 are eligible for state awards recognizing them as high achieving schools (California Distinguished School, National Blue Ribbon School, or Title I Academic Achievement Awards). Cabrillo has an API of 811 in 2013 and has earned Distinguished School Award and the Title I Academic School Award from CDE. The school also received letters of commendation from Senator Dianne Feinstein and County Office Superintendent

Sheila Jordan. Therefore, Cabrillo Elementary School should not be in the Open Enrollment school list, which is normally being viewed as a low-performing school.

Cabrillo offers tutoring for students who are behind academically and has excellent programs like after-school homework/tutor club, Read Naturally Lab, Corrective Reading program, and before and after-school teacher intervention.

Student Population: 397

City Type: Urban

Public Hearing Date: 12/11/2013
Public Hearing Advertised: Noitce in local newspaper, post at school, post at main library, posted at district office

Local Board Approval Date: 12/11/2013

Community Council Reviewed By: Schoolsite Council
Community Council Reviewed Date: 12/9/2013
Community Council Objection: N
Community Council Objection Explanation:

Audit Penalty YN: N

Categorical Program Monitoring: N

Submitted by: Ms. Kathy Ashford
Position: Director, Federal & State Projects
E-mail: kashford@fremont.k12.ca.us
Telephone: 510-659-2531 x12631
Fax: 510-659-2532

Bargaining Unit Date: 11/14/2013
Name: CSEA
Representative: Joyce Recar
Title: President
Position: Support
Comments:

Bargaining Unit Date: 11/14/2013
Name: FSMA
Representative: Debbie Amundson
Title: President
Position: Support
Comments:

Bargaining Unit Date: 11/13/2013
Name: FUDTA
Representative: Sherea Westra
Title: President
Position: Support

Comments:

California Department of Education
WAIVER SUBMISSION - General

CD Code: 0161200 Waiver Number: 4-12-2013 Active Year: 2013

Date In: 12/9/2013 3:09:55 PM

Local Education Agency: Livermore Valley Joint Unified School District
Address: 685 East Jack London Blvd.
Livermore, CA 94551

Start: 7/1/2014 End: 6/30/2015

Waiver Renewal: Y
Previous Waiver Number: 3-2-2013-W-02 Previous SBE Approval Date: 5/8/2013

Waiver Topic: Open Enrollment
Ed Code Title: Removal From the List of LEAs
Ed Code Section: 48352(a) and *CCR* Title 5 Section 4701
Ed Code Authority: 33050

Ed Code or *CCR* to Waive: [(a) "Low-achieving school" means any school identified by the Superintendent pursuant to the following:

(1) Excluding the schools, and taking into account the impact of the criteria in paragraph (2), the Superintendent annually shall create a list of 1,000 schools ranked by increasing API with the same ratio of elementary, middle, and high schools as existed in decile 1 in the 2008-09 school year.

(2) In constructing the list of 1,000 schools each year, the Superintendent shall ensure each of the following:

(A) A local educational agency shall not have more than 10 percent of its schools on the list. However, if the number of schools in a local educational agency is not evenly divisible by 10, the Superintendent shall round up to the next whole number of schools.

(B) Court, community, or community day schools shall not be included on the list.

(C) Charter schools shall not be included on the list.]

Outcome Rationale: LVJUSD is requesting that Junction K-8 be removed from the 2014-2015 Open Enrollment – Low Achieving Schools List. This request is supported by our District Advisory Committee, District English Language Advisory Committee, Junction Schoolsite Council, Junction English Learner Advisory Committee and all three district bargaining units. After the strategic combining of a K-5 school with a neighboring middle school, Junction Avenue K-8 opened its doors in the fall of 2009. Parents, school and district staff spent the previous year collaborating, researching, planning, problem solving and working together to create a K-8 school that would meet the educational and social emotional needs of the students in this low socio-economic neighborhood. In the past four years, the community has embraced the school, supporting mentoring and tutoring programs, expanding enrichment and intervention opportunities for students after school and maintaining a safe environment. The school has

become a point for pride for parents and the community. The Dual Immersion Program is attracting students from locations throughout the District. This year alone, 71 students have chosen to transfer into Junction K-8 School. The “1000 Low Performing Schools” designation only serves as a distraction to the current focus on improving and enhancing the current academic program. The district, community, parents and staff at Junction Avenue K-8 continue to be exceedingly committed to providing the highest-quality education and closing the achievement and opportunity gap. Finally, Livermore Valley Joint Unified School District honors all requests from parents to have their students attend schools within our district, on a space available basis, as well as schools in our neighboring districts. LVJUSD parents currently are able to transfer their children to Junction K-8 from other schools or transfer their children out of the school. The “Open Enrollment Act” does not add any new transfer options for our students, it serves only to distract from the focused efforts of the school community.

Student Population: 824

City Type: Suburban

Public Hearing Date: 11/19/2013
Public Hearing Advertised: Local newspaper, posted at schoolsite

Local Board Approval Date: 11/19/2013

Community Council Reviewed By: Junction Schoolsite Council & English Learner Advisory Comm, District Advisory Comm & DELAC
Community Council Reviewed Date: 10/8/2013
Community Council Objection: N
Community Council Objection Explanation:
Audit Penalty YN: N

Categorical Program Monitoring: N

Submitted by: Ms. Cindy Alba
Position: Assistant Superintendent
E-mail: calba@lvjusd.k12.ca.us
Telephone: 925-606-3224
Fax:

Bargaining Unit Date: 09/24/2013
Name: California State Employees Association
Representative: Julie Elfin
Title: President
Position: Support
Comments:

Bargaining Unit Date: 09/12/2013
Name: Livermore Education Association
Representative: Shelly Fields
Title: President
Position: Support
Comments:

Bargaining Unit Date: 10/08/2013
Name: Service Employees International Union
Representative: Ernie Rodgers
Title: President
Position: Support
Comments:

California Department of Education
WAIVER SUBMISSION - General

CD Code: 3667843 Waiver Number: 9-12-2013 Active Year: 2013

Date In: 12/11/2013 12:21:39 PM

Local Education Agency: Redlands Unified School District
Address: 20 West Lugonia Ave.
Redlands, CA 92374

Start: 7/1/2014 End: 6/30/2015

Waiver Renewal: Y
Previous Waiver Number: 10-4-2013-W-01 Previous SBE Approval Date: 7/11/2013

Waiver Topic: Open Enrollment
Ed Code Title: Removal From the List of LEAs
Ed Code Section: 48352(a) and *CCR* Title 5 Section 4701
Ed Code Authority: 33050

Ed Code or *CCR* to Waive: *Education Code* 48352. For purposes of this article, the following definitions apply:
[(a) "Low-achieving school" means any school identified by the Superintendent pursuant to the following:
(1) Excluding the schools, and taking into account the impact of the criteria in paragraph (2), the Superintendent annually shall create a list of 1,000 schools ranked by increasing API with the same ratio of elementary, middle, and high schools as existed in decile 1in the 2008-09 school year.
(2) In constructing the list of 1,000 schools each year, the Superintendent shall ensure each of the following:
(A) A local educational agency shall not have more than 10 percent of its schools on the list. However, if the number of schools in a local educational agency is not evenly divisible by 10, the Superintendent shall round up to the next whole number of schools.
(B) Court, community, or community day schools shall not be included on the list.
(C) Charter schools shall not be included on the list.]
(b) "Parent" means the natural or adoptive parent or guardian of a dependent child.
(c) "School district of enrollment" means a school district other than the school district in which the parent of a pupil resides, but in which the parent of the pupil nevertheless intends to enroll the pupil pursuant to this article.
(d) "School district of residence" means a school district in which the parent of a pupil resides and in which the pupil would otherwise be required to enroll pursuant to Section 48200.
Title 5 *CCR* 4701. Identification of Open Enrollment Schools.

[a) The State Superintendent of Public Instruction (SSPI) shall annually construct a list of 1,000 schools for the Open Enrollment Act that maintains the same ratio of elementary, middle, and high schools as existed in decile 1 of the 2009 Base Academic Performance Index (API) file and retains only “10 percent” of a local educational agency's (LEA's) schools pursuant to the following methodology:

(1) the list of 1,000 schools shall include 687 elementary schools, 165 middle schools, and

148 high schools;

(2) the list of 1,000 schools shall exclude the following:
(A) schools that are court, community, or community day schools;
(B) schools that are charter schools;
(C) schools that are closed; and
(D) schools that have fewer than 100 valid test scores.

3) an LEA shall have on the list no more than 10 percent of its total number of schools that are not closed. However, when that total number of schools is not evenly divisible by 10, the 10 percent number of the LEA's schools shall be rounded up to the next whole number; and

(4) to produce the final list of 1,000 schools, the SSPI shall apply the following process: (A) create a pool of schools: 1. for the purpose of constructing the Open Enrollment Schools List for transfer during the 2010-2011 school year, this pool shall be created by selecting all schools from the 2009 Base API file.]

Outcome Rationale: Redlands Unified Schools District (RUSD,) with a district-wide API ranking of 831, is requesting to remove Lugonia Elementary from the Open Enrollment List. Lugonia Elementary has an API of 803, and has improved their API score by 204 points in 12 years. This impressive gain is the largest increase of any of our schools since the inception of the API. In addition, the school continues to make gains school-wide, as well as in their significant sub-groups. For the 2013-14 school year, Lugonia was only 1 of 3 schools who made all AYP targets for all subgroups through Safe Harbor. Redlands Unified is providing Lugonia with significant supplementary fiscal, curricular, professional development, and technology support. Placing Lugonia Elementary School on the list, when they are not one of the 1,000 lowest performing schools in the state, creates a stigma of negativity that impacts students, staff, and community morale; in addition, to having a significant educational, economic, and political impact on the school, and it’s community. By removing Lugonia Elementary School from the Open Enrollment List, the school will maintain the same sense of pride and momentum of high academic achievement for all their students that all schools in RUSD enjoy.

Student Population: 595

City Type: Urban

Public Hearing Date: 12/10/2013
Public Hearing Advertised: flyers posted at school site, public library & main post office; information on school & district web sites

Local Board Approval Date: 12/10/2013

Community Council Reviewed By: Lugonia SSC & ELAC
Community Council Reviewed Date: 11/13/2013
Community Council Objection: N
Community Council Objection Explanation:

Audit Penalty YN: N

Categorical Program Monitoring: N

Submitted by: Ms. Julie Swan
Position: Director, School Improvement & Professional Development
E-mail: julie_swan@redlands.k12.ca.us
Telephone: 909-307-5300 x6766
Fax:

Bargaining Unit Date: 12/02/2013
Name: Redlands Teachers Asscociation
Representative: Maria Clark
Title: President
Position: Support
Comments:

California Department of Education
WAIVER SUBMISSION - General

CD Code: 3667843 Waiver Number: 10-12-2013 Active Year: 2013

Date In: 12/11/2013 12:35:24 PM

Local Education Agency: Redlands Unified School District
Address: 20 West Lugonia Ave.
Redlands, CA 92374

Start: 7/1/2014 End: 6/30/2015

Waiver Renewal: Y
Previous Waiver Number: 11-4-2013-W-01 Previous SBE Approval Date: 7/11/2013

Waiver Topic: Open Enrollment
Ed Code Title: Removal From the List of LEAs
Ed Code Section: 48352(a) and *CCR* Title 5 Section 4701
Ed Code Authority: 33050

Ed Code or *CCR* to Waive: *Education Code* 48352. For purposes of this article, the following definitions apply:
[(a) "Low-achieving school" means any school identified by the Superintendent pursuant to the following:
(1) Excluding the schools, and taking into account the impact of the criteria in paragraph (2), the Superintendent annually shall create a list of 1,000 schools ranked by increasing API with the same ratio of elementary, middle, and high schools as existed in decile 1in the 2008-09 school year.
(2) In constructing the list of 1,000 schools each year, the Superintendent shall ensure each of the following:
(A) A local educational agency shall not have more than 10 percent of its schools on the list. However, if the number of schools in a local educational agency is not evenly divisible by 10, the Superintendent shall round up to the next whole number of schools. (B) Court, community, or community day schools shall not be included on the list.
(C) Charter schools shall not be included on the list.]
(b) "Parent" means the natural or adoptive parent or guardian of a dependent child.
(c) "School district of enrollment" means a school district other than the school district in which the parent of a pupil resides, but in which the parent of the pupil nevertheless intends to enroll the pupil pursuant to this article.
(d) "School district of residence" means a school district in which the parent of a pupil resides and in which the pupil would otherwise be required to enroll pursuant to Section 48200.
Title 5 *CCR* 4701. Identification of Open Enrollment Schools.

[a) The State Superintendent of Public Instruction (SSPI) shall annually construct a list of 1,000 schools for the Open Enrollment Act that maintains the same ratio of elementary, middle, and high schools as existed in decile 1 of the 2009 Base Academic Performance Index (API) file and retains only “10 percent” of a local educational agency's (LEA's) schools pursuant to the following methodology:
(1) the list of 1,000 schools shall include 687 elementary schools, 165 middle schools, and 148 high schools;

(2) the list of 1,000 schools shall exclude the following:
(A) schools that are court, community, or community day schools;
(B) schools that are charter schools;
(C) schools that are closed; and
(D) schools that have fewer than 100 valid test scores.

3) an LEA shall have on the list no more than 10 percent of its total number of schools that are not closed. However, when that total number of schools is not evenly divisible by 10, the 10 percent number of the LEA's schools shall be rounded up to the next whole number; and

(4) to produce the final list of 1,000 schools, the SSPI shall apply the following process: (A) create a pool of schools: 1. for the purpose of constructing the Open Enrollment Schools List for transfer during the 2010-2011 school year, this pool shall be created by selecting all schools from the 2009 Base API file.]

Outcome Rationale: Redlands Unified Schools District (RUSD,) with a district-wide API ranking of 831, is requesting to remove Victoria Elementary from the Open Enrollment List. Victoria Elementary has an API of 778, and has improved their API score by 130 points in 12 years. This gain is due in large part to the commitment of the staff to provide the best learning environment for their diverse student population and to the districts' highest (92%) Free & Reduced lunch site. Redlands Unified School District is providing Victoria with significant supplemental fiscal, curricular, professional development, and technology support. Placing Victoria Elementary School on the list, when they are not one of the 1,000 lowest performing schools in the state, creates a stigma of negativity that impacts students, staff, and community morale; in addition, to having a significant educational, economic, and political impact on the school, and it's community. By removing Victoria Elementary School from the Open Enrollment List, the school will maintain the same sense of pride and momentum of high academic achievement for all their students that all schools in RUSD enjoy.

Student Population: 515

City Type: Urban

Public Hearing Date: 12/10/2013
Public Hearing Advertised: flyers posted at school site, public library & main post office; information on school $ district web sites

Local Board Approval Date: 12/10/2013

Community Council Reviewed By: Victoria SSC & ELAC
Community Council Reviewed Date: 11/22/2013
Community Council Objection: N
Community Council Objection Explanation:

Audit Penalty YN: N

Categorical Program Monitoring: N

Submitted by: Ms. Julie Swan
Position: Director, School improvement & Professional Development
E-mail: julie_swan@redlands.k12.ca.us
Telephone: 909-307-5300 x6766
Fax:

Bargaining Unit Date: 12/02/2013
Name: Redlands Teachers Association
Representative: Maria Clark
Title: President
Position: Support
Comments:

California Department of Education
WAIVER SUBMISSION - General

CD Code: 3968650 Waiver Number: 5-12-2013 Active Year: 2013

Date In: 12/10/2013 9:08:26 AM

Local Education Agency: Ripon Unified School District
Address: 304 North Acacia Ave.
Ripon, CA 95366

Start: 7/1/2014 End: 6/30/2015

Waiver Renewal: N
Previous Waiver Number: Previous SBE Approval Date:

Waiver Topic: Open Enrollment
Ed Code Title: Removal From the List of LEAs
Ed Code Section: 48352(a) and *CCR* Title 5 Section 4701
Ed Code Authority: 33050

Ed Code or *CCR* to Waive: *Education Code* 48352.
[(a) "Low-achieving school" means any school identified by the Superintendent pursuant to the following:

(1) Excluding the schools, and taking into account the impact of the criteria in paragraph (2), the Superintendent annually shall create a list of 1,000 schools ranked by increasing API with the same ratio of elementary, middle, and high schools as existed in decile 1in the 2008-09 school year.

(2) In constructing the list of 1,000 schools each year, the Superintendent shall ensure each of the following:

(A) A local educational agency shall not have more than 10 percent of its schools on the list. However, if the number of schools in a local educational agency is not evenly divisible by 10, the Superintendent shall round up to the next whole number of schools. (B) Court, community, or community day schools shall not be included on the list. (C) Charter schools shall not be included on the list.] (b) "Parent" means the natural or adoptive parent or guardian of a dependent child. (c) "School district of enrollment" means a school district other than the school district in which the parent of a pupil resides, but in which the parent of the pupil nevertheless intends to enroll the pupil pursuant to this article. (d) "School district of residence" means a school district in which the parent of a pupil resides and in which the pupil would otherwise be required to enroll pursuant to Section 48200.

Title 5 *CCR* 4701. Identification of Open Enrollment Schools.
[a) The State Superintendent of Public Instruction (SSPI) shall annually construct a list of 1,000 schools for the Open Enrollment Act that maintains the same ratio of elementary, middle, and high schools as existed in decile 1 of the 2009 Base Academic Performance Index (API) file and retains only “10 percent” of a local educational agency's (LEA's) schools pursuant to the following methodology:
(1) the list of 1,000 schools shall include 687 elementary schools, 165 middle schools, and

148 high schools;

(2) the list of 1,000 schools shall exclude the following: (A) schools that are court, community, or community day schools; (B) schools that are charter schools; (C) schools that are closed; and (D) schools that have fewer than 100 valid test scores.

3) an LEA shall have on the list no more than 10 percent of its total number of schools that are not closed. However, when that total number of schools is not evenly divisible by 10, the 10 percent number of the LEA's schools shall be rounded up to the next whole number; and

(4) to produce the final list of 1,000 schools, the SSPI shall apply the following process: (A) create a pool of schools: 1. for the purpose of constructing the Open Enrollment Schools List for transfer during the 2010-2011 school year, this pool shall be created by selecting all schools from the 2009 Base API file.]

Outcome Rationale: Though Ripona Elementary dipped to an API of 796 (4 points below the state goal), their API for the last six years has been stellar. Working backwards from 2013 the APIs have been 796, 841, 835, 815, 841 and 836 in 2008. This is an average of more than 827 for the past six years and the state goal is 800. State rankings from 2012 back to 2008 are 7, 7, 6, 8 and 8 respectively. Similar schools rankings are 7, 7, 4, 7 and 7 as well. These rankings certainly show that Ripona is an above average school. There are students on a waiting list to get into Ripona at some grade levels. Ripona is working hard to maintain a strong, positive learning environment for their students and staff. They have a new principal this year, who has chosen and integrated stellar new employees including 46% of the teaching staff. The staff is analyzing data and creating interventions. They have a new enrichment program. Being on the 1,000 lowest performing schools list certainly sends a mixed message and shows that the Open Enrollment Act is clearly inconsistent with the CDE efforts to encourage schools that reach state goals. We respectfully request removal from the list.

Student Population: 393

City Type: Small

Public Hearing Date: 12/9/2013
Public Hearing Advertised: Notices posted at each school, District office and City Hall

Local Board Approval Date: 12/9/2013

Community Council Reviewed By: Ripona Elementary Schoolsite Council
Community Council Reviewed Date: 11/5/2013
Community Council Objection: N
Community Council Objection Explanation:

Audit Penalty YN: N

Categorical Program Monitoring: N

Submitted by: Ms. Kathryn Coleman
Position: Director of Curriculum & Categorical Programs
E-mail: kcoleman@sjcoe.net
Telephone: 209-599-2131
Fax: 209-599-6271

Bargaining Unit Date: 11/04/2013
Name: California School Employees Association
Representative: Jeff Hardenbrook
Title: President
Position: Support
Comments:

Bargaining Unit Date: 10/30/2013
Name: Ripon Unified District Teachers Association
Representative: Rod Wright
Title: President
Position: Support
Comments:

California State Board of Education

Meeting Agenda Items for March 12-13, 2014

WAIVER ITEM W-04

ITEM #W-04

CALIFORNIA STATE BOARD OF EDUCATION

MARCH 2014 AGENDA

☒ **General Waiver**

SUBJECT Request by **Folsom-Cordova Unified School District** to waive portions of California *Education Code* Section 51222(a), related to the statutory minimum requirement of 400 minutes of physical education each ten school days for students in grades nine through twelve in order to implement a block schedule at Vista del Lago High School. Waiver Number: 26-10-2013	☒ **Action** ☒ **Consent**

SUMMARY OF THE ISSUES

Vista del Lago High School (HS) is on a 4X4 block schedule where students receive 836 minutes of physical education instruction every 10 school days for 18 weeks. *Education Code (EC)* Section 51222(a) requires a minimum of 400 minutes every 10 school days for the entire school year. Because students at Vista del Lago HS only take physical education for one semester, they are seeking a waiver to *EC* Section 51222(a).

Authority for Waiver: *EC* Section 33050

RECOMMENDATION

☒ **Approval** ☐ **Approval with conditions** ☐ **Denial**

California *Education Code* (*EC)* Section 33051(b) will not apply, and the district will be required to reapply to renew the waiver.

SUMMARY OF KEY ISSUES

EC Section 51222(a) established requirements for minimum instructional minutes of PE, 400 minutes every ten school days for pupils in grades seven through twelve. Vista del Lago HS has implemented a block schedule in grades nine through twelve that does not provide each student with PE instruction for a minimum of 400 minutes every ten school days.

Students at this school are enrolled in PE for only 18 weeks of the school year, receiving instruction for an average of 83 minutes per school day (four days at 92 minutes and one day at 50 minutes). This means that PE is taught for 418 minutes per school week (or 836 minutes each ten days). Therefore, the actual time that Vista del Lago HS students are enrolled in PE meets the minimum minute requirements, if added on an annual basis (7,524 minutes).

Sample Student Schedules	**Fall Term** 18 Consecutive Weeks	**Spring Term** 18 Consecutive Weeks
Student A	Minutes per week of PE instruction = 0	Minutes per week of PE Instruction = 418
Student B	Minutes per week of PE Instruction = 418	Minutes per week of PE instruction =0

The Department has worked closely with Folsom-Cordova Unified School District to ensure that all criteria have been met to a high degree of completion. The district has provided evidence indicating they have met the criteria for this waiver as follows:

1. The PE instructional program at Vista del Lago HS complies with federal and state statutes and regulations related to PE pertaining to minimum minute requirements; instruction is based on PE content standards; and instruction aligned with the *Physical Education Framework for California Public Schools* (sequential, articulated, and age-appropriate instruction).

2. The district has developed a PE professional development plan for teachers who deliver instruction in PE at that school.

3. The students are enrolled in courses of PE a minimum of 18 weeks in 50–90 minute daily class periods during the regular school year.

4. The district described a method by which it will monitor students' maintenance of a personal physical activity program during the weeks they are not participating in a PE course at that school. The monitoring program includes: student accountability for participation in physical activity; guidance for students in using the principles of exercise to design and complete their physical activity program; specific information regarding the design; and delivery of the monitoring program.

5. The PE program complies with *California Code of Regulations*, Title 5, Article 3.1, Section 10060.

6. All eligible students are prepared for and participate in the physical performance testing as specified in *EC* Section 60800.

7. Alternate day scheduling for PE rather than alternate term scheduling has been thoroughly investigated by the district.

When the district is identified for a Federal Program Monitoring (FPM) review by the CDE, Vista del Lago HS shall have PE reviewed as a part of the district's FPM process.

As required by SBE Waiver Policy #99–03, PE Requirements for Block Schedules, the 2012–13 California Physical Fitness Test (PFT) data was reviewed and indicates that 52.2% of Vista del Lago HS grade nine students met all six out of six fitness standards on each of the PFT items. This indicates a 5.6% decrease from their 2011–12 results (57.8%).

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

Demographic Information: Vista del Lago HS has a student population of 1450. The district is located in a suburban area of Sacramento County.

Authority for Waiver: *EC* Section 33050

SUMMARY OF PREVIOUS STATE BOARD OF EDUCATION DISCUSSION AND ACTION

State Board of Education (SBE) Waiver Policy #99–03, Physical Education (PE) Requirements for Block Schedules, which was last revised in July 2006, establishes criteria for granting waivers related to PE instructional minutes for the purpose of implementing a block schedule. This policy, #99–03, is available for viewing at http://www.cde.ca.gov/re/lr/wr/documents/pepolicy.doc.

Schools began implementing block schedules, sometimes with disregard for the statutory requirements for PE instructional minutes, in the 1980s. Several types of these block schedules incorporate PE instruction on a limited basis and do not meet the statutory requirement of 400 minutes every 10 school days. A committee including PE experts, district staff, SBE members, and California Department of Education staff developed a recommendation for a waiver policy. This group did not feel that they could ask high schools in the state to stop doing block scheduling, so flexibility was sought, and a waiver policy was created.

FISCAL ANALYSIS (AS APPROPRIATE)

There is no statewide fiscal impact of waiver approval or denial.

ATTACHMENT(S)

Attachment 1: Summary Table of Physical Education Block Schedule State Board of Education Waivers for March 2014 (1 page)

Attachment 2: Folsom-Cordova Unified School District General Waiver Request 26-10-2013 (2 pages) (Original waiver request is signed and on file in the Waiver Office.)

Summary Table of Physical Education Block Schedule State Board of Education Waivers for March 2014

Waiver Number	District	Period of Request	Bargaining Unit, Representatives Consulted, Date, and Position	Public Hearing and Board Approval Date	Public Hearing Advertisement	SSC/Advisory Committee Consulted, Date, and Position
26-10-2013	Folsom-Cordova Unified School District	**Requested:** August 15, 2013, to August 15, 2015 **Recommended**: August 15, 2013, to August 14, 2014	Folsom Cordova Educators Association Michael Itkoff, President October 22, 2013, **Neutral**	October 10, 2013	Newspaper, District website, and Facebook	Schoolsite Council, School Board meeting and Curriculum Advisory Council October 10, 2013, **No objection**

Created by the California Department of Education
January 7, 2014

California Department of Education
WAIVER SUBMISSION - General

CD Code: 3467330 Waiver Number: 26-10-2013 Active Year: 2013

Date In: 10/29/2013 5:27:42 PM

Local Education Agency: Folsom-Cordova Unified School District
Address: 1965 Birkmont Dr.
Rancho Cordova, CA 95742

Start: 8/15/2013 End: 8/15/2015

Waiver Renewal: N
Previous Waiver Number: Previous SBE Approval Date:

Waiver Topic: Physical Education Program
Ed Code Title: Block Schedules
Ed Code Section: 51222(a)
Ed Code Authority: 33050

Ed Code or *CCR* to Waive: All pupils, except pupils excused or exempted pursuant to Section 51241, shall be required to attend upon the courses of physical education for a total period of time of not less than 400 minutes each 10 schooldays.

Outcome Rationale: Vista del Lago high School opened its doors in the fall of 2007 employing a 4x4 block schedule comprising four year-long courses taught in each 18 week term. The decision to utilize an alternative term schedule was reached after several months of educational research, discussion and input from community members, staff, and students. The following factors led to the adoption of the 4x4 schedule:

1. Under the alternate day schedule teachers continue to have a large number of contacts per semester (175 contacts). The alternative term schedule decreases the number of student contacts (105 contacts).

2. The absence of daily contact is viewed as an impediment to instruction by the Vista del Lago community. The enhanced learning opportunities afford students due 90 minute blocks is diminished alternative day block schedule.

3. The alternative day schedule does not increase the capacity to take additional electives, advance in the core subjects or remediate. The alternative term schedule allows the school/students to adjust course selections mid-year based on student performance. For example a student who fails algebra I first term can retake the course second term and not fall behind or have to attend summer school. The alternative block schedule does not provide students this option.

Student Population: 1450

City Type: Suburban

Public Hearing Date: 10/10/2013
Public Hearing Advertised: Newspaper, District website, and Facebook

Local Board Approval Date: 10/10/2013

Community Council Reviewed By: Schoolsite Council, School Board meeting and Curriculum Advisory Council
Community Council Reviewed Date: 10/10/2013
Community Council Objection: N
Community Council Objection Explanation:

Audit Penalty YN: N

Categorical Program Monitoring: N

Submitted by: Dr. John Dixon
Position: Principal
E-mail: jdixon@fcusd.org
Telephone: 916-294-2410 x410150
Fax:

Bargaining Unit Date: 10/22/2013
Name: Folsom Cordova Educators Association
Representative: Michael Itkoff
Title: President
Position: Neutral
Comments:

California State Board of Education

Meeting Agenda Items for March 12-13, 2014

WAIVER ITEM W-05

ITEM #W-05

CALIFORNIA STATE BOARD OF EDUCATION

MARCH 2014 AGENDA

☒ **General Waiver**

SUBJECT Request by **Lindsay Unified School District** to waive *California Code of Regulations,* Title 5, Section 3051.16(b)(3), the requirement that educational interpreters for deaf and hard of hearing pupils meet minimum qualifications as of July 1, 2009, to allow Katie Holland and Jessica Torres to continue to provide services to students until June 30, 2014, under a remediation plan to complete those minimum requirements. Waiver Numbers: 13-11-2013 14-11-2013	☒ **Action** ☒ **Consent**

SUMMARY OF THE ISSUES

The SBE must determine if Katie Holland and Jessica Torres, interpreters for the Lindsay Unified School District, qualify for education interpreter waivers, to provide educational interpreter services until June 30, 2014.

Authority for Waiver: *Education Code* Section 33050

RECOMMENDATION

☐ **Approval** ☒ **Approval with conditions** ☐ **Denial**

The California Department of Education (CDE) recommends approval of the waiver requests for Katie Holland and Jessica Torres, with the individual conditions noted in the Attachment 1.

SUMMARY OF KEY ISSUES

The Individuals with Disabilities Education Improvement Act of 2004 (IDEIA 2004) requires that interpreters for pupils who are deaf or hard of hearing meet state-approved or state-recognized certification, registration, or other comparable requirements, as defined in Title 34 of the *Code of Federal Regulations*, Section 300.156(b)(1).

To meet this federal requirement, the *California Code of Regulations*, Section 3051.16(b)(3) requires the following:

By **July 1, 2009**, and thereafter, an educational interpreter shall be certified by the national Registry of Interpreters for the Deaf (RID), or equivalent; in lieu of RID certification or equivalent, an educational interpreter must have achieved a score of **4.0** or above on the Educational Interpreter Performance Assessment (EIPA), the Educational Sign Skills Evaluation-Interpreter/Receptive (ESSE-I/R), or the National Association of the Deaf/American Consortium of Certified Interpreters (NAD/ACCI) assessment. If providing Cued Language transliteration, a transliterator shall possess Testing/Evaluation and Certification Unit (TECUnit) certification, or have achieved a score of **4.0** or above on the EIPA – Cued Speech.

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

SUMMARY OF PREVIOUS STATE BOARD OF EDUCATION DISCUSSION AND ACTION

In 2002, the State Board of Education (SBE) approved regulations that required educational interpreters to be certified by the national Registry of Interpreters for the Deaf (RID), or equivalent, by January 1, 2007. As of July 1, 2009, they have been required to be certified by the RID, or equivalent, or to have achieved a score of 4.0 or better on specified assessments.

In November 2009, the SBE approved a policy regarding educational interpreter waiver requests. That policy is on the CDE website at http://www.cde.ca.gov/re/lr/wr/documents/interpreter_000.doc

FISCAL ANALYSIS (AS APPROPRIATE)

There is no statewide fiscal impact of waiver approval.

ATTACHMENT(S)

Attachment 1: List of Waiver Numbers, Districts, Information Regarding Test Scores and Conditions (1 page)

Attachment 2: Lindsay Unified School District Waiver Request Waiver 13-11-2013 (3 pages) (Original waiver request is signed and on file in the Waiver Office.)

Attachment 3: Lindsay Unified School District Waiver Request Waiver 14-11-2013 (3 pages) (Original waiver request is signed and on file in the Waiver Office.)

List of Waiver Numbers, Districts, Information Regarding Test Scores and Conditions

Waiver Number	LEA	Interpreter	Period of Request	Local Board and Public Hearing Approval Date Public Hearing Requirement	Bargaining Unit, Representative(s) Consulted, Date and Position	Advisory Committee Consulted, Date and Position	Previous Waivers (Yes/No) Date	Name, Date, and Score of Most Recent Evaluation	Name, Dates, and Scores of Previous Evaluations	Date of Hire
13-11-2013	Lindsay Unified School District	Katie Holland	**Requested:** 8/1/13 to 6/30/14 **Recommended:** 8/1/13 to 6/30/14	10/28/2013 Notice posted at each school	California School Employees Association Freddy Martinez, President Support 10/24/13	Schoolsite Council at Kennedy Elementary School 10/21/13	New	ESSE September 2012 4.0 Expressive 3.0 Receptive	N/A	8/1/13
	Conditions: 1. The Lindsay Unified School District must provide Ms. Holland with weekly one-on-one mentorship, based on an individualized professional development plan, by a qualified interpreter. 2. By June 2014, the Lindsay Unified High School District must provide CDE with new assessment scores for Ms. Holland.									
14-11-2013	Lindsay Unified School District	Jessica Torres	**Requested:** 8/1/13 to 6/30/14 **Recommended:** 8/1/13 to 6/30/14	10/28/2013 Notice posted at each school	California School Employees Association Freddy Martinez, President Support 10/24/13	Schoolsite Council at Kennedy Elementary School 10/21/13	New	EIPA June 2013 3.7	EIPA September 2010 3.9	8/1/13
	Conditions: 1. The Lindsay Unified School District must provide Ms. Torres with weekly one-on-one mentorship, based on an individualized professional development plan, by a qualified interpreter. 2. By June 2014, the Lindsay Unified High School District must provide CDE with new assessment scores for Ms. Torres.									

California Department of Education
WAIVER SUBMISSION - General

CD Code: 5471993 Waiver Number: 13-11-2013 Active Year: 2013

Date In: 11/22/2013 3:48:25 PM

Local Education Agency: Lindsay Unified School District
Address: 371 East Hermosa St.
Lindsay, CA 93247

Start: 8/1/2013 End: 6/30/2014

Waiver Renewal: N
Previous Waiver Number: Previous SBE Approval Date:

Waiver Topic: Special Education Program
Ed Code Title: Educational Interpreter for Deaf and Hard of Hearing
Ed Code Section: *CCR*, Title 5 Section 3051.16(b)(3)
Ed Code Authority: 33050

Ed Code or *CCR* to Waive: Educational Interpreter not Meeting State and Federal Qualifications

(b) Certification requirements for educational interpreters for deaf and hard of hearing pupils.
~~(3) By July 1, 2009, and thereafter, an educational interpreter shall be certified by the national RID, or equivalent; in lieu of RID certification or equivalent, an educational interpreter must have achieved a score of 4.0 or above on the EIPA, the ESSE-I/R, or the NAD/ACCI assessment. If providing Cued Language transliteration, a transliterator shall possess TECUnit certification, or have achieved a score of 4.0 or above on the EIPA - Cued Speech.~~

Outcome Rationale: Pursuant to State Board of Education Waiver Policy for Educational Interpreters Not Meeting Regulatory Standards (Board Policy #09-02, November 2009), Lindsay Unified School District (LUSD) is seeking approval for a General Waiver for Educational Interpreter for Katie Holland. Since 2009, when new interpreter requirements went into effect, Lindsay Unified School District has made a concerted effort to employ educational interpreters with a certification level of 4.0 or higher for its currently enrolled seven deaf students. The District currently employs five educational interpreters who meet or exceed the certification level of 4.0 and seeks waivers for two interpreters who meet the requirements of the criteria as set forth by the above policy. The District requests that the following information be considered.

Student Population: 4130

City Type: Rural

Public Hearing Date: 10/28/2013
Public Hearing Advertised: Notice posted at each school

Local Board Approval Date: 10/28/2013

Community Council Reviewed By: Kennedy Elementary Schoolsite Council
Community Council Reviewed Date: 10/21/2013
Community Council Objection: N
Community Council Objection Explanation:

Audit Penalty YN: N

Categorical Program Monitoring: N

Submitted by: Ms. Suzzane Terrill
Position: Director of Special Education
E-mail: sterrill@lindsay.k12.ca.us
Telephone: 559-562-1703 x5766
Fax: 559-562-1579

Bargaining Unit Date: 10/24/2013
Name: CA School Employees Association
Representative: Freddy Martinez
Title: President
Position: Support
Comments:

EDUCATIONAL INTERPRETER

Certification Remediation Plan (2013-14)

Effective July 1, 2009 as required by CA Code of Regulations, Sections 3051.16(b)(3) and 3065, an educational interpreter shall be certified by the national RID; in lieu of RID certification or equivalent, an educational interpreter must have achieved a score of 4.0 or above on the EIPA, the ES SEI/R, or the NAD/ACCI assessment.

If an educational interpreter has not met the standard, the district may apply for a one year waiver on their behalf. As a condition for waiver approval, a remediation plan must be in place and evidence must be submitted to prove that the educational interpreter is making satisfactory progress towards meeting certification requirements.

I understand that I do not meet the standard for educational interpreters as outlined above and in order to become a certified educational interpreter, I must meet one of the following options:
(Check assessment you plan on taking.)

☐ RID National Certification

Score 4.0 or above on one of the following assessments:

☐ EIPA ☒ ESSE-I/R ☐ NAD/ACCI

Actions I will take to complete the above requirements:
(Describe your plan)

☒ Participate in the following Central California Registry of Interpreters for the Deaf continuing education seminars:

Date: 10/25/2013 David N. Evans: Standards for Interpreting Standardized Testing
Date: 10/26/2013 David N. Evans: The Interpreting Process: Intention or Retention

☒ Complete the interpreter course offered by College of Sequoias or other accredited college on:

Date(s): Spring 2014 Semester

☒ Participate in tri-annual interpreter meetings with the mentor and Director of Special Education to review educational interpreter learning goals focused on improvement of educational interpreter skills and exam preparation.

Date(s): November 2013, January 2014, April 2014

☒ Meet weekly with certified interpreter mentor for feedback and progress monitoring of the above learning goals:

Mentor: Suzanne Juarez, Certified Educational Interpreter

☒ Complete the ESSE-I/R by April 30, 2014

Date: Unknown at this time, TBD

I further understand that the Director of Special Education and I will discuss my Certification Remediation Plan regularly to ensure that I am actively working toward the required interpreter certification.

Katie Holland		
Employee (Print Name)	Signature	Date
Suzzane Terrill		
Administrator (Print Name)	Signature	Date
Director of Special Education		
Administrator Title		

Return a copy of this document to the Human Resources Department

California Department of Education
WAIVER SUBMISSION - General

CD Code: 5471993 Waiver Number: 14-11-2013 Active Year: 2013

Date In: 11/22/2013 4:00:20 PM

Local Education Agency: Lindsay Unified School District
Address: 371 East Hermosa St.
Lindsay, CA 93247

Start: 8/1/2013 End: 6/30/2014

Waiver Renewal: N
Previous Waiver Number: Previous SBE Approval Date:

Waiver Topic: Special Education Program
Ed Code Title: Educational Interpreter for Deaf and Hard of Hearing
Ed Code Section: *CCR*, Title 5 Section 3051.16(b)(3)
Ed Code Authority: 33050

Ed Code or *CCR* to Waive: Educational Interpreter not Meeting State and Federal Qualifications

(b) Certification requirements for educational interpreters for deaf and hard of hearing pupils.
~~(3) By July 1, 2009, and thereafter, an educational interpreter shall be certified by the national RID, or equivalent; in lieu of RID certification or equivalent, an educational interpreter must have achieved a score of 4.0 or above on the EIPA, the ESSE-I/R, or the NAD/ACCI assessment. If providing Cued Language transliteration, a transliterator shall possess TECUnit certification, or have achieved a score of 4.0 or above on the EIPA Cued Speech.~~

Outcome Rationale: Pursuant to State Board of Education Waiver Policy for Educational Interpreters Not Meeting Regulatory Standards (Board Policy #09-02, November 2009), Lindsay Unified School District (LUSD) is seeking approval for a General Waiver for Educational Interpreter for Jessica Torres. Since 2009, when new interpreter requirements went into effect, Lindsay Unified School District has made a concerted effort to employ educational interpreters with a certification level of 4.0 or higher for its currently enrolled seven deaf students. The District currently employs five educational interpreters who meet or exceed the certification level of 4.0 and seeks waivers for two interpreters who meet the requirements of the criteria as set forth by the above policy. The District requests that the following information be considered.

Student Population: 4130

City Type: Rural

Public Hearing Date: 10/28/2013
Public Hearing Advertised: Notice Posted at each school

Local Board Approval Date: 10/28/2013

Community Council Reviewed By: Kennedy Elementary Schoolsite Council
Community Council Reviewed Date: 10/21/2013
Community Council Objection: N
Community Council Objection Explanation:

Audit Penalty YN: N

Categorical Program Monitoring: N

Submitted by: Ms. Suzzane Terrill
Position: Director of Special Education
E-mail: sterrill@lindsay.k12.ca.us
Telephone: 559-562-5111 x5766
Fax: 559-562-1579

Bargaining Unit Date: 10/24/2013
Name: CA School Employees Association
Representative: Freddy Martinez
Title: President
Position: Support
Comments:

EDUCATIONAL INTERPRETER

Certification Remediation Plan (2013-14)

Effective July 1, 2009 as required by CA Code of Regulations, Sections 3051.16(b)(3) and 3065, an educational interpreter shall be certified by the national RID; in lieu of RID certification or equivalent, an educational interpreter must have achieved a score of 4.0 or above on the EIPA, the ES SEI/R, or the NAD/ACCI assessment.

If an educational interpreter has not met the standard, the district may apply for a one year waiver on their behalf. As a condition for waiver approval, a remediation plan must be in place and evidence must be submitted to prove that the educational interpreter is making satisfactory progress towards meeting certification requirements.

I understand that I do not meet the standard for educational interpreters as outlined above and in order to become a certified educational interpreter, I must meet one of the following options:
(Check assessment you plan on taking.)

☐ RID National Certification

Score 4.0 or above on one of the following assessments:

☒ EIPA ☐ ESSE-I/R ☐ NAD/ACCI

Actions I will take to complete the above requirements:
(Describe your plan)

☒ Participate in the following Central California Registry of Interpreters for the Deaf continuing education seminars:

Date: 10/25/2013 David N. Evans: Standards for Interpreting Standardized Testing
Date: 10/26/2013 David N. Evans: The Interpreting Process: Intention or Retention

☒ Participate in tri-annual interpreter meetings with the mentor and Director of Special Education to review educational interpreter learning goals focused on improvement of educational interpreter skills and exam preparation.

Date(s): November 2013, January 2014, April 2014

☒ Meet weekly with certified interpreter mentor for feedback and progress monitoring of the above learning goals:

Mentor: Linda Sanders, RID Certified Interpreter with 25 years of interpreter experience

☒ Participate in seminars offered at Tulare County Office of Education/ Deaf and Hard of Hearing Service Center:

Date(s): TBD during the 2013-14 school year.

☒ Complete the ESSE-I/R or EIPA by April 30, 2014

Date: Unknown at this time, TBD

I further understand that the Director of Special Education and I will discuss my Certification Remediation Plan regularly to ensure that I am actively working toward the required interpreter certification.

Jessica Torres Employee (Print Name)	Signature	Date
Suzzane Terrill Administrator (Print Name)	Signature	Date
Director of Special Education Administrator Title		

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California State Board of Education

Meeting Agenda Items for March 12-13, 2014

WAIVER ITEM W-06

ITEM #W-06

CALIFORNIA STATE BOARD OF EDUCATION

MARCH 2014 AGENDA

☒ **Specific Waiver**

SUBJECT Request by **Moreland School District**, under the authority of California *Education Code* Section 56101 and *California Code of Regulations*, Title 5, Section 3100 to waive *Education Code* Section 56362(c), allowing the caseload of the resource specialist to exceed the maximum caseload of 28 students by no more than 4 students (32 maximum). Donna Wohltmann assigned at Payne Elementary School. Waiver Number: 10-10-2013	☒ **Action** ☒ **Consent**

RECOMMENDATION

☐ Approval ☒ Approval with conditions ☐ Denial

The California Department of Education (CDE) recommends approval with the following conditions: the district must provide instructional aide time of at least five hours daily whenever the resource specialist's caseload exceeds the statutory maximum caseload of 28 students by no more than four students (32 maximum), during the waiver's effective period, per *California Code of Regulations*, Title 5, (*5 CCR*), Section 3100(d)(2).

SUMMARY OF PREVIOUS STATE BOARD OF EDUCATION DISCUSSION AND ACTION

Education Code (*EC*) Section 56101 allows the State Board of Education (SBE) to waive any provision of *EC* or regulation if the waiver is necessary or beneficial when implementing a student's individualized education program (IEP). *CCR*, Title 5, specifically allows the SBE to approve waivers for resource specialists providing special education services to allow them to exceed the maximum caseload of 28 students by no more than four students. However, there are specific requirements in these regulations which must be met for approval, and if these requirements are not met, the waiver must be denied:

1) The requesting agency demonstrates to the satisfaction of the SBE: (A) that the excess resource specialist caseload results from extraordinary fiscal and/or programmatic conditions; and (B) that the extraordinary conditions have been resolved or will be resolved by the time the waiver expires.

2) The waiver stipulates that an affected resource specialist will have the assistance of an instructional aide at least five hours daily whenever that resource specialist's caseload exceeds the statutory maximum during the waiver's effective period.

3) The waiver confirms that the students served by an affected resource specialist will receive all of the services called for in their IEP.

4) The waiver was agreed to by any affected resource specialist, and the bargaining unit, if any, to which the resource specialist belongs participated in the waiver's development.

5) The waiver demonstrates to the satisfaction of the SBE that the excess caseload can be reasonably managed by an affected resource specialist in particular relation to: (A) the resource specialist's pupil contact time and other assigned duties; and (B) the programmatic conditions faced by the resource specialist, including, but not limited to, student age level, age span, and the behavioral characteristics; number of curriculum levels taught at any one time or any given session; and intensity of student instructional needs.

The SBE receives about a dozen waivers of this type each year, and approximately 90 percent are approved. Due to the nature of this type of waiver, they are almost always retroactive.

SUMMARY OF KEY ISSUES

A resource specialist is a credentialed teacher who provides instruction and services to children with IEPs that are with regular education teachers for the majority of the school day. Resource specialists coordinate special education services with general education programs for his or her students.

Before recommending approval, the existing complaint/compliance database for each district requesting a caseload waiver is examined. If it appears that a particular local educational agency is requesting large numbers of waivers, or upon complaint from an individual resource specialist alleging that waiver conditions are not being followed, referrals are made to the Special Education Division for follow-up.

The district’s enrollment exceeded their projections by approximately 200 students. With an increase in their overall population came an increase of students with IEPs. The LEA has demonstrated that (A) The excess resource specialist caseload results from programmatic conditions; and (B) The extraordinary condition will be resolve by the time the waiver expires.

The waiver stipulates that an affected resource specialist will have the assistance of an instructional aid at least 5.5 hours daily whenever that resource specialist's caseload exceeds the statutory maximum during the waiver's effective period.

The waiver was agreed to by Donna Wohltmann (Resource Specialist Teacher) at Payne Elementary School, and Paul Mack, Union President of the bargaining unit

The Department recommends approval. There have been no prior documented complaints registered with the CDE related to this school district exceeding the maximum resource specialist program caseload of 28 students.

Demographic Information: Moreland School District has a student population of 618 and is located in a suburban area of Santa Clara County.

Authority for Waiver: *EC* Section 56362(c), 5 *CCR* 3100

Period of request: 9/19/13 to 6/13/14

Local board approval date(s): 10/10/2013

Bargaining unit(s) consulted on date(s): 9/19/2013

Name of bargaining unit/representative(s) consulted: Paul Mack, Union President.

Position of bargaining unit(s) (choose only one):
☐ Neutral ☒ Support ☐ Oppose**):**

Advisory committee(s) consulted: Beth Majchrzak, SELPA Director

Objections raised (choose one): ☒ None ☐ Objections are as follows:

Date(s) consulted: 10/18/2013

FISCAL ANALYSIS (AS APPROPRIATE)

There is no statewide fiscal impact of waiver(s) approval.

ATTACHMENT(S)

Attachment 1: Moreland School District – Payne Elementary School Specific Waiver Request 10-10-2013 (6 pages) (Original waiver request is signed and on file in the Waiver Office.)

California Department of Education
WAIVER SUBMISSION - Specific

CD Code: 4369575 Waiver Number: 10-10-2013 Active Year: 2013

Date In: 10/18/2013 12:36:27 PM

Local Education Agency: Moreland School District
Address: 4711 Campbell Ave.
San Jose, CA 95130

Start: 9/19/2013 End: 6/13/2014

Waiver Renewal: N
Previous Waiver Number: Previous SBE Approval Date:

Waiver Topic: Special Education Program
Ed Code Title: Resource Teacher Caseload
Ed Code Section: 56362 (c)
Ed Code Authority: 56101 and 5 *CCR* Section 3100

Ed Code or *CCR* to Waive: 56362(c)

Outcome Rationale: We currently have a full time resource specialist and a five and half hour daily instructional assistant for our resource program. Due to an increase in total student enrollment, we have experienced an increase in the number of students with disabilities. We believe it is always best to keep students at their home school and provide necessary services using our school staff. Increasing the resource specialist's caseload will allow us to do this. If the caseload exceeds the maximum increase of 32, we will use another resource specialist from a different site to provide services.

Student Population: 618

City Type: Suburban

Local Board Approval Date: 10/10/2013

Audit Penalty YN: N

Categorical Program Monitoring: N

Submitted by: Ms. Destiny Ortega
Position: Director of Student Services
E-mail: dortega@moreland.org
Telephone: 408-874-2952
Fax:

Bargaining Unit Date: 9/19/13
Name: Destiny Ortega
Representative: Paul Mack
Title: Union President
Position: Teacher

Comments: He is in support of the waiver. He added that he wants to ensure that we keep in mind what is best for students and provide them with the necessary services.

California Department of Education
Revised 4-25-2013

SPECIFIC WAIVER REQUEST FOR RESOUCE SPECIALIST CASELOAD
To be completed by the ADMINISTRATOR

1. SELPA / District / COE Name: Moreland School District

2. Name of Resource Specialist*: Donna Wohltmann

3. School / District Assignment: Payne Elementary School

4. Status: Permanent _X___ Probation ____ Temporary ___

5. Number of students _29____ (Caseload) proposed number of students _32___

6. Full time Equivalent (FTE%): 1.0

7. Number of periods or hours taught by Resource Specialist:

   Periods ___ Hours _6__

8. Average number of students per hour taught: 4

9. Indicate amount of Instructional Aide time: _5.5__ (hours) to be provided to this resource specialist with this waiver.
   Note: At least 5 hours of aide time is required when the caseload is over 28, per *CCR*, Title 5, Section 3100(d)(2).

10. Provide assurance that the waiver will not hinder the implementation of a student's individualized educational program (IEP) for all students involved with the waiver or compliance with specified federal law, per *CCR*, Title 5, Section 3100(d):

    We believe that with a full time Resource Specialist and a 5.5 hour aide we can provide a quality program which meets the requirements of each IEP. To assist the Resource Specialist, we have removed her responsibility to private school students. She will not be given students on service plans or assessment from the local private schools.

11. Explain what extraordinary fiscal or program circumstances resulted in this request for excess caseload, per *CCR*, Title 5, Section 3100(d):

This year our enrollment exceeded our projections by approximately two hundred students. With an increase in our overall population came an increase of students with IEPs.

12. Indicate how your plan of action to resolve conditions by the time the waiver expires or is denied by the SBE, per *CCR*, Title 5, Section 3100(d)(1):

    Should the caseload remain above twenty-eight students or is denied, we will have a Resource Specialist from another site provide service to the additional students.

Administrator/Designee Name and Title: Destiny Ortega, Director

Telephone number (and extension): 408-874-2952

Date: 9/19/2013

*Resource Specialist as defined in *EC* Section 56362.5 California Department of Education

Revised 4-25-2013

SPECIFIC WAIVER REQUEST FOR RESOUCE SPECIALIST CASELOAD
To be completed by the RESOURCE SPECIALIST (Teacher)

Name: Donna Wohltmann
Assigned at: Payne

1. Is the information in Items 1 – 12 on the attached SW _ RSC _ Administrator form an accurate reflection of your current assignments, personal data, FTE, your caseload, number of periods taught and average number of students?
   __x___ Yes _____ No
   If not, please state where you believe these facts or numbers differ:

2. Will all students served receive all of the services called for in their IEP's? Can you reasonably manage the excess caseload in relation to the programmatic condition you face, including, but not limited to, student age level, age span, and behavioral characteristics; number of curriculum levels taught at any one time or any given session, and intensity of student instructional needs. Please explain: I know all students will receive their stated services in the manner they are entitled to according to their IEP's as I could not do anything less than my best to support them.

3. Can you reasonably manage the excess caseload in relation to your student contact time, and other assigned duties? Please explain: At this point I feel I will be able to reasonably manage the excess caseload as far as student contact time is concerned. However the excess caseload puts quite a time strain on my "other duties" such as initial assessments and report writing and meeting time and District teacher duties. I have indicated this to my administrators and have been assured that they will provide me with assistance or withdraw duties if and when it becomes necessary. I believe I can hold them to these promises.

4. *EC* Section 56362(c) states that no resource specialist shall have a caseload which exceeds 28 students, per *CCR*, Title 5, Section 3100. Regulations allow your agency to request a waiver of the *EC*, providing certain conditions are met, and that in no circumstance may your caseload be raised to above 32 students.

   Indicate your position regarding this waiver request by a check mark in one box.

___x__ AGREE – to the increase in my student caseload from 28 students to not more than 32 students.

_____ DISAGREE – to an increase in my student caseload over the 28 students. If disagreeing, provide rational below:

5. Indicate a check mark in the appropriate box:

   ___x__ I did not have a student caseload of more than 28 during the last school year.

_____ I did have a student caseload of more than 28 during the last school year. If

yes, please respond below:

a. Did you have an approved waiver for this caseload? Yes ___ No ___
b. Specify which months / weeks you were over caseload: From _____ to _____
c. Other pertinent information?

_____ I have had a student caseload of **more than** 28 for **more than two consecutive years**.

6. Instructional Aide time currently receiving: 5 1/2 hours (prior to increased caseload).

7. Any additional Aide time with this waiver? 0 total hours after increase.

___x__ I hereby certify that the information provided on this application is true and correct.

Date: 09/19/13

Telephone number (and extension): 408-874-3730

California State Board of Education

Meeting Agenda Items for March 12-13, 2014

WAIVER ITEM W-07

ITEM #W-07

CALIFORNIA STATE BOARD OF EDUCATION

MARCH 2014 AGENDA

☒ **General Waiver**

SUBJECT Request by **Mupu Elementary School District** to waive California *Education Code* Section 41402(a), the requirement which sets the ratio of administrators to teachers for elementary schools at nine for every 100 teachers. Mupu Elementary School District would like to temporarily increase the ratio during the transition of training a new superintendent. Waiver Number: 31-12-2013	☒ **Action** ☒ **Consent**

SUMMARY OF THE ISSUES

Mupu Elementary School District's (Mupu Elementary) superintendent will be retiring at the end of the 2013–14 school year and the school district is training a veteran teacher leader to be the next principal/superintendent; thus resulting in noncompliance with the administrator/teacher ratio requirement. Waiving this requirement will allow Mupu Elementary to maintain this temporary arrangement of having more than one administrator with no fiscal consequences.

Authority for Waiver: *Education Code (EC)* Section 33050

RECOMMENDATION

☒ **Approval** ☐ **Approval with conditions** ☐ **Denial**

The California Department of Education recommends that the State Board of Education (SBE) approve the waiver for Mupu Elementary for the 2013–14 school year.

SUMMARY OF KEY ISSUES

Pursuant to *EC* Section 41402, elementary school districts must maintain an administrator to teacher ratio of nine administrators to every 100 teachers. School districts with only one administrator are exempt from the requirement. Mupu Elementary typically has one administrator; however, because the current superintendent will be retiring in July 2014 the district promoted a veteran teacher leader to 0.5 full-time equivalent (FTE) principal (increased to 0.88 FTE in January) in order to train a new superintendent and ensure a smooth leadership transition. This increased the number of administrators from 1.0 to 1.88 (1.71 weighted average), and thus prevents Mupu Elementary from using the existing exemption. Failure to comply with the

administrator/teacher ratio requirement will either cost Mupu Elementary approximately $72,000 in penalties or require the hiring of 13.6 additional teachers, both of which are fiscally prohibitive.

In the 2014–15 school year, only one administrator will remain. Mupu Elementary indicates that the school district does not have a bargaining unit, but that all teachers and classified staff encouraged and supported the school district's succession plan and parent groups were also relieved that the new superintendent would have a year of training and mentoring before assuming the new position.

Demographic Information: Mupu Elementary School District is a small, one school district, with a student population of 146 and is located in a rural community in Ventura 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* 33051(a), available at http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=EDC&sectionNum=33051.

SUMMARY OF PREVIOUS STATE BOARD OF EDUCATION DISCUSSION AND ACTION

There were multiple, similar waivers approved from July 2001 through June 2012 for Banta Elementary School District, which was allowed to have an increased number of administrators due to a temporary, large facilities expansion.

FISCAL ANALYSIS (AS APPROPRIATE)

There is no statewide fiscal impact of waiver approval.

ATTACHMENT(S)

Attachment 1: Summary Table (1 page)

Attachment 2: Mupu Elementary School District General Waiver Request 31-12-2013 (2 pages) (Original waiver request is signed and on file in the Waiver Office.)

Information from Districts Requesting Waivers of Administrator/Teacher Ratio Requirement

California *Education Code* Section 41402(a)

Waiver Number	District	Period of Request	Bargaining Unit, Representatives Consulted, Date, and Position	Public Hearing and Local Board Approval Date	Public Hearing Advertisement	SSC/Advisory Committee Date/Position
31-12-2013	Mupu Elementary School District	**Requested:** July 1, 2013, to June 30, 2014 **Recommended**: July 1, 2013, to June 30, 2014	District has no bargaining units	December 19, 2013	Posted Agenda on Website and School/District Site	Schoolsite council December 17, 2013 No Objection

Created by California Department of Education
January 27, 2014

California Department of Education
WAIVER SUBMISSION - General

CD Code: 5672504 Waiver Number: 31-12-2013 Active Year: 2013

Date In: 12/19/2013 11:19:44 AM

Local Education Agency: Mupu Elementary School District
Address: 4410 North Ojai Rd.
Santa Paula, CA 93060

Start: 7/1/2013 End: 6/29/2015

Waiver Renewal: N
Previous Waiver Number: Previous SBE Approval Date:

Waiver Topic: Administrator/Teacher Ratio
Ed Code Title: Administrator/Teacher Ratio in Elementary School D
Ed Code Section: 41400-41407
Ed Code Authority: 33050

Ed Code or *CCR* to Waive: *EC* 41400-41407 The Superintendent of Public Instruction shall determine the reduction in state support resulting from excess administrative employees identified in subdivision (d) of Section 41403 as follows: (a) Compute the ratio which total state support to the district general fund bears to the total general fund income of the district. (b) Multiply the ratio determined pursuant to subdivision (a) by the average salary of administrative employees. (c) Multiply the product of subdivision (b) by the number of administrative employees converted to the nearest whole number in excess of the maximum number specified in Section 41402. The amount of the second principal apportionment made to the district for the current fiscal year pursuant to Section 41335 shall be reduced by the product so produced. However, no reduction shall reduce the final apportionment below the amount specified in Section 6 of Article IX of the California Constitution.

Outcome Rationale: Mupu is a small one-school district that typically has one administrator (Superintendent/Principal) who conducts all school and district business. This administrator has no other administrative help, not even a district secretary. This administrator is retiring in July 2014. Because of this unique and all-encompassing administrative position, the district needed a succession plan to ensure a smooth transition so that neither the educational program nor district/school operations experience disruption. To that end, the Superintendent is using this year to train the new administrator in all aspects of running the school and district. The District promoted a veteran teacher leader (who has an administrative services credential) to .5 FTE Principal (to increase to .88 FTE in January). By doing this, the “actual excess” is .83—which rounds to 1. The District faces two fiscally devastating scenarios: (1) Hire up to 3 teachers to reduce the ratio to less than .49 or (2) Pay a penalty of approximately $72,000. The District would need to use reserves to pay for either of these options. For this fiscal year, the District is already deficit spending to accommodate technology issues related to the Common Core assessment requirements, hiring additional certificated staff, and promoting teacher to Principal. If the District has to use more of its reserves funds, it will hurt the district, which will hurt the educational program for its students.

District does not have a bargaining unit, but all teachers and classified staff encouraged and supported the District's succession plan. Parent groups were relieved that the new Superintendent/Principal would have the benefit of a year's training and mentoring before assuming total control.

Student Population: 146

City Type: Rural

Public Hearing Date: 12/18/2013
Public Hearing Advertised: Posted Agenda on Website and School/District Site

Local Board Approval Date: 12/18/2013

Community Council Reviewed By: Schoolsite Council
Community Council Reviewed Date: 12/17/2013
Community Council Objection: N
Community Council Objection Explanation:

Audit Penalty YN: N

Categorical Program Monitoring: N

Submitted by: Ms. Jeanine Gore
Position: Superintendent
E-mail: jgore@mupu.k12.ca.us
Telephone: 805-525-0422
Fax: 805-525-2871

California State Board of Education

Meeting Agenda Items for March 12-13, 2014

WAIVER ITEM W-08

ITEM #W-08

CALIFORNIA STATE BOARD OF EDUCATION

MARCH 2014 AGENDA

☒ **General Waiver**

SUBJECT Request by **Gilroy Unified School District** to waive portions of California *Education Code* sections 17466, 17472, and 17475, and all of 17473 and 17474, specific statutory provisions for the sale and lease of surplus property. Approval of the waiver would allow the district to sell two pieces of property using a broker and a "request for proposal" process, thereby maximizing the proceeds from the sale. The district properties for which the waiver is requested are the Wren Avenue Property and the Grove Property, both located in the city of Gilroy. Waiver Number: 16-11-2013	☒ **Action** ☒ **Consent**

SUMMARY OF THE ISSUES

The California Department of Education recommends approval to waive portions of *Education Code* (*EC*) sections 17466, 17472, and 17475, and all of 17473 and 17474. This waiver will allow the district to sell two pieces of property using a broker and a "request for proposal" process, maximizing the proceeds from the sale.

Authority for Waiver: *EC* Section 33050

RECOMMENDATION

☐ **Approval** ☒ **Approval with conditions** ☐ **Denial**

The California Department of Education recommends approval with the following condition: the proposals the governing board determines to be most desirable shall be selected within 30 to 60 days of the public meeting when the proposals are received and the reasons for those determinations shall be identified in public sessions and included in the minutes of the meeting.

SUMMARY OF KEY ISSUES

Under the provisions of *EC* sections 33050 through 33053, the district is requesting that specific portions of the *EC* relating to the sale or lease of district property be waived. The district believes that it will maximize the returns on the sale or lease of the property

to the greatest extent possible. The district is requesting that the requirement of sealed proposals and the oral bidding process be waived allowing the district to determine what constitutes the most "desirable" bid and set their own terms and conditions for the sale of surplus property.

The district is requesting the sale of two pieces of vacant land. The Wren Property is approximately 9.92 acres of vacant land located at 8450 Wren Avenue, Gilroy, California. This piece of property is the former Las Animas Elementary School site which was closed at the end of the 2006–07 school year and demolished in July of 2007. The students from the Las Animas Elementary School were transferred to Rod Kelley Elementary and Antonio del Buono Elementary School in the 2007–08 year. The district is growing at the southern edge of its attendance boundary and not the northern edge where this property is located. The second piece of property is the Grove Property which is approximately 15.05 acres of undeveloped vacant land located at Santa Teresa Blvd. and Miller Avenue in Gilroy, California.

Demographic Information: Gilroy Unified School District has a student population of 8600 and is located in an urban area in Santa Clara 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* 33051(a), available at http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=EDC&sectionNum=33051.

SUMMARY OF PREVIOUS STATE BOARD OF EDUCATION DISCUSSION AND ACTION

The State Board of Education has approved all previous waivers regarding the bidding process and the sale or lease of surplus property. The district is requesting to waive the same provisions for the sale or lease of surplus property.

FISCAL ANALYSIS (AS APPROPRIATE)

The flexibility in property disposition requested herein will allow the district to maximize revenue. The applicant district will financially benefit from the sale of the properties.

ATTACHMENT(S)

Attachment 1: Summary Table (1 page)

Attachment 2: Gilroy Unified School District General Waiver Request 16-11-2013 (3 pages) (Original waiver request is signed and on file in the Waiver Office.)

SUMMARY TABLE

Waiver Number	School District	Property	Period of Request	Local Board Approval Date	Public Hearing Date	Bargaining Unit Consulted – Date	Position of Bargaining Unit	Advisory Committee Consulted	Streamlined Waiver Policy
16-11-2013	Gilroy Unified School District	8450 Wren Avenue Property (formerly Las Animas Elementary School) and "The Grove" Property located at Santa Teresa Blvd. and Miller Ave.	**Requested:** January 16, 2014, – January 16, 2016 **Recommended:** January 16, 2014, – January 14, 2016	November 21, 2013	November 21, 2013	California School Employee Association (CSEA) – November 12, 2013 B.C. Doyle, President **Support** Gilroy Federation of Teachers and Paraprofessional (GFTP) – November 12, 2013 Aracelia O'Connor, President **Support** Gilroy Teachers Association (GTA) – November 12, 2013 Jonathan Bass, President **Support**	CSEA – Support GFTP – Support GTA – Support	District Advisory Committee, District Facility Subcommittee - October 23, 2013	No

California Department of Education
WAIVER SUBMISSION - General

CD Code: 4369484 Waiver Number: 16-11-2013 Active Year: 2013

Date In: 11/29/2013 5:35:18 PM

Local Education Agency: Gilroy Unified School District
Address: 7810 Arroyo Cir.
Gilroy, CA 95020

Start: 1/16/2014 End: 1/16/2016

Waiver Renewal: N
Previous Waiver Number: Previous SBE Approval Date:

Waiver Topic: Sale or Lease of Surplus Property
Ed Code Title: Sale of Surplus Property
Ed Code Section: 17466, 17472, 17473, 17474, 17475
Ed Code Authority: 33050

Ed Code or *CCR* to Waive: Section 17466: Before ordering sale or lease of any property the governing board, in a regular open meeting, by a two thirds vote of all its members, shall adopt a resolution, declaring its intention to sell or lease the property, as the case may be. The resolution shall describe the property proposed to be sold or leased in such a manner as to identify it [and shall specify the minimum price or rental and the terms upon which it will be sold or leased and the commission, or rate thereof, if any, which the board will pay to a licensed real estate broker out of the minimum price or rental. The resolution shall fix a time not less than three weeks thereafter for a public meeting of the governing board to be held at its regular place of meeting, at which sealed proposals to purchase or lease will be received and considered].

RATIONALE: The aforementioned language to be waived allows the District to avoid specifying a minimum bid at a public meeting and would allow the District to set its own terms and conditions and remove references to minimum bids and actions to be taken with “sealed’ bids. The District would instead negotiate proposals with various land developers and/or real estate agents/brokers – Individual negotiations would be confidential.

Section 17472: At the time and place fixed in the resolution for the meeting of the governing body, all sealed proposals which have been received shall, in a public session, be opened, examined, and declared by the Board. Of the proposals submitted [which conform to all terms and conditions specified in the resolution of intention to sell or to lease and] which are made by responsible bidders, the proposal [which is the highest] which the District Board determines represents the most desirable sale or lease of the property, [after deducting there from the commission, if any, to be paid to a licensed real estate broker in connection therewith], shall be finally accepted, [unless a higher oral bid is accepted or the Board rejects all bids].

RATIONALE: The aforementioned language to be waived allows the District to determine what constitutes the most “desirable” bid, set its own terms and conditions, and would remove the

requirement that an oral bid be accepted.

Section 17473: Entire section pertaining to oral bids to be waived.

RATIONALE: Waiving this section would allow the District to eliminate the oral bidding process.

Section 17474: Entire section proposed to be waived.

RATIONALE: Waiving the section pertaining to oral bidding process eliminates technical language related to commissions paid to brokers who procure the winning oral bid.

Section 17475: The final acceptance by the governing body may be made either at the same session or at any adjourned session of the same meeting held within [60] 10 days next following.

RATIONALE: Proposed language change would allow the District 60 days, instead of 10, to accept offers.

Outcome Rationale: The Gilroy Unified School District complied with the surplus property requirements, regarding offers to public agencies and non-profit organizations, specified in *EC* Sections 17464-17465 and 17485 et seq., but received no letters of interest or offers – Copies of legal notice, public offering notices and returned notices are attached.

The District proposes to use the Request for Proposals (RFP) process to realize the asset potential of the subject property. Approval of the proposed waiver would allow District to sell, lease or exchange property using a broker process, thereby maximizing the proceeds from such sale and/or lease.

Student Population: 8600

City Type: Urban

Public Hearing Date: 11/21/2013
Public Hearing Advertised: Newspaper Legal Advertisement, Notice Posted at District Office, Notice posed on District Website, Noticde posted at school sites

Local Board Approval Date: 11/21/2013

Community Council Reviewed By: District Advisory Committee, District Facility Subcommittee
Community Council Reviewed Date: 10/23/2013
Community Council Objection: N
Community Council Objection Explanation:

Audit Penalty YN: N

Categorical Program Monitoring: N

Submitted by: Dr. Deborah Flores
Position: Superintendent
E-mail: Debbie.Flores@gusd.k12.ca.us
Telephone: 408-847-2700
Fax:

Bargaining Unit Date: 11/12/2013
Name: California School Employee Association
Representative: BC Doyle
Title: President
Position: Support
Comments:

Bargaining Unit Date: 11/12/2013
Name: Gilroy Federation of Teachers and Paraprofessional
Representative: Aracelia O'Connor
Title: President
Position: Support
Comments:

Bargaining Unit Date: 11/12/2013
Name: Gilroy Teachers Association
Representative: Jonathan Bass
Title: President
Position: Support
Comments:

California State Board of Education

Meeting Agenda Items for March 12-13, 2014

WAIVER ITEM W-09

ITEM #W-09

CALIFORNIA STATE BOARD OF EDUCATION

MARCH 2014 AGENDA

☒ **General Waiver**

SUBJECT Request by **Union Hill Elementary School District** to waive portions of California *Education Code* Section 5091, which will allow the board of trustees to make a provisional appointment to a vacant board position past the 60-day statutory deadline. Waiver Number: 11-12-2013	☒ **Action** ☒ **Consent**

SUMMARY OF THE ISSUE(S)

California *Education Code* (*EC*) Section 5091 requires a school district governing board to make a provisional appointment or order an election to fill a vacancy on the governing board within 60 days of the occurrence of the vacancy. *EC* Section 5091 further requires the county superintendent of schools (county superintendent) to order an election to fill the vacancy if the district governing board does not take action within 60 days. Approval of this waiver request would remove the 60-day limit for the Union Hill Elementary School District (ESD); thus, giving the governing board additional time to make a provisional appointment.

Authority for Waiver: *EC* Section 33050

RECOMMENDATION

☒ **Approval** ☐ **Approval with conditions** ☐ **Denial**

The California Department of Education (CDE) recommends that the SBE approve the request by the Union Hill ESD to waive portions of *EC* Section 5091 (as revised by the CDE in Attachment 3), which require a governing board to take action to fill a vacancy on the board within 60 days.

SUMMARY OF KEY ISSUES

EC Section 5091 provides that a school district governing board must make a provisional appointment or order an election to fill a vacancy on the governing board within 60 days of the occurrence of the vacancy. *EC* Section 5091 further provides that, if the district governing board fails to take action within 60 days, the county

superintendent of schools (county superintendent) must order an election to fill the vacancy. Approval of this waiver request would remove the 60-day limit and the requirement that the Nevada County Superintendent call an election; thus, giving the Union Hill ESD governing board additional time to make a provisional appointment.
A vacancy on the five-member Union Hill ESD governing board occurred on August 13, 2013, when a member of the board resigned. The term for this now-vacant seat is set to expire upon certification of the results of the November 2016 governing board election.

The district actively recruited a potential candidate to fill the vacancy—however, it was unable to find an interested, qualified candidate until after the 60-day appointment window had closed. If the SBE approves this waiver request, the governing board has indicated that it will appoint this candidate at its April 10, 2014, meeting. The appointee will hold office only until the November 2014 election, whereupon an election will be held to fill the vacancy for the remainder of the unexpired term (*EC* Section 5091[e]).

After the governing board of the Union Hill ESD was unable to make an appointment to fill the vacancy (or call an election) within 60 days of the vacancy, the remaining option in *EC* Section 5091 was for the Nevada County Superintendent to call a special election. However, the earliest established election date (pursuant to California *Elections Code* Section 1000) that could have been held subsequent to the expiration of the 60 days would have been the April 8, 2014, election. Such an election would not have filled the vacancy any sooner than the governing board's current plans to fill the vacancy at its April 10, 2014, meeting (assuming SBE approval of this waiver request). The Nevada County Superintendent supports the Union Hill ESD's waiver request.

As stated previously, the term for the vacant seat expires with the November 2016 governing board election—thus, regardless of the SBE's action on this waiver request, the unexpired portion of this term will be filled at the November 2014 general election. If the SBE approves the waiver, the Union Hill ESD will appoint a member to serve on the board until the November 2014 election. If the SBE denies the waiver, the seat on the board will remain vacant until the November 2014 election.

Given the above considerations, the lack of local opposition to the waiver request, and the CDE's determination that none of the reasons for denial in *EC* Section 33051(a) exist, the CDE recommends that the SBE approve the request by the Union Hill ESD to waive portions of *EC* Section 5091 (as revised by the CDE in Attachment 3), which require a governing board to take action to fill a vacancy on the board within 60 days.

Demographic Information:

The Union Hill ESD has a student population of 656 and is located in a rural area of Nevada 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* 33051(a), available at http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=EDC&sectionNum=33051.

SUMMARY OF PREVIOUS STATE BOARD OF EDUCATION DISCUSSION AND ACTION

The SBE has previously approved similar waiver requests related to *EC* Section 5091. The most recent approval was at the March 14, 2013, SBE meeting for the Manchester Union ESD in Mendocino County.
The Union Hill ESD meets the criteria for the SBE Streamlined Waiver Policy, available at http://www.cde.ca.gov/re/lr/wr/documents/sbestreamlined.doc, achieving an Academic Performance Index (API) of 800 or above in the current scoring cycle. Therefore, this waiver has been scheduled for the consent calendar. The Union Hill ESD has a 2013 Growth API of 849.

FISCAL ANALYSIS (AS APPROPRIATE)

Approval of the waiver request will not have negative fiscal effects on any local or state agency. There will be an additional ballot measure at the November 2014 election for Union Hill ESD governing board members (to fill the vacancy for the remainder of the unexpired term of the current vacancy) irrespective of any SBE action on this waiver request.

ATTACHMENT(S)

Attachment 1: Information from Districts Requesting Waivers of Elections Required to Establish Trustee Area Elections (1 page)

Attachment 2: Union Hill Elementary School District General Waiver Request 11-12-2013 (2 pages) (Original waiver request is signed and on file in the Waiver Office.)

Attachment 3: Portions of California *Education Code* Section 5091 Recommended for Revision (1 page)

Information from Districts Requesting Waiver of 60-Day Timeline for Provisional Board Appointment

California *Education Code* Section 5091

Waiver Number	District	Period of Request	Bargaining Unit, Representatives Consulted, Date, and Position	Public Hearing and Board Approval Date	Public Hearing Advertisement	SSC/Advisory Committee Position
11-12-2013	Union Hill Elementary School District	**Requested:** October 3, 2013, to April 10, 2014 **Recommended**: October 3, 2013, to June 10, 2014	Union Hill Teachers' Association, Mary Gauthier President, 11/20/13: **Support**	12/10/13	Notice posted at each school site.	Reviewed by Union Hill School Site Council on 11/25/13: **No objections**

Created by California Department of Education
December 17, 2013

California Department of Education
California Department of Education
WAIVER SUBMISSION - General

CD Code: 2966407 Waiver Number: 11-12-2013 Active Year: 2013

Date In: 12/11/2013 2:19:31 PM

Local Education Agency: Union Hill Elementary School District
Address: 10879 Bartlett Dr.
Grass Valley, CA 95945

Start: 10/3/2013 End: 4/10/2014

Waiver Renewal: N
Previous Waiver Number: Previous SBE Approval Date:

Waiver Topic: School District Reorganization
Ed Code Title: 60 day Requirement to Fill Board Vacancy
Ed Code Section: *EC* 5091 (a)
Ed Code Authority: *EC* 33050

Ed Code or *CCR* to Waive: *EC* to Waive: (a)Whenever a vacancy occurs, or whenever a resignation has been filed with the county superintendent of schools containing a deferred effective date, the school district or community college district governing board [shall, within 60 days of the vacancy or the filing of the deferred resignation,] either order an election or make a provisional appointment to fill the vacancy. A governing board member may not defer the effective date of his or her resignation for more than 60 days after he or she files the resignation with the county superintendent of schools. [In the event that a governing board fails to make a provisional appointment or order an election within the prescribed 60-day period as required by this section, the county superintendent of schools shall order an election to fill the vacancy.]

Outcome Rationale: The District has a governing board of five members. On August 13, 2013 one member resigned. The board has actively sought to fill the vacancy, and has only as of recent, found a qualified candidate. A waiver of the 60 day time limit will allow the board to make a provisional appointment at the April 10, 2014 board meeting.

Student Population: 656

City Type: Rural

Public Hearing Date: 12/10/2013
Public Hearing Advertised: Notice was posted at each school site.

Local Board Approval Date: 12/10/2013

Community Council Reviewed By: Union Hill Schoolsite Council
Community Council Reviewed Date: 11/25/2013
Community Council Objection: N
Community Council Objection Explanation:

Audit Penalty YN: N

Categorical Program Monitoring: N

Submitted by: Ms. Susan Barry
Position: Superintendent
E-mail: sbarry@uhsd.k12.a.us
Telephone: 530-273-0647x105
Fax:

Bargaining Unit Date: 11/20/2013
Name: Union Hill Teachers' Association
Representative: Mary Gauthier
Title: President
Position: Support
Comments:

Portions of California *Education Code* Section 5091 Recommended for Revision

Waiver requested by Union Hill Elementary School District:

5091. (a) Whenever a vacancy occurs, or whenever a resignation has been filed with the county superintendent of schools containing a deferred effective date, the school district or community college district governing board ~~shall, within 60 days of the vacancy or the filing of the deferred resignation,~~ either order an election or make a provisional appointment to fill the vacancy. A governing board member may not defer the effective date of his or her resignation for more than 60 days after he or she files the resignation with the county superintendent of schools.
~~In the event that a governing board fails to make a provisional appointment or order an election within the prescribed 60-day period as required by this section, the county superintendent of schools shall order an election to fill the vacancy.~~

Waiver recommended by California Department of Education:

5091. (a) Whenever a vacancy occurs, or whenever a resignation has been filed with the county superintendent of schools containing a deferred effective date, the school district or community college district governing board shall~~, within 60 days of the vacancy or the filing of the deferred resignation,~~ either order an election or make a provisional appointment to fill the vacancy. A governing board member may not defer the effective date of his or her resignation for more than 60 days after he or she files the resignation with the county superintendent of schools.
~~In the event that a governing board fails to make a provisional appointment or order an election within the prescribed 60-day period as required by this section, the county superintendent of schools shall order an election to fill the vacancy.~~

California State Board of Education

Meeting Agenda Items for March 12-13, 2014

WAIVER ITEM W-10

ITEM #W-10

CALIFORNIA STATE BOARD OF EDUCATION

MARCH 2014 AGENDA

☒ **General Waiver**

SUBJECT	
Request by **South Monterey County Joint Union High School District** to waive California *Education Code* Section 5020, and portions of sections 5019, 5021, and 5030, that require a districtwide election to establish a by-trustee-area method of election. Waiver Number: 2-12-2013	☒ **Action** ☒ **Consent**

SUMMARY OF THE ISSUE(S)

School districts that elect governing board members at-large are facing existing or potential litigation under the California Voting Rights Act of 2001 (CVRA). Pursuant to the California *Education Code* (*EC*), a district can change from at-large elections to trustee-area elections only if the change is approved by both the County Committee on School District Organization (County Committee) and voters at a districtwide election.

To reduce the potential for litigation and to establish trustee-area elections as expeditiously as possible, the South Monterey County Joint Union High School District (JUHSD) requests that the California State Board of Education (SBE) waive the requirement that trustee-area elections be approved at a districtwide election—allowing trustee-area elections to be adopted upon review and approval of the County Committee. As a condition for receiving an emergency loan from the state, the California State Superintendent of Public Instruction (SSPI) has assumed “all the legal rights, duties, and powers of the governing board” of the South Monterey County JUHSD (pursuant to *EC* Section 41326) and has appointed an administrator for the district, who has assumed the responsibilities of the governing board for purposes of this waiver request.

Authority for Waiver: *EC* Section 33050

RECOMMENDATION

☒ **Approval** ☐ **Approval with conditions** ☐ **Denial**

The California Department of Education (CDE) recommends that the SBE approve the request by the South Monterey County JUHSD to waive *EC* Section 5020, and portions of sections 5019, 5021, and 5030, which require trustee-area elections be approved at a districtwide election.

SUMMARY OF KEY ISSUES

Approval of this waiver request would eliminate the election requirement for approval of trustee areas and a by-trustee-area method of election for future governing board elections in the South Monterey County JUHSD. Voters in the district will continue to elect all board members—however, if the waiver request is approved, all board members will be elected by trustee areas, beginning with the next board election.

The county committee has the authority to approve or disapprove the adoption of trustee areas and methods of election for school district governing board elections. Pursuant to *EC* Section 5020, county committee approval of trustee areas and election methods constitutes an order of election; thus, voters in the district have final approval.

Many districts in California are facing existing or potential litigation under the CVRA over their at-large election methods. To help avoid potential litigation, the South Monterey County JUHSD is taking action to establish trustee areas and adopt a by-trustee-area election method. In order to establish these trustee areas and the method of election as expeditiously as possible, the district is requesting that the SBE waive the requirement that the trustee areas and the election method be approved at a districtwide election.

Only the election to establish trustee areas and election method will be eliminated by approval of the waiver request—voters in the district will continue to elect all governing board members. Moreover, approval of the waiver requests will not eliminate any existing legal rights of currently seated board members.

The waiver request has been reviewed by CDE staff and it has determined that there was no significant public opposition to the waiver request at the public hearing held in the district. As a condition for receiving an emergency loan from the state, the SSPI has assumed “all the legal rights, duties, and powers of the governing board” of the South Monterey County JUHSD (pursuant to *EC* Section 41326) and has appointed an administrator for the district who has assumed the responsibilities of the governing board for purposes of this waiver request, including the public hearing.

The CDE has further determined that none of the grounds specified in *EC* Section 33051, which authorize denial of a waiver, exist. The CDE recommends that the SBE approve the request by the South Monterey County JUHSD to waive *EC* Section 5020 in its entirety and portions of *EC* sections 5019, 5021, and 5030.

Demographic Information:

The South Monterey County JUHSD has a student population of 1,996 and is located in a rural area of Monterey 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* 33051(a), available at http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=EDC&sectionNum=33051.

SUMMARY OF PREVIOUS STATE BOARD OF EDUCATION DISCUSSION AND ACTION

The SBE has approved numerous similar waivers—most recently for the Alvord Unified School District (Riverside County), the Newman-Crows Landing Unified School District (Stanislaus County), and the Salida Union Elementary School District (Stanislaus County) at the January 2014 SBE meeting.

FISCAL ANALYSIS (AS APPROPRIATE)

Approval of the waiver requests will not have negative fiscal effects on any local or state agency. Failure to approve the waiver request will result in the additional costs to the South Monterey County JUHSD for a districtwide election.

ATTACHMENT(S)

Attachment 1: Information from Districts Requesting Waivers of Elections Required to Establish Trustee Area Elections (1 page)

Attachment 2: South Monterey County Joint Union High School District General Waiver Request 2-12-2013 (6 pages) (Original waiver request is signed and on file in the Waiver Office.)

Attachment 3: California *Education Code* Sections to be Waived (4 pages)

Information from Districts Requesting Waivers of Elections Required to Establish Trustee Area Elections

California *Education Code* Section 5020 and portions of sections 5019, 5021, and 5030

Waiver Number	District	Period of Request	Bargaining Unit, Representatives Consulted, Date, and Position	Public Hearing and Board Approval Date	Public Hearing Advertisement	SSC/Advisory Committee Position
2-12-2013	South Monterey County Joint Union High School District	**Requested and Recommended**: January 1, 2014, to December 30, 2015	King City High School Teachers' Association, Paul Cavanagh, President, 10/26/2013: **Support** California School Employees' Association, Teresa Gama, President, 10/24/13: **Support**	11/13/2013	Notice in newspaper; notice posted at each school site, the public library, and the post office.	Reviewed by the District English Learners' Advisory Committee on 11/4/13: **No objections**

Created by California Department of Education
December 12, 2013

California Department of Education
WAIVER SUBMISSION - General

CD Code: 2766068 Waiver Number: 2-12-2013 Active Year: 2013

Date In: 12/5/2013 12:14:36 PM

Local Education Agency: South Monterey County Joint Union High School District
Address: 800 Broadway St.
King City, CA 93930

Start: 1/1/2014 End: 12/30/2015

Waiver Renewal: N
Previous Waiver Number: Previous SBE Approval Date:

Waiver Topic: School District Reorganization
Ed Code Title: Election of Governing Board
Ed Code Section: 5020, 5019, 5030
Ed Code Authority: 33050

Ed Code or *CCR* to Waive: Request to waive the following sections and portions of the *Education Code* lined out below:

§ 5019. Trustee areas and size of school district governing boards; powers of county committee; proposal and hearing

(a) Except in a school district governed by a board of education provided for in the charter of a city or city and county, in any school district or community college district, the county committee on school district organization may establish trustee areas, rearrange the boundaries of trustee areas, abolish trustee areas, and increase to seven or decrease to five the number of members of the governing board, or adopt one of the alternative methods of electing governing board members specified in Section 5030.

(b) The county committee on school district organization may establish or abolish a common governing board for a high school district and an elementary school district within the boundaries of the high school district. The resolution of the county committee on school district organization approving the establishment or abolition of a common governing board shall be presented to the electors of the school districts as specified in Section 5020.

(c) (1) A proposal to make the changes described in subdivision (a) or (b) may be initiated by the county committee on school district organization or made to the county committee on school district organization either by a petition signed by 5 percent or 50, whichever is less, of the qualified registered voters residing in a district in which there are 2,500 or fewer qualified registered voters, by 3 percent or 100, whichever is less, of the qualified registered voters residing in a district in which there are 2,501 to 10,000 qualified registered voters, by 1 percent or 250, whichever is less, of the qualified registered voters residing in a district in which there are 10,001 to 50,000 qualified registered voters, by 500 or more of the qualified registered voters residing in a district in which there are 50,001 to 100,000 qualified registered voters, by

750 or more of the qualified registered voters residing in a district in which there are 100,001 to 250,000 qualified registered voters, or by 1,000 or more of the qualified registered voters residing in a district in which there are 250,001 or more qualified registered voters or by resolution of the governing board of the district. For this purpose, the necessary signatures for a petition shall be obtained within a period of 180 days before the submission of the petition to the county committee on school district organization and the number of qualified registered voters in the district shall be determined pursuant to the most recent report submitted by the county elections official to the Secretary of State under Section 2187 of the Elections Code.

(2) When a proposal is made pursuant to paragraph (1), the county committee on school district organization shall call and conduct at least one hearing in the district on the matter. At the conclusion of the hearing, the county committee on school district organization shall approve or disapprove the proposal.

(d) If the county committee on school district organization approves pursuant to subdivision (a) the rearrangement of the boundaries of trustee areas for a particular district, then the rearrangement of the trustee areas shall be effectuated for the next district election occurring at least 120 days after its approval, unless at least 5 percent of the registered voters of the district sign a petition requesting an election on the proposed rearrangement of trustee area boundaries. The petition for an election shall be submitted to the county elections official within 60 days of the proposal's adoption by the county committee on school district organization. If the qualified registered voters approve pursuant to subdivision (b) or (c) the rearrangement of the boundaries to the trustee areas for a particular district, the rearrangement of the trustee areas shall be effective for the next district election occurring at least 120 days after its approval by the voters.

§ 5020. Presentation of proposal to electors

(a) The resolution of the county committee approving a proposal to establish or abolish trustee areas, to adopt one of the alternative methods of electing governing board members specified in Section 5030, or to increase or decrease the number of members of the governing board shall constitute an order of election, and the proposal shall be presented to the electors of the district not later than the next succeeding election for members of the governing board.

(b) If a petition requesting an election on a proposal to rearrange trustee area boundaries is filed, containing at least 5 percent of the signatures of the district's registered voters as determined by the elections official, the proposal shall be presented to the electors of the district, at the next succeeding election for the members of the governing board, at the next succeeding statewide primary or general election, or at the next succeeding regularly scheduled election at which the electors of the district are otherwise entitled to vote, provided that there is sufficient time to place the issue on the ballot.

(c) If a petition requesting an election on a proposal to establish or abolish trustee areas, to increase or decrease the number of members of the board, or to adopt one of the alternative methods of electing governing board members specified in Section 5030 is filed, containing at least 10 percent of the signatures of the district's registered voters as determined by the elections official, the proposal shall be presented to the electors of the district, at the next succeeding election for the members of the governing board, at the next succeeding statewide primary or general election, or at the next succeeding regularly scheduled election at which the electors of the district are otherwise entitled to vote, provided that there is sufficient time to place the issue on the ballot. Before the proposal is presented to the electors, the county

committee on school district organization may call and conduct one or more public hearings on the proposal.

(d) The resolution of the county committee approving a proposal to establish or abolish a common governing board for a high school and an elementary school district within the boundaries of the high school district shall constitute an order of election. The proposal shall be presented to the electors of the district at the next succeeding statewide primary or general election, or at the next succeeding regularly scheduled election at which the electors of the district are otherwise entitled to vote, provided that there is sufficient time to place the issue on the ballot.

(e) For each proposal there shall be a separate proposition on the ballot. The ballot shall contain the following words:

"For the establishment (or abolition or rearrangement) of trustee areas in ____ (insert name) School District --Yes" and "For the establishment (or abolition or rearrangement) of trustee areas in ____ (insert name) School District--No."

"For increasing the number of members of the governing board of ____ (insert name) School District from five to seven--Yes" and "For increasing the number of members of the governing board of ____ (insert name) School District from five to seven--No."

"For decreasing the number of members of the governing board of ____ (insert name) School District from seven to five--Yes" and "For decreasing the number of members of the governing board of ____ (insert name) School District from seven to five--No."

"For the election of each member of the governing board of the ____ (insert name) School District by the registered voters of the entire ____ (insert name) School District--Yes" and "For the election of each member of the governing board of the ____ (insert name) School District by the registered voters of the entire ____ (insert name) School District--No."

"For the election of one member of the governing board of the ____ (insert name) School District residing in each trustee area elected by the registered voters in that trustee area--Yes" and "For the election of one member of the governing board of the ____ (insert name) School District residing in each trustee area elected by the registered voters in that trustee area--No."

"For the election of one member, or more than one member for one or more trustee areas, of the governing board of the ____ (insert name) School District residing in each trustee area elected by the registered voters of the entire ____ (insert name) School District--Yes" and "For the election of one member, or more than one member for one or more trustee areas, of the governing board of the ____ (insert name) School District residing in each trustee area elected by the registered voters of the entire ____ (insert name) School District--No."

"For the establishment (or abolition) of a common governing board in the ____ (insert name) School District and the ____ (insert name) School District--Yes" and "For the establishment (or abolition) of a common governing board in the ____ (insert name) School District and the ____ (insert name) School District--No."

If more than one proposal appears on the ballot, all must carry in order for any to become effective, except that a proposal to adopt one of the methods of election of board members specified in Section 5030 which is approved by the voters shall become effective unless a proposal which is inconsistent with that proposal has been approved by a greater number of

voters. An inconsistent proposal approved by a lesser number of voters than the number which have approved a proposal to adopt one of the methods of election of board members specified in Section 5030 shall not be effective.

§ 5021. Incumbents to serve out terms despite approval of change

(a) If a proposal for the establishment of trustee areas formulated under Sections 5019 and 5020 is approved by a majority of the voters voting at the election, any affected incumbent board member shall serve out his or her term of office and succeeding board members shall be nominated and elected in accordance with Section 5030. In the event two or more trustee areas are established at such election which are not represented in the membership of the governing board of the school district, or community college district the county committee shall determine by lot the trustee area from which the nomination and election for the next vacancy on the governing board shall be made.

(b) If a proposal for rearrangement of boundaries is approved by a majority of the voters voting on the measure, or by the county committee on school district organization when no election is required, and if the boundary changes affect the board membership, any affected incumbent board member shall serve out his or her term of office and succeeding board members shall be nominated and elected in accordance with Section 5030.

(c) If a proposal for abolishing trustee areas is approved by a majority of the voters voting at the election, the incumbent board members shall serve out their terms of office and succeeding board members shall be nominated and elected at large from the district.

§ 5030. Alternate method of election

Except as provided in Sections 5027 and 5028, in any school district or community college district having trustee areas, the county committee on school district organization and the registered voters of a district, pursuant to Sections 5019 and 5020, respectively, may at any time recommend one of the following alternate methods of electing governing board members:

(a) That each member of the governing board be elected by the registered voters of the entire district.

(b) That one or more members residing in each trustee area be elected by the registered voters of that particular trustee area.

(c) That each governing board member be elected by the registered voters of the entire school district or community college district, but reside in the trustee area which he or she represents.

The recommendation shall provide that any affected incumbent member shall serve out his or her term of office and that succeeding board members shall be nominated and elected in accordance with the method recommended by the county committee.

Whenever trustee areas are established in a district, provision shall be made for one of the alternative methods of electing governing board members.

In counties with a population of less than 25,000, the county committee on school district organization or the county board of education, if it has succeeded to the duties of the county committee, may at any time, by resolution, with respect to trustee areas established for any school district, other than a community college district, amend the provision required by this section without additional approval by the electors, to require one of the alternate methods for electing board members to be utilized.

Outcome Rationale: Approval of this waiver request would eliminate the election requirement for approval of trustee areas and a by-trustee-area method of election for future governing board

elections in the South Monterey County Joint Union High School District (UHSD) in Monterey County. Voters in the district will continue to elect all board members—however, if the waiver is approved, all board members will be elected by trustee areas, beginning with the next board election.

The county committee on school district organization (county committee) has the authority to approve or disapprove the adoption of trustee areas and methods of election for school district governing board elections. Pursuant to California *Education Code* (*EC*) Section 5020, county committee approval of trustee areas and methods of election constitutes an order of election; thus, voters in the district have final approval.

A number of districts in California are facing existing or potential litigation under the California Voting Rights Act of 2001 over their at-large election methods. To help protect itself from potential litigation, the South Monterey County Joint UHSD is taking action to establish trustee areas and adopt a by-trustee-area method of election for the governing board. In order to establish these trustee areas and the method of election as expeditiously as possible, the district is requesting that the SBE waive the requirement that the trustee areas and the election method be approved at a districtwide election.

Student Population: 1996

City Type: Rural

Public Hearing Date: 11/13/2013
Public Hearing Advertised: Posting, public newspaper

Local Board Approval Date: 11/13/2013

Community Council Reviewed By: District English Language Advisory Committee
Community Council Reviewed Date: 11/4/2013
Community Council Objection: N
Community Council Objection Explanation:

Audit Penalty YN: N

Categorical Program Monitoring: N

Submitted by: Dr. Daniel Moirao
Position: State Administrator
E-mail: dmoirao@smcjuhsd.org
Telephone: 831-385-0606
Fax:

Bargaining Unit Date: 10/26/2013
Name: King City High School Teachers Association
Representative: Paul Cavanagh
Title: President
Position: Support
Comments:

Bargaining Unit Date: 10/24/2013
Name: California School Employees' Association
Representative: Teresa Gama
Title: President
Position: Support
Comments

California *Education Code* Sections to be Waived

§ 5019. Trustee areas and size of school district governing boards; powers of county committee; proposal and hearing

(a) Except in a school district governed by a board of education provided for in the charter of a city or city and county, in any school district or community college district, the county committee on school district organization may establish trustee areas, rearrange the boundaries of trustee areas, abolish trustee areas, and increase to seven or decrease to five the number of members of the governing board, or adopt one of the alternative methods of electing governing board members specified in Section 5030.

(b) The county committee on school district organization may establish or abolish a common governing board for a high school district and an elementary school district within the boundaries of the high school district. The resolution of the county committee on school district organization approving the establishment or abolition of a common governing board shall be presented to the electors of the school districts as specified in Section 5020.

(c) (1) A proposal to make the changes described in subdivision (a) or (b) may be initiated by the county committee on school district organization or made to the county committee on school district organization either by a petition signed by 5 percent or 50, whichever is less, of the qualified registered voters residing in a district in which there are 2,500 or fewer qualified registered voters, by 3 percent or 100, whichever is less, of the qualified registered voters residing in a district in which there are 2,501 to 10,000 qualified registered voters, by 1 percent or 250, whichever is less, of the qualified registered voters residing in a district in which there are 10,001 to 50,000 qualified registered voters, by 500 or more of the qualified registered voters residing in a district in which there are 50,001 to 100,000 qualified registered voters, by 750 or more of the qualified registered voters residing in a district in which there are 100,001 to 250,000 qualified registered voters, or by 1,000 or more of the qualified registered voters residing in a district in which there are 250,001 or more qualified registered voters or by resolution of the governing board of the district. For this purpose, the necessary signatures for a petition shall be obtained within a period of 180 days before the submission of the petition to the county committee on school district organization and the number of qualified registered voters in the district shall be determined pursuant to the most recent report submitted by the county elections official to the Secretary of State under Section 2187 of the Elections Code.

(2) When a proposal is made pursuant to paragraph (1), the county committee on school district organization shall call and conduct at least one hearing in the district on the matter. At the conclusion of the hearing, the county committee on school district organization shall approve or disapprove the proposal.

(d) If the county committee on school district organization approves pursuant to subdivision (a) ~~the rearrangement of the~~ boundaries of trustee areas for a particular district, then the ~~rearrangement of the~~ trustee areas shall be effectuated for the next district election occurring at least 120 days after ~~its~~ approval~~, unless at least 5 percent of the registered voters of the district sign a petition requesting an election on the proposed rearrangement of trustee area boundaries. The petition for an election shall be submitted to the county elections official within 60 days of the proposal's adoption by the county committee on school district organization. If~~

~~the qualified registered voters approve pursuant to subdivision (b) or (c) the rearrangement of the boundaries to the trustee areas for a particular district, the rearrangement of the trustee areas shall be effective for the next district election occurring at least 120 days after its approval by the voters~~.

~~§ 5020. Presentation of proposal to electors~~

~~(a) The resolution of the county committee approving a proposal to establish or abolish trustee areas, to adopt one of the alternative methods of electing governing board members specified in Section 5030, or to increase or decrease the number of members of the governing board shall constitute an order of election, and the proposal shall be presented to the electors of the district not later than the next succeeding election for members of the governing board.~~

~~(b) If a petition requesting an election on a proposal to rearrange trustee area boundaries is filed, containing at least 5 percent of the signatures of the district's registered voters as determined by the elections official, the proposal shall be presented to the electors of the district, at the next succeeding election for the members of the governing board, at the next succeeding statewide primary or general election, or at the next succeeding regularly scheduled election at which the electors of the district are otherwise entitled to vote, provided that there is sufficient time to place the issue on the ballot.~~

~~(c) If a petition requesting an election on a proposal to establish or abolish trustee areas, to increase or decrease the number of members of the board, or to adopt one of the alternative methods of electing governing board members specified in Section 5030 is filed, containing at least 10 percent of the signatures of the district's registered voters as determined by the elections official, the proposal shall be presented to the electors of the district, at the next succeeding election for the members of the governing board, at the next succeeding statewide primary or general election, or at the next succeeding regularly scheduled election at which the electors of the district are otherwise entitled to vote, provided that there is sufficient time to place the issue on the ballot. Before the proposal is presented to the electors, the county committee on school district organization may call and conduct one or more public hearings on the proposal.~~

~~(d) The resolution of the county committee approving a proposal to establish or abolish a common governing board for a high school and an elementary school district within the boundaries of the high school district shall constitute an order of election. The proposal shall be presented to the electors of the district at the next succeeding statewide primary or general election, or at the next succeeding regularly scheduled election at which the electors of the district are otherwise entitled to vote, provided that there is sufficient time to place the issue on the ballot.~~

~~(e) For each proposal there shall be a separate proposition on the ballot. The ballot shall contain the following words:~~

~~"For the establishment (or abolition or rearrangement) of trustee areas in ____ (insert name) School District --Yes" and "For the establishment (or abolition or rearrangement) of trustee areas in ____ (insert name) School District--No."~~

~~"For increasing the number of members of the governing board of ____ (insert name) School District from five to seven--Yes" and "For increasing the number of members of the governing board of ____ (insert name) School District from five to seven--No."~~

~~"For decreasing the number of members of the governing board of ____ (insert name) School District from seven to five--Yes" and "For decreasing the number of members of the governing board of ____ (insert name) School District from seven to five--No."~~

~~"For the election of each member of the governing board of the ____ (insert name) School District by the registered voters of the entire ____ (insert name) School District--Yes" and "For the election of each member of the governing board of the ____ (insert name) School District by the registered voters of the entire ____ (insert name) School District--No."~~

~~"For the election of one member of the governing board of the ____ (insert name) School District residing in each trustee area elected by the registered voters in that trustee area--Yes" and "For the election of one member of the governing board of the ____ (insert name) School District residing in each trustee area elected by the registered voters in that trustee area--No."~~

~~"For the election of one member, or more than one member for one or more trustee areas, of the governing board of the ____ (insert name) School District residing in each trustee area elected by the registered voters of the entire ____ (insert name) School District--Yes" and "For the election of one member, or more than one member for one or more trustee areas, of the governing board of the ____ (insert name) School District residing in each trustee area elected by the registered voters of the entire ____ (insert name) School District--No."~~

~~"For the establishment (or abolition) of a common governing board in the ____ (insert name) School District and the ____ (insert name) School District--Yes" and "For the establishment (or abolition) of a common governing board in the ____ (insert name) School District and the ____ (insert name) School District--No."~~

~~If more than one proposal appears on the ballot, all must carry in order for any to become effective, except that a proposal to adopt one of the methods of election of board members specified in Section 5030 which is approved by the voters shall become effective unless a proposal which is inconsistent with that proposal has been approved by a greater number of voters. An inconsistent proposal approved by a lesser number of voters than the number which have approved a proposal to adopt one of the methods of election of board members specified in Section 5030 shall not be effective.~~

§ 5021. Incumbents to serve out terms despite approval of change

(a) If a proposal for the establishment of trustee areas formulated under Section~~s~~ 5019 ~~and 5020~~ is approved ~~by a majority of the voters voting at the election~~, any affected incumbent board member shall serve out his or her term of office and succeeding board members shall be nominated and elected in accordance with Section 5030. In the event two or more trustee areas are established ~~at such election~~ which are not represented in the membership of the governing board of the school district, or community college district the county committee shall determine by lot the trustee area from which the nomination and election for the next vacancy on the governing board shall be made.

(b) If a proposal for rearrangement of boundaries is approved by ~~a majority of the voters voting on the measure, or by~~ the county committee on school district organization ~~when no election is required~~, and if the boundary changes affect the board membership, any affected incumbent board member shall serve out his or her term of office and succeeding board members shall be nominated and elected in accordance with Section 5030.

(c) If a proposal for abolishing trustee areas is approved ~~by a majority of the voters voting at the election~~, the incumbent board members shall serve out their terms of office and succeeding board members shall be nominated and elected at large from the district.

§ 5030. Alternate method of election

Except as provided in Sections 5027 and 5028, in any school district or community college district having trustee areas, the county committee on school district organization and the registered voters of a district, pursuant to Section~~s~~ 5019 ~~and 5020~~, respectively, may at any time recommend one of the following alternate methods of electing governing board members:

(a) That each member of the governing board be elected by the registered voters of the entire district.

(b) That one or more members residing in each trustee area be elected by the registered voters of that particular trustee area.

(c) That each governing board member be elected by the registered voters of the entire school district or community college district, but reside in the trustee area which he or she represents.

The recommendation shall provide that any affected incumbent member shall serve out his or her term of office and that succeeding board members shall be nominated and elected in accordance with the method recommended by the county committee.

Whenever trustee areas are established in a district, provision shall be made for one of the alternative methods of electing governing board members.

~~In counties with a population of less than 25,000,~~ the county committee on school district organization or the county board of education, if it has succeeded to the duties of the county committee, may at any time, by resolution, with respect to trustee areas established for any school district, other than a community college district, amend the provision required by this section without additional approval by the electors, to require one of the alternate methods for electing board members to be utilized.

California State Board of Education

Meeting Agenda Items for March 12-13, 2014

WAIVER ITEM W-11

ITEM #W-11

CALIFORNIA STATE BOARD OF EDUCATION

MARCH 2014 AGENDA

☒ **General Waiver**

SUBJECT	
Request by six school districts to waive California *Education Code* Section 5020, and portions of sections 5019, 5021, and 5030, that require a districtwide election to establish a by-trustee-area method of election. Waiver Numbers: Beaumont Unified School District 20-1-2014 Desert Sands Unified School District 24-1-2014 Linden Unified School District 20-12-2013 Palm Springs Unified School District 22-1-2014 Stanislaus Union Elementary School District 15-12-2013 Waterford Unified School District 7-11-2013	☒ **Action** ☒ **Consent**

SUMMARY OF THE ISSUE(S)

School districts that elect governing board members at-large are facing existing or potential litigation under the California Voting Rights Act of 2001 (CVRA). Pursuant to the California *Education Code* (*EC*), a district can change from at-large elections to trustee-area elections, only if the change is approved by both the County Committee on School District Organization (County Committee) and voters at a districtwide election.

To reduce the potential for litigation and to establish by-trustee-area elections as expeditiously as possible, the Beaumont Unified School District (USD), the Desert Sands USD, the Linden USD, the Palm Springs USD, the Stanislaus Union Elementary School District (UESD), and the Waterford USD request that the California State Board of Education (SBE) waive the requirement that by-trustee-area elections be approved at a districtwide election—allowing trustee-area elections to be adopted upon review and approval of the County Committee.

Authority for Waiver: *EC* Section 33050

RECOMMENDATION

☒ **Approval** ☐ **Approval with conditions** ☐ **Denial**

The California Department of Education (CDE) recommends that the SBE approve the requests by the Beaumont USD, the Desert Sands USD, the Linden USD, the Palm Springs USD, the Stanislaus UESD, and the Waterford USD, to waive *EC* Section 5020, and portions of sections 5019, 5021, and 5030, which require trustee-area elections be

approved at a districtwide election.

SUMMARY OF KEY ISSUES

Approval of these waiver requests would eliminate the election requirement for approval of trustee areas and a by-trustee-area method of election for future governing board elections in the school districts. Voters in the districts will continue to elect all board members—however, if the waiver requests are approved, all board members will be elected by trustee areas, beginning with the next board election.

County Committees have the authority to approve or disapprove the adoption of trustee areas and methods of election for school district governing board elections. Pursuant to *EC* Section 5020, County Committee approval of trustee areas and election methods constitutes an order of election; thus, voters in each of the districts have final approval. If approved, each of these waivers will allow trustee-area elections to be adopted upon review and approval of the County Committee.

Many districts in California are facing existing or potential litigation under the CVRA over their at-large election methods. To help avoid potential litigation, the districts are taking action to establish trustee areas and adopt trustee-area election methods. In order to establish these trustee areas and the methods of election as expeditiously as possible, the Beaumont USD, the Desert Sands USD, the Linden USD, the Palm Springs USD, the Stanislaus UESD, and the Waterford USD, are requesting that the SBE waive the requirement that the trustee areas and the election methods be approved at districtwide elections.

Only the election to establish trustee areas and election method will be eliminated by approval of the waiver requests—voters in the school districts will continue to elect all governing board members. Moreover, approval of the waiver requests will not eliminate any existing legal rights of currently seated board members.

The waiver requests have been reviewed by CDE staff and it has determined that there was no significant public opposition to the waivers at the public hearings held by the governing boards. The CDE has further determined that none of the grounds specified in *EC* Section 33051, which authorize denial of a waiver, exist. The CDE recommends that the SBE approve the requests by the Beaumont USD, the Desert Sands USD, the Linden USD, the Palm Springs USD, the Stanislaus UESD, and the Waterford USD to waive *EC* Section 5020 in its entirety and portions of *EC* sections 5019, 5021, and 5030.

Demographic Information:

The Beaumont USD has a student population of 9,000 and is located in a suburban area of Riverside County.

The Desert Sands USD has a student population of 29,156 and is located in an urban area of Riverside County.

The Linden USD has a student population of 2,294 and is located in a rural area of San Joaquin County.

The Palm Springs USD has a student population of 22,622 and is located in a suburban area of Riverside County.

The Stanislaus UESD has a student population of 3,100 and is located in a rural area of Stanislaus County.

The Waterford USD has a student population of 1,730 and is located in a small city of Stanislaus County.

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

SUMMARY OF PREVIOUS STATE BOARD OF EDUCATION DISCUSSION AND ACTION

The SBE has approved numerous similar waivers—most recently for the Alvord USD (Riverside County), the Newman-Crows Landing USD (Stanislaus County), and the Salida UESD (Stanislaus County) at the January 2014 SBE meeting.

The Beaumont USD, the Desert Sands USD, and the Stanislaus UESD meet the criteria for the SBE Streamlined Waiver Policy, available at http://www.cde.ca.gov/re/lr/wr/documents/sbestreamlined.doc, achieving an Academic Performance Index (API) of 800 or above in the current scoring cycle. Therefore, these waivers have been scheduled for the consent calendar. The 2013 Growth API scores for these districts are 812 for the Beaumont USD, 805 for the Desert Sands USD, and 815 for Stanislaus UESD.

FISCAL ANALYSIS (AS APPROPRIATE)

Approval of the waiver requests will not have negative fiscal effects on any local or state agency. Failure to approve the waiver requests will result in additional costs to the districts for districtwide elections.

ATTACHMENT(S)

Attachment 1: Information from Districts Requesting Waivers of Elections Required to Establish Trustee Area Elections (2 pages)

Attachment 2: Beaumont Unified School District General Waiver Request 20-1-2014 (7 pages) (Original waiver request is signed and on file in the Waiver Office.)

Attachment 3: Desert Sands Unified School District General Waiver Request 24-1-2014 (7 pages) (Original waiver request is signed and on file in the Waiver Office.)

Attachment 4: Linden Unified School District General Waiver Request 20-12-2013 (8 pages) (Original waiver request is signed and on file in the Waiver Office.)

Attachment 5: Palm Springs Unified School District General Waiver Request 22-1-2014 (7 pages) (Original waiver request is signed and on file in the Waiver Office.)

Attachment 6: Stanislaus Union Elementary School District General Waiver Request 15-12-2013 (8 pages) (Original waiver request is signed and on file in the Waiver Office.)

Attachment 7: Waterford Unified School District General Waiver Request 7-11-2013 (8 pages) (Original waiver request is signed and on file in the Waiver Office.)

Information from Districts Requesting Waivers of Elections Required to Establish Trustee Area Elections

California *Education Code* Section 5020 and portions of sections 5019, 5021, and 5030

Waiver Number	District	Meets SBE Streamlined Waiver Policy?	Period of Request	Bargaining Unit, Representatives Consulted, Date, and Position	Public Hearing and Board Approval Date	Public Hearing Advertisement	SSC/Advisory Committee Position
20-1-2104	Beaumont Unified School District	Yes	**Requested:** January 1, 2014, to December 31, 2014 **Recommended**: January 1, 2014, to December 30, 2015	Beaumont Teachers' Association, Greg Abt, President, 12/18/13: **Support** California School Employees' Association, Diane Lockwood, President, 1/7/14: **Neutral**	Public hearing: 12/10/2013 Board approval: 1/7/2014	Notice in a local newspaper, posted at the district office, and posted in three community locations.	Reviewed by the District Advisory Council and the District English Learners' Advisory Committee on 1/6/14: **No objections**
24-1-2014	Desert Sands Unified School District	Yes	**Requested:** January 1, 2014, to December 31, 2014 **Recommended**: January 1, 2014, to December 30, 2015	Desert Sands Teachers' Association, Mona Davidson, President; 11/6/13: **Neutral** California School Employees' Association; Lora Lee, President, 11/6/13: **Support** Association of California School Administrators, Maryalice Owings, President, 11/6/13: **Support**	Public hearing: 12/17/2013 Board approval: 1/7/2014	Newspaper, posted at school sites and district office.	Reviewed by the District Finance Committee on 12/12/13: **No objections**
20-12-2013	Linden Unified School District	No	**Requested and Recommended** March 12, 2014, to March 10, 2016	Association of Linden Educators - Linden Unified School District, Shannon Roberson, President, and Nolan Meyer, Chairman of the Negotiating Team, 11/1/13: **Support** California School Employees' Association, Mario Sanchez, President, 11/1/13: **Support**	11/13/13	Notice posted at each school site; and on district office bulletin boards and Web site.	Reviewed by the District English Learners' Advisory Committee on 12/5/13: **No objections**

Information from Districts Requesting Waivers of Elections Required to Establish Trustee Area Elections

California *Education Code* Section 5020 and portions of sections 5019, 5021, and 5030

Waiver Number	District	Meets SBE Streamlined Waiver Policy?	Period of Request	Bargaining Unit, Representatives Consulted, Date, and Position	Public Hearing and Board Approval Date	Public Hearing Advertisement	SSC/Advisory Committee Position
22-1-2014	Palm Springs Unified School District	No	**Requested:** January 1, 2014, to December 31, 2014 **Recommended**: January 1, 2014, to December 30, 2015	Palm Springs Teachers' Association, Mark Acker, President, 11/27/13: **Support** Teamster Teams I & II, Vickie Martinez, Chief Shop Steward, 11/27/13: **Support**	12/10/13	Direct e-mail to interested entities, Web site posting, and in public display case at district office.	Reviewed by the Board Community Advisory Committee, the District's cities, and the District's Leadership Team on 11/27/13: **No objections**
15-12-2013	Stanislaus Union Elementary School District	Yes	**Requested:** December 13, 2013, to December 12, 2015 **Recommended**: December 13, 2013, to December 11, 2015	Stanislaus Union Teachers' Association, Sheila Marable, President, 11/25/13: **Support** California School Employees' Association, Cathy Hudson, President, 11/25/13: **Support**	12/12/13	Notice in local newspaper and posted at each school site and at the district office.	Reviewed by all school site councils and English Learners' Advisory Committees on 11/25/13: **No objections**
7-11-2013	Waterford Unified School District	No	**Requested:** January 1, 2013, to December 31, 2014 **Recommended**: January 1, 2014, to December 30, 2015	Waterford Teachers' Association, Travis Walsh, President, 10/25/13: **Neutral** California School Employees' Association, Dennis Dorton, President, 10/31/13: **Support**	11/14/13	Notice in local newspaper, district newsletter, and posted at each school.	Reviewed by all school site councils, school English Learners' Advisory Committees, and District English Learners' Advisory Committee on 10/23/13: **No objections**

Created by California Department of Education
January 13, 2014

California Department of Education
WAIVER SUBMISSION - General

CD Code: 3366993 Waiver Number: 20-1-2014 Active Year: 2014

Date In: 1/8/2014 3:13:55 PM

Local Education Agency: Beaumont Unified School District
Address: 350 West Brookside
Beaumont, CA 92223

Start: 1/1/2014 End: 12/31/2014

Waiver Renewal: N
Previous Waiver Number: Previous SBE Approval Date:

Waiver Topic: School District Reorganization
Ed Code Title: Elimination of Election Requirement
Ed Code Section: Portions of 5019, 5021, 5030, and all of 5020
Ed Code Authority: 33050

Ed Code or *CCR* to Waive: Attachment A

Outcome Rationale: Attachment B

Student Population: 9000

City Type: Suburban

Public Hearing Date: 12/10/2013
Public Hearing Advertised: Notice in local newspaper, posted at the district office, and posted in three community locations.

Local Board Approval Date: 1/7/2014

Community Council Reviewed By: District Advisory Council and DELAC
Community Council Reviewed Date: 1/6/2014
Community Council Objection: N
Community Council Objection Explanation:

Audit Penalty YN: N

Categorical Program Monitoring: N

Submitted by: Dr. Maureen Latham
Position: Superintendent
E-mail: mlatham@beaumontusd.k12.ca.us
Telephone: 951-845-1631 x5324
Fax: 951-845-2319

Bargaining Unit Date: 01/07/2014
Name: California School Employees Association and It's Chapter 351
Representative: Diane Lockwood
Title: President
Position: Neutral
Comments:

Attachment A

6. Education Code or California Code of Regulations section to be waived

The Beaumont Unified School District desires to waive the following sections and portions of the Education Code lined out below:

§ 5019. Trustee areas and size of school district governing boards; powers of county committee; proposal and hearing

(a) Except in a school district governed by a board of education provided for in the charter of a city or city and county, in any school district or community college district, the county committee on school district organization may establish trustee areas, rearrange the boundaries of trustee areas, abolish trustee areas, and increase to seven or decrease to five the number of members of the governing board, or adopt one of the alternative methods of electing governing board members specified in Section 5030.

(b) The county committee on school district organization may establish or abolish a common governing board for a high school district and an elementary school district within the boundaries of the high school district. The resolution of the county committee on school district organization approving the establishment or abolition of a common governing board shall be presented to the electors of the school districts as specified in Section 5020.

(c) (1) A proposal to make the changes described in subdivision (a) or (b) may be initiated by the county committee on school district organization or made to the county committee on school district organization either by a petition signed by 5 percent or 50, whichever is less, of the qualified registered voters residing in a district in which there are 2,500 or fewer qualified registered voters, by 3 percent or 100, whichever is less, of the qualified registered voters residing in a district in which there are 2,501 to 10,000 qualified registered voters, by 1 percent or 250, whichever is less, of the qualified registered voters residing in a district in which there are 10,001 to 50,000 qualified registered voters, by 500 or more of the qualified registered voters residing in a district in which there are 50,001 to 100,000 qualified registered voters, by 750 or more of the qualified registered voters residing in a district in which there are 100,001 to 250,000 qualified registered voters, or by 1,000 or more of the qualified registered voters residing in a district in which there are 250,001 or more qualified registered voters or by resolution of the governing board of the district. For this purpose, the necessary signatures for a petition shall be obtained within a period of 180 days before the submission of the petition to the county committee on school district organization and the number of qualified registered voters in the district shall be determined pursuant to the most recent report submitted by the county elections official to the Secretary of State under Section 2187 of the Elections Code.
(2) When a proposal is made pursuant to paragraph (1), the county committee on school district organization shall call and conduct at least one hearing in the district on the
matter. At the conclusion of the hearing, the county committee on school district organization shall approve or disapprove the proposal.

(d) If the county committee on school district organization approves pursuant to subdivision (a) ~~the rearrangement of the~~ boundaries of trustee areas for a particular district, then the ~~rearrangement of the~~ trustee areas shall be effectuated for the next district election occurring at least 120 days after its approval, ~~unless at least 5 percent of the registered voters of the district sign a petition requesting an election on the proposed rearrangement of trustee area~~

~~boundaries. The petition for an election shall be submitted to the county elections official within 60 days of the proposal's adoption by the county committee on school district organization. If the qualified registered voters approve pursuant to subdivision (b) or (c) the rearrangement of the boundaries to the trustee areas for a particular district, the rearrangement of the trustee areas shall be effective for the next district election occurring at least 120 days after its approval by the voters~~.

~~§ 5020. Presentation of proposal to electors~~

~~(a) The resolution of the county committee approving a proposal to establish or abolish trustee areas, to adopt one of the alternative methods of electing governing board members specified in Section 5030, or to increase or decrease the number of members of the governing board shall constitute an order of election, and the proposal shall be presented to the electors of the district not later than the next succeeding election for members of the governing board.~~

~~(b) If a petition requesting an election on a proposal to rearrange trustee area boundaries is filed, containing at least 5 percent of the signatures of the district's registered voters as determined by the elections official, the proposal shall be presented to the electors of the district, at the next succeeding election for the members of the governing board, at the next succeeding statewide primary or general election, or at the next succeeding regularly scheduled election at which the electors of the district are otherwise entitled to vote, provided that there is sufficient time to place the issue on the ballot.~~

~~(c) If a petition requesting an election on a proposal to establish or abolish trustee areas, to increase or decrease the number of members of the board, or to adopt one of the alternative methods of electing governing board members specified in Section 5030 is filed, containing at least 10 percent of the signatures of the district's registered voters as determined by the elections official, the proposal shall be presented to the electors of the district, at the next succeeding election for the members of the governing board, at the next succeeding statewide primary or general election, or at the next succeeding regularly scheduled election at which the electors of the district are otherwise entitled to vote, provided that there is sufficient time to place the issue on the ballot. Before the proposal is presented to the electors, the county committee on school district organization may call and conduct one or more public hearings on the proposal.~~

~~(d) The resolution of the county committee approving a proposal to establish or abolish a common governing board for a high school and an elementary school district within the boundaries of the high school district shall constitute an order of election. The proposal shall be presented to the electors of the district at the next succeeding statewide primary or general election, or at the next succeeding regularly scheduled election at which the electors of the district are otherwise entitled to vote, provided that there is sufficient time to place the issue on the ballot.~~

~~(e) For each proposal there shall be a separate proposition on the ballot. The ballot shall contain the following words:~~

~~"For the establishment (or abolition or rearrangement) of trustee areas in ____ (insert name) School District --Yes" and "For the establishment (or abolition or rearrangement) of trustee areas in ____ (insert name) School District--No."~~

~~"For increasing the number of members of the governing board of ____ (insert name) School District from five to seven--Yes" and "For increasing the number of members of the governing board of ____ (insert name) School District from five to seven--No."~~

~~"For decreasing the number of members of the governing board of ____ (insert name) School District from seven to five--Yes" and "For decreasing the number of members of the governing board of ____ (insert name) School District from seven to five--No."~~

~~"For the election of each member of the governing board of the ____ (insert name) School District by the registered voters of the entire ____ (insert name) School District-Yes" and "For the election of each member of the governing board of the ____ (insert name) School District by the registered voters of the entire ____ (insert name) School District--No."~~

~~"For the election of one member of the governing board of the ____ (insert name) School District residing in each trustee area elected by the registered voters in that trustee area-Yes" and "For the election of one member of the governing board of the ____ (insert name) School District residing in each trustee area elected by the registered voters in that trustee area--No."~~
~~"For the election of one member, or more than one member for one or more trustee areas, of the governing board of the ____ (insert name) School District residing in each trustee area elected by the registered voters of the entire ____ (insert name) School District-Yes" and "For the election of one member, or more than one member for one or more trustee areas, of the governing board of the ____ (insert name) School District residing in each trustee area elected by the registered voters of the entire ____ (insert name) School District--No."~~

~~"For the establishment (or abolition) of a common governing board in the ____ (insert name) School District and the ____ (insert name) School District--Yes" and "For the establishment (or abolition) of a common governing board in the ____ (insert name) School District and the ____ (insert name) School District--No."~~

~~If more than one proposal appears on the ballot, all must carry in order for any to become effective, except that a proposal to adopt one of the methods of election of board members specified in Section 5030 which is approved by the voters shall become effective unless a proposal which is inconsistent with that proposal has been approved by a greater number of voters. An inconsistent proposal approved by a lesser number of voters than the number which have approved a proposal to adopt one of the methods of election of board members specified in Section 5030 shall not be effective.~~

§ 5021. Incumbents to serve out terms despite approval of change

(a) If a proposal for the establishment of trustee areas formulated under Sections 5019 ~~and 5020~~ is approved ~~by a majority of the voters voting at the election~~, any affected incumbent board member shall serve out his or her term of office and succeeding board members shall be nominated and elected in accordance with Section 5030. In the event two or more trustee areas are established ~~at such election~~ which are not represented in the membership of the governing board of the school district, or community college district the county committee shall determine by lot the trustee area from which the nomination and election for the next vacancy on the governing board shall be made.

(b) If a proposal for rearrangement of boundaries is approved by ~~a majority of the voters~~ voting on the measure, or by the county committee on school district organization ~~when no election is~~

~~required~~, and if the boundary changes affect the board membership, any affected incumbent board member shall serve out his or her term of office and succeeding board members shall be nominated and elected in accordance with Section 5030.

(c) If a proposal for abolishing trustee areas is approved ~~by a majority of the voters voting at the election~~, the incumbent board members shall serve out their terms of office and succeeding board members shall be nominated and elected at large from the district.

§ 5030. Alternate method of election

Except as provided in Sections 5027 and 5028, in any school district or community college district having trustee areas, the county committee on school district organization and the registered voters of a district, pursuant to Sections 5019 ~~and 5020~~, respectively, may at any time recommend one of the following alternate methods of electing governing board members:
(a) That each member of the governing board be elected by the registered voters of the entire district.
(b) That one or more members residing in each trustee area be elected by the registered voters of that particular trustee area.
(c) That each governing board member be elected by the registered voters of the entire school district or community college district, but reside in the trustee area which he or she represents.

The recommendation shall provide that any affected incumbent member shall serve out his or her term of office and that succeeding board members shall be nominated and elected in accordance with the method recommended by the county committee.

Whenever trustee areas are established in a district, provision shall be made for one of the alternative methods of electing governing board members.

~~In counties with a population of less than 25,000,~~ the county committee on school district organization or the county board of education, if it has succeeded to the duties of the county committee, may at any time, by resolution, with respect to trustee areas established for any school district, other than a community college district, amend the provision required by this section without additional approval by the electors, to require one of the alternate methods for electing board members to be utilized.

Attachment B

7. Desired Outcome/ Rationale

The Beaumont Unified School District desires to have the requested Education Code sections waived because the waiver of these sections will allow the District to successfully adopt trustee areas and establish a by-trustee election process as expeditiously as possible, thereby enabling the District to avoid litigation resulting out of its current at-large election process for electing its governing board members.

The District currently utilizes an at-large election process to elect its governing board members. The District's failure to successfully adopt and implement trustee areas and a by-trustee area election process leaves it vulnerable to litigation in which the District would be exposed to potentially having to pay significant attorneys' fees to plaintiffs, which would pose an undue hardship and extreme detriment to the District and its students.

CVRA History

The California Legislature enacted the California Voting Rights Act of 2001. (*See* California Elections Code §§ 14025-14032). This legislation makes all at-large election systems in California for cities, school districts and special districts vulnerable to legal attack, largely on proof of racially polarized voting, regardless of whether a majority district can be formed and, under the interpretation adopted by plaintiffs in other pending CVRA cases, without regard to the electoral success of minority candidates or the need to prove actual racial injury exists.

The CVRA purports to alter several requirements that plaintiffs would have to prove under the Federal Voting Rights Act, thereby making it easier to challenge at-large election systems.

The first suit under the CVRA was filed against the City of Modesto in 2004. Modesto challenged the facial constitutionality of the CVRA on the basis that, by using race as the sole criterion of liability, the CVRA contains a suspect racial classification that California was required to justify under equal protection strict scrutiny standards. The trial court struck down the statute but the California Court of Appeal reversed. (*Sanchez v. City of Modesto* (2006) 145 Cal.App.4th 660).

The City of Modesto ultimately settled the litigation, but not before paying plaintiffs $3 million dollars in attorneys' fees to plaintiffs' attorneys (the prevailing party [other than a public agency] is entitled to an award of their attorneys' fees and costs under the CVRA) and another $1.7 million to its own attorneys.

Similarly, the Hanford Joint Union High School District was sued under the CVRA and after adopting trustee areas and establishing by-trustee area elections (and requesting and receiving the same waiver from the State Board of Education that is being requested here), paid plaintiffs in that lawsuit the sum of $110,000 pursuant to a settlement agreement. Most recently, the Madera Unified School District has been sued under the CVRA and their November 2008 governing board member election was enjoined by the court. The Plaintiffs in that case demanded $1.8 million in attorneys' fees from that District, though that amount was subsequently reduced by the trial court and upheld on appeal.

Normally, under Education Code section 5020, the County Committee on School District organization, after conducting its own public hearing on the recommended plans, would call for an election and put the matter to a vote of the District's electors. However, going through an election process would prevent the District from electing successor trustees in a timely manner and leaves the District vulnerable to a lawsuit and injunction.

The requested waiver will allow the District to complete its transition to a by-trustee area election process in time to for the next governing board member election which will reduce the District's liability under the CVRA going forward.

California Department of Education
WAIVER SUBMISSION - General

CD Code: 3367058 Waiver Number: 24-1-2014 Active Year: 2014

Date In: 1/9/2014 11:40:16 AM

Local Education Agency: Desert Sands Unified School District
Address: 47-950 Dune Palms Rd.
La Quinta, CA 92253

Start: 1/1/2014 End: 12/31/2014

Waiver Renewal: N
Previous Waiver Number: Previous SBE Approval Date:

Waiver Topic: School District Reorganization
Ed Code Title: Elimination of Election Requirement
Ed Code Section: Portions of 5019, 5021, 5030 and all of 5020
Ed Code Authority: 33050

Ed Code or *CCR* to Waive: Attachment A

Outcome Rationale: Attachment B

Student Population: 29156

City Type: Urban

Public Hearing Date: 12/17/2013
Public Hearing Advertised: Newspaper, posted at school sites and District office

Local Board Approval Date: 1/7/2014

Community Council Reviewed By: Finance Commitee
Community Council Reviewed Date: 12/12/2013
Community Council Objection: N
Community Council Objection Explanation:

Audit Penalty YN: N

Categorical Program Monitoring: N

Submitted by: Dr. Gary Rutherford
Position: Superintendent
E-mail: gary.rutherford@desertsands.us
Telephone: 760-771-8502
Fax: 760-771-8522

Bargaining Unit Date: 11/06/2013
Name: Association of California School Administrators
Representative: Maryalice Owings
Title: President
Position: Support
Comments:

Bargaining Unit Date: 11/06/2013
Name: California School Employees Assocation
Representative: Lora Lee
Title: President
Position: Support
Comments:

Bargaining Unit Date: 11/06/2013
Name: Desert Sands Teachers Association
Representative: Mona Davidson
Title: President
Position: Neutral
Comments:

Attachment A

6. Education Code or California Code of Regulations section to be waived

The Desert Sands Unified School District desires to waive the following sections and portions of the Education Code lined out below:

§ 5019. Trustee areas and size of school district governing boards; powers of county committee; proposal and hearing

(a) Except in a school district governed by a board of education provided for in the charter of a city or city and county, in any school district or community college district, the county committee on school district organization may establish trustee areas, rearrange the boundaries of trustee areas, abolish trustee areas, and increase to seven or decrease to five the number of members of the governing board, or adopt one of the alternative methods of electing governing board members specified in Section 5030.

(b) The county committee on school district organization may establish or abolish a common governing board for a high school district and an elementary school district within the boundaries of the high school district. The resolution of the county committee on school district organization approving the establishment or abolition of a common governing board shall be presented to the electors of the school districts as specified in Section 5020.

(c) (1) A proposal to make the changes described in subdivision (a) or (b) may be initiated by the county committee on school district organization or made to the county committee on school district organization either by a petition signed by 5 percent or 50, whichever is less, of the qualified registered voters residing in a district in which there are 2,500 or fewer qualified registered voters, by 3 percent or 100, whichever is less, of the qualified registered voters residing in a district in which there are 2,501 to 10,000 qualified registered voters, by 1 percent or 250, whichever is less, of the qualified registered voters residing in a district in which there are 10,001 to 50,000 qualified registered voters, by 500 or more of the qualified registered voters residing in a district in which there are 50,001 to 100,000 qualified registered voters, by 750 or more of the qualified registered voters residing in a district in which there are 100,001 to 250,000 qualified registered voters, or by 1,000 or more of the qualified registered voters residing in a district in which there are 250,001 or more qualified registered voters or by resolution of the governing board of the district. For this purpose, the necessary signatures for a petition shall be obtained within a period of 180 days before the submission of the petition to the county committee on school district organization and the number of qualified registered voters in the district shall be determined pursuant to the most recent report submitted by the county elections official to the Secretary of State under Section 2187 of the Elections Code.

(2) When a proposal is made pursuant to paragraph (1), the county committee on school district organization shall call and conduct at least one hearing in the district on the matter. At the conclusion of the hearing, the county committee on school district organization shall approve or disapprove the proposal.

(d) If the county committee on school district organization approves pursuant to subdivision (a) ~~the rearrangement of the~~ boundaries of trustee areas for a particular district, then the ~~rearrangement of the~~ trustee areas shall be effectuated for the next district election occurring at least 120 days after ~~its~~ approval~~, unless at least 5 percent of the registered voters of the district~~

~~sign a petition requesting an election on the proposed rearrangement of trustee area boundaries. The petition for an election shall be submitted to the county elections official within 60 days of the proposal's adoption by the county committee on school district organization. If the qualified registered voters approve pursuant to subdivision (b) or (c) the rearrangement of the boundaries to the trustee areas for a particular district, the rearrangement of the trustee areas shall be effective for the next district election occurring at least 120 days after its approval by the voters.~~

~~§ 5020. Presentation of proposal to electors~~

~~(a) The resolution of the county committee approving a proposal to establish or abolish trustee areas, to adopt one of the alternative methods of electing governing board members specified in Section 5030, or to increase or decrease the number of members of the governing board shall constitute an order of election, and the proposal shall be presented to the electors of the district not later than the next succeeding election for members of the governing board.~~

~~(b) If a petition requesting an election on a proposal to rearrange trustee area boundaries is filed, containing at least 5 percent of the signatures of the district's registered voters as determined by the elections official, the proposal shall be presented to the electors of the district, at the next succeeding election for the members of the governing board, at the next succeeding statewide primary or general election, or at the next succeeding regularly scheduled election at which the electors of the district are otherwise entitled to vote, provided that there is sufficient time to place the issue on the ballot.~~

~~(c) If a petition requesting an election on a proposal to establish or abolish trustee areas, to increase or decrease the number of members of the board, or to adopt one of the alternative methods of electing governing board members specified in Section 5030 is filed, containing at least 10 percent of the signatures of the district's registered voters as determined by the elections official, the proposal shall be presented to the electors of the district, at the next succeeding election for the members of the governing board, at the next succeeding statewide primary or general election, or at the next succeeding regularly scheduled election at which the electors of the district are otherwise entitled to vote, provided that there is sufficient time to place the issue on the ballot. Before the proposal is presented to the electors, the county committee on school district organization may call and conduct one or more public hearings on the proposal.~~

~~(d) The resolution of the county committee approving a proposal to establish or abolish a common governing board for a high school and an elementary school district within the boundaries of the high school district shall constitute an order of election. The proposal shall be presented to the electors of the district at the next succeeding statewide primary or general election, or at the next succeeding regularly scheduled election at which the electors of the district are otherwise entitled to vote, provided that there is sufficient time to place the issue on the ballot.~~

~~(e) For each proposal there shall be a separate proposition on the ballot. The ballot shall contain the following words:~~

~~"For the establishment (or abolition or rearrangement) of trustee areas in _____ (insert name) School District --Yes" and "For the establishment (or abolition or rearrangement) of trustee areas in _____ (insert name) School District--No."~~

~~"For increasing the number of members of the governing board of ____ (insert name) School District from five to seven--Yes" and "For increasing the number of members of the governing board of ____ (insert name) School District from five to seven--No."~~

~~"For decreasing the number of members of the governing board of ____ (insert name) School District from seven to five--Yes" and "For decreasing the number of members of the governing board of ____ (insert name) School District from seven to five--No."~~

~~"For the election of each member of the governing board of the ____ (insert name) School District by the registered voters of the entire ____ (insert name) School District-- Yes" and "For the election of each member of the governing board of the ____ (insert name) School District by the registered voters of the entire ____ (insert name) School District--No."~~

~~"For the election of one member of the governing board of the ____ (insert name) School District residing in each trustee area elected by the registered voters in that trustee area--Yes" and "For the election of one member of the governing board of the ____ (insert name) School District residing in each trustee area elected by the registered voters in that trustee area--No."~~

~~"For the election of one member, or more than one member for one or more trustee areas, of the governing board of the ____ (insert name) School District residing in each trustee area elected by the registered voters of the entire ____ (insert name) School District--Yes" and "For the election of one member, or more than one member for one or more trustee areas, of the governing board of the ____ (insert name) School District residing in each trustee area elected by the registered voters of the entire ____ (insert name) School District--No."~~

~~"For the establishment (or abolition) of a common governing board in the ____ (insert name) School District and the ____ (insert name) School District--Yes" and "For the establishment (or abolition) of a common governing board in the ____ (insert name) School District and the ____ (insert name) School District--No."~~

~~If more than one proposal appears on the ballot, all must carry in order for any to become effective, except that a proposal to adopt one of the methods of election of board members specified in Section 5030 which is approved by the voters shall become effective unless a proposal which is inconsistent with that proposal has been approved by a greater number of voters. An inconsistent proposal approved by a lesser number of voters than the number which have approved a proposal to adopt one of the methods of election of board members specified in Section 5030 shall not be effective.~~

§ 5021. Incumbents to serve out terms despite approval of change

(a) If a proposal for the establishment of trustee areas formulated under Sections 5019 ~~and 5020~~ is approved ~~by a majority of the voters voting at the election~~, any affected incumbent board member shall serve out his or her term of office and succeeding board members shall be nominated and elected in accordance with Section 5030. In the event two or more trustee areas are established ~~at such election~~ which are not represented in the membership of the governing board of the school district, or community college district the county committee shall determine by lot the trustee area from which the nomination and election for the next vacancy on the governing board shall be made.

(b) If a proposal for rearrangement of boundaries is approved by ~~a majority of the voters voting on the measure, or by~~ the county committee on school district organization ~~when no election is required~~, and if the boundary changes affect the board membership, any affected incumbent board member shall serve out his or her term of office and succeeding board members shall be nominated and elected in accordance with Section 5030.

(c) If a proposal for abolishing trustee areas is approved ~~by a majority of the voters voting at the election~~, the incumbent board members shall serve out their terms of office and succeeding board members shall be nominated and elected at large from the district.

§ 5030. Alternate method of election

Except as provided in Sections 5027 and 5028, in any school district or community college district having trustee areas, the county committee on school district organization and the registered voters of a district, pursuant to Sections 5019 ~~and 5020~~, respectively, may at any time recommend one of the following alternate methods of electing governing board members:
(a) That each member of the governing board be elected by the registered voters of the entire district.
(b) That one or more members residing in each trustee area be elected by the registered voters of that particular trustee area.
(c) That each governing board member be elected by the registered voters of the entire school district or community college district, but reside in the trustee area which he or she represents.

The recommendation shall provide that any affected incumbent member shall serve out his or her term of office and that succeeding board members shall be nominated and elected in accordance with the method recommended by the county committee.

Whenever trustee areas are established in a district, provision shall be made for one of the alternative methods of electing governing board members.

~~In counties with a population of less than 25,000,~~ the county committee on school district organization or the county board of education, if it has succeeded to the duties of the county committee, may at any time, by resolution, with respect to trustee areas established for any school district, other than a community college district, amend the provision required by this section without additional approval by the electors, to require one of the alternate methods for electing board members to be utilized.

Attachment B

7. Desired Outcome/ Rationale

The Desert Sands Unified School District desires to have the requested Education Code sections waived because the waiver of these sections will allow the District to successfully adopt trustee areas and establish a by-trustee election process as expeditiously as possible, thereby enabling the District to avoid litigation resulting out of its current at-large election process for electing its governing board members.

The District currently utilizes an at-large election process to elect its governing board members. The District's failure to successfully adopt and implement trustee areas and a by-trustee area election process leaves it vulnerable to litigation in which the District would be exposed to potentially having to pay significant attorneys' fees to plaintiffs, which would pose an undue hardship and extreme detriment to the District and its students.

CVRA History

The California Legislature enacted the California Voting Rights Act of 2001. (*See* California Elections Code §§ 14025-14032). This legislation makes all at-large election systems in California for cities, school districts and special districts vulnerable to legal attack, largely on proof of racially polarized voting, regardless of whether a majority district can be formed and, under the interpretation adopted by plaintiffs in other pending CVRA cases, without regard to the electoral success of minority candidates or the need to prove actual racial injury exists.

The CVRA purports to alter several requirements that plaintiffs would have to prove under the Federal Voting Rights Act, thereby making it easier to challenge at-large election systems.

The first suit under the CVRA was filed against the City of Modesto in 2004. Modesto challenged the facial constitutionality of the CVRA on the basis that, by using race as the sole criterion of liability, the CVRA contains a suspect racial classification that California was required to justify under equal protection strict scrutiny standards. The trial court struck down the statute but the California Court of Appeal reversed. (*Sanchez v. City of Modesto* (2006) 145 Cal.App.4th 660).

The City of Modesto ultimately settled the litigation, but not before paying plaintiffs $3 million dollars in attorneys' fees to plaintiffs' attorneys (the prevailing party [other than a public agency] is entitled to an award of their attorneys' fees and costs under the CVRA) and another $1.7 million to its own attorneys.

Similarly, the Hanford Joint Union High School District was sued under the CVRA and after adopting trustee areas and establishing by-trustee area elections (and requesting and receiving the same waiver from the State Board of Education that is being requested here), paid plaintiffs in that lawsuit the sum of $110,000 pursuant to a settlement agreement. Most recently, the Madera Unified School District has been sued under the CVRA and their November 2008 governing board member election was enjoined by the court. The Plaintiffs in that case demanded $1.8 million in attorneys' fees from that District, though that amount was subsequently reduced by the trial court and upheld on appeal.

Normally, under Education Code section 5020, the County Committee on School District organization, after conducting its own public hearing on the recommended plans, would call for an election and put the matter to a vote of the District's electors. However, going through an election process would prevent the District from electing successor trustees in a timely manner and leaves the District vulnerable to a lawsuit and injunction.

The requested waiver will allow the District to complete its transition to a by-trustee area election process in time to for the next governing board member election which will reduce the District's liability under the CVRA going forward.

California Department of Education
WAIVER SUBMISSION - General

CD Code: 3968577 Waiver Number: 20-12-2013 Active Year: 2013

Date In: 12/16/2013 1:07:12 PM

Local Education Agency: Linden Unified School District
Address: 18527 East Main St.
Linden, CA 95236

Start: 3/12/2014 End: 3/10/2016

Waiver Renewal: N
Previous Waiver Number: Previous SBE Approval Date:

Waiver Topic: School District Reorganization
Ed Code Title: Elimination of Election Requirement
Ed Code Section: Portions of 5019, 5021, 5030 and all of 5020
Ed Code Authority: 33050

Ed Code or *CCR* to Waive: See Attachment A

Outcome Rationale: See attachment B

Student Population: 2294

City Type: Rural

Public Hearing Date: 11/13/2013
Public Hearing Advertised: Notice was posted at each school site, district office bulletin boards and website.

Local Board Approval Date: 11/13/2013

Community Council Reviewed By: Linden Unified School District DELAC
Community Council Reviewed Date: 12/5/2013
Community Council Objection: N
Community Council Objection Explanation:

Audit Penalty YN: N

Categorical Program Monitoring: N

Submitted by: Dr. Leo Zuber
Position: Interim Superintendent
E-mail: lzuber@sjcoe.net
Telephone: 209-887-3894
Fax: 209-887-2250

Bargaining Unit Date: 11/01/2013
Name: Association of Linden Educators - Linden Unified School District
Representative: Nolan Meyer
Title: Chairman of the Negotiating Team
Position: Support
Comments:

Bargaining Unit Date: 11/01/2013
Name: Association of Linden Educators - Linden Unified School District (2)
Representative: Shannon Roberson
Title: President
Position: Support
Comments:

Bargaining Unit Date: 11/01/2013
Name: California School Employees Association
Representative: Mario Sanchez
Title: President
Position: Support
Comments:

ATTACHMENT A

6. Education Code or California Code of Regulations section to be waived.

The Linden Unified School District Board of Education desires to waive the following sections and portions of the Education Code lined out below:

§ 5019. Trustee areas and size of school district governing boards; powers of county committee; proposal and hearing

(a) Except in a school district governed by a board of education provided for in the charter of a city or city and county, in any school district or community college district, the county committee on school district organization may establish trustee areas, rearrange the boundaries of trustee areas, abolish trustee areas, and increase to seven or decrease to five the number of members of the governing board, or adopt one of the alternative methods of electing governing board members specified in Section 5030. (b) The county committee on school district organization may establish or abolish a common governing board for a high school district and an elementary school district within the boundaries of the high school district. The resolution of the county committee on school district organization approving the establishment or abolition of a common governing board shall be presented to the electors of the school districts as specified in Section 5020.

(c) (1) A proposal to make the changes described in subdivision (a) or (b) may be initiated by the county committee on school district organization or made to the county committee on school district organization either by a petition signed by 5 percent or 50, whichever is less, of the qualified registered voters residing in a district in which there are 2,500 or fewer qualified registered voters, by 3 percent or 100, whichever is less, of the qualified registered voters residing in a district in which there are 2,501 to 10,000 qualified registered voters, by 1 percent or 250, whichever is less, of the qualified registered voters residing in a district in which there are 10,001 to 50,000 qualified registered voters, by 500 or more of the qualified registered voters residing in a district in which there are 50,001 to 100,000 qualified registered voters, by 750 or more of the qualified registered voters residing in a district in which there are 100,001 to 250,000 qualified registered voters, or by 1,000 or more of the qualified registered voters residing in a district in which there are 250,001 or more qualified registered voters or by resolution of the governing board of the district. For this purpose, the necessary signatures for a petition shall be obtained within a period of 180 days before the submission of the petition to the county committee on school district organization and the number of qualified registered voters in the district shall be determined pursuant to the most recent report submitted by the county elections official to the Secretary of State under Section 2187 of the Elections Code.

(2) When a proposal is made pursuant to paragraph (1), the county committee on school district organization shall call and conduct at least one hearing in the district on the matter. At the conclusion of the hearing, the county committee on school district organization shall approve or disapprove the proposal.

(d) If the county committee on school district organization approves pursuant to subdivision (a) ~~the rearrangement of the~~ boundaries of trustee areas for a particular district, then the ~~rearrangement of the~~ trustee areas shall be effectuated for the next district election occurring at least 120 days after its approval~~, un1ess at least 5 percent of registered voters the district sign a petition requesting an election on the proposed rearrangement of the trustee area boundaries.~~

~~The petition for an election shall be submitted to the county elections official within 60 days of the proposal's adoption by the county committee on school district organization. If the qualified registered voters approve pursuant to subdivision (b(or (c) the rearrangement of the boundaries to the trustee areas for a particular district, the rearrangement of the trustee areas shall be effective for the next district election occurring at least 129 days after its approval by the voters.~~

~~§ 5020. Presentation of proposal to electors~~
~~(a) The resolution of the county committee approving a proposal to establish or abolish trustee areas, to adopt one of the alternative methods of electing governing board members specified in Section 5030, or to increase or decrease the number of members of the governing board shall constitute an order of election, and the proposal shall be presented to the electors of the district not later than the next succeeding election for members of the governing board.~~

~~(b) If a petition requesting an election on a proposal to rearrange trustee area boundaries is filed, containing at least 5 percent of the signatures of the district's registered voters as determined by the elections official, the proposal shall be presented to the electors of the district, at the next succeeding election for the members of the governing board, at the next succeeding statewide primary or general election, or at the next succeeding regularly scheduled election at which the electors of the district are otherwise entitled to vote, provided that there is sufficient time to place the issue on the ballot.~~

~~(c) If a petition requesting an election on a proposal to establish or abolish trustee areas, to increase or decrease the number of members of the board, or to adopt one of the alternative methods of electing governing board members specified in Section 5030 is filed, containing at least 10 percent of the signatures of the district's registered voters as determined by the elections official, the proposal shall be presented to the electors of the district, at the next succeeding election for the members of the governing board, at the next succeeding statewide primary or general election, or at the next succeeding regularly scheduled election at which the electors of the district are otherwise entitled to vote, provided that there is sufficient time to place the issue on the ballot. Before the proposal is presented to the electors, the county committee on school district organization may call and conduct one or more public hearings on the proposal.~~

~~(d) The resolution of the county committee approving a proposal to establish or abolish a common governing board for a high school and an elementary school district within the boundaries of the high school district shall constitute an order of election. The proposal shall be presented to the electors of the district at the next succeeding statewide primary or general election, or at the next succeeding regularly scheduled election at which the electors of the district are otherwise entitled to vote, provided that there is sufficient time to place the issue on the ballot.~~

~~(e) For each proposal there shall be a separate proposition on the ballot. The ballot shall contain the following words:~~

~~"For the establishment (or abolition or rearrangement) of trustee areas in ____ (insert name) School District --Yes" and "For the establishment (or abolition or rearrangement) of trustee areas in ____ (insert name) School District--No."~~

~~"For increasing the number of members of the governing board of ____ (insert name) School District from five to seven--Yes" and "For increasing the number of members of the governing~~

~~board of ____ (insert name) School District from five to seven--No."~~

~~"For decreasing the number of members of the governing board of ____ (insert name) School District from seven to five--Yes" and "For decreasing the number of members of the governing board of ____ (insert name) School District from seven to five--No."~~

~~"For the election of each member of the governing board of the ____ (insert name) School District by the registered voters of the entire ____ (insert name) School District--Yes" and "For the election of each member of the governing board of the ____ (insert name) School District by the registered voters of the entire ____ (insert name) School District--No."~~

~~"For the election of one member of the governing board of the ____ (insert name) School District residing in each trustee area elected by the registered voters in that trustee area--Yes" and "For the election of one member of the governing board of the ____ (insert name) School District residing in each trustee area elected by the registered voters in that trustee area--No."~~

~~"For the election of one member, or more than one member for one or more trustee areas, of the governing board of the ____ (insert name) School District residing in each trustee area elected by the registered voters of the entire ____ (insert name) School District--Yes" and "For the election of one member, or more than one member for one or more trustee areas, of the governing board of the ____ (insert name) School District residing in each trustee area elected by the registered voters of the entire ____ (insert name) School District--No."~~

~~"For the establishment (or abolition) of a common governing board in the ____ (insert name) School District and the ____ (insert name) School District--Yes" and "For the establishment (or abolition) of a common governing board in the ____ (insert name) School District and the ____ (insert name) School District--No."~~

~~If more than one proposal appears on the ballot, all must carry in order for any to become effective, except that a proposal to adopt one of the methods of election of board members specified in Section 5030 which is approved by the voters shall become effective unless a proposal which is inconsistent with that proposal has been approved by a greater number of voters. An inconsistent proposal approved by a lesser number of voters than the number which have approved a proposal to adopt one of the methods of election of board members specified in Section 5030 shall not be effective.~~

§ 5021. Incumbents to serve out terms despite approval of change

(a) If a proposal for the establishment of trustee areas formulated under Sections 5019 ~~and 5020~~ is approved~~ by a majority of the voters voting at the election~~, any affected incumbent board member shall serve out his or her term of office and succeeding board members shall be nominated and elected in accordance with Section 5030. In the event two or more trustee areas are established ~~at such election~~ which are not represented in the membership of the governing board of the school district, or community college district the county committee shall determine by lot the trustee area from which the nomination and election for the next vacancy on the governing board shall be made.

(b) If a proposal for rearrangement of boundaries is approved by a ~~majority of the voters voting on the measure, or by~~ the county committee on school district organization ~~when no election is required~~, and if the boundary changes affect the board membership, any affected

incumbent board member shall serve out his or her term of office and succeeding board members shall be nominated and elected in accordance with Section 5030.

(c) If a proposal for abolishing trustee areas is approved ~~by a majority of the voters voting at the election~~, the incumbent board members shall serve out their terms of office and succeeding board members shall be nominated and elected at large from the district.

§ 5030. Alternate method of election

Except as provided in Sections 5027 and 5028, in any school district or community college district having trustee areas, the county committee on school district organization and the registered voters of a district, pursuant to Section~~s~~ 5019 ~~and 5020~~, ~~respectively,~~ may at any time recommend one of the following alternate methods of electing governing board members:

(a) That each member of the governing board be elected by the registered voters of the entire district.

(b) That one or more members residing in each trustee area be elected by the registered voters of that particular trustee area.

(c) That each governing board member be elected by the registered voters of the entire school district or community college district, but reside in the trustee area which he or she represents.

The recommendation shall provide that any affected incumbent member shall serve out his or her term of office and that succeeding board members shall be nominated and elected in accordance with the method recommended by the county committee.

Whenever trustee areas are established in a district, provision shall be made for one of the alternative methods of electing governing board members.

~~In counties with a population of less than 25,000~~, the county committee on school district organization or the county board of education, if it has succeeded to the duties of the county committee, may at any time, by resolution, with respect to trustee areas established for any school district, other than a community college district, amend the provision required by this section without additional approval by the electors, to require one of the alternate methods for electing board members to be utilized.

ATTACHMENT B

Desired Outcome / Rationale

The Linden Unified School District Board of Education (LUSDBOE) desires to have the requested Education Code sections waived because the waiver of these sections will allow LUSDBOE to successfully adopt trustee areas and establish a by-trustee election process for the Linden Unified School District (LUSD) as expeditiously as possible, thereby enabling LUSD to avoid litigation resulting from LUSD's current at-large election process for electing its governing board members.

It is imperative that LUSD adopt these areas and establish this process without delay and without interference because like many of the school districts that have been threatened with lawsuits under the California Voting Rights Act of 2001 ("CVRA"), LUSD currently utilizes an at-large election process to elect its governing board members. The failure to successfully adopt and implement trustee areas and a by-trustee area election process in LUSD leaves LUSD vulnerable to such litigation and exposure to potential significant costs, such as attorneys' fees to plaintiffs, which would pose an undue hardship and extreme detriment to LUSD and ultimately students in LUSD.

CVRA History

The California Legislature enacted the California Voting Rights Act of 2001. *(See* California Elections Code §§ 14025-14032). This legislation makes all at-large election systems in California for cities, school districts and special districts vulnerable to legal attack, largely on proof of racially polarized voting, regardless of whether a majority district can be formed and, under the interpretation adopted by plaintiffs in other pending CVRA cases, without regard to the electoral success of minority candidates or the need to prove actual racial injury exists.

The CVRA purports to alter several requirements that plaintiffs would have to prove under the Federal Voting Rights Act, thereby making it easier to challenge at-large election systems. The first suit under the CVRA was filed against the City of Modesto in 2004. Modesto challenged the facial constitutionality of the CVRA on the basis that, by using race as the sole criterion of liability, the CVRA contains a suspect racial classification that California was required to justify under equal protection strict scrutiny standards. The trial court struck down the statute but the California Court of Appeal reversed. *(Sanchez v. City of Modesto* (2006) 145 Cal.App.4th 660).

The City of Modesto ultimately settled the litigation, but not before paying plaintiffs $3 million dollars in attorneys' fees to plaintiffs' attorneys (the prevailing party [other than a public agency] is entitled to an award of their attorneys' fees and costs under the CVRA) and another $1.7 million to its own attorneys.

Similarly, the Hanford Joint Union High School District was sued under the CVRA and after adopting trustee areas and establishing by-trustee area elections (and requesting and receiving the same waiver from the State Board of Education that is being requested here), paid plaintiffs in that lawsuit the sum of $110,000 pursuant to a settlement-agreement. Most recently, the Madera Unified School District has been sued under the CVRA and their November 2008 governing board member election was enjoined by the

court. The Plaintiffs in that case demanded $1.8 million in attorney fees from that District.

Normally, under Education Code section 5020, the County Committee on School District Organization, after conducting its own public hearing on the recommended plans, would call for an election and put the matter to a vote of the LUSD electorate. However, going through that process would prevent LUSD from electing successor trustees in a timely manner and leaves LUSD vulnerable to a lawsuit and injunction.

The requested waiver will allow LUSD to complete the transition to a by-trustee area election process in time to for the next governing board member election, which will reduce LUSD's liability under the CVRA going forward.

California Department of Education
WAIVER SUBMISSION - General

CD Code: 3367173 Waiver Number: 22-1-2014 Active Year: 2014

Date In: 1/9/2014 11:04:26 AM

Local Education Agency: Palm Springs Unified School District
Address: 980 East Tahquitz Canyon Way
Palm Springs, CA 92262

Start: 1/1/2014 End: 12/31/2014

Waiver Renewal: N
Previous Waiver Number: Previous SBE Approval Date:

Waiver Topic: School District Reorganization
Ed Code Title: Elimination of Election Requirement
Ed Code Section: 5019, 5021, 5030, and all of 5020
Ed Code Authority: 33050

Ed Code or *CCR* to Waive: See Attachment #A

Outcome Rationale: 7. Desired Outcome/ Rationale

The Palm Springs Unified School District desires to have the requested *Education Code* sections waived because the waiver of these sections will allow the District to successfully adopt trustee areas and establish a by-trustee election process as expeditiously as possible, thereby enabling the District to avoid litigation resulting out of its current at-large election process for electing its governing board members.

It is imperative that the District adopt these areas and establish this process without delay and without interference because the District has received public comments at Board meetings and in other venues concerning the California Voting Rights Act of 2001 ("CVRA") from citizens who are dissatisfied with the at large system and who have threatened to sue the District if it does not convert to by-trustee area elections. The District currently utilizes an at-large election process to elect its governing board members. The District's failure to successfully adopt and implement trustee areas and a by-trustee area election process leaves it vulnerable to litigation in which the District would be exposed to potentially having to pay significant attorneys' fees to plaintiffs, which would pose an undue hardship and extreme detriment to the District and its students.

CVRA History

The California Legislature enacted the California Voting Rights Act of 2001. (See California Elections Code §§ 14025-14032). This legislation makes all at-large election systems in California for cities, school districts and special districts vulnerable to legal attack, largely on proof of racially polarized voting, regardless of whether a majority district can be formed and, under the interpretation adopted by plaintiffs in other pending CVRA cases, without regard to the electoral success of minority candidates or the need to prove actual racial injury exists.

The CVRA purports to alter several requirements that plaintiffs would have to prove under the Federal Voting Rights Act, thereby making it easier to challenge at-large election systems.

The first suit under the CVRA was filed against the City of Modesto in 2004. Modesto challenged the facial constitutionality of the CVRA on the basis that, by using race as the sole criterion of liability, the CVRA contains a suspect racial classification that California was required to justify under equal protection strict scrutiny standards. The trial court struck down the statute but the California Court of Appeal reversed. (Sanchez v. City of Modesto (2006) 145 Cal.App.4th 660).

The City of Modesto ultimately settled the litigation, but not before paying plaintiffs $3 million dollars in attorneys' fees to plaintiffs' attorneys (the prevailing party [other than a public agency] is entitled to an award of their attorneys' fees and costs under the CVRA) and another $1.7 million to its own attorneys.

Similarly, the Hanford Joint Union High School District was sued under the CVRA and after adopting trustee areas and establishing by-trustee area elections (and requesting and receiving the same waiver from the State Board of Education that is being requested here), paid plaintiffs in that lawsuit the sum of $110,000 pursuant to a settlement agreement. Most recently, the Madera Unified School District has been sued under the CVRA and their November 2008 governing board member election was enjoined by the court. The Plaintiffs in that case demanded $1.8 million in attorneys' fees from that District, though that amount was subsequently reduced by the trial court and upheld on appeal.

Normally, under *Education Code* section 5020, the County Committee on School District organization, after conducting its own public hearing on the recommended plans, would call for an election and put the matter to a vote of the District's electors. However, going through an election process would prevent the District from electing successor trustees in a timely manner and leaves the District vulnerable to a lawsuit and injunction.

The requested waiver will allow the District to complete its transition to a by-trustee area election process in time to for the next governing board member election which will reduce the District's liability under the CVRA going forward.

Student Population: 22622

City Type: Suburban

Public Hearing Date: 12/10/2013
Public Hearing Advertised: Direct e-mail to interested entities (see attached), website posting and public display case at District Office

Local Board Approval Date: 12/10/2013

Community Council Reviewed By: Board Community Advisory Committee, the District's cities, District Unions, Leadership Team
Community Council Reviewed Date: 11/27/2013
Community Council Objection: N
Community Council Objection Explanation:

Audit Penalty YN: N

Categorical Program Monitoring: N

Submitted by: Dr. Christine Anderson
Position: Superintendent of Schools
E-mail: canderson@psusd.us
Telephone: 760-416-6003
Fax: 760-416-6015

Bargaining Unit Date: 11/27/2013
Name: Palm Springs Teachers' Association
Representative: Mark Acker
Title: President
Position: Support
Comments:

Bargaining Unit Date: 11/27/2013
Name: Teamster Teams I & II
Representative: Vickie Martinez
Title: Chief Shop Steward
Position: Support
Comments:

Attachment A

6. Education Code or California Code of Regulations section to be waived

The Palm Springs Unified School District desires to waive the following sections and portions of the Education Code lined out below:

§ 5019. Trustee areas and size of school district governing boards; powers of county committee; proposal and hearing

(a) Except in a school district governed by a board of education provided for in the charter of a city or city and county, in any school district or community college district, the county committee on school district organization may establish trustee areas, rearrange the boundaries of trustee areas, abolish trustee areas, and increase to seven or decrease to five the number of members of the governing board, or adopt one of the alternative methods of electing governing board members specified in Section 5030.

(b) The county committee on school district organization may establish or abolish a common governing board for a high school district and an elementary school district within the boundaries of the high school district. The resolution of the county committee on school district organization approving the establishment or abolition of a common governing board shall be presented to the electors of the school districts as specified in Section 5020.

(c) (1) A proposal to make the changes described in subdivision (a) or (b) may be initiated by the county committee on school district organization or made to the county committee on school district organization either by a petition signed by 5 percent or 50, whichever is less, of the qualified registered voters residing in a district in which there are 2,500 or fewer qualified registered voters, by 3 percent or 100, whichever is less, of the qualified registered voters residing in a district in which there are 2,501 to 10,000 qualified registered voters, by 1 percent or 250, whichever is less, of the qualified registered voters residing in a district in which there are 10,001 to 50,000 qualified registered voters, by 500 or more of the qualified registered voters residing in a district in which there are 50,001 to 100,000 qualified registered voters, by 750 or more of the qualified registered voters residing in a district in which there are 100,001 to 250,000 qualified registered voters, or by 1,000 or more of the qualified registered voters residing in a district in which there are 250,001 or more qualified registered voters or by resolution of the governing board of the district. For this purpose, the necessary signatures for a petition shall be obtained within a period of 180 days before the submission of the petition to the county committee on school district organization and the number of qualified registered voters in the district shall be determined pursuant to the most recent report submitted by the county elections official to the Secretary of State under Section 2187 of the Elections Code.

(2) When a proposal is made pursuant to paragraph (1), the county committee on school district organization shall call and conduct at least one hearing in the district on the matter. At the conclusion of the hearing, the county committee on school district organization shall approve or disapprove the proposal.

(d) If the county committee on school district organization approves pursuant to subdivision (a) ~~the rearrangement of the~~ boundaries of trustee areas for a particular district, then the ~~rearrangement of the~~ trustee areas shall be effectuated for the next district election occurring at least 120 days after ~~its~~ approval~~, unless at least 5 percent of the registered voters of the district~~

~~sign a petition requesting an election on the proposed rearrangement of trustee area boundaries. The petition for an election shall be submitted to the county elections official within 60 days of the proposal's adoption by the county committee on school district organization. If the qualified registered voters approve pursuant to subdivision (b) or (c) the rearrangement of the boundaries to the trustee areas for a particular district, the rearrangement of the trustee areas shall be effective for the next district election occurring at least 120 days after its approval by the voters~~.

~~§ 5020. Presentation of proposal to electors~~

~~(a) The resolution of the county committee approving a proposal to establish or abolish trustee areas, to adopt one of the alternative methods of electing governing board members specified in Section 5030, or to increase or decrease the number of members of the governing board shall constitute an order of election, and the proposal shall be presented to the electors of the district not later than the next succeeding election for members of the governing board.~~

~~(b) If a petition requesting an election on a proposal to rearrange trustee area boundaries is filed, containing at least 5 percent of the signatures of the district's registered voters as determined by the elections official, the proposal shall be presented to the electors of the district, at the next succeeding election for the members of the governing board, at the next succeeding statewide primary or general election, or at the next succeeding regularly scheduled election at which the electors of the district are otherwise entitled to vote, provided that there is sufficient time to place the issue on the ballot.~~

~~(c) If a petition requesting an election on a proposal to establish or abolish trustee areas, to increase or decrease the number of members of the board, or to adopt one of the alternative methods of electing governing board members specified in Section 5030 is filed, containing at least 10 percent of the signatures of the district's registered voters as determined by the elections official, the proposal shall be presented to the electors of the district, at the next succeeding election for the members of the governing board, at the next succeeding statewide primary or general election, or at the next succeeding regularly scheduled election at which the electors of the district are otherwise entitled to vote, provided that there is sufficient time to place the issue on the ballot. Before the proposal is presented to the electors, the county committee on school district organization may call and conduct one or more public hearings on the proposal.~~

~~(d) The resolution of the county committee approving a proposal to establish or abolish a common governing board for a high school and an elementary school district within the boundaries of the high school district shall constitute an order of election. The proposal shall be presented to the electors of the district at the next succeeding statewide primary or general election, or at the next succeeding regularly scheduled election at which the electors of the district are otherwise entitled to vote, provided that there is sufficient time to place the issue on the ballot.~~

~~(e) For each proposal there shall be a separate proposition on the ballot. The ballot shall contain the following words:~~

~~"For the establishment (or abolition or rearrangement) of trustee areas in _____ (insert name) School District --Yes" and "For the establishment (or abolition or rearrangement) of trustee areas in _____ (insert name) School District--No."~~

~~"For increasing the number of members of the governing board of ____ (insert name) School District from five to seven--Yes" and "For increasing the number of members of the governing board of ____ (insert name) School District from five to seven--No."~~

~~"For decreasing the number of members of the governing board of ____ (insert name) School District from seven to five--Yes" and "For decreasing the number of members of the governing board of ____ (insert name) School District from seven to five--No."~~

~~"For the election of each member of the governing board of the ____ (insert name) School District by the registered voters of the entire ____ (insert name) School District--Yes" and "For the election of each member of the governing board of the ____ (insert name) School District by the registered voters of the entire ____ (insert name) School District--No."~~

~~"For the election of one member of the governing board of the ____ (insert name) School District residing in each trustee area elected by the registered voters in that trustee area--Yes" and "For the election of one member of the governing board of the ____ (insert name) School District residing in each trustee area elected by the registered voters in that trustee area--No."~~

~~"For the election of one member, or more than one member for one or more trustee areas, of the governing board of the ____ (insert name) School District residing in each trustee area elected by the registered voters of the entire ____ (insert name) School District--Yes" and "For the election of one member, or more than one member for one or more trustee areas, of the governing board of the ____ (insert name) School District residing in each trustee area elected by the registered voters of the entire ____ (insert name) School District--No."~~

~~"For the establishment (or abolition) of a common governing board in the ____ (insert name) School District and the ____ (insert name) School District--Yes" and "For the establishment (or abolition) of a common governing board in the ____ (insert name) School District and the ____ (insert name) School District--No."~~

~~If more than one proposal appears on the ballot, all must carry in order for any to become effective, except that a proposal to adopt one of the methods of election of board members specified in Section 5030 which is approved by the voters shall become effective unless a proposal which is inconsistent with that proposal has been approved by a greater number of voters. An inconsistent proposal approved by a lesser number of voters than the number which have approved a proposal to adopt one of the methods of election of board members specified in Section 5030 shall not be effective.~~

§ 5021. Incumbents to serve out terms despite approval of change

(a) If a proposal for the establishment of trustee areas formulated under Section~~s~~ 5019 ~~and 5020~~ is approved ~~by a majority of the voters voting at the election~~, any affected incumbent board member shall serve out his or her term of office and succeeding board members shall be nominated and elected in accordance with Section 5030. In the event two or more trustee areas are established ~~at such election~~ which are not represented in the membership of the governing board of the school district, or community college district the county committee shall determine by lot the trustee area from which the nomination and election for the next vacancy on the governing board shall be made.

(b) If a proposal for rearrangement of boundaries is approved by ~~a majority of the voters voting~~

~~on the measure, or by~~ the county committee on school district organization ~~when no election is required~~, and if the boundary changes affect the board membership, any affected incumbent board member shall serve out his or her term of office and succeeding board members shall be nominated and elected in accordance with Section 5030.

(c) If a proposal for abolishing trustee areas is approved ~~by a majority of the voters voting at the election~~, the incumbent board members shall serve out their terms of office and succeeding board members shall be nominated and elected at large from the district.

§ 5030. Alternate method of election

Except as provided in Sections 5027 and 5028, in any school district or community college district having trustee areas, the county committee on school district organization and the registered voters of a district, pursuant to Section~~s~~ 5019 ~~and 5020~~, respectively, may at any time recommend one of the following alternate methods of electing governing board members:

(a) That each member of the governing board be elected by the registered voters of the entire district.

(b) That one or more members residing in each trustee area be elected by the registered voters of that particular trustee area.

(c) That each governing board member be elected by the registered voters of the entire school district or community college district, but reside in the trustee area which he or she represents.

The recommendation shall provide that any affected incumbent member shall serve out his or her term of office and that succeeding board members shall be nominated and elected in accordance with the method recommended by the county committee.

Whenever trustee areas are established in a district, provision shall be made for one of the alternative methods of electing governing board members.

~~In counties with a population of less than 25,000,~~ the county committee on school district organization or the county board of education, if it has succeeded to the duties of the county committee, may at any time, by resolution, with respect to trustee areas established for any school district, other than a community college district, amend the provision required by this section without additional approval by the electors, to require one of the alternate methods for electing board members to be utilized.

California Department of Education
WAIVER SUBMISSION - General

CD Code: 5071282 Waiver Number: 15-12-2013 Active Year: 2013

Date In: 12/13/2013 9:43:12 AM

Local Education Agency: Stanislaus Union Elementary School District
Address: 2410 Janna Ave.
Modesto, CA 95350

Start: 12/13/2013 End: 12/12/2015

Waiver Renewal: N
Previous Waiver Number: Previous SBE Approval Date:

Waiver Topic: School District Reorganization
Ed Code Title: Elimination of Election Requirement
Ed Code Section: Portions of 5019, 5021, 5030, and all of 5020
Ed Code Authority: 33050

Ed Code or *CCR* to Waive: Please See Waiver Attachment A

Outcome Rationale: Please See Waiver Attachment B

Student Population: 3100

City Type: Rural

Public Hearing Date: 12/12/2013
Public Hearing Advertised: Notice in local newspaper, Notice posted at each school site, and Notice posted at District Office

Local Board Approval Date: 12/12/2013

Community Council Reviewed By: All Schoolsite Councils and ELAC
Community Council Reviewed Date: 11/25/2013
Community Council Objection: N
Community Council Objection Explanation:

Audit Penalty YN: N

Categorical Program Monitoring: N

Submitted by: Mr. Nevin Trehan
Position: Attorney at Kronick Moskovitz Tiedemann & Girard
E-mail: ntrehan@kmtg.com
Telephone: 916-321-4500
Fax:

Bargaining Unit Date: 11/25/2013
Name: California School Employees Association Chapter #520
Representative: Cathy Hudson
Title: President
Position: Support
Comments:

Bargaining Unit Date: 11/25/2013
Name: Stanislaus Union Teachers Association
Representative: Sheila Marable
Title: President
Position: Support
Comments:

Attachment A

The Stanislaus Union School District desires to waive the following sections and portions of sections of the Education Code lined out below:

§ 5019. Trustee areas and size of school district governing boards; powers of county committee; proposal and hearing

(a) Except in a school district governed by a board of education provided for in the charter of a city or city and county, in any school district or community college district, the county committee on school district organization may establish trustee areas, rearrange the boundaries of trustee areas, abolish trustee areas, and increase to seven or decrease to five the number of members of the governing board, or adopt one of the alternative methods of electing governing board members specified in Section 5030.

(b) The county committee on school district organization may establish or abolish a common governing board for a high school district and an elementary school district within the boundaries of the high school district. The resolution of the county committee on school district organization approving the establishment or abolition of a common governing board shall be presented to the electors of the school districts as specified in Section 5020.

(c) (1) A proposal to make the changes described in subdivision (a) or (b) may be initiated by the county committee on school district organization or made to the county committee on school district organization either by a petition signed by 5 percent or 50, whichever is less, of the qualified registered voters residing in a district in which there are 2,500 or fewer qualified registered voters, by 3 percent or 100, whichever is less, of the qualified registered voters residing in a district in which there are 2,501 to 10,000 qualified registered voters, by 1 percent or 250, whichever is less, of the qualified registered voters residing in a district in which there are 10,001 to 50,000 qualified registered voters, by 500 or more of the qualified registered voters residing in a district in which there are 50,001 to 100,000 qualified registered voters, by 750 or more of the qualified registered voters residing in a district in which there are 100,001 to 250,000 qualified registered voters, or by 1,000 or more of the qualified registered voters residing in a district in which there are 250,001 or more qualified registered voters or by resolution of the governing board of the district. For this purpose, the necessary signatures for a petition shall be obtained within a period of 180 days before the submission of the petition to the county committee on school district organization and the number of qualified registered voters in the district shall be determined pursuant to the most recent report submitted by the county elections official to the Secretary of State under Section 2187 of the Elections Code.

(2) When a proposal is made pursuant to paragraph (1), the county committee on school district organization shall call and conduct at least one hearing in the district on the matter. At the conclusion of the hearing, the county committee on school district organization shall approve or disapprove the proposal.

(d) If the county committee on school district organization approves pursuant to subdivision (a) ~~the rearrangement of the~~ boundaries of trustee areas for a particular district, then the ~~rearrangement of the~~ trustee areas shall be effectuated for the next district election occurring at least 120 days after its approval~~, unless at least 5 percent of the registered voters~~

~~of the district sign a petition requesting an election on the proposed rearrangement of trustee area boundaries. The petition for an election shall be submitted to the county elections official within 60 days of the proposal's adoption by the county committee on school district organization. If the qualified registered voters approve pursuant to subdivision (b) or (c) the rearrangement of the boundaries to the trustee areas for a particular district, the rearrangement of the trustee areas shall be effective for the next district election occurring at least 120 days after its approval by the voters.~~

~~§ 5020. Presentation of proposal to electors~~

~~(a) The resolution of the county committee approving a proposal to establish or abolish trustee areas, to adopt one of the alternative methods of electing governing board members specified in Section 5030, or to increase or decrease the number of members of the governing board shall constitute an order of election, and the proposal shall be presented to the electors of the district not later than the next succeeding election for members of the governing board.~~

~~(b) If a petition requesting an election on a proposal to rearrange trustee area boundaries is filed, containing at least 5 percent of the signatures of the district's registered voters as determined by the elections official, the proposal shall be presented to the electors of the district, at the next succeeding election for the members of the governing board, at the next succeeding statewide primary or general election, or at the next succeeding regularly scheduled election at which the electors of the district are otherwise entitled to vote, provided that there is sufficient time to place the issue on the ballot.~~

~~(c) If a petition requesting an election on a proposal to establish or abolish trustee areas, to increase or decrease the number of members of the board, or to adopt one of the alternative methods of electing governing board members specified in Section 5030 is filed, containing at least 10 percent of the signatures of the district's registered voters as determined by the elections official, the proposal shall be presented to the electors of the district, at the next succeeding election for the members of the governing board, at the next succeeding statewide primary or general election, or at the next succeeding regularly scheduled election at which the electors of the district are otherwise entitled to vote, provided that there is sufficient time to place the issue on the ballot. Before the proposal is presented to the electors, the county committee on school district organization may call and conduct one or more public hearings on the proposal.~~

~~(d) The resolution of the county committee approving a proposal to establish or abolish a common governing board for a high school and an elementary school district within the boundaries of the high school district shall constitute an order of election. The proposal shall be presented to the electors of the district at the next succeeding statewide primary or general election, or at the next succeeding regularly scheduled election at which the electors of the district are otherwise entitled to vote, provided that there is sufficient time to place the issue on the ballot.~~

~~(e) For each proposal there shall be a separate proposition on the ballot. The ballot shall contain the following words: "For the establishment (or abolition or rearrangement) of trustee areas in ____ (insert name) School District --Yes" and "For the establishment (or abolition or rearrangement) of trustee areas in ____ (insert name) School District--No."~~

~~"For increasing the number of members of the governing board of ____ (insert name) School District from five to seven--Yes" and "For increasing the number of members of the governing board of ____ (insert name) School District from five to seven--No."~~

~~"For decreasing the number of members of the governing board of ____ (insert name) School District from seven to five--Yes" and "For decreasing the number of members of the governing board of ____ (insert name) School District from seven to five--No."~~

~~"For the election of each member of the governing board of the ____ (insert name) School District by the registered voters of the entire ____ (insert name) School District--Yes" and "For the election of each member of the governing board of the ____ (insert name) School District by the registered voters of the entire ____ (insert name) School District--No."~~

~~"For the election of one member of the governing board of the ____ (insert name) School District residing in each trustee area elected by the registered voters in that trustee area--Yes" and "For the election of one member of the governing board of the ____ (insert name) School District residing in each trustee area elected by the registered voters in that trustee area--No."~~

~~"For the election of one member, or more than one member for one or more trustee areas, of the governing board of the ____ (insert name) School District residing in each trustee area elected by the registered voters of the entire ____ (insert name) School District--Yes" and "For the election of one member, or more than one member for one or more trustee areas, of the governing board of the ____ (insert name) School District residing in each trustee area elected by the registered voters of the entire ____ (insert name) School District--No."~~

~~"For the establishment (or abolition) of a common governing board in the ____ (insert name) School District and the ____ (insert name) School District--Yes" and "For the establishment (or abolition) of a common governing board in the ____ (insert name) School District and the ____ (insert name) School District--No."~~

~~If more than one proposal appears on the ballot, all must carry in order for any to become effective, except that a proposal to adopt one of the methods of election of board members specified in Section 5030 which is approved by the voters shall become effective unless a proposal which is inconsistent with that proposal has been approved by a greater number of voters. An inconsistent proposal approved by a lesser number of voters than the number which have approved a proposal to adopt one of the methods of election of board members specified in Section 5030 shall not be effective.~~

§ 5021. Incumbents to serve out terms despite approval of change

(a) If a proposal for the establishment of trustee areas formulated under Section~~s~~ 5019 ~~and 5020~~ is approved ~~by a majority of the voters voting at the election~~, any affected incumbent board member shall serve out his or her term of office and succeeding board members shall be nominated and elected in accordance with Section 5030. In the event two or more trustee areas are established ~~at such election~~ which are not represented in the membership of the governing board of the school district, or community college district the county committee shall determine by lot the trustee area from which the nomination and election for the next vacancy on the governing board shall be made.

(b) If a proposal for rearrangement of boundaries is approved by ~~a majority of the voters voting on the measure, or by~~ the county committee on school district organization ~~when no election is required~~, and if the boundary changes affect the board membership, any affected incumbent board member shall serve out his or her term of office and succeeding board members shall be nominated and elected in accordance with Section 5030.

(c) If a proposal for abolishing trustee areas is approved ~~by a majority of the voters voting at the election~~, the incumbent board members shall serve out their terms of office and succeeding board members shall be nominated and elected at large from the district.

§ 5030. Alternate method of election

Except as provided in Sections 5027 and 5028, in any school district or community college district having trustee areas, the county committee on school district organization and the registered voters of a district, pursuant to Section~~s~~ 5019 ~~and 5020~~, ~~respectively,~~ may at any time recommend one of the following alternate methods of electing governing board members:

(a) That each member of the governing board be elected by the registered voters of the entire district.

(b) That one or more members residing in each trustee area be elected by the registered voters of that particular trustee area.

(c) That each governing board member be elected by the registered voters of the entire school district or community college district, but reside in the trustee area which he or she represents.

The recommendation shall provide that any affected incumbent member shall serve out his or her term of office and that succeeding board members shall be nominated and elected in accordance with the method recommended by the county committee.

Whenever trustee areas are established in a district, provision shall be made for one of the alternative methods of electing governing board members.

~~In counties with a population of less than 25,000,~~ the county committee on school district organization or the county board of education, if it has succeeded to the duties of the county committee, may at any time, by resolution, with respect to trustee areas established for any school district, other than a community college district, amend the provision required by this section without additional approval by the electors, to require one of the alternate methods for electing board members to be utilized.

Attachment B

Desired Outcome/ Rationale

The Stanislaus Union School District desires to have the requested Education Code sections waived because the waiver of these sections will allow the District to successfully adopt trustee areas and establish a by-trustee election process as expeditiously as possible, thereby enabling the District to avoid litigation resulting from its current at-large election process for electing its governing board members.

It is imperative that the District adopt trustee areas and complete the implementation process without delay and without interference because like many of the school districts that have been threatened with lawsuits under the California Voting Rights Act of 2001 ("CVRA"), the District currently utilizes an at-large election process to elect its governing board members. The District's failure to successfully adopt and implement trustee areas and a by-trustee area election process leaves it vulnerable to such litigation in which the District would be exposed to potentially having to pay significant attorneys' fees to plaintiffs, which would pose an undue hardship and extreme detriment to the District and its students.

CVRA History

The California Legislature enacted the California Voting Rights Act of 2001 (see California Elections Code §§ 14025-14032). This legislation makes all at-large election systems in California for cities, school districts and special districts vulnerable to legal attack, largely on proof of racially polarized voting, regardless of whether a majority district can be formed and, under the interpretation adopted by plaintiffs in other pending CVRA cases, without regard to the electoral success of minority candidates or the need to prove actual racial injury exists.

The CVRA purports to alter several requirements that plaintiffs would have to prove under the Federal Voting Rights Act, thereby making it easier to challenge at-large election systems.

The first suit under the CVRA was filed against the City of Modesto in 2004. Modesto challenged the facial constitutionality of the CVRA on the basis that, by using race as the sole criterion of liability, the CVRA contains a suspect racial classification that California was required to justify under equal protection strict scrutiny standards. The trial court struck down the statute but the California Court of Appeal reversed. (*Sanchez v. City of Modesto* (2006) 145 Cal.App.4th 660).

The City of Modesto ultimately settled the litigation, but not before paying plaintiffs $3 million dollars in attorneys' fees to plaintiffs' attorneys (the prevailing party [other than a public agency] is entitled to an award of their attorneys' fees and costs under the CVRA) and another $1.7 million to its own attorneys.

Similarly, the Hanford Joint Union High School District was sued under the CVRA and after adopting trustee areas and establishing by-trustee area elections (and requesting and receiving the same waiver from the State Board of Education that is being requested here), paid plaintiffs in that lawsuit the sum of $110,000 pursuant to a settlement agreement.

Most recently, the Madera Unified School District has been sued under the CVRA and their November 2008 governing board member election was enjoined by the court. The Plaintiffs in that case demanded $1.8 million in attorneys' fees from that District. Normally, under Education Code section 5020, the County Committee on School District organization, after conducting its own public hearing on the recommended plans, would call for an election and put the matter to a vote of the District's electors. However, going through that process would prevent the District from electing successor trustees in a timely manner and leaves the District vulnerable to a lawsuit and injunction.

The requested waiver will allow the District to complete its transition to a by-trustee area election process in time to for the next governing board member election in November of 2014 which will reduce the District's liability under the CVRA going forward.

California Department of Education
WAIVER SUBMISSION - General

CD Code: 5075572 Waiver Number: 7-11-2013 Active Year: 2013

Date In: 11/15/2013 3:42:16 PM

Local Education Agency: Waterford Unified School District
Address: 219 North Reinway Ave., Bldg. 2
Waterford, CA 95386

Start: 1/1/2013 End: 12/31/2014

Waiver Renewal: N
Previous Waiver Number: Previous SBE Approval Date:

Waiver Topic: School District Reorganization
Ed Code Title: Elimination of Election Requirement
Ed Code Section: Portions of 5019, 5021, 5030 and all of 5020
Ed Code Authority: 33050

Ed Code or *CCR* to Waive: See Attachment A

Outcome Rationale: See Attachment B

Student Population: 1730

City Type: Small

Public Hearing Date: 11/14/2013
Public Hearing Advertised: X Notice in a newspaper X Notice posted at each school X Other: District Newsletter

Local Board Approval Date: 11/14/2013

Community Council Reviewed By: All Schoolsite Councils, ELACs, and DELAC
Community Council Reviewed Date: 10/23/2013
Community Council Objection: N
Community Council Objection Explanation:

Audit Penalty YN: N

Categorical Program Monitoring: N

Submitted by: Mr. Don Davis
Position: Superintendent
E-mail: ddavis@waterford.k12.ca.us
Telephone: 209-874-1809 x0
Fax: 209-874-3109

Bargaining Unit Date: 10/31/2013
Name: California School Employees Association #657
Representative: Dennis Dorton
Title: President
Position: Support
Comments:

Bargaining Unit Date: 10/25/2013
Name: Waterford Teachers Association
Representative: Travis Walsh
Title: President
Position: Neutral
Comments:

Attachment A

6. Education Code or California Code of Regulations section to be waived

The Waterford Unified School District desires to waive the following sections and portions of the Education Code lined out below:

§ 5019. Trustee areas and size of school district governing boards; powers of county committee; proposal and hearing

(a) Except in a school district governed by a board of education provided for in the charter of a city or city and county, in any school district or community college district, the county committee on school district organization may establish trustee areas, rearrange the boundaries of trustee areas, abolish trustee areas, and increase to seven or decrease to five the number of members of the governing board, or adopt one of the alternative methods of electing governing board members specified in Section 5030.

(b) The county committee on school district organization may establish or abolish a common governing board for a high school district and an elementary school district within the boundaries of the high school district. The resolution of the county committee on school district organization approving the establishment or abolition of a common governing board shall be presented to the electors of the school districts as specified in Section 5020.

(c) (1) A proposal to make the changes described in subdivision (a) or (b) may be initiated by the county committee on school district organization or made to the county committee on school district organization either by a petition signed by 5 percent or 50, whichever is less, of the qualified registered voters residing in a district in which there are 2,500 or fewer qualified registered voters, by 3 percent or 100, whichever is less, of the qualified registered voters residing in a district in which there are 2,501 to 10,000 qualified registered voters, by 1 percent or 250, whichever is less, of the qualified registered voters residing in a district in which there are 10,001 to 50,000 qualified registered voters, by 500 or more of the qualified registered voters residing in a district in which there are 50,001 to 100,000 qualified registered voters, by 750 or more of the qualified registered voters residing in a district in which there are 100,001 to 250,000 qualified registered voters, or by 1,000 or more of the qualified registered voters residing in a district in which there are 250,001 or more qualified registered voters or by resolution of the governing board of the district. For this purpose, the necessary signatures for a petition shall be obtained within a period of 180 days before the submission of the petition to the county committee on school district organization and the number of qualified registered voters in the district shall be determined pursuant to the most recent report submitted by the county elections official to the Secretary of State under Section 2187 of the Elections Code.

(2) When a proposal is made pursuant to paragraph (1), the county committee on school district organization shall call and conduct at least one hearing in the district on the matter. At the conclusion of the hearing, the county committee on school district organization shall approve or disapprove the proposal.

(d) If the county committee on school district organization approves pursuant to subdivision (a) ~~the rearrangement of the~~ boundaries of trustee areas for a particular district, then the ~~rearrangement of the~~ trustee areas shall be effectuated for the next district election occurring at least 120 days after ~~its~~ approval~~, unless at least 5 percent of the registered voters of the district~~

~~sign a petition requesting an election on the proposed rearrangement of trustee area boundaries. The petition for an election shall be submitted to the county elections official within 60 days of the proposal's adoption by the county committee on school district organization. If the qualified registered voters approve pursuant to subdivision (b) or (c) the rearrangement of the boundaries to the trustee areas for a particular district, the rearrangement of the trustee areas shall be effective for the next district election occurring at least 120 days after its approval by the voters~~.

~~§ 5020. Presentation of proposal to electors~~

~~(a) The resolution of the county committee approving a proposal to establish or abolish trustee areas, to adopt one of the alternative methods of electing governing board members specified in Section 5030, or to increase or decrease the number of members of the governing board shall constitute an order of election, and the proposal shall be presented to the electors of the district not later than the next succeeding election for members of the governing board.~~

~~(b) If a petition requesting an election on a proposal to rearrange trustee area boundaries is filed, containing at least 5 percent of the signatures of the district's registered voters as determined by the elections official, the proposal shall be presented to the electors of the district, at the next succeeding election for the members of the governing board, at the next succeeding statewide primary or general election, or at the next succeeding regularly scheduled election at which the electors of the district are otherwise entitled to vote, provided that there is sufficient time to place the issue on the ballot.~~

~~(c) If a petition requesting an election on a proposal to establish or abolish trustee areas, to increase or decrease the number of members of the board, or to adopt one of the alternative methods of electing governing board members specified in Section 5030 is filed, containing at least 10 percent of the signatures of the district's registered voters as determined by the elections official, the proposal shall be presented to the electors of the district, at the next succeeding election for the members of the governing board, at the next succeeding statewide primary or general election, or at the next succeeding regularly scheduled election at which the electors of the district are otherwise entitled to vote, provided that there is sufficient time to place the issue on the ballot. Before the proposal is presented to the electors, the county committee on school district organization may call and conduct one or more public hearings on the proposal.~~

~~(d) The resolution of the county committee approving a proposal to establish or abolish a common governing board for a high school and an elementary school district within the boundaries of the high school district shall constitute an order of election. The proposal shall be presented to the electors of the district at the next succeeding statewide primary or general election, or at the next succeeding regularly scheduled election at which the electors of the district are otherwise entitled to vote, provided that there is sufficient time to place the issue on the ballot.~~

~~(e) For each proposal there shall be a separate proposition on the ballot. The ballot shall contain the following words:~~

~~"For the establishment (or abolition or rearrangement) of trustee areas in _____ (insert name) School District --Yes" and "For the establishment (or abolition or rearrangement) of trustee areas in _____ (insert name) School District--No."~~

~~"For increasing the number of members of the governing board of ____ (insert name) School District from five to seven--Yes" and "For increasing the number of members of the governing board of ____ (insert name) School District from five to seven--No."~~

~~"For decreasing the number of members of the governing board of ____ (insert name) School District from seven to five--Yes" and "For decreasing the number of members of the governing board of ____ (insert name) School District from seven to five--No."~~

~~"For the election of each member of the governing board of the ____ (insert name) School District by the registered voters of the entire ____ (insert name) School District--Yes" and "For the election of each member of the governing board of the ____ (insert name) School District by the registered voters of the entire ____ (insert name) School District--No."~~

~~"For the election of one member of the governing board of the ____ (insert name) School District residing in each trustee area elected by the registered voters in that trustee area--Yes" and "For the election of one member of the governing board of the ____ (insert name) School District residing in each trustee area elected by the registered voters in that trustee area--No."~~

~~"For the election of one member, or more than one member for one or more trustee areas, of the governing board of the ____ (insert name) School District residing in each trustee area elected by the registered voters of the entire ____ (insert name) School District--Yes" and "For the election of one member, or more than one member for one or more trustee areas, of the governing board of the ____ (insert name) School District residing in each trustee area elected by the registered voters of the entire ____ (insert name) School District--No."~~

~~"For the establishment (or abolition) of a common governing board in the ____ (insert name) School District and the ____ (insert name) School District--Yes" and "For the establishment (or abolition) of a common governing board in the ____ (insert name) School District and the ____ (insert name) School District--No."~~

~~If more than one proposal appears on the ballot, all must carry in order for any to become effective, except that a proposal to adopt one of the methods of election of board members specified in Section 5030 which is approved by the voters shall become effective unless a proposal which is inconsistent with that proposal has been approved by a greater number of voters. An inconsistent proposal approved by a lesser number of voters than the number which have approved a proposal to adopt one of the methods of election of board members specified in Section 5030 shall not be effective.~~

§ 5021. Incumbents to serve out terms despite approval of change

(a) If a proposal for the establishment of trustee areas formulated under Section~~s~~ 5019 ~~and 5020~~ is approved ~~by a majority of the voters voting at the election~~, any affected incumbent board member shall serve out his or her term of office and succeeding board members shall be nominated and elected in accordance with Section 5030. In the event two or more trustee areas are established ~~at such election~~ which are not represented in the membership of the governing board of the school district, or community college district the county committee shall determine by lot the trustee area from which the nomination and election for the next vacancy on the governing board shall be made.

(b) If a proposal for rearrangement of boundaries is approved by ~~a majority of the voters voting~~

~~on the measure, or by~~ the county committee on school district organization ~~when no election is required~~, and if the boundary changes affect the board membership, any affected incumbent board member shall serve out his or her term of office and succeeding board members shall be nominated and elected in accordance with Section 5030.

(c) If a proposal for abolishing trustee areas is approved ~~by a majority of the voters voting at the election~~, the incumbent board members shall serve out their terms of office and succeeding board members shall be nominated and elected at large from the district.

§ 5030. Alternate method of election

Except as provided in Sections 5027 and 5028, in any school district or community college district having trustee areas, the county committee on school district organization and the registered voters of a district, pursuant to Section~~s~~ 5019 ~~and 5020~~, ~~respectively,~~ may at any time recommend one of the following alternate methods of electing governing board members:

(a) That each member of the governing board be elected by the registered voters of the entire district.

(b) That one or more members residing in each trustee area be elected by the registered voters of that particular trustee area.

(c) That each governing board member be elected by the registered voters of the entire school district or community college district, but reside in the trustee area which he or she represents.

The recommendation shall provide that any affected incumbent member shall serve out his or her term of office and that succeeding board members shall be nominated and elected in accordance with the method recommended by the county committee.

Whenever trustee areas are established in a district, provision shall be made for one of the alternative methods of electing governing board members.

~~In counties with a population of less than 25,000,~~ the county committee on school district organization or the county board of education, if it has succeeded to the duties of the county committee, may at any time, by resolution, with respect to trustee areas established for any school district, other than a community college district, amend the provision required by this section without additional approval by the electors, to require one of the alternate methods for electing board members to be utilized.

Attachment B

6. Desired Outcome/ Rationale

The Waterford Unified School District desires to have the requested Education Code sections waived because the waiver of these sections will allow the District to successfully adopt trustee areas and establish a by-trustee election process as expeditiously as possible, thereby enabling the District to avoid litigation resulting out of its current at-large election process for electing its governing board members.

It is imperative that the District adopt these areas and establish this process without delay and without interference because the District has been presented with a demand letter under the California Voting Rights Act of 2001 ("CVRA"), threatening to sue the District if it does not convert to by-trustee area elections. The District currently utilizes an at-large election process to elect its governing board members. The District's failure to successfully adopt and implement trustee areas and a by-trustee area election process leaves it vulnerable to litigation in which the District would be exposed to potentially having to pay significant attorneys' fees to plaintiffs, which would pose an undue hardship and extreme detriment to the District and its students.

CVRA History

The California Legislature enacted the California Voting Rights Act of 2001. (*See* California Elections Code §§ 14025-14032). This legislation makes all at-large election systems in California for cities, school districts and special districts vulnerable to legal attack, largely on proof of racially polarized voting, regardless of whether a majority district can be formed and, under the interpretation adopted by plaintiffs in other pending CVRA cases, without regard to the electoral success of minority candidates or the need to prove actual racial injury exists.

The CVRA purports to alter several requirements that plaintiffs would have to prove under the Federal Voting Rights Act, thereby making it easier to challenge at-large election systems.

The first suit under the CVRA was filed against the City of Modesto in 2004. Modesto challenged the facial constitutionality of the CVRA on the basis that, by using race as the sole criterion of liability, the CVRA contains a suspect racial classification that California was required to justify under equal protection strict scrutiny standards. The trial court struck down the statute but the California Court of Appeal reversed. (*Sanchez v. City of Modesto* (2006) 145 Cal.App.4th 660).

The City of Modesto ultimately settled the litigation, but not before paying plaintiffs $3 million dollars in attorneys' fees to plaintiffs' attorneys (the prevailing party [other than a public agency] is entitled to an award of their attorneys' fees and costs under the CVRA) and another $1.7 million to its own attorneys.

Similarly, the Hanford Joint Union High School District was sued under the CVRA and after adopting trustee areas and establishing by-trustee area elections (and requesting and receiving the same waiver from the State Board of Education that is being requested here), paid plaintiffs in that lawsuit the sum of $110,000 pursuant to a settlement agreement. Most recently, the Madera Unified School District has been sued under the CVRA and their November 2008 governing board member election was enjoined by the court. The Plaintiffs in that case demanded $1.8 million in attorneys' fees from that District, though that amount was subsequently reduced by the trial court and upheld on appeal.

Normally, under Education Code section 5020, the County Committee on School District organization, after conducting its own public hearing on the recommended plans, would call for an election and put the matter to a vote of the District's electors. However, going through an election process would prevent the District from electing successor trustees in a timely manner and leaves the District vulnerable to a lawsuit and injunction.

The requested waiver will allow the District to complete its transition to a by-trustee area election process in time to for the next governing board member election which will reduce the District's liability under the CVRA going forward.

California State Board of Education

Meeting Agenda Items for March 12-13, 2014

WAIVER ITEM W-12

ITEM #W-12

CALIFORNIA STATE BOARD OF EDUCATION

MARCH 2014 AGENDA

☒ **General Waiver**

SUBJECT	
Request by **Green Point Elementary School District** for a renewal to waive California *Education Code* Section 35780(a), which requires lapsation of a district with an average daily attendance of less than six. Waiver Number: 32-12-2013	☒ **Action** ☒ **Consent**

SUMMARY OF THE ISSUE(S)

At the time this waiver request was submitted, the Green Point Elementary School District (ESD) in Humboldt County reported that it had four students enrolled in the first through eighth grades. *Education Code* (*EC*) Section 35780(a) requires the Humboldt County Committee on School District Organization (County Committee) to lapse the district if its average daily attendance (ADA) in these grade levels is below six at the close of the 2013–14 school year. The Green Point ESD governing board is requesting that the California State Board of Education (SBE) waive *EC* Section 35780(a) in order to allow the district to continue to operate for the 2014–15 school year. The SBE approved an identical waiver request from the Green Point ESD at the January 2013 1SBE meeting to allow the district to continue operations for 2013–14. The Humboldt County Superintendent of Schools strongly supports the Green Point ESD waiver request.

Authority for Waiver: *EC* Section 33050

RECOMMENDATION

☒ **Approval** ☐ **Approval with conditions** ☐ **Denial**

The California Department of Education (CDE) recommends that the SBE approve the request by the Green Point ESD to waive *EC* 35780(a) regarding district lapsation.

SUMMARY OF KEY ISSUES

EC Section 35780 establishes the conditions necessary for a county committee to initiate lapsation proceedings for a school district. Subdivision (a) of this section requires lapsation of an elementary school district when the district's first through eighth grade

ADA falls below six. Under conditions of lapsation, the county committee is required to annex the territory of the lapsed district to one or more adjoining districts.

The Green Point ESD reports that the first through eighth grade ADA of the district likely will be below six at the end of the 2013–14 school year. The district reports a current year enrollment of eight students—however, only four are in grades one through eight (with the remaining students in kindergarten). The district is requesting a waiver of subdivision (a) of *EC* 35780 (the requirement to lapse the district) for one year. The SBE approved an identical request from the Green Point ESD in January 2013, which allowed the district to continue operations through 2013–14. At that time, the CDE noted that the district was projecting only four students in grades one through eight for the 2013–14 school year and that the Green Point ESD likely would need to submit the current request in order to avoid lapsation for the 2014–15 school year.

Given current (and projected) kindergarten enrollment, the Green Point ESD anticipates grades one through eight enrollment to be eight for 2014–15, and remain at seven or above for at least the subsequent two years. Total enrollment in the district has fluctuated between 5 and 9 students over the past five years (see following table).

Green Point Elementary School District

Year	Enrollment
2009–10	8
2010–11	7
2011–12	9
2012–13	5
2013–14	8

The closest school to the Green Point School is in the Blue Lake Union Elementary School District (ESD), with an enrollment of 158. The single school in the Blue Lake Union ESD is located over 21 miles from the Green Point School. The road between the two schools is very curvy, climbs over a mountain pass, and can be dangerous during rain and snow. Although the Blue Lake Union ESD is the closest district, there is no guarantee that the Green Point ESD, if lapsed, would be annexed to this district. The Humboldt County Committee would order the Green Point ESD annexed to one or more adjoining districts according to what the County Committee determines is in the best interests of the adjoining districts and the residents of the lapsed district.

Note that lapsation would not necessarily result in the closure of the Green Point School. A school in a lapsed district can continue to operate while having its administrative functions handled by the district it joins. The governing board of the district receiving the Green Point School would make the decision regarding closure of the school.

The Humboldt County Superintendent of Schools has provided strong support for the district's request to waive *EC* Section 35780, noting that:

- Safety of the elementary students is the primary concern. The Green Point School is located in a remote valley and transportation in and out of the valley can be very treacherous.

- The Green Point academic program is a quality program in a "neighborhood setting." Parents historically have been very active in the school.

- The current enrollment dip appears to be an anomaly. Enrollment should stabilize once the younger children in the community become school-age.

- Board membership has historically been very stable, unlike many districts of similar size. There has been little difficulty attracting members of the community to serve on the board.

- Even if the district was forced to lapse, it is highly likely the Green Point School would have to operate as a necessary small school—thus; there would be no financial savings from the lapsation.[1]

The Green Point ESD has until the end of the 2013–14 school year to determine if ADA is above six students, since the County Committee cannot initiate lapsation until that time. Approval of this waiver will provide another year to stabilize enrollment. If ADA is not at six or above by June 30, 2015, the County Committee will be required to initiate lapsation at that time even if this waiver request is approved.

The California Department of Education (CDE) finds that none of the grounds specified in *EC* Section 33051, which authorize denial of a waiver, exist. The CDE recommends that the SBE approve the request by the Green Point ESD to waive subdivision (a) of *EC* Section 35780.

Demographic Information:

The Green Point ESD has a kindergarten through eighth grade student population of eight and is located in a rural area of Humboldt 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* 33051(a), available at http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=EDC&sectionNum=33051.

SUMMARY OF PREVIOUS STATE BOARD OF EDUCATION DISCUSSION AND ACTION

The SBE approved a similar waiver request for the Green Point ESD at the January 2013 SBE meeting. At that time, the district's enrollment projections indicated that it was unlikely that 2013–14 enrollment would be sufficient to avoid lapsation; and the CDE noted the probability that the Green Point ESD would need to make the current request.

[1] CDE estimates (based on 2012–13 financial data) that lapsation would result in a $590 increase in necessary small school funding should the Green Point School remain operational.

FISCAL ANALYSIS (AS APPROPRIATE)

Approval of the waiver requests will not have negative fiscal effects[1] on any local or state agency.

ATTACHMENT(S)

Attachment 1: Information from Districts Requesting Waivers of Lapsation Requirement (1 page)

Attachment 2: Green Point Elementary School District General Waiver Request 32-12-2013 (5 pages) (Original waiver request is signed and on file in the Waiver Office.)

Information from Districts Requesting Waivers of Lapsation Requirement

California *Education Code* Section 35780(a)

Waiver Number	District	Period of Request	Bargaining Unit, Representatives Consulted, Date, and Position	Public Hearing and Board Approval Date	Public Hearing Advertisement	SSC/Advisory Committee Position
32-12-2013	Green Point Elementary School District	**Requested:** July 1, 2014, to June 30, 2015 **Recommended:** July 1, 2014, to June 29, 2015	District has no bargaining units.	12/12/13	Notice in local newspaper, notice posted on the door of the Green Point School, on the Community Bulletin Board, and at the Blue Lake Post Office.	Reviewed by the Schoolsite Council: 12/11/13: **No objections**

Created by California Department of Education
January 2, 2014

California Department of Education
WAIVER SUBMISSION - General

CD Code: 1262851 Waiver Number: 32-12-2013 Active Year: 2013

Date In: 12/19/2013 3:00:17 PM

Local Education Agency: Green Point Elementary School District
Address: 180 Valkensar Ln.
Blue Lake, CA 95525

Start: 7/1/2014 End: 6/30/2015

Waiver Renewal: Y
Previous Waiver Number: 9-11-2012-W-12 Previous SBE Approval Date: 1/16/2013

Waiver Topic: School District Reorganization
Ed Code Title: Lapsation of a Small District
Ed Code Section: 35780(a)
Ed Code Authority: 33050

Ed Code or *CCR* to Waive: 35780(a) Any school district which has been organized for more than three years shall be lapsed as provided in this article if the number of registered electors in the district is less than six [or if the average daily attendance of pupils in the school or schools maintained by the district is less than six in grades 1 through 8 or is less than 11 in grades 9 through 12, except that for any unified district which has established and continues to operate at least one senior high school, the board of supervisors shall defer the lapsation of the district for one year upon a written request of the governing board of the district and written concurrence of the county committee. The board of supervisors shall make no more than three such deferments.]

Outcome Rationale: Please see Addendum A (attached)

Student Population: 7

City Type: Rural

Public Hearing Date: 12/12/2013
Public Hearing Advertised: Notice was published in the Times-Standard Newspaper and posted on the door of the Green Point School, on the Community Bulletin Board and at the Blue Lake Post Office.

Local Board Approval Date: 12/12/2013

Community Council Reviewed By: Green Point School Site Council
Community Council Reviewed Date: 12/11/2013
Community Council Objection: N
Community Council Objection Explanation:

Audit Penalty YN: N

Categorical Program Monitoring: N

Submitted by: Ms. Rea Erickson
Position: Superintendent
E-mail: rerickson@humboldt.k12.ca.us
Telephone: 707-668-5921
Fax:

Addendum A
Desired Outcome/Rationale

School District Background and Geography
Green Point School District is located in the Redwood Valley, off State Highway 299, nestled in the coastal mountain range of Humboldt County. The Redwood Valley is a distinct geographic region, and the residents have a strong sense of community. The district was founded in 1912 and has been serving students for 100 years. The school was built at the current location in 1952, and was completely rebuilt in 1992. The school building is in excellent condition and has been thoroughly modernized including wiring for the Internet and current technology. As the only public facility in the area, it serves both as an educational facility as well as community gathering place in a convenient physical location for the students and the community who live in this isolated valley.

Students Being Served
The school has averaged 12 students per year since 2000-2001. This one-school district serves Transitional-kindergarten (T-K) through 8th grade students.

CBEDS enrollment for Green Point School fluctuates between seven and 18 students. Typically more than 70% of the student population qualifies for the Free and Reduced Meal Program. The student population is typically a mix of Caucasian and Native American.

At this time, several children in the area are young, resulting in a bubble of T-K and Kindergarten students. According to the families of these students, they will continue to attend Green Point School, and their younger siblings will as well. A projected enrollment chart based on known enrollments is included (Addendum B). Additional students are also anticipated to enroll based on past patterns. The current enrollment for first through 8th grade students is four, but with four Kindergarten students, the enrollment will significantly increase in the years to come.

Staffing and Support
Staffing for the school is lean and efficient. There are 1.98 highly qualified certificated personnel and one part-time support person, with active volunteer parental assistance in the classroom and with other school-related activities. The teaching staff is experienced, having been with the district for 26 and 7 years.
The Schoolsite Council is active.

The District has a three-member Board of Trustees.

Community
The school is essential to the fabric of the community and fills many needs for its residents, from a social gathering place for community events, to a valuable educational resource to its students and the greater community.

The economy in the area is primarily cattle ranching, agriculture and logging. A few of the parents work outside of the community in Arcata or Eureka. However, in most cases parents have home-based businesses. The location of the school is very accessible for the parents who want to be directly involved in their student's education.

Contiguous School Districts and Schools

There are five contiguous school districts. The nearest school district is Blue Lake Union School District located 21.12 miles from the Green Point School. Blue Lake has an enrollment of 158 students and 11 certificated personnel. In the Klamath-Trinity Joint Unified School District, the Trinity Valley Elementary School is 29.16 miles from the Green Point School, with 166 students and 10 certificated staff members. In the McKinleyville Union School District, Morris Elementary is 31.52 miles from Green Point School. Morris serves 325 students with 17 certificated staff. Trinidad Union School District is 39.02 miles from Green Point School and employs 10 certificated staff serving 157 students. Big Lagoon Union School District is 46.17 miles away and serves 54 students with three certificated employees.

Should a lapsation be necessary, clearly the closest school district to merge with would be Blue Lake. Blue Lake School is, however, located on the other side of one of the two major mountain passes whose road has been known to close periodically and up to several hours during the winter (please refer to next section for more discussion).

Challenges in Transportation

Green Point provides transportation for students. Chains were purchased for the bus in 2010, and a strobe light was installed in 2011 to improve visibility in dense fog. Over the last several years, the district has taken an average of one day per year as an emergency closure day due to mudslides, power outages and snow. Historically emergency closures have ranged from no days up to three, minimizing disruption to the instructional program.

If the students are required to travel outside of the area to attend school in another district, they are likely to miss more days of school, due to the weather conditions and limitations in transportation. The road is one lane in several places and is subject to heavy fog, rain, snow and ice, and landslides. Many parents expressed that transporting their student to another school would cause financial hardship.

In order to transport students from Green Point to Blue Lake School, the only road goes up and over the Lord Ellis mountain pass. In order to reach the next closest school, Trinity Valley Elementary, transportation requires travel up and over the Berry Summit mountain pass. These are two of the highest mountain passes in Humboldt County and both experience heavy fog, rain, snow and ice each year. Often they are closed for periods of time due to mudslides and extreme weather. It would be difficult to estimate the number of days students could miss due to these conditions.

Another consideration is the distance students travel to attend school. All of the students would travel significantly further in order to get from home to Blue Lake School, compared to attending Green Point School. Based on the home addresses for students currently enrolled, the travel distance for individual students would increase as much as tenfold: from 2.3 to 23.41 miles; 3.17 to 17.95 miles; 11.24 to 16.49 miles; 8.42 to 13.67 miles; and 13.94 to 18.74 miles. In addition students would travel on Highway 299 (over the Lord Ellis Pass) in order to attend school. The

safety consideration is based on road conditions out of Green Point and over the mountain pass in addition to the increased distance.

Financial Considerations
As mentioned above, if the Green Point School District is lapsed, it is likely to be reorganized into the Blue Lake School District. Because of the distance students would be required to travel to Blue Lake and for a variety of other reasons, the Green Point School would likely stay open as a school site, and it would continue to qualify as a Necessary Small School. Because of the Necessary Small Schools Funding, there is no real cost savings to the state as a result of the lapsation.

Extremely Supportive Community
Parents and community members support the Green Point School District and value the education their children are receiving. Several parents took the opportunity to speak with the County Superintendent, and most wrote letters of support. Many community members also registered their support for the school through e-mail and phone calls.

The school has regularly made APY. Please see Addendum C for the Mission Statement. Approval of this waiver request will provide an opportunity to stabilize enrollment and allow the staff to continue providing the quality education the families and students have come to expect.

California State Board of Education

Meeting Agenda Items for March 12-13, 2014

WAIVER ITEM W-13

ITEM #W-13

CALIFORNIA STATE BOARD OF EDUCATION

MARCH 2014 AGENDA

☒ **General Waiver**

SUBJECT	
Request by two districts to waive portions of California *Education Code* sections 35534, 35780, and 35782, and all of Section 35786, regarding district lapsation and date of effectiveness of lapsation. Waiver Numbers: Cox Bar Elementary School District 24-12-2013 Trinity Alps Unified School District 23-12-2013	☒ **Action** ☒ **Consent**

SUMMARY OF THE ISSUE(S)

The Cox Bar Elementary School District (ESD) in Trinity County is a component district of the Trinity Alps Unified School District (USD). The first through eighth grade enrollment of the Cox Bar ESD is five. The governing boards of both the Cox Bar ESD and the Trinity Alps USD have approved resolutions to submit requests to the California State Board of Education (SBE) to waive portions of the *Education Code* (*EC*) in order to allow the Cox Bar ESD to lapse into the Trinity Alps USD. If the SBE approves the waiver requests, the Cox Bar ESD will cease to exist as a component district and will become part of the Trinity Alps USD effective July 1, 2014.

Note that the Trinity County Office of Education is listed as the local education agency for waiver number 24-12-2013 (Attachment 2). However, the waiver request actually is submitted by the governing board of the Cox Bar ESD. The Trinity County Superintendent of Schools currently is the acting superintendent of Cox Bar ESD and filed the request on the governing board's behalf.

Authority for Waiver: *EC* Section 33050

RECOMMENDATION

☒ **Approval** ☐ **Approval with conditions** ☐ **Denial**

The California Department of Education (CDE) recommends that the SBE approve the requests by the Cox Bar ESD and the Trinity Alps USD to waive portions of *EC* sections 35534, 35780, and 35782, and all of Section 35786, regarding district lapsation and date of effectiveness of lapsation.

SUMMARY OF KEY ISSUES

EC Section 35780 requires each county committee on school district organization (county committee) to "lapse" an elementary school district if that district's average daily attendance (ADA) in first through eighth grade falls below six. The lapsation process requires the county committee to dissolve the district and annex the territory of the lapsed district to one or more adjacent districts. *EC* Section 35782 requires that the county committee wait until the close of the school year to initiate the lapsation process, while *EC* Section 35786 requires the lapsation to be effective on the date that the county committee approves the lapsation.

Approval of the waiver requests will allow the Trinity County Committee to lapse the Cox Bar ESD even if the ADA in the district does not meet the conditions for mandatory lapsation as stated in *EC* Section 35780. Approval also will allow the Trinity County Committee to begin the lapsation process before the end of the 2013–14 school year and will make the lapsation effective at the beginning of the 2014–15 year.

The 2013–14 first through eighth grade enrollment for the Cox Bar ESD is five according to the most current data provided by the school districts. The districts expect enrollment to remain at that level for the 2014–15 school year. As can be seen in the following table, enrollment over the past years has remained very low.

Cox Bar ESD Grades 1–8 Enrollment

Year	Enrollment
2009–10	9
2010–11	9
2011–12	9
2012–13	9

Source: California Basic Educational Data System

The district governing boards believe that the lapsation will provide financial and educational benefits for the Cox Bar ESD and its students, including:

- More flexibility in student programs
- Improved matriculation
- Greater ability to absorb extreme fluctuations in enrollment
- Efficiency of district office functions
- Better financial stability
- Enhanced ability of Cox Bar School to continue to exist and serve the community

If the waiver requests are approved, the Cox Bar ESD will lapse and become a part of the Trinity Alps USD. By removing the requirement that the county committee wait until the close of the school year to initiate the lapsation, the approved waiver request will allow the lapsation process to proceed in a timeframe that provides the affected districts the ability to plan appropriately for the consolidation of the districts. By allowing the lapsation to be effective at the beginning of a new school year, the waiver will allow a more orderly transition for both educational and fiscal purposes.

The CDE recommends that the SBE approve the Cox Bar ESD and the Trinity Alps USD requests to waive portions of *EC* sections 35534, 35780, and 35782, and all of *EC* Section 35786, to facilitate the lapsation of those districts. There has been no local opposition to the waiver request reported and the CDE has determined that none of the grounds specified in *EC* Section 33051(a) that authorize denial of a waiver, exist.

Demographic Information:

The Cox Bar ESD has a kindergarten through eighth grade student population of seven and is located in a rural area of Trinity County.

The Trinity Alps USD has a kindergarten through twelfth grade student population of 732 and is located in a rural area of Trinity 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* 33051(a), available at http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=EDC&sectionNum=33051.

SUMMARY OF PREVIOUS STATE BOARD OF EDUCATION DISCUSSION AND ACTION

The SBE has approved numerous similar waivers—most recently for the Manton Joint Union ESD, the Mineral ESD, and the Plum Valley ESD (all in Tehama County), at the March 2013 SBE meeting.

FISCAL ANALYSIS (AS APPROPRIATE)

Approval of the waiver requests will not have negative fiscal effects on any local or state agency.

ATTACHMENT(S)

Attachment 1: Information from Districts Requesting Waivers of Conditions and Effective Dates for Lapsation (1 page)

Attachment 2: Cox Bar Elementary School District* General Waiver Request 24-12-2013 (2 pages) (Original waiver request is signed and on file in the Waiver Office.)

Attachment 3: Trinity Alps Unified School District General Waiver Request 23-12-2013 (2 pages) (Original waiver request is signed and on file in the Waiver Office.)

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* The Trinity County Office of Education is listed as the local education agency in the attachment. However, the waiver request is from the governing board of the Cox Bar ESD. The Trinity County Superintendent of Schools is the acting superintendent of Cox Bar ESD and filed the request on the governing board's behalf.

Information from Districts Requesting Waivers of Conditions and Effective Dates for Lapsation

California Education Code *Section 35786 and portions of sections 35534, 35780, and 35782*

Waiver Number	District	Period of Request	Bargaining Unit, Representatives Consulted, Date, and Position	Public Hearing and Board Approval Date	Public Hearing Advertisement	SSC/Advisory Committee Position
24-12-2013	* Cox Bar Elementary School District	**Requested:** March 13, 2014, to March 13, 2015 **Recommended**: March 13, 2014, to December 1, 2015	District has no bargaining units.	Public Hearing: 10/10/13 Approval: 11/12/13	Notice in local newspaper, notice posted at three locations in district and at the Trinity County Office of Education.	Reviewed by the district's Committee on District Lapsation: 9/16/13: **No objections**
23-12-2013	Trinity Alps Unified School District	**Requested:** March 13, 2014, to March 13, 2015 **Recommended**: March 13, 2014, to December 1, 2015	Trinity Alps Teachers' Association; Dave Newton, President; 9/3/13: **Neutral** California School Employees' Association; Luke Case, President; 9/3/13: **Neutral**	Public Hearing: 10/9/13 Approval: 11/13/13	Notice in local newspaper, notice posted at three locations in district and at the Trinity County Office of Education.	Reviewed by all school site councils and the district's Committee on District Lapsation: 10/3/13: **No objections**

* The Trinity County Office of Education is listed as the local educational agency on the waiver request. However, the request actually is from the Cox Bar Elementary School District. The Trinity County Superintendent of Schools currently is the district's acting superintendent and filed the request on the district's behalf.

Created by California Department of Education
December 20, 2013

California Department of Education
WAIVER SUBMISSION - General

CD Code: 5310538 Waiver Number: 24-12-2013 Active Year: 2013

Date In: 12/18/2013 11:27:08 AM

Local Education Agency: Trinity County Office of Education
Address: 201 Memorial Dr.
Weaverville, CA 96093

Start: 3/13/2014 End: 3/13/2015

Waiver Renewal: N
Previous Waiver Number: Previous SBE Approval Date:

Waiver Topic: School District Reorganization
Ed Code Title: Lapsation of a Small District
Ed Code Section: 35780, 35782, 35786, 35534
Ed Code Authority: 33050

Ed Code or *CCR* to Waive: 35780. (a) Any school district which has been organized for more than three years shall be lapsed as provided in this article [if the number of registered electors in the district is less than six or if the average daily attendance of pupils in the school or schools maintained by the district is less than six in grades 1 through 8 or is less than 11 in grades 9 through 12,] except that for any unified district which has established and continues to operate at least one senior high school, the board of supervisors shall defer the lapsation of the district for one year upon a written request of the governing board of the district and written concurrence of the county committee. The board of supervisors shall make no more than three such deferments.

35782. [Within 30 days after the close of each school year,] the county committee shall conduct a public hearing on the issues specified in Section 35780. Notice of the public hearing shall be given at least 10 days in advance thereof to each member of the governing board of the lapsed district immediately prior to its lapsation, to each of the governing boards which adjoin the lapsed district, and to the high school district of which the lapsed elementary district is a component.

35534. [Except as provided in Section 35536 and 35786 and subject to compliance with Section 54900 of the Government Code,] any action to reorganize a school district shall be effective for all purposes on July 1 of [the calendar year following] the calendar year in which the action is completed.

Outcome Rationale: The current enrollment of Cox Bar Elementary School is 5 students kindergarten through eighth grade. The decision to apply for a waiver is based on the inability of Cox Bar Elementary School District to maintain an average daily attendance of pupils in grades 1 through 8 of six students or more.

The desired outcome of this waiver is to provide improved matriculation, financial viability, efficiency of district office functions, ability to absorb extreme fluctuations of student enrollment,

allow for flexibility in student programs, and enhance the ability of Cox Bar School to continue to exist and provide quality educational programs to students in the community.

In addition, the Cox Bar School District lies entirely within the territory of the Trinity Alps Unified School District, both governing boards agree the lapsation should take place, and there is no opposition from the employees or community groups.

Student Population: 7

City Type: Rural

Public Hearing Date: 10/10/2013
Public Hearing Advertised: Three locations within the Cox Bar School District, Trinity County Department of Education, Local Newpaper

Local Board Approval Date: 11/12/2013

Community Council Reviewed By: Cox Bar Elementary Committee on District Lapsation
Community Council Reviewed Date: 9/3/2013
Community Council Objection: N
Community Council Objection Explanation:

Audit Penalty YN: N

Categorical Program Monitoring: N

Submitted by: Ms. Bettina Blackwell
Position: Superintendent of Schools
E-mail: bblackwell@tcoek12.org
Telephone: 530-623-3861 x222
Fax:

California Department of Education
WAIVER SUBMISSION - General

CD Code: 5376513 Waiver Number: 23-12-2013 Active Year: 2013

Date In: 12/17/2013 3:19:49 PM

Local Education Agency: Trinity Alps Unified School District
Address: 321 Victory Ln.
Weaverville, CA 96093

Start: 3/13/2014 End: 3/13/2015

Waiver Renewal: N
Previous Waiver Number: Previous SBE Approval Date:

Waiver Topic: School District Reorganization
Ed Code Title: Lapsation of a Small District
Ed Code Section: 35780, 35782, 35786, 35534
Ed Code Authority: 33050

Ed Code or *CCR* to Waive: 35780. (a) Any school district which has been organized for more than three years shall be lapsed as provided in this article [if the number of registered electors in the district is less than six or if the average daily attendance of pupils in the school or schools maintained by the district is less than six in grades 1 through 8 or is less than 11 in grades 9 through 12,] except that for any unified district which has established and continues to operate at least one senior high school, the board of supervisors shall defer the lapsation of the district for one year upon a written request of the governing board of the district and written concurrence of the county committee. The board of supervisors shall make no more than three such deferments.

35782. [Within 30 days after the close of each school year,] the county committee shall conduct a public hearing on the issues specified in Section 35780. Notice of the public hearing shall be given at least 10 days in advance thereof to each member of the governing board of the lapsed district immediately prior to its lapsation, to each of the governing boards which adjoin the lapsed district, and to the high school district of which the lapsed elementary district is a component.

35534. [Except as provided in Section 35536 and 35786 and subject to compliance with Section 54900 of the Government Code,] any action to reorganize a school district shall be effective for all purposes on July 1 of [the calendar year following] the calendar year in which the action is completed.

Outcome Rationale: The current enrollment of Cox Bar Elementary School is 5 students kindergarten through eighth grade. The decision to apply for a waiver is based on the inability of Cox Bar Elementary School District to maintain an average daily attendance of pupils in grades 1 through 8 of six students or more.

The desired outcome of this waiver is to provide improved matriculation, financial viability, efficiency of district office functions, ability to absorb extreme fluctuations of student enrollment,

allow for flexibility in student programs, and enhance the ability of Cox Bar School to continue to exist and provide quality educational programs to students in the community.

In addition, the Cox Bar School District lies entirely within the territory of the Trinity Alps Unified School District, both governing boards agree the lapsation should take place, and there is no opposition from the employees or community groups.

Student Population: 7

City Type: Rural

Public Hearing Date: 10/9/2013
Public Hearing Advertised: Three locations within the Trinity Alps Unified School District, Trinity County Office of Education, local paper

Local Board Approval Date: 11/13/2013

Community Council Reviewed By: TAUSD Committee on District Lapsation, Trinity High and Weaverville Elementary Site Councils
Community Council Reviewed Date: 9/16/2013
Community Council Objection: N
Community Council Objection Explanation:

Audit Penalty YN: N

Categorical Program Monitoring: N

Submitted by: Mr. Tom Barnett
Position: Superintendent - TAUSD
E-mail: tbarnett@tcoek12.org
Telephone: 530-623-6104 x252
Fax: 530-623-3418

Bargaining Unit Date: 09/03/2013
Name: Trinity Alps Teachers Association
Representative: Dave Newton
Title: President
Position: Neutral
Comments:

Bargaining Unit Date: 09/03/2013
Name: California School Employees Association Chapter 578
Representative: Luke Case
Title: President
Position: Neutral
Comments:

California State Board of Education

Meeting Agenda Items for March 12-13, 2014

WAIVER ITEM W-14

ITEM #W-14

CALIFORNIA STATE BOARD OF EDUCATION

MARCH 2014 AGENDA

☒ **Specific Waiver**

SUBJECT

Request by 11 local educational agencies, under the authority of California *Education Code* Section 52863 for waivers of *Education Code* Section 52852, relating to schoolsite councils regarding changes in shared, composition, or shared and composition members.

Waiver Numbers:
Caruthers Unified School District 25-10-2013
Chawanakee Unified School District 7-12-2013
El Dorado County Office of Education 2-11-2013
Golden Feather Union Elementary School District 1-12-2013
Hilmar Unified School District 19-10-2013
Los Angeles County Office of Education 3-10-2013
Marysville Joint Unified School District 12-11-2013
Mountain Valley Unified School District 6-12-2013
Mountain Valley Unified School District 8-12-2013
Placer County Office of Education 27-12-2013
Pomona Unified School District 3-12-2013
Santa Barbara County Office of Education 3-11-2013

☒ **Action**

☒ **Consent**

SUMMARY OF THE ISSUE(S)

Specific authority is provided in California *Education Code* (*EC*) Section 52863 to allow the State Board of Education (SBE) to waive the Schoolsite Council (SSC) requirements contained in *EC* 52852 of the School-Based Coordination Program (SBCP) Act that would hinder the success of the program implementation. These waivers must be renewed every two years.

Authority for Waiver: *EC* Section 52863

RECOMMENDATION

☐ **Approval** ☒ **Approval with conditions** ☐ **Denial**

The California Department of Education recommends approval with the following conditions: See Attachment 1.

SUMMARY OF KEY ISSUES

Caruthers Unified School District is requesting a shared SSC for two schools: Caruthers High School (29 teachers serving 570 students in grades nine through twelve) and MARC (Continuation) High School (3 teachers serving 15 students in grades nine through twelve). MARC Continuation High School is a very small school with one principal and three teachers. Two of the three teachers also teach at Caruthers High School. The two schools have similar curriculum and share services and personnel such as special education support services and testing coordinators. They are located on the same campus in a small rural community.

Chawanakee Unified School District is requesting a shared SSC for two small schools: Minarets Charter High School (245 students in grades nine through twelve) and Minarets High School (281 students in grades nine through twelve). There are a total of 24 classroom teachers for both schools. Minarets Charter High School is a dependent charter of Minarets High School. The two schools share the same goals and academic program. They are located on the same campus in a rural area.

El Dorado County Office of Education is requesting a shared SSC with composition change for two small schools: Blue Ridge School (2 teachers serving 11 students in kindergarten through grade twelve) and Golden Ridge School (2 teachers serving 16 students in kindergarten through grade twelve). Both schools are court schools for Juvenile Hall. They are located in a small city.

Golden Feather Union Elementary School District is requesting a shared SSC for two small schools: Concow Elementary School (7 teachers serving 112 students in kindergarten through grade eight) and Golden Feather Community Day School (1 teacher serving 3 students in kindergarten through grade eight). The two schools serve the same attendance area, have common administration, and hold common faculty meetings together. They also plan, implement, monitor, and evaluate educational programs as one group. The schools are located in a rural area.

Hilmar Unified School District is requesting an SSC composition change for one of its alternative schools: Irwin Continuation High School (3.5 teachers serving 50 students in grades nine through twelve). The student population is extremely mobile with enrollment numbers ranging anywhere from 25 to 50 students. It is the only alternative school in the district and follows its own curriculum. It is located in a rural area.

Los Angeles County Office of Education is requesting three separate shared SSCs for 10 small alternative schools: 1) Afflerbaugh-Paige Camp School (12 teachers serving 192 students in grades seven through twelve), Glenn Rockey Camp School (7 teachers serving 67 students in grades seven through twelve), and Dorothy Kirby Camp School (7 teachers serving 70 students in grades seven through twelve); 2) Jarvis Camp School (15 teachers serving 95 students in grades seven through twelve), McNair Camp School (8 teachers serving 90 students in grades seven through twelve), and Onizuka

Camp School (10 teachers serving 70 students in grades seven through twelve); and 3) Pacific Lodge Residential Education Center (4.5 teachers serving 50 students in grades seven through twelve), Fred C. Miller Camp School (11 teachers serving 145 students in grades seven through twelve), David Gonzalez Camp School (7 teachers serving 96 students in grades seven through twelve), and Vernon Kilpatrick Camp School (8 teachers serving 101 students in grades seven through twelve). These ten schools belong to three Principal Administrative Units within the Los Angeles County Office of Education. They are located in an urban area.

Marysville Joint Unified School District is requesting a shared SSC for three alternative schools: North Marysville Continuation High School (4 teachers serving 110 students in grades nine through twelve), South Lindhurst Continuation High School (4 teachers serving 118 students in grades nine through twelve), and Lincoln (Abraham) Alternative (Home) School (36 part-time teachers serving 190 students in kindergarten through grade twelve). The three schools share an administration with one principal overseeing all three schools. They also serve similar, highly mobile student populations and share the same community. They are located within eight miles of each other in a small city.

Mountain Valley Unified School District is requesting an SSC composition change for a small school: Hyampom Arts Magnet School (1 teacher serving 11 students in kindergarten through grade eight). The school has very limited staffing with a part-time principal, one teacher, a part-time instructional assistant, and a part-time clerk. It is located in a small rural area.

Mountain Valley Unified School District is requesting a shared SSC with composition change for two small schools: Hayfork High School (8.43 teachers serving 100 students in grades nine through twelve) and Valley High School (1 teacher serving 7 students in grades nine through twelve). The two schools share a part-time principal and have very limited staffing. They are located in a rural area.

Placer County Office of Education is requesting a shared SSC for two small alternative schools. Placer County Community Schools have three campuses: Alder Grove Community Day School in Auburn (2 teachers serving 19 students in kindergarten through grade twelve), Koinonia Community Day School in Loomis (1 teacher serving 28 students in kindergarten through grade twelve) and Tahoe Truckee Community Day School in Truckee (1 teacher serving 7 students in kindergarten through grade twelve). Placer County Court Schools have one campus in Auburn (3 teachers serving 18 students in kindergarten through grade twelve). The schools are located in a suburban area.

Pomona Unified School District is requesting a shared SSC for two alternative schools: Park West Continuation High School (15 teachers serving 257 students in grades nine through twelve) and Pomona Alternative School (8 teachers serving 20 students in grades seven through ten). Some of the teaching staff at both schools are shared with schools in the district. The two schools share one principal. A significant number of Park West High School students have attended Pomona Alternative School. They are housed on the same campus in a suburban area.

Santa Barbara County Office of Education is requesting a shared SSC with composition change for four of its alternative schools: Phoenix (Community Day) High School (sharing teachers with Santa Barbara Community School serving 1 student in grades nine through twelve), Phoenix (Community Day) High School II (sharing teachers with Santa Barbara County Community School serving 1 student), Santa Barbara County Community School (6 teachers serving 120 students in grades seven through twelve), and Santa Barbara County Juvenile Court School (6 teachers serving 106 students in grades seven through twelve). These schools share a common administration, curriculum, services, and coordinate program planning. Student populations are similar and highly mobile, going in and out of one school to another. They are located either in a small city or in a rural area with some of them sharing the same campus.

SUMMARY OF PREVIOUS STATE BOARD OF EDUCATION DISCUSSION AND ACTION

The CDE Waiver Office has previously presented requests from local educational agencies (LEAs) to waive some of the SSC requirements in *EC* 52863 or to allow one shared schoolsite council for multiple schools. All of these requests have been granted with conditions. The conditions take into consideration the rationale provided by the LEAs, a majority of which are due to the size, type, location, or other capacities of the schools.

FISCAL ANALYSIS (AS APPROPRIATE)

There is no statewide fiscal impact of waiver approval.

ATTACHMENT(S)

Attachment 1: Local Educational Agencies Requesting a Schoolsite Council Waiver (7 Pages)

Attachment 2: Caruthers Unified School District Specific Waiver Request 25-10-2013 (2 Pages) (Original waiver request is signed and on file in the Waiver Office.)

Attachment 3: Chawanakee Unified School District Specific Waiver Request 7-12-2013 (2 Pages) (Original waiver request is signed and on file in the Waiver Office.)

Attachment 4: El Dorado County Office of Education Specific Waiver Request 2-11-2013 (2 Pages) (Original waiver request is signed and on file in the Waiver Office.)

Attachment 5: Golden Feather Union Elementary School District Specific Waiver Request 1-12-2013 (2 Pages) (Original waiver request is signed and on file in the Waiver Office.)

Attachment 6: Hilmar Unified School District Specific Waiver Request 19-10-2013 (3 Pages) (Original waiver request is signed and on file in the Waiver Office.)

Attachment 7: Los Angeles County Office of Education Specific Waiver Request 3-10-2013 (3 Pages) (Original waiver request is signed and on file in the Waiver Office.)

Attachment 8: Marysville Joint Unified School District Specific Waiver Request 12-11-2013 (2 Pages) (Original waiver request is signed and on file in the Waiver Office.)

Attachment 9: Mountain Valley Unified School District Specific Waiver Request 6-12-2013 (2 Pages) (Original waiver request is signed and on file in the Waiver Office.)

Attachment 10: Mountain Valley Unified School District Specific Waiver Request 8-12-2013 (3 Pages) (Original waiver request is signed and on file in the Waiver Office.)

Attachment 11: Placer County Office of Education Specific Waiver Request 27-12-2013 (2 Pages) (Original waiver request is signed and on file in the Waiver Office.)

Attachment 12: Pomona Unified School District Specific Waiver Request 3-12-2013 (2 Pages) (Original waiver request is signed and on file in the Waiver Office.)

Attachment 13: Santa Barbara County Office of Education Specific Waiver Request 3-11-2013 (3 Pages) (Original waiver request is signed and on file in the Waiver Office.)

Local Educational Agencies Requesting a Schoolsite Council Waiver

Waiver Number	LEA for School(s) (CDS Code[s])	LEAs Request	CDE Recommendation	Previous Waiver Yes or No Period of Request/ Period Recommended	Collective Bargaining Unit Position/ Current Agreement	SSC/Advisory Committee Position	Local Board Approval Date
25-10-2013	Caruthers Unified School District for Caruthers High School (1075598 1030535) and MARC High School (1075598 1030543)	Shared SSC	Approval with conditions; the SSC must consist of one principal, four classroom teachers (selected by peers), one other school representative (selected by peers), three parents/community members (selected by parents), and three students (selected by peers).	**Yes** **Requested:** 11/23/2013 To 11/23/2015 **Recommended:** 11/23/2013 To 11/22/2015	California School Employees Association Margie Conger, President 10/18/2013 **Support** Caruthers Unified Teachers Association Carla Correia, President 10/18/2013 **Support**	SSC 10/02/2013 **Approve**	10/28/2013
7-12-2013	Chawanakee Unified School District for Minarets Charter High School (2075606 0125021) and Minarets High School (2075606 0117010)	Shared SSC	Approval with conditions; the SSC must consist of one principal, three classroom teachers (selected by peers), one other school representative (selected by peers), four parents/community members (selected by parents), and one student (selected by peers).	**No** **Requested:** 08/19/2013 To 08/19/2015 **Recommended:** 08/19/2013 To 08/18/2015	Chawanakee Teachers Association Kim Boatman, President 12/06/2013 **Neutral**	SSC 11/15/2013 **Approve**	12/10/2013

Waiver Number	LEA for School(s) (CDS Code[s])	LEAs Request	CDE Recommendation	Previous Waiver Yes or No Period of Request/ Period Recommended	Collective Bargaining Unit Position/ Current Agreement	SSC/Advisory Committee Position	Local Board Approval Date
2-11-2013	El Dorado County Office of Education for Blue Ridge School (0910090 0106047) and Golden Ridge School (0910090 0930016)	Shared SSC and Composition Change	Approval with conditions; the SSC must consist of one principal/lead teacher, one classroom teacher (selected by peers), two parents/community members (selected by parents), and one student (selected by peers).	**No** **Requested:** 12/01/2013 To 12/01/2015 **Recommended:** 12/01/2013 To 11/30/2015	None indicated.	El Dorado COE Cabinet 10/29/2013 **Approve**	11/05/2013
1-12-2013	Golden Feather Union Elementary School District for Concow Elementary School (0461457 6003131) and Golden Feather Community Day School (0461457 6118244)	Shared SSC	Approval with conditions; the SSC must consist of one principal, three classroom teachers (selected by peers), one other school representative (selected by peers), and five parents/community members (selected by parents).	**No** **Requested:** 07/01/2014 To 06/30/2016 **Recommended:** 07/01/2014 To 06/30/2016	None indicated	SSC & School Board 11/18/2013 **Approve**	11/20/2013
19-10-2013	Hilmar Unified School District for Irwin Continuation High School (2465698 2430080)	SSC Composition Change	Approval with conditions; the SSC must consist of one principal, one classroom teacher (selected by peers), one parent/community member (selected by parents), and one student (selected by peers).	**No** **Requested:** 08/15/2013 To 06/15/2015 **Recommended:** 08/15/2013 To 06/15/2015	Hilmar Unified Teachers Association Dick Piersma, President 10/02/2013 **Support**	Irwin Continuation High School SSC 09/26/2013 **Approve**	10/08/2013

Waiver Number	LEA for School(s) (CDS Code[s])	LEAs Request	CDE Recommendation	Previous Waiver Yes or No Period of Request/ Period Recommended	Collective Bargaining Unit Position/ Current Agreement	SSC/Advisory Committee Position	Local Board Approval Date
3-10-2013	Los Angeles County Office of Education for Afflerbaugh-Paige Camp School (1910199 0121921), Glenn Rockey Camp School (1910199 0121939), Dorothy Kirby Camp School (1910199 0121905), Jarvis Camp School (1910199 0122044), NcNair Camp School (1910199 0122036), Onizuka Camp School (1910199 0122028), Pacific Lodge Residential Education Center (1910199 0123612), Fred C. Miller Camp School (1910199 0121947), David Gonzales Camp School (1910199 0121970), and Vermon Kilpatrick Camp School (1910199 0121954)	Shared SSCs (3)	Approval with conditions; 1) the SSC (for Afflerbaugh-Paige Camp School, Glenn Rockey Camp School and Dorothy Kirby Camp School) must consist of one principal, four classroom teachers (selected by peers), one other school representative (selected by peers), three parents/community members (selected by parents), and three students (selected by peers); 2) the SSC (for Jarvis Camp School, McNair Camp School, and Onizuka Camp School) must consist of one principal, four classroom teachers (selected by peers), one other school representative (selected by peers), three parents/community members (selected by parents), and three students (selected by peers); 3) the SSC (for Pacific Lodge Residential Education Center, Fred C. Miller Camp School, and David Gonzales Camp School) must consist of one principal, four classroom teachers (selected by peers), one other school representative (selected by peers), three parents/community members (selected by parents), and three students (selected by peers).	**No** **Requested:** 10/19/2013 To 09/30/2015 **Recommended:** 10/19/2013 To 09/30/2015	Los Angeles County Education Association Brian Christian, President 08/13/2013 **Support**	District School Leadership Team 08/16/2013 **Approve**	09/10/2013

Waiver Number	LEA for School(s) (CDS Code[s])	LEAs Request	CDE Recommendation	Previous Waiver Yes or No Period of Request/ Period Recommended	Collective Bargaining Unit Position/ Current Agreement	SSC/Advisory Committee Position	Local Board Approval Date
12-11-2013	Marysville Joint Unified School District for North Marysville Continuation High School (5872736 5830088), South Lindhurst Continuation High School (5872736 5830096), and Lincoln (Abraham) (Alternative) School (5872736 5830054)	Shared SSC	Approval with conditions; the SSC must consist of one principal, four classroom teachers (selected by peers), one other school representative (selected by peers), three parents/community members (selected by parents), and three students (selected by peers).	**Yes** **Requested:** 01/02/2014 To 01/01/2016 **Recommended:** 01/02/2014 To 01/01/2016	Marysville Unified Teachers Association Inge Schlussler, President 10/31/2013 **Support** Operating Engineers Local Unit #3 Mike Minton, Business/Labor Representative 09/25/2013 **Support** Supervisors Unit Edwin Gomez, President 10/31/2013 **Support**	Alternative Education SSC 09/25/2013 **Approve**	11/12/2013

Waiver Number	LEA for School(s) (CDS Code[s])	LEAs Request	CDE Recommendation	Previous Waiver Yes or No Period of Request/ Period Recommended	Collective Bargaining Unit Position/ Current Agreement	SSC/Advisory Committee Position	Local Board Approval Date
6-12-2013	Mountain Valley Unified School District for Hyampom Arts Magnet Elementary School (5375028 6053763)	SSC Composition Change	Approval with conditions; the SSC must consist of one principal, one classroom teacher (selected by peers), one other school representative (selected by peers), and three parents/community members (selected by parents).	**Yes** **Requested:** 11/02/2013 To 11/02/2015 **Recommended:** 11/02/2013 To 11/01/2015	California School Employees Association Terra Kephart, President 11/14/2013 **Support** Mountain Valley Teachers Association Morgan Rourke, President 11/21/2013 **Support**	Hyampom Arts Magnet School SSC 11/21/2013 **Approve**	11/14/2013
8-12-2013	Mountain Valley Unified School District for Hayfork High School (5375028 5337407) and Valley High School (5375028 5330022)	Shared SSC and Composition Change	Approval with conditions; the SSC must consist of one principal, two classroom teachers (selected by peers), other school representative (selected by peers), three parents/community members (selected by parents), and one student (selected by peers).	**No** **Requested:** 11/02/2013 To 11/02/2015 **Recommended:** 11/02/2013 To 11/01/2015	California School Employees Association Terra Kephart, President 11/14/2013 **Support** Mountain Valley Teachers Association Morgan Rourke, President 11/21/2013 **Support**	Hayfork High School SSC 10/10/2013	11/14/2013

Waiver Number	LEA for School(s) (CDS Code[s])	LEAs Request	CDE Recommendation	Previous Waiver Yes or No Period of Request/ Period Recommended	Collective Bargaining Unit Position/ Current Agreement	SSC/Advisory Committee Position	Local Board Approval Date
27-12-2013	Placer County Office of Education for Placer County Community Schools(3110314 3130259) and Placer County Court Schools (3110314 3130101)	Shared SSC	Approval with conditions; the SSC must consist of one principal, four classroom teachers (selected by peers), one other school representative (selected by peers), three parents/community members (selected by parents), and three students (selected by peers).	**No** **Requested:** 01/01/2014 To 01/01/2016 **Recommended:** 01/01/2014 To 12/31/2015	None indicated	Place County Office of Education Court School and Community Day School SSC 11/19/2013 **Approve**	12/12/2013
3-12-2013	Pomona Unified School District for Park West Continuation High School (1964907 1936772) and Pomona Alternative School (1964907 1995547)	Shared SSC	Approval with conditions; the SSC must consist of one principal, four classroom teachers (selected by peers), one other school representative (selected by peers), three parents/community members (selected by parents), and three students (selected by peers).	**No** **Requested:** 07/01/2013 To 06/30/2014 **Recommended:** 07/01/2013 To 06/30/2014	Associated Pomona Teachers Morgan Brown, Executive Director 10/25/2013 **Support**	SSC and English Learner Advisory Committee 10/15/2013 **Approve**	11/06/2013

Waiver Number	LEA for School(s) (CDS Code[s])	LEAs Request	CDE Recommendation	Previous Waiver Yes or No Period of Request/ Period Recommended	Collective Bargaining Unit Position/ Current Agreement	SSC/Advisory Committee Position	Local Board Approval Date
3-11-2013	Santa Barbara County Office of Education for Phoenix High School (4210421 0127027), Phoenix High School II (4210421 0126946), Santa Barbara County Community School 4210421 4230207), and Santa Barbara County Juvenile Court School (4210421 4230157)	Shared SSC and Composition Change	Approval with conditions; the SSC must consist of one principal, two classroom teachers (selected by peers), one other school representative (selected by peers), two parents/community members (selected by parents), and two students (selected by peers).	**No** **Requested:** 07/01/2013 To 06/30/2015 **Recommended:** 07/01/2013 To 06/30/2015	California School Employees Association Michael Ostini, President 10/22/2013 S**upport** Santa Barbara County Education Association Laura Ishikawa, President 10/21/2013 **Support**	Parent Staff Advisory Community 11/05/2013 **Approve**	11/07/2013

California Department of Education
WAIVER SUBMISSION - Specific

CD Code: 1075598 Waiver Number: 25-10-2013 Active Year: 2013

Date In: 10/29/2013 11:31:01 AM

Local Education Agency: Caruthers Unified School District
Address: 1 Tiller Ave.
Caruthers, CA 93609

Start: 11/23/2013 End: 11/23/2015

Waiver Renewal: Y
Previous Waiver Number: 36-11-2011-W-20 Previous SBE Approval Date: 3/8/2012

Waiver Topic: Schoolsite Council Statute
Ed Code Title: Shared Schoolsite Council
Ed Code Section: 52852
Ed Code Authority: 52863

Ed Code or *CCR* to Waive: *EC* 52852 A schoolsite council shall be established at [each] school which participates in school-based program coordination. The council shall be composed of the principal and representatives of: teachers selected by teachers at the school; other school personnel selected by other school personnel at the school; parents of pupils attending the school selected by such parents; and, in secondary schools, pupils selected by pupils attending the school.

Outcome Rationale: MARC Continuation High School is a small continuation school serving 15 students in grades nine through twelve as of Census Day. It is located on the same property as the comprehensive high school, Caruthers High School, which serves 570 students. Both high schools reside in a small rural community in the Central San Joaquin Valley. Due to the size of the community, these schools share common family members and similar demographics.

MARC Continuation High School has a principal and three teachers. Two of the three teachers are primarily Caruthers High School teachers, however, they each teach one class at MARC Continuation High School. Caruthers High has 29 teachers. The schools share staff members to ensure the continuation school has highly qualified teachers.

Both MARC Continuation High School and Caruthers High School share similar curriculum and services (e.g. Special Education support, testing coordinators, etc.). This waiver is necessary to streamline common district goals with limited staff and resources.

Student Population: 15

City Type: Rural

Local Board Approval Date: 10/28/2013

Council Reviewed By: Schoolsite Council

Council Reviewed Date: 10/2/2013
Council Objection: N
Council Objection Explanation:

Audit Penalty YN: N

Categorical Program Monitoring: N

Submitted by: Ms. Rebecca Aguila
Position: Data & Accountability Coordinator
E-mail: raguila@caruthers.k12.ca.us
Telephone: 559-495-6422
Fax: 559-864-8857

Bargaining Unit Date: 10/18/2013
Name: California School Employees Association
Representative: Margie Conger
Title: President
Position: Support
Comments:

Bargaining Unit Date: 10/18/2013
Name: Caruthers Unified Teachers Association
Representative: Carla Correia
Title: President
Position: Support
Comments:

California Department of Education
WAIVER SUBMISSION - Specific

CD Code: 2075606 Waiver Number: 7-12-2013 Active Year: 2013

Date In: 12/11/2013 10:54:49 AM

Local Education Agency: Chawanakee Unified School District
Address: 33030 Road 228
North Fork, CA 93643

Start: 8/19/2013 End: 8/19/2015

Waiver Renewal: N
Previous Waiver Number: Previous SBE Approval Date:

Waiver Topic: Schoolsite Council Statute
Ed Code Title: Shared Schoolsite Council
Ed Code Section: 52852
Ed Code Authority: 52863

Ed Code or *CCR* to Waive: [A schoolsite council shall be established at each school which participates in school-based program coordination.] The council shall be composed of the principal and representatives of: teachers selected by teachers at the school; other school personnel selected by other school personnel at the school; parents of pupils attending the school selected by such parents; and, in secondary schools, pupils selected by pupils attending the school.

Outcome Rationale: Minarets and Minarets Charter are housed on the same campus. Minarets Charter is a dependent charter of Minarets High. The students from both schools are in classes together taught by the same teachers. The academic program and goals are the same for both sites. Due to the fact that the students are taught together by the same teachers in the same facilities.

This wavier will streamline the process and need for more committees and plans and give the admin and council time to focus on the academic needs of the students.

Student Population: 540

City Type: Rural

Local Board Approval Date: 12/10/2013

Council Reviewed By: Schoolsite Council and the govering board
Council Reviewed Date: 11/15/2013
Council Objection: N
Council Objection Explanation:

Audit Penalty YN: N

Categorical Program Monitoring: N

Submitted by: Ms. Jessica Fairbanks
Position: Categorical Director
E-mail: jfairbanks@mychawanakee.org
Telephone: 559-868-4200 x326
Fax: 559-868-4222

Bargaining Unit Date: 12/06/2013
Name: Chawanakee Teachers Association
Representative: Kim Boatman
Title: President
Position: Neutral
Comments:

California Department of Education
WAIVER SUBMISSION - Specific

CD Code: 0910090 Waiver Number: 2-11-2013 Active Year: 2013

Date In: 11/12/2013 11:39:42 AM

Local Education Agency: El Dorado County Office of Education
Address: 6767 Green Valley Rd.
Placerville, CA 95667

Start: 12/1/2013 End: 12/1/2015

Waiver Renewal: N
Previous Waiver Number: Previous SBE Approval Date:

Waiver Topic: Schoolsite Council Statute
Ed Code Title: Shared Schoolsite Council with Reduced Number and Composition
Ed Code Section: 52852
Ed Code Authority: 52863

Ed Code or *CCR* to Waive: A schoolsite council shall be established at each school which participates in school-based program coordination. The council shall be composed of the principal and representatives of: teachers selected by teachers at the school; other school personnel selected by other school personnel at the school; parents of pupils attending the school selected by such parents; and, in secondary schools, pupils selected by pupils attending the school.

At the secondary level the council shall be constituted to ensure parity between (a) the principal, classroom teachers and other school personnel; and (b) equal numbers of parents, or other community members selected by parents, and pupils.

52863. Any governing board, on behalf of a school site council, may request the State Board of Education to grant a waiver of any provision of this article. The State Board of Education may grant a request when it finds that the failure to do so would hinder the implementation or maintenance of a successful school-based coordinated program.

If the State Board of Education approves a waiver request, the waiver shall apply only to the school or schools which requested the waiver and shall be effective for no more than two years. The State Board of Education may renew a waiver request.

Outcome Rationale: Golden Ridge and Blue Ridge Schools are court schools for Juvenile Hall. Blue Ridge has very small numbers of students enrolled at any one time. Recruiting the number of required members of the school site council and recruiting members from the required roles is very difficult at both schools and especially for Blue Ridge. Combining the schools' two councils and reducing the number and composition will greatly facilitate the schools' ability to operate.

Student Population: 27

City Type: Small

Local Board Approval Date: 11/5/2013

Council Reviewed By: Reviewed by the COE Cabinet. We don not have an advisory council.
Council Reviewed Date: 10/29/2013
Council Objection: N
Council Objection Explanation:

Audit Penalty YN: N

Categorical Program Monitoring: N

Submitted by: Ms. Angie Lind
Position: Sr. Director, Curriculum, Instruction
E-mail: alind@edcoe.org
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California Department of Education
WAIVER SUBMISSION - Specific

CD Code: 0461457 Waiver Number: 1-12-2013 Active Year: 2013

Date In: 12/2/2013 3:32:04 PM

Local Education Agency: Golden Feather Union Elementary School District
Address: 11679 Nelson Bar Rd.
Oroville, CA 95965

Start: 7/1/2014 End: 6/30/2016

Waiver Renewal: N
Previous Waiver Number: Previous SBE Approval Date:

Waiver Topic: Schoolsite Council Statute
Ed Code Title: Shared Schoolsite Council
Ed Code Section: 52852
Ed Code Authority: 52863

Ed Code or *CCR* to Waive: 52852. A schoolsite council shall be established at [each] school which participates in school-based program coordination.

Outcome Rationale: Golden Feather Union Elementary School District is a small, rural district with two school sites. One site is for the K-8 grade student attending Concow School and the other is for K-8 students attending Community Day School. It is a single attendance area and is considered one school with two campuses. All sites are under common administration. Staff for both sites hold common faculty meetings and plan, implement, monitor and evaluate as one group. To ensure continued shared responsibility for the program and articulation of curriculum, it is necessary to funtion as a unit under one Schoolsite Council.

Student Population: 112

City Type: Rural

Local Board Approval Date: 11/20/2013

Council Reviewed By: Schoolsite Council, School Board
Council Reviewed Date: 11/18/2013
Council Objection: N
Council Objection Explanation:

Audit Penalty YN: N

Categorical Program Monitoring: N

Submitted by: Mr. Gregory Blake
Position: Superintendent/Principal
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California Department of Education
WAIVER SUBMISSION - Specific

CD Code: 2465698 Waiver Number: 19-10-2013 Active Year: 2013

Date In: 10/24/2013 9:49:11 AM

Local Education Agency: Hilmar Unified School District
Address: 7807 North Lander Ave.
Hilmar, CA 95324

Start: 8/15/2013 End: 6/15/2015

Waiver Renewal: N
Previous Waiver Number: Previous SBE Approval Date:

Waiver Topic: Schoolsite Council Statute
Ed Code Title: Number and Composition of Members
Ed Code Section: 52852
Ed Code Authority: 52863

Ed Code or *CCR* to Waive: *EC* 52852 A schoolsite council shall be established at each school which participates in school-based program coordination. The council shall be composed of the principal and representatives of: teachers selected by teachers at the school; other school personnel selected by other school personnel at the school; parents of pupils attending the school selected by such parents; and, in secondary schools, pupils selected by pupils attending the school.

52852. ~~A schoolsite council shall be established at each school which participates in school-based program coordination. The council shall be composed of the principal and representatives of: teachers selected by teachers at the school; other school personnel selected by other school personnel at the school; parents of pupils attending the school selected by such parents; and, in secondary schools, pupils selected by pupils attending the school. At the elementary level the council shall be constituted to ensure parity between (a) the principal, classroom teachers, and other school personnel; and (b) parents or other community members selected by parents. At the secondary level the council shall be constituted to ensure parity between (a) the principal, classroom teachers and other school personnel; and (b) equal numbers of parents, or other community members selected by parents, and pupils. At both, the elementary and secondary levels, classroom teacher shall comprise the majority of persons represented under category (a). Existing schoolwide advisory groups or school support groups maybe utilized as the schoolsite council if those groups conform to this section. The Superintendent of Public Instruction shall provide several examples of selection and replacement procedures that may be considered by schoolsite councils. An employee of a school, who is also a parent or guardian of a pupil who attends a school other than the school of the parent's or guardian's employment, is not disqualified by virtue of this employment from serving as a parent representative on the schoolsite council established for the school that his or her child or ward attends.~~

Outcome Rationale: Irwin Continuation High School is operated by the Hilmar Unified School District, a small rural district in Merced County. Irwin Continuation High School enrolls

approximately 50 students, with 40 students enrolled at the time this waiver request was written. It employs only 3 full-time classroom teachers, a part-time special education teacher, a full-time principal, and a full-time secretary. Because this site is an alternative high school setting, the student population is extremely mobile and enrollment numbers can range anywhere from 25 to 50 students.

Despite the continual recruitment efforts of the site principal, most parents are not willing to sit on the Schoolsite Council, and the few that are rarely have students enrolled at the school for very long. The principal will continue to seek out parents willing to serve on the Schoolsite Council; however, a waiver of the parity requirements of *EC* Section 52852 is currently needed.

In order to maintain the parity between the school employees and the community/parent/student representation, the proposal of this waiver is to allow Irwin Continuation High School to have a Schoolsite Council composed of four members: the school principal, one teacher, one parent, and one student.

A composition waiver is needed rather than a waiver allowing the sharing of a Site Council with another school because Irwin Continuation High School is the only alternative high school in the district; and as a result, the criteria required for school sharing of a Schoolsite Council cannot be met: Irwin does not share site administration with any other site in the district, its student population is much smaller than Hilmar High School's (which currently has an enrollment of 651 students), and Irwin Continuation High School employs a separate curriculum than Hilmar High School.

A composition waiver allowing the Irwin Continuation High Schoolsite Council to be composed of four members: the school principal, one teacher, one parent, and one student, is the only option for this site to meet the parity requirements of *Education Code* (*EC*) Section 52852.

Student Population: 40

City Type: Rural

Local Board Approval Date: 10/8/2013

Council Reviewed By: Irwin Continuation High Schoolsite Council
Council Reviewed Date: 9/26/2013
Council Objection: N
Council Objection Explanation:

Audit Penalty YN: N

Categorical Program Monitoring: N

Submitted by: Ms. Cecilia Areias
Position: Teacher on Assignment, Categorical Programs
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Bargaining Unit Date: 10/02/2013
Name: Hilmar Unified Teachers' Association (HUTA)
Representative: Dick Piersma
Title: President
Position: Support
Comments:

California Department of Education
WAIVER SUBMISSION - Specific

CD Code: 1910199 Waiver Number: 3-10-2013 Active Year: 2013

Date In: 10/3/2013 1:13:27 PM

Local Education Agency: Los Angeles County Office of Education
Address: 9300 Imperial Hwy.
Downey, CA 90242

Start: 10/19/2013 End: 9/30/2015

Waiver Renewal: Y
Previous Waiver Number: 6-11-2011W-20 Previous SBE Approval Date: 3/8/2012

Waiver Topic: Schoolsite Council Statute
Ed Code Title: Shared Schoolsite Council
Ed Code Section: 52852
Ed Code Authority: 52863

Ed Code or *CCR* to Waive: *EC* 52852 A schoolsite council shall be established at [each school] Principal Academic Unit (PAU) which participates in school-based program coordination. The council shall be composed of the principal and representatives of teachers slected by teachers at the school; other school personnel selected by other school personnel at the school, parents or probation officers; and in secondary schools, pupils selcted by pupils attending the school.

Outcome Rationale: Los Angeles County division of student programs operates ten Principal Administrative Units (PAU). Principals are responsible for oversight of one or more probation camps or juvenile halls and each camp or hall has a different CDS code. The request is that the Site Council can be composed from individuals representingt the PAU vs each individual camp or hall. The rationale is the fact that some camps are very small and a full site council would be impossible to attain. (See attached)

Student Population: 3250

City Type: Urban

Local Board Approval Date: 9/10/2013

Council Reviewed By: District School Leadership Team
Council Reviewed Date: 8/16/2013
Council Objection: N
Council Objection Explanation:

Audit Penalty YN: N

Categorical Program Monitoring: N

Submitted by: Dr. Tracy Rohlfing
Position: Coordinator Title I
E-mail: rohlfing_tracy@lacoe.edu
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Fax:

Bargaining Unit Date: 08/13/2013
Name: Los Angeles County Education Association (LACEA)
Representative: Brian Christian
Title: President
Position: Support
Comments:

Los Angeles County Office of Education (1910199) Waiver Request Attachment

	PAU (Principal Administrative Unit)	Principal	Student Population Per Site	CDS Code Per Site LACOE 19-10199	Staff	Location
1	**Angeles Forest PAU**	**Jennifer Miller**				
	*Afflerbaugh Paige School		192	0121921	12	LaVerne, 91750
	*Glenn Rockey School		67	0121939	7	San Dimas, 91733
	*Dorothy Kirby School		70	0121905	7	City of Commerce 90040
2	**Barry J Nidorf PAU**	**Norberto Perez**				
	*Barry J Nidorf Juvenile Hall School		265	0121822	27	Sylmar, 91342
	*Phoenix Academy Residential CEC		98	0123604	11	Lake View Terrace 91342
3	**Central PAU**	**Cecelia Ornelas**				
	*Central Juvenile Hall School		379	0121897	32	Los Angeles 90033
4	**Christa McAuliffe PAU**	**Kimberly Humphries**				
	*Challenger Jarvis		95	0122044	15	Lancaster, 93536
	*Challenger McNair		90	0122036	8	Lancaster, 93536
	*Challenger Onizuka		70	0122028	10	Lancaster, 93536
5	**East LA PAU**	**Seema Gaur**	406 Community Day School	1996172	19	91754,91331,91702, 90660, 90033,91016, 90001, 91766, 91331
6	**Los Padrinos PAU**	**John Cotton**				
	*Los Padrinos Juvenile Hall		339	0121871	27	Downey, 90242
7	**Munz-Mendenhall PAU**	**Santos Decasas**				
	*John Munz Camp School		78	0122002	7	Lake Hughes, 93532
	*William Mendenhall Camp School		88	0122010	6	Lake Hughes 93532
8	**Renaissance PAU**	**Peggy Dunn**	Community Day School	1996214	19	90250, 90242, 90221, 90038, 90301, 90650, 90260, 90027, 90262, 90222, 90807
9	**Road to Success Academy PAU**	**Paulette Koss**				
	*Joseph Scott Camp School		36	0121988	5	Saugus, 91390
	*Kenyon Scudder Camp School		53	0121966	4	Saugus, 91390
10	**Santa Monica Mountains PAU**	**Zan Mason**				
	*Pacific Lodge Residential CEC			0123612		Woodland Hills, 91364
	*Fred Miller Camp School		145	0121947	11	Malibu, 90265
	*David Gonzalez Camp School		96	0121970	7	Calabasas 91302
	*Vernon Kilpatrick Camp School		101	0121954	8	Malibu 90265
11	**Soledad Enrichment Charter School**	Jason Hasty Felipe Vasquez	3304	1996008	54	Los Angeles 90004

*Probation Facility for Incarcerated Youth.

California Department of Education
WAIVER SUBMISSION - Specific

CD Code: 5872736 Waiver Number: 12-11-2013 Active Year: 2013

Date In: 11/20/2013 1:53:57 PM

Local Education Agency: Marysville Joint Unified School District
Address: 1919 B St.
Marysville, CA 95901

Start: 1/2/2014 End: 1/1/2016

Waiver Renewal: Y
Previous Waiver Number: 30-1-2012-W-20 Previous SBE Approval Date: 5/9/2012

Waiver Topic: Schoolsite Council Statute
Ed Code Title: Shared Schoolsite Council
Ed Code Section: 52852
Ed Code Authority: 52863

Ed Code or *CCR* to Waive: *EC* 52852 A schoolsite council shall be established at [each] school which participates in school-based program coordination. The council shall be composed of the principal and representatives of: teachers selected by teachers at the school; other school personnel selected by other school personnel at the school; parents of pupils attending the school selected by such parents; and, in secondary schools, pupils selected by pupils attending the school.

Outcome Rationale: It is very difficult for alternative education programs to obtain the statutory requirements of a 12 member secondary school site council. The schools share a common community, common goals, and common administration while serving a similar population of students. One principal serves all three alternative programs. In addition, the consolidated school site council provides a savings in time and resources. All three schools are located within a geographic circumference of 8 miles. The alternative education program has a 50% transient rate of which half of those students transition from one MJUSD alternative education program to another. Continuation of a joint school site council is proposed for North Marysville Continuation High School, South Lindhurst Continuation High School, and Abraham Lincoln Home School. The school site council will continue to be comprised of one administer (administers all sites), four teachers, one other school representative, three parents, and three students. The initial wavier awarded in May 2012 has proved to be very beneficial to the Alternative Education Program.

Student Population: 480

City Type: Small

Local Board Approval Date: 11/12/2013

Council Reviewed By: Alternative Education Schoolsite Council
Council Reviewed Date: 9/25/2013
Council Objection: N
Council Objection Explanation:

Audit Penalty YN: N

Categorical Program Monitoring: N

Submitted by: Ms. Jami Larson
Position: Director of Categorical Programs
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Bargaining Unit Date: 10/31/2013
Name: Marysville Unified Teachers Association
Representative: Inge Schlussler
Title: President
Position: Support
Comments:

Bargaining Unit Date: 09/25/2013
Name: Operating Engineers Local Unit #3
Representative: Mike Minton
Title: Business/Labor Representative
Position: Support
Comments:

Bargaining Unit Date: 10/31/2013
Name: Supervisors Unit
Representative: Edwin Gomez
Title: President
Position: Support
Comments:

California Department of Education
WAIVER SUBMISSION - Specific

CD Code: 5375028 Waiver Number: 6-12-2013 Active Year: 2013

Date In: 12/11/2013 10:29:59 AM

Local Education Agency: Mountain Valley Unified School District
Address: 231 Oak Ave.
Hayfork, CA 96041

Start: 11/2/2013 End: 11/2/2015

Waiver Renewal: Y
Previous Waiver Number: 35-12-2011-W-20 Previous SBE Approval Date: 3/8/2012

Waiver Topic: Schoolsite Council Statute
Ed Code Title: Number and Composition of Members
Ed Code Section: 52852
Ed Code Authority: 52863

Ed Code or *CCR* to Waive:
Requesting a reduced composition in members for a small, rural school. (Statute requires 10 members for an elementary school site council.)

Outcome Rationale: Desired Outcome/Rationale:
Mountain Valley Unified School District consists of five school sites; Hayfork Elementary School (HES), Hyampom Arts Magnet School (HAMS), Valley Continuation High School (VHS) and Mountain Valley Community Day School (CDS). The total enrollment of the district is 338 students. CDS is located adjacent to the HES, and HHS and VHS are about 2 miles apart. HAMS is located 45 minutes away in the small community of Hyampom and serves 11 students in grades K-8.

Hyampom Arts Magnet School (HAMS) is a single teacher school site, with 11 students in grades K-8. There is a part-time instructional assistant at the school along with a part-time clerk in the school office. The principal for Hayfork Elementary School is also the principal for Hyampom Arts Magnet. It would be impossible for teachers to be a majority of the staff on the site council, as there is only one teacher. It would make an effective group by allowing the teachers, the paraprofessional, the principal and three parents to compose the council. HAMS has operated its own site council and would like to continue to do so because of the distance to Hayfork.

Rational
A waiver would allow a reduction in the number of school personnel and parents that are required to serve on the site council at Hyampom Arts Magnet School. It is difficult to meet the required member numbers due to the isolated, rural nature of the school and the small number of staff.

Student Population: 11

City Type: Rural

Local Board Approval Date: 11/14/2013

Council Reviewed By: Hyampom Arts Magnet Schoolsite Council
Council Reviewed Date: 11/21/2013
Council Objection: N
Council Objection Explanation:

Audit Penalty YN: N

Categorical Program Monitoring: N

Submitted by: Ms. Sue Hayes
Position: Administrative Assistant/HR
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Bargaining Unit Date: 11/14/2013
Name: California School Employees Asssociation
Representative: Terra Kephart
Title: President, Hayfork/Hyampom Chapter
Position: Support
Comments:

Bargaining Unit Date: 11/21/2013
Name: Mountain Valley Teachers Association
Representative: Morgan Rourke
Title: President
Position: Support
Comments:

California Department of Education
WAIVER SUBMISSION - Specific

CD Code: 5375028 Waiver Number: 8-12-2013 Active Year: 2013

Date In: 12/11/2013 11:11:42 AM

Local Education Agency: Mountain Valley Unified School District
Address: 231 Oak Ave.
Hayfork, CA 96041

Start: 11/2/2013 End: 11/2/2015

Waiver Renewal: N
Previous Waiver Number: Previous SBE Approval Date:

Waiver Topic: Schoolsite Council Statute
Ed Code Title: Shared Schoolsite Council with Reduced Number and Composition
Ed Code Section: 52852
Ed Code Authority: 52863

Ed Code or *CCR* to Waive: Requesting reduced composition in members for a small school. [Statute requires 12 members for a high school site council].

Requesting shared school site council. *EC* 52852 A school site council shall be established at [each] school site which participates in a school-based program coordination.

Outcome Rationale: SPECIFIC WAIVER; SHARED SCHOOLSITE COUNCIL and COMPOSITION OF MEMBERS

Desired Outcome/Rationale:
Mountain Valley Unified School District consists of five school sites; Hayfork Elementary School (HES), Hyampom Arts Magnet School (HAMS), Valley Continuation High School (VHS) and Mountain Valley Community Day School (CDS). The total enrollment of the district is 338 students. The CDS is located adjacent to the HES, and HHS and VHS are about 2 miles apart. HAMS is located 45 minutes away in the small community of Hyampom and serves 11 students in grades K-8.

SHARED SCHOOLSITE COUNCIL
HHS and VHS schoolsite councils met to discuss the possibility of joining site councils and having one council. Currently, the schools share a .60 FTE principal, common curriculum and other services.
Rational for Combining the Councils:
1. Students that attend VHS usually are from HHS and are behind on their credits. They are working to complete units required for graduation. These students have the opportunity to earn their way back to HHS and re-join their class at HHS.
2. VHS is a single teacher site.
3. VHS has only 7 students who are working their way back to HHS.

4. It is difficult to get the required number of parents to attend the meetings at VHS. Prior to being granted the initial waiver, the only member other than the teacher and principal was a community member.
5. It is the district's goal to improve school-to-school communication within the district.

COMPOSITION OF MEMBERS
Hayfork High School is a small, rural comprehensive high school. There is a .60 FTE principal, 8.43 FTE teachers and 100 students. There are two clerical positions in the school office, five paraprofessionals in the special education classroom, and a part-time library technician.

Valley High School is a small continuation high school. The school is a single teacher site with 7 students. The sites (HHS & VHS) share a part-time principal.

The minimum number for a high school is twelve. With 9 teachers at HHS and 1 teacher at VHS doing many other duties outside of the classroom, it is difficult to have the required number of teachers on the council. The principal, a classified person and two teachers, along with three parents/community members and a student would be a reasonable combination for this site.

Rational
A waiver would allow a reduction in the number of school personnel and parents that are required to serve on the combined site council of Hayfork High School /Valley High School. It is difficult to meet the required member numbers due to the isolated, rural nature of the schools and the small number of staff.

Student Population: 100

City Type: Rural

Local Board Approval Date: 11/14/2013

Council Reviewed By: Hayfork High Schoolsite Council
Council Reviewed Date: 10/10/2013
Council Objection: N
Council Objection Explanation:

Audit Penalty YN: N

Categorical Program Monitoring: N

Submitted by: Ms. Sue Hayes
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Fax: 530-628-5267

Bargaining Unit Date: 11/14/2013
Name: California School Employees Asssociation
Representative: Terra Kephart
Title: President, Hayfork/Hyampom Chapter
Position: Support
Comments:

Bargaining Unit Date: 11/21/2013
Name: Mountain Valley Teachers Association
Representative: Morgan Rourke
Title: President
Position: Support
Comments:

California Department of Education
WAIVER SUBMISSION - Specific

CD Code: 3110314 Waiver Number: 27-12-2013 Active Year: 2013

Date In: 12/18/2013 1:53:09 PM

Local Education Agency: Placer County Office of Education
Address: 360 Nevada St.
Auburn, CA 95603

Start: 1/1/2014 End: 1/1/2016

Waiver Renewal: N
Previous Waiver Number: Previous SBE Approval Date:

Waiver Topic: Schoolsite Council Statute
Ed Code Title: Shared Schoolsite Council with Reduced Number and Composition
Ed Code Section: 52852
Ed Code Authority: 52863

Ed Code or *CCR* to Waive: 52852. A schoolsite council shall be established [at each school] which participates in school-based program coordination. The council shall be composed of the principal and representatives of: teachers selected by teachers at the school; other school personnel selected by other school personnel at the school; parents of pupils attending the school selected by such parents; and, in secondary schools, pupils selected by pupils attending the school.

Outcome Rationale: Using the above statutary requirments, PCOE would have to develope councils with at least 12 members per school: 1 pricipal, 3 teachers and 2 other employees, 3 parents or community members, and 3 students. PCOE has 4 sites across a large county and it would be verey difficult to achieve the required number of members per site.

Student Population: 78

City Type: Suburban

Local Board Approval Date: 12/12/2013

Council Reviewed By: PCOE Court and Community School Schoolsite Council
Council Reviewed Date: 11/19/2013
Council Objection: N
Council Objection Explanation:

Audit Penalty YN: N

Categorical Program Monitoring: N

Submitted by: Mr. Phillip Williams
Position: Associate Superintendent
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California Department of Education
WAIVER SUBMISSION - Specific

CD Code: 1964907 Waiver Number: 3-12-2013 Active Year: 2013

Date In: 12/5/2013 12:57:18 PM

Local Education Agency: Pomona Unified School District
Address: 800 South Garey Ave.
Pomona, CA 91766

Start: 7/1/2013 End: 6/30/2014

Waiver Renewal: N
Previous Waiver Number: Previous SBE Approval Date:

Waiver Topic: Schoolsite Council Statute
Ed Code Title: Shared Schoolsite Council
Ed Code Section: 52852
Ed Code Authority: 52863

Ed Code or *CCR* to Waive: *EC* 52852 A schoolsite council shall be established at [each] school which participates in school-based program coordination. The council shall be composed of the principal and representatives of: teachers selected by teachers at the school; other school personnel selected by other school personnel at the school; parents of pupils attending the school selected by such parents; and, in secondary schools, pupils selected by pupils attending the school.

Outcome Rationale: Approval of this waiver request will allow Pomona Alternative School and Park West High School to have a single Schoolsite Council.

Park West High School and Pomona Alternative School are housed on the same campus. A significant number of Park West students are former Pomona Alternative School students who transferred to Park West after turning sixteen. The two schools have a mutualistic relationship.

Both schools are administered by Mr. Neville Brown (Principal), student support staff, and facility maintenance staff.

Both schools are located at the same facility: 1460 East Holt Avenue, Suite 100 Pomona, CA 91766

Pomona Alternative School has a population of 20 students and 8 teachers (these teachers also work at Park West) and

Park West High School has a population of 257 students and 15 teachers (8 of these teachers also work at Pomona Alternative School)

Both schools share two (2) Special Education Teachers, one (1) Teacher on Assignment, one (1) Physical Education Teacher, one (1) Science Teacher and one (1) Librarian.

We believe that the establishment of a single Schoolsite Council will streamline site operations, reduce distractive duplicated efforts, and allow consolidated planning. Ensuring a synergic effort to provide effective standard based instruction, program evaluation, parent engagement and development activities, and school-to-home communication resulting in greater opportunities to increase student achievement.

Student Population: 26189

City Type: Suburban

Local Board Approval Date: 11/6/2013

Council Reviewed By: Schoolsite Council and English Learner Advisory Committee
Council Reviewed Date: 10/15/2013
Council Objection: N
Council Objection Explanation:

Audit Penalty YN: N

Categorical Program Monitoring: N

Submitted by: Ms. Zoila Savaglio
Position: Program Administrator, Categorical Programs
E-mail: zoila.savaglio@pusd.org
Telephone: 909-397-4800 x3829
Fax: 909-629-9750

Bargaining Unit Date: 10/25/2013
Name: Associated Pomona Teachers (APT)
Representative: Morgan Brown
Title: Executive Director
Position: Support
Comments:

California Department of Education
WAIVER SUBMISSION - Specific

CD Code: 4210421 Waiver Number: 3-11-2013 Active Year: 2013

Date In: 11/13/2013 8:34:37 AM

Local Education Agency: Santa Barbara County Office of Education
Address: 4400 Cathedral Oaks Rd.
Santa Barbara, CA 93110

Start: 7/1/2013 End: 6/30/2015

Waiver Renewal: N
Previous Waiver Number: Previous SBE Approval Date:

Waiver Topic: Schoolsite Council Statute
Ed Code Title: Shared Schoolsite Council with Reduced Number and Composition
Ed Code Section: 52852
Ed Code Authority: 52863

Ed Code or *CCR* to Waive: A schoolsite council shall be established. [at each school which participates in school based program coordination] The council shall be composed of one [the principal] administrator and [representatives of:] two teachers selected by teachers [at the school]; one other school personnel selected by other school personnel [at the school]; two parents of pupils attending the schools or other community members selected by such parents [and pupils]; and, in secondary schools, two pupils selected by pupils attending the schools.

Outcome Rationale: Desired outcome/rationale:

By creating one council to serve all sites with a reduced number of members, we believe all interested parties can still be properly represented and served. The council is composed of representatives from each site when feasible. The combined SSC will identify and address the unique student population and program requirements at each school, along with those identified program improvement needs common to all schools. We believe that the establishment of a joint school site council will allow streamlined site operations, reduce duplicated efforts, and consolidated planning. Ensuring a synergic effort to provide effective standard based instruction, program evaluation, parent engagement, and school-to-home communication resulting in greater opportunities to increase student achievement.

Because of the July 2013 closing of three school sites in Santa Barbara, the reduced student enrollment, and teachers at the remaining school sites, we believe to operate as a joint school site council with a reduced number of members, managed by by-laws and procedures, SBCEO can continue to provide adequate representation selected from the six groups available for membership and ensure a parity of representation with the membership composition required by the California *Education Code*.

Description of the situation in area:

SBCEO operates two community schools sites, two court school sites, and two community day school site, grades 7-12, in Santa Barbara County ranging at a maximum distance between north county and south county of about 100 miles.

The schools share a common administrator acting as principal for all sites. Each school shares common administration, curriculum and services, coordinated program planning, including special education services. The majority of students enrolled in the community schools and community day school are probation referred and/or expelled from the local school districts. The student populations are similar. The students are very mobile from one school to another staying with an SBCEO school for approximately 90-100 days. Students attending the court schools in many cases are some of the same students who were attending the community school before an arrest or adjudication with a pattern of going from community school to court school and back again.

The mobile student population at the community, court and community day schools also creates the challenge of having separate school site councils. It is extremely difficult to secure a consistent number of parents/community members and students to meet the 50% parents/community members and students mandate for the secondary site council.

Student Population: 228

City Type: Small

Local Board Approval Date: 11/7/2013

Council Reviewed By: Parent Staff Advisory Committee
Council Reviewed Date: 11/5/2013
Council Objection: N
Council Objection Explanation:

Audit Penalty YN: N

Categorical Program Monitoring: N

Submitted by: Ms. Jan Clevenger
Position: Assistant Superintendent
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Telephone: 805-964-4710 x5265
Fax: 805-964-2641

Bargaining Unit Date: 10/22/2013
Name: California School Employees Association
Representative: Michael Ostini
Title: President
Position: Support
Comments:

Bargaining Unit Date: 10/21/2013
Name: Santa Barbara County Education Association
Representative: Laura Ishikawa
Title: President
Position: Support
Comments:

California State Board of Education

Meeting Agenda Items for March 12-13, 2014

WAIVER ITEM W-15

ITEM #W-15

CALIFORNIA STATE BOARD OF EDUCATION

MARCH 2014 AGENDA

☒ **General Waiver**

SUBJECT Request by four local educational agencies to waive *California Code of Regulations,* Title 5, Section 3043(d), which requires a minimum of 20 school days of attendance of four hours each for an extended school year (summer school) for special education students. Waiver Numbers: Madera County Office of Education 30-12-2013 Paradise Unified School District 19-12-2013 South Whittier Elementary School District 18-10-2013 Visalia Unified School District 11-11-2013	☒ **Action** ☒ **Consent**

RECOMMENDATION

☐ **Approval** ☒ **Approval with conditions** ☐ **Denial**

The California Department of Education (CDE) recommends that the State Board of Education (SBE) approve the request from four local educational agencies to provide extended school year (ESY) services for fewer than 20 days with the condition that 80 hours or more of instruction be provided. (A minimum of 76 hours of instruction may be provided if a holiday is included.) Also, special education and related services offered during the extended year period must be comparable in standards, scope, and quality to the special education program offered during the regular academic year as required by 5 *CCR*, Section 3043(d).

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 special education students.

ESY is the term for the education of special education students “between the close of one academic year and the beginning of the next,” similar to a summer school. It must be provided for each individual with exceptional needs whose individualized education program (IEP) requires it. Local educational agencies may request a waiver to provide an ESY program for fewer days than the traditional model.

SUMMARY OF KEY ISSUES

The Madera County Office of Education proposes to provide ESY services utilizing a 15-day model of five and one-half hours of instruction per day. Students will receive the same number of instructional minutes. This proposal aligns the district schedule with the ESY schedule of the County Office of Education which provides ESY services to some Madera County Office of Education students. Further, both programs utilize the County Office of Education's transportation and support providers.

Due to the current fiscal crisis in California, the Paradise Unified School District proposes to provide ESY services to identified special education students utilizing a fifteen (15) day, five and one half (5.5) hours of instruction model rather than a traditional twenty (20) day, four hours of instruction model. Students would receive the same or greater number of instructional minutes. Fewer ESY days will result in substantial savings in transportation, utilities, janitorial, food services, administration and clerical costs. Additionally, the proposed 15-day model of instruction will allow for all the expenses to be accounted for in one fiscal year, rather than two fiscal years.

The South Whittier Elementary School District proposes to provide ESY services utilizing a 16-day model over a four-week period at 4.75 hours per day (16 days X 4.75 hours per day = 76 hours), providing the same number of instructional hours as in a traditional 20-day model, including holidays (19 days X 4 hours = 76 hours). The proposed model which extends daily attendance time results in identical instructional time totals, but provides for a reduction in total days of attendance to 16 days, Monday through Thursday, over a four-week period.

The Visalia Unified School District proposes to provide ESY services utilizing a 16-day model of five hours and 20 minutes of instruction per day. This proposal provides the same number of instructional hours equal to the traditional 20-day calendar and an opportunity for special education staff to participate in staff development, which occurs during the summer.

For the purposes of reimbursement for average daily attendance, an ESY program:

- Must provide instruction of at least as many minutes over the shorter period as would have been provided during a typical 20-day program;

- Must be the same length of time as the school day for pupils of the same age level attending summer school in the district in which the extended year program is provided, but not less than the minimum school day for that age unless otherwise specified in the IEP to meet a pupil's unique needs; and

- Must offer special education and related services during the extended year period that are comparable in standards, scope, and quality to the special education program offered during the regular academic year.

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

FISCAL ANALYSIS (AS APPROPRIATE)

There is no statewide fiscal impact of waiver approval.

ATTACHMENTS

Attachment 1: Summary Table (1 page)

Attachment 2: Madera County Office of Education General Waiver Request 30-12-2013 (2 pages) (Original waiver request is signed and on file in the Waiver Office.)

Attachment 3: Paradise Unified School District General Waiver Request 19-12-2013 (2 pages) (Original waiver request is signed and on file in the Waiver Office.)

Attachment 4: South Whittier Elementary School District General Waiver Request 18-10-2013 (3 pages). (Original waiver request is signed and on file in the Waiver Office.)

Attachment 5: Visalia Unified School District General Waiver Request 11-11-2013 (2 pages). (Original waiver request is signed and on file in the Waiver Office.)

Extended School Year Summary Table

Waiver Number	Local Educational Agency	Period of Request	Demographics	Local Board Approval Date	Date Bargaining Unit Consulted	Position of Bargaining Unit	Date Advisory Committee or Site Council Consulted	Position of Committee/ Council
30-12-2013	Madera County Office of Education	**Requested:** 7/1/2013 to 6/30/2014 **Recommended:** 7/1/2013 to 6/30/2014	Small, rural county with high poverty	12/10/2013	12/02/2013 Madera County Office of Ed Teachers Association	Support	11/14/2013 Gould Educational Center Parent Group	Support
19-12-2013	Paradise Unified School District	**Requested:** 12/10/2013 to 7/31/2014 **Recommended:** 12/10/2013 to 7/31/2014	Rural	12/10/2013	10/03/2013 Paradise Classified Employees Association	Support	12/10/2013 Paradise Unified School Board	Support
18-10-2013	South Whittier Elementary School District	**Requested:** 06/02/2014 to 06/26/2014 **Recommended:** 06/02/2014 to 06/26/2014	Urban	10/22/2013	09/19/2013 South Whittier Teacher's Association/ 10/10/2013 South Whittier Classified School Employees Association	Support Support	10/10/2013 District Advisory and ELA Committee	Support
11-11-2013	Visalia Unified School District	**Requested:** 06/01/2014 to 05/31/2016 **Recommended**: 06/01/2014 to 05/31/2016	Urban	11/12/2013	11/05/2013 CA State Employees Association/ 11/15/2013 Visalia Unified Teacher's Association	Support Neutral	11/12/2013 Visalia USD and VUSD Superintendent's Cabinet	Support

California Department of Education
WAIVER SUBMISSION - General

CD Code: 2010207 Waiver Number: 30-12-2013 Active Year: 2013

Date In: 12/19/2013 9:06:33 AM

Local Education Agency: Madera County Office of Education
Address: 1105 South Madera Ave.
Madera, CA 93637

Start: 7/1/2013 End: 6/30/2014

Waiver Renewal: Y
Previous Waiver Number: 27-12-2011-W-9 Previous SBE Approval Date: 5/9/2012

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

Ed Code or *CCR* to Waive: 5 *CCR* 3043
[(d) An extended year program shall be provided for a minimum of 20 instructional days, including holidays.]

Outcome Rationale: The Madera County Office of Education (MCOE) proposes to provide Extended School Year (ESY) services to identified special educaiton students with moderate to severe disabilities utilizing a fifteen (15) day, five and one half (5 1/2) hours per day instructional model rather than twenty (20) days with four (4) hours of instruction per day. Students would receive the same total numer of instrucitonal minutes in fifteen (15) days due to a longer instructional day as they would in twenty (20) shorter days of instruction. Because a change in routine is often difficult for students with moderate to severe disabilities, the longer school day for ESY will align better with the regular school year providing more consistency in instruction for the students served. Additionally, the operation of ESY for 15 days instead of 20 will better match the district calendars on sites where MCOE classes are located allowing students more opportunities to be with their typically developing peers. Fewer ESY days will also result in substantial savings in transportation, utilities, janitorial services, food services, and administration and clerical costs.

Student Population: 330

City Type: Small

Public Hearing Date: 12/10/2013
Public Hearing Advertised: Posted at school sites and MCOE administration building

Local Board Approval Date: 12/10/2013

Community Council Reviewed By: Gould Educational Center Parent Group

Community Council Reviewed Date: 11/14/2013
Community Council Objection: N
Community Council Objection Explanation:

Audit Penalty YN: N

Categorical Program Monitoring: N

Submitted by: Ms. Cheryl Mohr
Position: Director, Special Education
E-mail: cmohr@maderacoe.us
Telephone: 559-662-4669
Fax: 559-674-7468

Bargaining Unit Date: 12/02/2013
Name: Madera County Office of Education Teachers Assocation CTA/NEA
Representative: Tanya Hill
Title: President
Position: Support
Comments:

California Department of Education
WAIVER SUBMISSION - General

CD Code: 0461531 Waiver Number: 19-12-2013 Active Year: 2013

Date In: 12/13/2013 4:02:39 PM

Local Education Agency: Paradise Unified School District
Address: 6696 Clark Rd
Paradise, CA 95969

Start: 12/10/2013 End: 7/31/2014

Waiver Renewal: N
Previous Waiver Number: Previous SBE Approval Date:

Waiver Topic: Special Education Program
Ed Code Title: Extended School Year (Summer School)
Ed Code Section: 5 *CCR* 3043
Ed Code Authority: 33050-33053

Ed Code or *CCR* to Waive: 3043 Extended school year services shall be provided for each individual with exceptional needs who has unique needs and requires special education and related services in excess of the regular academic year. Such individuals shall have handicaps which are likely to continue indefinitely or for a prolonged period, and interruption of the pupil's educational programming may cause regression, when coupled with limited recoupment capacity, rendering it impossible or unlikely that the pupil will attain the level of self-sufficiency and independence that would otherwise be expected in view of his or her handicapping condition. The lack of clear evidence of such factors may not be used to deny an individual an extended school year program if the individualized education program team determines the need for such a program and includes extended school year in the individualized education program pursuant to subsection (f).

(a) Extended year special education and related services shall be provided by a school district, special education local plan area, or county office offering programs during the regular academic year.

(b) Individuals with exceptional needs who may require an extended school year are those who: (1) Are placed in special classes or centers; or (2) Are individuals with exceptional needs whose individualized education programs specify an extended year program as determined by the individualized education program team.

(c) The term "extended year" as used in this section means the period of time between the close of one academic year and the beginning of the succeeding academic year. The term "academic year" as used in this section means that portion of the school year during which the regular day school is maintained, which period must include not less than the number of days required to entitle the district, special education services region, or county office to apportionments of state funds.

(d) An extended year program shall be provided for a minimum of 20 instructional days, including holidays.

Outcome Rationale: Due to the current fiscal crisis in California, the Paradise Unified School District proposes to provide Extended School Year (ESY) services to identified special education students utilizing a fifteen (15) day, five and one half (5.5) hours of instructional model rather than the traditional model of twenty (20) day with four (4) hours of instruction. Students would receive the same or greater number of instructional minutes. Butte County Office of Education has applied for the waiver as well as Oroville City Elementary School District. Fewer ESY days will result in substantial savings in transportation, utilities, janitorial, food services, administration and clerical costs. Lastly, the proposed model of providing 15 days of service will allow for all the expenses to be accounted for in one fiscal year, rather than two.

Student Population: 586

City Type: Rural

Public Hearing Date: 11/19/2013
Public Hearing Advertised: The Paradise Unified School Board Agenda was posted at Paradise Unified School District Office, Paradise Unified School Sites and Paradise Public Library

Local Board Approval Date: 12/10/2013

Community Council Reviewed By: Paradise Unified School Board
Community Council Reviewed Date: 12/10/2013
Community Council Objection: N
Community Council Objection Explanation:

Audit Penalty YN: N

Categorical Program Monitoring: N

Submitted by: Ms. Mary Ficcardi
Position: Director of Special Services
E-mail: mficcardi@pusdk12.org
Telephone: 530-872-6400 x242
Fax: 530-877-5073

Bargaining Unit Date: 10/03/2013
Name: Paradise Classified Employees Association
Representative: Kristin Mundy
Title: President
Position: Support
Comments:

Bargaining Unit Date: 10/07/2013
Name: Teachers Association of Paradise
Representative: Joe Pratt
Title: President
Position: Support
Comments:

California Department of Education
WAIVER SUBMISSION - General

CD Code: 1965037 Waiver Number: 18-10-2013 Active Year: 2013

Date In: 10/23/2013 1:26:32 PM

Local Education Agency: South Whittier Elementary School District
Address: 11200 Telechron Ave.
Whittier, CA 90605

Start: 6/2/2014 End: 6/26/2014

Waiver Renewal: N
Previous Waiver Number: Previous SBE Approval Date:

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

Ed Code or *CCR* to Waive: Section 3043(d) Extended school year services shall be provided for each individual with exceptional needs who has unique needs and requires special education and related services in excess of the regular academic year. such individuals shall have handicaps which are likely to continue indefinitely or for a prolonged period, and interruption of the pupil's educational programming may cause regression, when coupled with limited recoupment capacity, rendering it impossible or unlikely that the pupil will attain the level of self-sufficiency and independence that would otherwise be expected in view of his or her handicapping condition. The lack of clear evidence of such factors may not be used to deny an individual an extended school year program if the individualized education program team determines the need for such a program and includes extended school year in the individualized education program pursuant to subsection (f).

a. Extended year special education and related services shall be provided by a school district, special education local plan area, or county office offering programs during the regular academic year.

b. Individuals with exceptional needs who may require an extended school year are those who: (1) are placed in special classes or centers; or (2) are individuals with exceptional needs whose individualized education programs specify an extended year program as determined by the individualized education program team.

c. The term "extended school year" as used in this section means the period of time between the close of one academic year and the beginning of the succeeding academic year. The term "academic year" as used in this section means that portion of the school year during which the regular day school is maintained, which period must include not less than the number of days required to entitle the district special education services region, or county office to apportionments of state funds.

d. [An extended year program shall be provided for a minimum of 20 instructional days, including holidays]

Outcome Rationale: South Whittier School District is proposing to operate a four week Extended School Year program for sixteen days at 4.75 hours per day (16 days x 4.75=76 hours). The district will be providing the same number of instructional hours (76 hours) as provided within the 20 instructional day calendar, including holidays (19 days x 4 hours=76 hours). The overall instructional time will remain the same; however there will be a reduction in days of attendance to 16 days over a four week period. We believe we will be able to support and extend student learning by modifying the ESY schedule to 16 days with extended daily time. Our proposed ESY will operate Monday-Thursday during the weeks of June 2, 2014 to June 26, 2014.

Proposed changes will provide the following:

1) Will increase the likelihood that highly qualified and trained classroom teachers and staff that work with students during the school year will apply to work during Extended School Year as well.

2) Will help to facilitate cost effective services within the classroom, and reduce related costs for transportation, electricity, custodial services, food services, administration, etc.

3) We have found that there is a drop in attendance on Fridays, after a holiday, as well as a reduction in attendance during the final week of instruction for extended school year.

Student Population: 3312

City Type: Urban

Public Hearing Date: 10/22/2013
Public Hearing Advertised: website and school board agenda

Local Board Approval Date: 10/22/2013

Community Council Reviewed By: District Advisory Committee/District English Language Advisory Committee
Community Council Reviewed Date: 10/10/2013
Community Council Objection: N
Community Council Objection Explanation:

Audit Penalty YN: N

Categorical Program Monitoring: N

Submitted by: Ms. Marsha Escalante
Position: Director of Special Education and Student Services
E-mail: mescalante@swhittier.k12.ca.us
Telephone: 562-944-6231 x2019
Fax: 562-903-5868

Bargaining Unit Date: 10/10/2013
Name: South Whittier Classified School Employees Assoc.
Representative: Laura Bribiescas
Title: SW CSEA President
Position: Support
Comments:

Bargaining Unite Date: 09/19/2013
Name: South Whittier Teacher Association
Representative: Audrey Radley
Title: South Whittier Teacher Association President
Position: Support
Comments:

California Department of Education
WAIVER SUBMISSION - General

CD Code: 5472256 Waiver Number: 11-11-2013 Active Year: 2013

Date In: 11/20/2013 1:34:32 PM

Local Education Agency: Visalia Unified School District
Address: 5000 West Cypress Ave.
Visalia, CA 93277

Start: 6/1/2014 End: 6/1/2016

Waiver Renewal: N
Previous Waiver Number: Previous SBE Approval Date:

Waiver Topic: Special Education Program
Ed Code Title: Extended School Year (Summer School)
Ed Code Section: *CCR* Title 5 3043 (d)
Ed Code Authority: 33050

Ed Code or *CCR* to Waive: (d) Extended School Year: An extended year program shall be provided for a minimum of 20 instructional days.

Outcome Rationale: The Visalia Unified School District's Special Education Department is requesting a waiver to change the extended school year services (ESY - Summer School) for all of our students in grades preschool through 12th grade who have disabilities and are eligible for ESY services. In previous years, the ESY program has been a five week program running four days per week for four hours per day, which met the *California Code of Regulations*, Title 5 (5 *CCR*), Section 3043 requirements of offering a 20 day ESY program. For the 2013 ESY program, we ran a four week program for four days per week for five hours and 20 minutes per day. The program was very successful for staff and for students and their families. For the 2014 ESY program, and for subsequent ESY programs, the district would like to provide a four week program running four days per week for five hours and 20 minutes per day for all grade levels. The instructional minutes of the new calendar would be equal to the instructional minutes of prior years' programs. This proposal is to allow all special education staff the opportunity to participate in staff development opportunities that occur in the summer, to provide flexibility to students and their families for summer planning, and to provide a more economical program with regards to transportation and facilities costs.

Student Population: 27000

City Type: Urban

Public Hearing Date: 11/12/2013
Public Hearing Advertised: Agenda posted (physically) for the public and by email to all VUSD employees

Local Board Approval Date: 11/12/2013

Community Council Reviewed By: Visalia Unified School Board and VUSD Superintendent's Cabinet
Community Council Reviewed Date: 11/12/2013

Community Council Objection: N
Community Council Objection Explanation:

Audit Penalty YN: N

Categorical Program Monitoring: N

Submitted by: Ms. Cara Peterson
Position: Director, Special Education
E-mail: cpeterson01@vusd.org
Telephone: 559-730-7581
Fax: 559-730-7381

Bargaining Unit Date: 11/05/2013
Name: California State Employees Association
Representative: Monica Renegar
Title: CSEA President
Position: Support
Comments:

Bargaining Unit Date: 11/15/2013
Name: Visalia Unified Teacher's Association
Representative: Karl Kildow
Title: VUTA President
Position: Neutral
Comments:

California State Board of Education

Meeting Agenda Items for March 12-13, 2014

WAIVER ITEM W-16

ITEM #-W-16

CALIFORNIA STATE BOARD OF EDUCATION

MARCH 2014 AGENDA

☒ **General Waiver**

SUBJECT	
Request by **Covina-Valley Unified School District** for a renewal to waive California *Education Code* Section 48352(a) and *California Code of Regulations,* Title 5, Section 4701, to remove Manzanita Elementary School from the Open Enrollment List of "low-achieving schools" for the 2013–14 school year. Waiver Number: 12-12-2013	☒ **Action** ☒ **Consent**

SUMMARY OF THE ISSUES

Covina-Valley Unified School District is requesting the removal of Manzanita Elementary from the 2013–14 Open Enrollment List. The State Board of Education (SBE) must take action to approve or deny removal of a school from the Open Enrollment List.

Authority for Waiver: *Education Code* (*EC*) Section 33050

RECOMMENDATION

☐ **Approval** ☐ **Approval with conditions** ☒ **Denial**

The California Department of Education (CDE) recommends denial of one waiver request for a school on the 2013–14 Open Enrollment List (Attachment 2) that does not meet the criteria for the SBE Streamlined Waiver Policy (available at http://www.cde.ca.gov/re/lr/wr/documents/sbestreamlined.doc). This waiver is recommended for denial because the educational needs of the pupils are not adequately addressed as required under *EC* 33051(a)(1).

SUMMARY OF KEY ISSUES

The Covina-Valley Unified School District does not meet the criteria set forth in the SBE streamlined waiver policy, therefore the CDE recommends that Manzanita Elementary School remain on the Open Enrollment List. The SBE streamlined waiver policy requires the district to have an API score of 800 or above in the 2011–12 scoring cycle. The Covina-Valley Unified School District has a 2012 Growth API score of 797. In the absence of a district API score of 800 or above, the SBE streamlined waiver policy requires the school to have an API score of 800 or above in the 2011–12 scoring cycle and meet their API growth targets for all student groups. Manzanita Elementary School has a 2012 Growth API score of 741 and failed to meet two of three 2012 API student group growth targets. In the absence of a district Growth API score of 800 or above, or if

the school fails to receive a Growth API score of 800 or above and does not meet its Growth API targets, the SBE streamlined waiver policy requires the school to make their API Growth targets in three of the previous five years. Manzanita Elementary School failed to meet their combined schoolwide and/or student group API Growth targets in three of the previous five years.

The methodology used in creating the list of 1,000 lowest achieving schools, per the statute, resulted in some higher achieving schools being placed on the list while at the same time some schools with lower APIs were not included on the list. This was primarily due to the statutory provision that an LEA can have no more than 10 percent of its schools on the list.

Identification as a "low-achieving" school can have a significant educational, economic, and political impact on the school community. The label of "low-achieving" does not take into account the API scores for schools whose scores have risen or are maintained closer to the higher levels of achievement. The perception that the school is "low-achieving" may cause unwarranted flight from the school community and may negatively impact fiscal issues.

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

Demographic Information: Manzanita Elementary School has a student population of 297 and is located in Los Angeles County.

Authority for Waiver: *EC* Section 33050

Period of request: July 1, 2013, to June 30, 2014

Period of recommendation:

Local board approval date(s): November 18, 2013

Public hearing held on date(s): November 18, 2013

Bargaining unit(s) consulted on date(s): California State Employees Association Representative: Shannon Medrano, consulted on November 14, 2013, and the Covina Unified Education Association Representative: Adam Hampton consulted on November 14, 2013

Public hearing advertised by: Notice posted at each school site and district Web site.

Advisory committee(s) consulted: Manzanita Elementary Schoolsite Council

SUMMARY OF PREVIOUS STATE BOARD OF EDUCATION DISCUSSION AND ACTION

This is the fifth time the SBE has heard a request from an LEA that does not meet the SBE streamlined waiver criteria to be removed from the 2013–14 Open Enrollment List. The SBE denied all of the non-streamlined waiver requests presented for removal from the 2013–14 Open Enrollment List.

FISCAL ANALYSIS (AS APPROPRIATE)

There is no statewide fiscal impact of waiver approval or denial.

ATTACHMENT(S)

Attachment 1: Schools Requesting a General Waiver from the 2013–14 Open Enrollment List (1 page)

Attachment 2: Manzanita Unified School District General Waiver Request 12-12-2013 (3 pages) (Original waiver request is signed and on file in the Waiver Office.)

Schools Requesting a General Waiver from the 2013–14 Open Enrollment List

Waiver #	County District School	2012 District Growth API	2012 School API Growth*		2012 API Target Met?	Met API Growth Targets (3 of last 5 yrs)	Meets SBE Waiver Policy (Yes/No)	Decile, Similar Schools Rank	Current PI Status	Position of Bargaining Unit/Date Consulted	Period of Request	Recommend for Approval (Yes/No)
12-12-2013	Los Angeles Covina-Valley Unified Manzanita Elementary	797	Schoolwide Hispanic or Latino SED English Learners	741 735 727 738	No No No Yes	No	No	3, 2	Year 3	Support 11/14/2013	**Requested:** 07/01/2013 to 06/30/2014	No

*Only student groups that are numerically significant are included in this column.
SED – Socioeconomically Disadvantaged

Prepared by the California Department of Education
Revised: 05-09-2013 9:42 AM

California Department of Education
WAIVER SUBMISSION - General

CD Code: 1964436 Waiver Number: 12-12-2013 Active Year: 2013

Date In: 12/11/2013 2:33:37 PM

Local Education Agency: Covina-Valley Unified School District
Address: 519 East Badillo St.
Covina, CA 91723

Start: 7/1/2013 End: 6/30/2014

Waiver Renewal: Y
Previous Waiver Number: 9-7-2012-W-06 Previous SBE Approval Date: 11/8/2012

Waiver Topic: Open Enrollment
Ed Code Title: Removal From the List of LEAs
Ed Code Section: 48352(a) and *CCR* Title 5 Section 4701
Ed Code Authority: 33050

Ed Code or *CCR* to Waive: ((a) "Low-achieving school" means any school identified by the Superintendent pursuant to the following:
(1) Excluding the schools, and taking into account the impact of the criteria in paragraph (2), the Superintendent annually shall create a list of 1,000 schools ranked by increasing API with the same ratio of elementary, middle, and high schools as existed in decile 1 in the 2008-09 school year.
(2) In constructing the list of 1,000 schools each year, the Superintendent shall ensure each of the following:
(A) A local educational agency shall not have more than 10 percent of its schools on the list. However, if the number of schools in a local educational agency is not evenly divisible by 10, the
Superintendent shall round up to the next whole number of schools.
(B) Court, community, or community day schools shall not be included on the list.
(C) Charter schools shall not be included on the list.)

Outcome Rationale: Covina-Valley Unified School District is requesting the removal of Manzanita Elementary from the 2013-14 Open Enrollment – Low Achieving Schools List. The inclusion of Manzanita on this list is inappropriate because Manzanita Elementary is not a low achieving school. The school has displayed an overall 94-point gain in the API since 2006. For the
2012-2013 school year, API growth occurred in the Hispanic and Students with Disabilities sub-groups. Manzanita's current API is 738, close to the statewide target of 800 for high achieving schools. Manzanita exhibited AYP growth within the White, Socio-Economically Disadvantaged, and English Learners subgroups for English Language Arts. Math growth occurred schoolwide and within the Hispanic and Students with Disabilities sub-groups. Students with Disabilities met Safe Harbor targets in both English Language Arts and math.

Student Population: 297

City Type: Suburban

Public Hearing Date: 11/18/2013
Public Hearing Advertised: Notice posted at each school and district website

Local Board Approval Date: 11/18/2013

Community Council Reviewed By: Manzanita School Site Council
Community Council Reviewed Date: 11/6/2013
Community Council Objection: N
Community Council Objection Explanation:

Audit Penalty YN: N

Categorical Program Monitoring: N

Submitted by: Ms. Alanna Arranaga
Position: Administrative Secretary
E-mail: aarranaga@cvusd.k12.ca.us
Telephone: 626-974-7000 x2071
Fax: 626-974-7061

Bargaining Unit Date: 11/14/2013
Name: California State Employees Association (CSEA)
Representative: Shannon Medrano
Title: President
Position: Support
Comments:

Bargaining Unit Date: 11/14/2013
Name: Covina Unified Education Association
Representative: Adam Hampton
Title: President
Position: Support
Comments:

California State Board of Education

Meeting Agenda Items for March 12-13, 2014

WAIVER ITEM W-17

ITEM #W-17

CALIFORNIA STATE BOARD OF EDUCATION

MARCH 2014 AGENDA

☒ **General Waiver**

SUBJECT	
Request by **Fowler Unified School District** to waive California *Education Code* Section 48352(a) and *California Code of Regulations,* Title 5, Section 4701, to remove Fremont Elementary School from the Open Enrollment List of "low-achieving schools" for the 2014–15 school year. Waiver Number: 10-11-2013	☒ **Action** ☒ **Consent**

SUMMARY OF THE ISSUES

Fowler Unified School District is requesting the removal of Fremont Elementary from the 2014–15 Open Enrollment List. The State Board of Education (SBE) must take action to approve or deny removal of a school from the Open Enrollment List.

Authority for Waiver: *Education Code* (*EC*) Section 33050

RECOMMENDATION

☐ **Approval** ☐ **Approval with conditions** ☒ **Denial**

The California Department of Education (CDE) recommends denial of one waiver request for a school on the 2014–15 Open Enrollment List (Attachment 2) that does not meet the criteria for the SBE Streamlined Waiver Policy (available at http://www.cde.ca.gov/re/lr/wr/documents/sbestreamlined.doc). Fremont Elementary School has failed to meet their combined schoolwide and/or student group API Growth targets in three of the last five years. This waiver is recommended for denial because the educational needs of the pupils are not adequately addressed as required under *EC* 33051(a)(1).

SUMMARY OF KEY ISSUES

Fowler Unified School District does not meet the criteria set forth in the SBE streamlined waiver policy, therefore the CDE recommends that Fremont Elementary School remain on the Open Enrollment List. The SBE streamlined waiver policy requires the district to have an API score of 800 or above in the current scoring cycle. Fowler Unified School District has a 2013 Growth API score of 779. In the absence of a district API score of 800 or above, the SBE streamlined waiver policy requires the school to have an API score of 800 or above in the current scoring cycle and meet their API growth targets for all student groups. Fremont Elementary School has a 2013 Growth API score of 792

and failed to meet all three 2013 API student group growth targets. In the absence of a district Growth API score of 800 or above, or if the school fails to receive a Growth API score of 800 or above and does not meet its Growth API targets, the SBE streamlined waiver policy requires the school to make their API Growth targets in three of the last five years. Fremont Elementary School has failed to meet their combined schoolwide and/or student group API Growth targets in three of the last five years.

The methodology used in creating the list of 1,000 lowest achieving schools, per the statute, resulted in some higher achieving schools being placed on the list while at the same time some schools with lower APIs were not included on the list. This was primarily due to the statutory provision that an LEA can have no more than 10 percent of its schools on the list.

Identification as a "low-achieving" school can have a significant educational, economic, and political impact on the school community. The label of "low-achieving" does not take into account the API scores for schools whose scores have risen or are maintained closer to the higher levels of achievement. The perception that the school is "low-achieving" may cause unwarranted flight from the school community and may negatively impact fiscal issues.

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

Demographic Information: Fremont Elementary School has a student population of 2,434 and is located in Fresno County.

Authority for Waiver: *EC* Section 33050

Period of request: August 15, 2013, to June 5, 2014

Period of recommendation:

Local board approval date(s): November 13, 2013

Public hearing held on date(s): November 13, 2013

Bargaining unit(s) consulted on date(s): Fowler Unified Teachers Association
Representative: Lesa Irick, consulted on November 18, 2013

Public hearing advertised by: Posting of agenda online, school sites, and district office prior to meeting

Advisory committee(s) consulted: Fowler Unified Board of Trustees

SUMMARY OF PREVIOUS STATE BOARD OF EDUCATION DISCUSSION AND ACTION

This is the first time the SBE has heard a request from an LEA that does not meet the

SBE streamlined waiver criteria to be removed from the 2014–15 Open Enrollment List.

FISCAL ANALYSIS (AS APPROPRIATE)

There is no statewide fiscal impact of waiver approval or denial.

ATTACHMENT(S)

Attachment 1: Schools Requesting a General Waiver from the 2014–15 Open Enrollment List (1 page)

Attachment 2: Fowler Unified School District General Waiver Request 10-11-2013 (4 pages) (Original waiver request is signed and on file in the Waiver Office.)

Schools Requesting a General Waiver from the 2014–15 Open Enrollment List

Waiver #	County District School	2013 District Growth API	2013 School API Growth*		2013 API Target Met?	Met API Growth Targets (3 of last 5 yrs)	Meets SBE Waiver Policy (Yes/No)	Decile, Similar Schools Rank	Current PI Status	Position of Bargaining Unit/Date Consulted	Period of Request	Recommend for Approval (Yes/No)
10-11-2013	Fresno Fowler Unified Fremont Elementary	779	Schoolwide Hispanic or Latino SED English Learners	792 774 768 770	No No No No	No	No	5, 4	Year 5	Support 11/18/2013	**Requested:** 08/15/2013 to 06/05/2014	No

*Only student groups that are numerically significant are included in this column.
SED – Socioeconomically Disadvantaged

Prepared by the California Department of Education
Revised: 12-31-2013 10:47 AM

California Department of Education
WAIVER SUBMISSION - General

CD Code: 1062158 Waiver Number: 10-11-2013 Active Year: 2013

Date In: 11/19/2013 2:21:35 PM

Local Education Agency: Fowler Unified School District
Address: 658 East Adams Ave.
Fowler, CA 93625

Start: 8/15/2013 End: 6/5/2014

Waiver Renewal: N
Previous Waiver Number: Previous SBE Approval Date:

Waiver Topic: Open Enrollment
Ed Code Title: Removal From the List of LEAs
Ed Code Section: 48352(a) and *CCR* Title 5 Section 4701
Ed Code Authority: 33050

Ed Code or *CCR* to Waive: [(2) "Low achieving school" means any school identified by the Superintendent pursuant to the following:

(1) Excluding the schools, and taking into account the impact of the criteria in paragraph (2), the Superintendent annually shall create a list of the 1,000 school ranked by increasing API with the same ratio of elementary, middle, and high schools as existed in decile 1 in 2008-09 school year.

(2) In constructing the list of 1,000 schools each year, the Superintendent shall ensure each of the following:

(A) A local educational agency shall not have more than 10 percent of its schools on the list. However, if the number of schools in the local education agency is not evenly divisible by 10, the Superintendent shall round up to the next whole number of schools.
(B) Court, community, or community day schools shall not be included on the list.
(C) Charter schools shall not be included on the list.]

Title 5 *CCR* 4701. Identification of Open Enrollment Schools.

[(a) The State Superintendent of Public Instruction (SSPI) shall annually construct a list of 1,000 schools for the Open Enrollment Act that maintains the same ratio of elementary, middle, and high schools as existed in decile 1 of the 2009 Base Academic Performance Index (API) file and retains only “10 percent” of a local educational agency’s (LEA’s) schools pursuant to the following methodology:

(1) the list of 1,000 schools shall include 687 elementary schools, 165 middle schools, and 148 high schools;

(2) the list of 1,000 schools shall exclude the following:
(A) schools that are court, community, or community day schools;

(B) schools that are charter Schools;
(C) schools that are closed; and
(D) schools that have fewer than 100 valid test scores.

(3) an LEA shall have on the list no more that 10 percent of its total number of schools that are not closed. However, when that total number of schools is not evenly divisible by 10, the 10 percent number of the LEA's schools shall be rounded up to the next whole number; and

(4) to produce the final list of 1,000 schools, the SSPI shall apply the following process:
(A) create a pool of schools;
1. For the purpose of constructing the Open Enrollment Schools List for transfer during the 2010-11 school year, this pool shall be created by selecting all schools from the 2009 Base API file.]

Outcome Rationale: Fowler Unified School District (FUSD) is requesting to remove Fremont Elementary School from the Open Enrollment List. Fremont Elementary School is a grades 3 – 5 school of approximately 474 students in the 2013/2014 school year. Fremont School has successfully met Academic Performance Index (API) growth targets in 4 of the past 5 years. Fremont School has also met Annual Yearly Progress (AYP) School-wide targets during the 2009 through 2012 school years. In addition, Fremont School fully met all AYP targets (School-wide, All Student Groups and All Targets) in the 2011 and 2012 school years. Fremont Elementary School has seen a growth in Academic Performance Index (API) from 757 to 811 during the past 5 years. The current Open Enrollment system clearly penalizes high achieving schools in small rural school districts, such as Fremont Elementary, and does not offer intended relief to students in urban school districts where large numbers of elementary schools have API scores significantly lower than Fremont School's API score of 792 and are not on the Open Enrollment list.

FUSD is providing Fremont with supplemental fiscal, curricular, professional development and technology support in order to continue the progress toward academic achievement. Placing Fremont Elementary School on the list creates a stigma of negativity that impacts students, staff, and community morale; in addition, to having a significant educational, economic, and political impact on the school, and its community. By removing Fremont Elementary School from the Open Enrollment List, the school will maintain the same sense of pride and momentum of high academic achievement for all their students that all schools in FUSD enjoy.

The charts below depict Fremont Elementary School's data for school years 2009 to present.

ANNUAL YEARLY PROGRESS (AYP)	2013	2012	2011	2010	2009
School-wide	No	Yes	Yes	Yes	Yes
All Student Groups	No	Yes	Yes	No	No

ACADEMIC PERFORMANCE INDEX (API)	2013	2012	2011	2010	2009
Score	792	811	799	784	775

The formula for designating Open Enrollment schools is clearly flawed. The criteria for developing the list of Open Enrollment schools has contributed to consequences that are contrary to the intent of the law which is to provide more options for parents at low-achieving schools. Fremont Elementary School's performance clearly demonstrates that it is a high achieving school which has continuously made progress to meet and/ or exceed the targets. The following facts serve to demonstrate Fremont Elementary School's continuous improvement

and progress to meet all targets:

- Fremont Elementary School's latest API in 2013 was 792, with an API of 811 in 2012.

- Fremont Elementary School met School-wide Annual Yearly Progress goals from 2009 through 2012. Goals for School-wide and All Student Groups were met in 2011 and 2012.

- Fremont Elementary has the highest API score of 792 when compared to all other Open Enrollment schools in Fresno County.

- There are 687 elementary schools which are required to be on the list of 1,000 schools due to middle/ high school API scores which are significantly lower in the State.

- As a result, larger districts' portion of schools to meet the Open Enrollment Act requirement are filled by middle/ high schools – this leaves the 687 elementary schools that are required to be selected to come from smaller districts (one lowest-scoring school in district) that do not have the 10% cap protection.

- As an example, 3 large districts (Fresno – with 63 total elementary schools, Los Angeles - with 554 total elementary schools, and Oakland - with 54 total elementary schools) have a combined 308 elementary schools that have scores below Fremont Elementary School's API score of 792 and yet are not on the Open Enrollment list.

- Of the 671 combined elementary schools in Fresno, Los Angeles and Oakland, only 35 elementary schools made the Open Enrollment list (3 in Fresno, 28 in Los Angeles and 4 in Oakland).

- The intent of Open Enrollment could not have been to give the parents of Fremont Elementary School in Fowler Unified School District the option to transfer schools all the while denying that same opportunity for parents in those 308 elementary schools in Fresno, Los Angeles, Oakland, as an example, whose scores were lower than 792.

- See Governor Brown's veto message for AB 47 which clearly gives administrative authority to the SBE to exempt schools from the Open Enrollment Act "that document strong student achievement." – like Fremont Elementary School in the Fowler Unified School District (see attached veto message).

A copy of this description is attached.

Student Population: 2434

City Type: Rural

Public Hearing Date: 11/13/2013
Public Hearing Advertised: Posting of agenda online, school sites, and district office prior to meeting.

Local Board Approval Date: 11/13/2013

Community Council Reviewed By: Fowler Unified Board of Trustees
Community Council Reviewed Date: 11/13/2013

Community Council Objection: N
Community Council Objection Explanation:
Audit Penalty YN: N

Categorical Program Monitoring: N

Submitted by: Mr. Eric Cederquist
Position: Superintendent
E-mail: ecederquist@fowlerusd.org
Telephone: 559-834-6080 x6085
Fax: 559-834-3390

Bargaining Unit Date: 11/18/2013
Name: Fowler Unified Teachers Association
Representative: Lesa Irick
Title: FUTA President
Position: Support
Comments:

Open Enrollment Act Waiver
Fremont Elementary School

The graphs below depict Fremont Elementary School's data for school years 2009 to present.

ANNUAL YEARLY PROGRESS (AYP)	2013	2012	2011	2010	2009
School-wide	No	Yes	Yes	Yes	Yes
All Student Groups	No	Yes	Yes	No	No

ACADEMIC PERFORMANCE INDEX (API)	2013	2012	2011	2010	2009
Score	792	811	799	784	775

California State Board of Education

Meeting Agenda Items for March 12-13, 2014

WAIVER ITEM W-18

ITEM #W-18

CALIFORNIA STATE BOARD OF EDUCATION

MARCH 2014 AGENDA

☒ **General Waiver**

SUBJECT	
Request by **San Joaquin County Office of Education** to waive California *Education Code* Section 5020, and portions of sections 5019, 5021, and 5030, that require a districtwide election to establish a by-trustee-area method of election. Waiver Number: 27-10-2013	☒ **Action** ☐ **Consent**

SUMMARY OF THE ISSUE(S)

School districts that elect governing board members at-large are facing existing or potential litigation under the California Voting Rights Act of 2001 (CVRA). County committees on school district organization (county committee) also have been subject to CVRA litigation due to the role they play in the process to establish trustee-area elections in school districts. Pursuant to the California *Education Code* (*EC*), a district can change from at-large elections to trustee-area elections only if the change is approved by both the county committee and voters at a districtwide election.

In the Ripon Unified School District (USD), a governing board member already must reside in a trustee area, but is elected by all voters in the district. However, the Ripon USD opposes a by-trustee-area method of election for the governing board. The San Joaquin County Office of Education (COE) is concerned that the Ripon USD and the San Joaquin County Committee are at risk for CVRA litigation if the district's at-large election method is not changed. To help reduce the potential for litigation, the COE requests that the California State Board of Education (SBE) waive the requirement that by-trustee-area elections be approved at a districtwide election—allowing such trustee-area elections to be adopted upon review and approval of the County Committee.

Authority for Waiver: *EC* Section 33050

RECOMMENDATION

☐ **Approval** ☐ **Approval with conditions** ☒ **Denial**

The California Department of Education has further determined that one of the grounds specified in *EC* Section 33051, which authorizes denial of a waiver, exists. The CDE recommends that the SBE deny the request by the San Joaquin COE to waive *EC* Section 5020 in its entirety and portions of *EC* sections 5019, 5021, and 5030, which require trustee-area elections be approved at a districtwide election, because "guarantees of parental involvement are jeopardized" (EC Section 33051[a][5]).

SUMMARY OF KEY ISSUES

Approval of this waiver request would eliminate the election requirement for approval of a by-trustee-area method of election for future governing board elections in the Ripon USD. District voters would continue to elect all board members—however, if the SBE approves the waiver requests (and a by-trustee-area method for future board elections is approved by the County Committee), all board members will be elected only by voters in their respective trustee areas, beginning with the subsequent board election.

The County Committee has the statutory power to approve or disapprove the adoption of methods of election for school district governing board elections (such approval constitutes an order of election pursuant to *EC* Section 5020). Additionally, the County Committee has the statutory power to initiate a proposal to establish trustee areas and a trustee-area method of election for any district in the county. Because it has these statutory powers, the County Committee could be subject to CVRA litigation if it fails to exercise them.[1]

School districts in California also are facing existing or potential litigation under the CVRA over their at-large election methods. To help avoid potential litigation in San Joaquin County, the San Joaquin COE is requesting that the SBE waive the requirement that the trustee areas and the election methods be approved at districtwide elections. Only the election to establish trustee areas and election method will be eliminated by approval of the waiver request—voters in the school districts will continue to elect all governing board members. Moreover, approval of the waiver requests will not eliminate any existing legal rights of currently seated board members.

The waiver request has been reviewed by CDE staff and it has determined that, although there was no significant public opposition to the waiver request at the public hearing held by the county board, there was considerable public opposition to the concept of a by-trustee area method of election at public hearings conducted by the Ripon USD governing board. Also, the Ripon USD is on record opposing both the establishment of a by-trustee-method of election for its governing board elections and this San Joaquin COE waiver request.

Demographic Information:

The Ripon USD has a student population of 3,238 and is located in rural and suburban areas of San Joaquin County.

[1] *Rey et al. v. Madera Unified School District et al.* (2012), 203 Cal. App. 4th 1223, 138 Cal. Rptr. 3d 192.

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

SUMMARY OF PREVIOUS STATE BOARD OF EDUCATION DISCUSSION AND ACTION

The SBE has approved numerous school district requests to waive the election requirement for the establishment of by-trustee-methods of election when the governing board of the district supports the waiver and there is no significant public opposition to the waiver—most recently for the Alvord Unified School District (Riverside County), the Newman-Crows Landing Unified School District (Stanislaus County), and the Salida Union Elementary School District (Stanislaus County) at the January 2014 SBE meeting.

The SBE, at its June 2008 meeting, also approved a request from the Monterey COE to waive the election requirement for the establishment of a by-trustee-method of election for the Monterey Peninsula Community College District when that district opposed the establishment of such an election method and there was significant public opposition to the request—however, the CDE had recommended that the SBE deny that waiver for the same reasons that exist in the current San Joaquin COE request.

FISCAL ANALYSIS (AS APPROPRIATE)

Approval of the waiver requests will not have negative fiscal effects on any local or state agency. Failure to approve the waiver request would result in the additional costs to the Ripon USD for a districtwide election to establish a by-trustee-area method of election for the district's governing board elections.

ATTACHMENT(S)

Attachment 1: Information from Districts Requesting Waivers of Elections Required to Establish Trustee Area Elections (1 page)

Attachment 2: San Joaquin County Office of Education General Waiver Request 27-10-2013 (8 pages) (Original waiver request is signed and on file in the Waiver Office.)

Information from Districts Requesting Waivers of Elections Required to Establish Trustee Area Elections

California *Education Code* Section 5020 and portions of sections 5019, 5021, and 5030

Waiver Number	District	Period of Request	Bargaining Unit, Representatives Consulted, Date, and Position	Public Hearing and Board Approval Date	Public Hearing Advertisement	SSC/Advisory Committee Position
27-10-2013	San Joaquin County Office of Education	**Requested:** October 28, 2013, to December 31, 2014 **Recommended:** March 12, 2014, to March 10, 2016	Ripon Unified District Teachers' Association, Rodney Wright, President, 10/11/13: **Neutral** Ripon Unified School District: California School Employees' Association, Jeff Hardenbrook, President, 10/11/13: **Neutral** San Joaquin County Educators' Association, Carole McNair, President, 4/3/13: **Neutral** San Joaquin County Office of Education: California School Employees' Association, Carol Black, President, 4/3/13: **Neutral**	10/28/13	Notice placed in newspapers; on County Office of Education bulletin boards, staff lounges, and Web site.	Reviewed by San Joaquin County Committee on School District Organization on 10/11/13: **No objections** Reviewed by Ripon Unified School District English Learners' Advisory Committee on 10/11/13: **Opposed to waiver request because the current at-large governing board election method reflects the open enrollment process in the district (i.e., it is district policy to allow parents to select any school in the district to enroll students).**

Created by California Department of Education
December 12, 2013

California Department of Education
WAIVER SUBMISSION - General

CD Code: 3910397 Waiver Number: 27-10-2013 Active Year: 2013

Date In: 10/30/2013 10:39:52 AM

Local Education Agency: San Joaquin County Office of Education
Address: 2901 Arch-Airport Rd.
Stockton, CA 95206

Start: 10/28/2013 End: 12/31/2014

Waiver Renewal: N
Previous Waiver Number: Previous SBE Approval Date:

Waiver Topic: School District Reorganization
Ed Code Title: Elimination of Election Requirement
Ed Code Section: Portions of 5019, 5021, 5030 and all of 5020
Ed Code Authority: 33050

Ed Code or *CCR* to Waive: See Attachment A

Outcome Rationale: See Attachment B and Attachment C

Student Population: 120037

City Type: Rural

Public Hearing Date: 10/28/2013
Public Hearing Advertised: Notice in newspapers. County office bulletin boads, staff lounges and website.

Local Board Approval Date: 10/28/2013

Community Council Reviewed By: San Joaquin County Committee on School District Organization and Ripon Unified DELAC
Community Council Reviewed Date: 10/11/2013
Community Council Objection: Y
Community Council Objection Explanation: DELAC opposed, noting the current at-large election process supports RUSD open enrollment policy.

Audit Penalty YN: N

Categorical Program Monitoring: N

Submitted by: Dr. Mick Founts
Position: Superintendent of Schools/Clerk of the Board
E-mail: jstanton@sjcoe.net
Telephone: 209-468-9151
Fax: 209-468-4975

Bargaining Unit Date: 10/11/2013
Name: RUSD: CSEA
Representative: Jeff Hardenbrook
Title: CSEA Rep
Position: Neutral
Comments:

Bargaining Unit Date: 10/11/2013
Name: RUSD: RUDTA
Representative: Rodney Wright
Title: RUDTA Rep
Position: Neutral
Comments:

Bargaining Unit Date: 04/03/2013
Name: SJCOE: CSEA
Representative: Carol Black
Title: CSEA Rep
Position: Neutral
Comments:

Bargaining Unit Date: 04/03/2013
Name: SJCOE: SJCEA
Representative: Carole McNair
Title: SJCEA
Position: Neutral
Comments:

ATTACHMENT A

6. Education Code or California Code of Regulations section to be waived.

The San Joaquin County Board of Education desires to waive the following sections and portions of the Education Code lined out below:

§ 5019. Trustee areas and size of school district governing boards; powers of county committee; proposal and hearing

(a) Except in a school district governed by a board of education provided for in the charter of a city or city and county, in any school district or community college district, the county committee on school district organization may establish trustee areas, rearrange the boundaries of trustee areas, abolish trustee areas, and increase to seven or decrease to five the number of members of the governing board, or adopt one of the alternative methods of electing governing board members specified in Section 5030. (b) The county committee on school district organization may establish or abolish a common governing board for a high school district and an elementary school district within the boundaries of the high school district. The resolution of the county committee on school district organization approving the establishment or abolition of a common governing board shall be presented to the electors of the school districts as specified in Section 5020.

(c) (1) A proposal to make the changes described in subdivision (a) or (b) may be initiated by the county committee on school district organization or made to the county committee on school district organization either by a petition signed by 5 percent or 50, whichever is less, of the qualified registered voters residing in a district in which there are 2,500 or fewer qualified registered voters, by 3 percent or 100, whichever is less, of the qualified registered voters residing in a district in which there are 2,501 to 10,000 qualified registered voters, by 1 percent or 250, whichever is less, of the qualified registered voters residing in a district in which there are 10,001 to 50,000 qualified registered voters, by 500 or more of the qualified registered voters residing in a district in which there are 50,001 to 100,000 qualified registered voters, by 750 or more of the qualified registered voters residing in a district in which there are 100,001 to 250,000 qualified registered voters, or by 1,000 or more of the qualified registered voters residing in a district in which there are 250,001 or more qualified registered voters or by resolution of the governing board of the district. For this purpose, the necessary signatures for a petition shall be obtained within a period of 180 days before the submission of the petition to the county committee on school district organization and the number of qualified registered voters in the district shall be determined pursuant to the most recent report submitted by the county elections official to the Secretary of State under Section 2187 of the Elections Code.

(2) When a proposal is made pursuant to paragraph (1), the county committee on school district organization shall call and conduct at least one hearing in the district on the matter. At the conclusion of the hearing, the county committee on school district organization shall approve or disapprove the proposal.

(d) If the county committee on school district organization approves pursuant to subdivision (a) ~~the rearrangement of the~~ boundaries of trustee areas for a particular district, then the ~~rearrangement of the~~ trustee areas shall be effectuated for the next district election occurring at least 120 days after its approval~~, un1ess at least 5 percent of registered voters the district sign a petition requesting an election on the proposed rearrangement of the trustee area boundaries. The petition for an election shall be submitted to the county elections official within 60 days of the proposal's adoption by the county committee on school district organization. If the qualified~~

~~registered voters approve pursuant to subdivision (b(or (c) the rearrangement of the boundaries to the trustee areas for a particular district, the rearrangement of the trustee areas shall be effective for the next district election occurring at least 129 days after its approval by the voters~~.

~~§ 5020. Presentation of proposal to electors~~

~~(a) The resolution of the county committee approving a proposal to establish or abolish trustee areas, to adopt one of the alternative methods of electing governing board members specified in Section 5030, or to increase or decrease the number of members of the governing board shall constitute an order of election, and the proposal shall be presented to the electors of the district not later than the next succeeding election for members of the governing board.~~

~~(b) If a petition requesting an election on a proposal to rearrange trustee area boundaries is filed, containing at least 5 percent of the signatures of the district's registered voters as determined by the elections official, the proposal shall be presented to the electors of the district, at the next succeeding election for the members of the governing board, at the next succeeding statewide primary or general election, or at the next succeeding regularly scheduled election at which the electors of the district are otherwise entitled to vote, provided that there is sufficient time to place the issue on the ballot.~~

~~(c) If a petition requesting an election on a proposal to establish or abolish trustee areas, to increase or decrease the number of members of the board, or to adopt one of the alternative methods of electing governing board members specified in Section 5030 is filed, containing at least 10 percent of the signatures of the district's registered voters as determined by the elections official, the proposal shall be presented to the electors of the district, at the next succeeding election for the members of the governing board, at the next succeeding statewide primary or general election, or at the next succeeding regularly scheduled election at which the electors of the district are otherwise entitled to vote, provided that there is sufficient time to place the issue on the ballot. Before the proposal is presented to the electors, the county committee on school district organization may call and conduct one or more public hearings on the proposal.~~

~~(d) The resolution of the county committee approving a proposal to establish or abolish a common governing board for a high school and an elementary school district within the boundaries of the high school district shall constitute an order of election. The proposal shall be presented to the electors of the district at the next succeeding statewide primary or general election, or at the next succeeding regularly scheduled election at which the electors of the district are otherwise entitled to vote, provided that there is sufficient time to place the issue on the ballot.~~

~~(e) For each proposal there shall be a separate proposition on the ballot. The ballot shall contain the following words:~~

~~"For the establishment (or abolition or rearrangement) of trustee areas in _____ (insert name) School District --Yes" and "For the establishment (or abolition or rearrangement) of trustee areas in _____ (insert name) School District--No."~~

~~"For increasing the number of members of the governing board of _____ (insert name) School District from five to seven--Yes" and "For increasing the number of members of the governing board of _____ (insert name) School District from five to seven--No."~~

~~"For decreasing the number of members of the governing board of _____ (insert name) School~~

~~District from seven to five--Yes" and "For decreasing the number of members of the governing board of ____ (insert name) School District from seven to five--No."~~

~~"For the election of each member of the governing board of the ____ (insert name) School District by the registered voters of the entire ____ (insert name) School District--Yes" and "For the election of each member of the governing board of the ____ (insert name) School District by the registered voters of the entire ____ (insert name) School District--No."~~

~~"For the election of one member of the governing board of the ____ (insert name) School District residing in each trustee area elected by the registered voters in that trustee area--Yes" and "For the election of one member of the governing board of the ____ (insert name) School District residing in each trustee area elected by the registered voters in that trustee area--No."~~

~~"For the election of one member, or more than one member for one or more trustee areas, of the governing board of the ____ (insert name) School District residing in each trustee area elected by the registered voters of the entire ____ (insert name) School District--Yes" and "For the election of one member, or more than one member for one or more trustee areas, of the governing board of the ____ (insert name) School District residing in each trustee area elected by the registered voters of the entire ____ (insert name) School District--No."~~

~~"For the establishment (or abolition) of a common governing board in the ____ (insert name) School District and the ____ (insert name) School District--Yes" and "For the establishment (or abolition) of a common governing board in the ____ (insert name) School District and the ____ (insert name) School District--No."~~

~~If more than one proposal appears on the ballot, all must carry in order for any to become effective, except that a proposal to adopt one of the methods of election of board members specified in Section 5030 which is approved by the voters shall become effective unless a proposal which is inconsistent with that proposal has been approved by a greater number of voters. An inconsistent proposal approved by a lesser number of voters than the number which have approved a proposal to adopt one of the methods of election of board members specified in Section 5030 shall not be effective.~~

§ 5021. Incumbents to serve out terms despite approval of change

(a) If a proposal for the establishment of trustee areas formulated under Sections 5019 ~~and 5020~~ is approved~~ by a majority of the voters voting at the election~~, any affected incumbent board member shall serve out his or her term of office and succeeding board members shall be nominated and elected in accordance with Section 5030. In the event two or more trustee areas are established ~~at such election~~ which are not represented in the membership of the governing board of the school district, or community college district the county committee shall determine by lot the trustee area from which the nomination and election for the next vacancy on the governing board shall be made.

(b) If a proposal for rearrangement of boundaries is approved by a ~~majority of the voters voting on the measure, or by~~ the county committee on school district organization ~~when no election is required~~, and if the boundary changes affect the board membership, any affected incumbent board member shall serve out his or her term of office and succeeding board members shall be nominated and elected in accordance with Section 5030.

(c) If a proposal for abolishing trustee areas is approved ~~by a majority of the voters voting at the election~~, the incumbent board members shall serve out their terms of office and succeeding

board members shall be nominated and elected at large from the district.

§ 5030. Alternate method of election

Except as provided in Sections 5027 and 5028, in any school district or community college district having trustee areas, the county committee on school district organization and the registered voters of a district, pursuant to Sections 5019 ~~and 5020~~, respectively, may at any time recommend one of the following alternate methods of electing governing board members:

(a) That each member of the governing board be elected by the registered voters of the entire district.

(b) That one or more members residing in each trustee area be elected by the registered voters of that particular trustee area.

(c) That each governing board member be elected by the registered voters of the entire school district or community college district, but reside in the trustee area which he or she represents.

The recommendation shall provide that any affected incumbent member shall serve out his or her term of office and that succeeding board members shall be nominated and elected in accordance with the method recommended by the county committee.

Whenever trustee areas are established in a district, provision shall be made for one of the alternative methods of electing governing board members.

~~In counties with a population of less than 25,000~~, the county committee on school district organization or the county board of education, if it has succeeded to the duties of the county committee, may at any time, by resolution, with respect to trustee areas established for any school district, other than a community college district, amend the provision required by this section without additional approval by the electors, to require one of the alternate methods for electing board members to be utilized.

ATTACHMENT B

Desired Outcome / Rationale

The San Joaquin County Board of Education (SJCBOE) desires to have the requested Education Code sections waived because the waiver of these sections will allow SJCBOE to successfully adopt trustee areas and establish a by-trustee election process for the Ripon Unified School District (RUSD) as expeditiously as possible, thereby enabling the SJBCOE to avoid litigation resulting out of RUSD's current and persistent recommendation to maintain an at-large election process for electing its governing board members based on community beliefs and customs.

It is imperative that RUSD adopt these areas and establish this process without delay and without interference because like many of the school districts that have been threatened with lawsuits under the California Voting Rights Act of 2001 ("CVRA"), RUSD currently utilizes an at-large election process to elect its governing board members. The failure to successfully adopt and implement trustee areas and a by-trustee area election process in RUSD leaves it vulnerable to such litigation in which SJCBOE would be exposed to potentially having to pay significant attorneys' fees to plaintiffs, which would pose an undue hardship and extreme detriment to SJCBOE and its students.

CVRA History

The California Legislature enacted the California Voting Rights Act of 2001. *(See* California Elections Code §§ 14025-14032). This legislation makes all at-large election systems in California for cities, school districts and special districts vulnerable to legal attack, largely on proof of racially polarized voting, regardless of whether a majority district can be formed and, under the interpretation adopted by plaintiffs in other pending CVRA cases, without regard to the electoral success of minority candidates or the need to prove actual racial injury exists.

The CVRA purports to alter several requirements that plaintiffs would have to prove under the Federal Voting Rights Act, thereby making it easier to challenge at-large election systems. The first suit under the CVRA was filed against the City of Modesto in 2004. Modesto challenged the facial constitutionality of the CVRA on the basis that, by using race as the sole criterion of liability, the CVRA contains a suspect racial classification that California was required to justify under equal protection strict scrutiny standards. The trial court struck down the statute but the California Court of Appeal reversed. *(Sanchez v. City of Modesto* (2006) 145 Cal.App.4th 660).

The City of Modesto ultimately settled the litigation, but not before paying plaintiffs $3 million dollars in attorneys' fees to plaintiffs' attorneys (the prevailing party [other than a public agency] is entitled to an award of their attorneys' fees and costs under the CVRA) and another $1.7 million to its own attorneys.

Similarly, the Hanford Joint Union High School District was sued under the CVRA and after adopting trustee areas and establishing by-trustee area elections (and requesting and receiving the same waiver from the State Board of Education that is being requested here), paid plaintiffs in that lawsuit the sum of $110,000 pursuant to a settlement-agreement. Most recently, the Madera Unified School District has been sued under the

CVRA and their November 2008 governing board member election was enjoined by the court. The Plaintiffs in that case demanded $1.8 million in attorney fees from that District.

Normally, under Education Code section 5020, the County Committee on School District Organization, after conducting its own public hearing on the recommended plans, would call for an election and put the matter to a vote of RUSD electorate. However, going through that process would prevent RUSD from electing successor trustees in a timely manner and leaves SJCBOE vulnerable to a lawsuit and injunction.

The requested waiver will allow SJCBOE to complete its transition to a by-trustee area election process in time to for the next governing board member election, which will reduce SJCBOE's liability under the CVRA going forward.

California State Board of Education

Meeting Agenda Items for March 12-13, 2014

WAIVER ITEM W-19

ITEM #W-19

CALIFORNIA STATE BOARD OF EDUCATION

MARCH 2014 AGENDA

☒ **General Waiver**

SUBJECT	
Request by **San Jose Unified School District** to waive California *Education Code* Section 44929.21(b), to enable both the granting of permanent status after the first year of probationary status and the granting of a third year of probationary status as deemed necessary. Waiver Number: 39-1-2014	☒ **Action** ☐ **Consent**

SUMMARY OF THE ISSUES

San Jose Unified School District (SJUSD) is requesting a waiver of *Education Code* (*EC*) Section 44929.21(b), which entitles an employee to tenure after the completion of two consecutive school years in a position requiring certification and who is reelected for the next succeeding school year to be classified and become a permanent employee of the district.

Authority for Waiver: *EC* Section 33050

RECOMMENDATION

☐ **Approval** ☐ **Approval with conditions** ☒ **Denial**

The California Department of Education (CDE) recommends denial of SJUSD's request to waive *EC* Section 44929.21(b), for multiple reasons. In general, this waiver request would impact major policies and would be better addressed by the Legislature. Specifically, this waiver is recommended for denial because (a) the waiver would eliminate the statutory requirements to grant tenure if the conditions of EC 44929.21(b) are met; (b) the waiver is in conflict with other provisions of the *EC* which cannot be waived; (c) under *EC* Section 33051(a)(4) the abrogation of this provision of the *EC* would result in unequal and potentially contentious treatment of probationary teachers; (d) it is unclear how probationary teachers who have been on probation for more than two years as of January 22, 2016, the date the waiver is scheduled to expire, would be treated; and (e) SJUSD should seek to amend the statute, which is the work of the Legislature. Therefore, CDE recommends that the SBE make a finding that the waiver would jeopardize pupil or school personnel protections pursuant to *EC* 33051(a)(4).

SUMMARY OF KEY ISSUES

The waiver request states that SJUSD and the San Jose Teacher's Association have developed and implemented a teacher evaluation and support system. As part of that new evaluation system, SJUSD seeks to waive *EC* Section 44929.21(b), stating that the new evaluation system would allow for some teachers to be granted tenure after one year of teaching, and others to be granted tenure after three years of probationary status.

The CDE's concern is that the proposed waiver would eliminate the statutory requirements and two-year period for determining when a probationary teacher becomes permanent. Without the statute in place, the time period for achieving permanent status could be as short or as long as the school district and the teachers' exclusive representative agree, or as the district determines if there is no agreement. If the waiver were granted, it would create uncertainty for teachers and students because it is not clear how probationary teachers would be treated at the end of the waiver period. Granting the waiver could also encourage other school districts to apply for similar waivers, thus potentially further undermining the statutory framework.

For these reasons, the changes proposed by SJUSD should be achieved through the legislative process.

In addition, *EC* Section 44929.21(b) is part of a complex statutory framework regarding certificated employee rights and status, including probationary status, permanent status, and dismissal. Granting of this waiver may result in an unresolvable conflict with other relevant sections of the *EC* that are not subject to waiver by the SBE. For example**,** *EC* Section 44948.3 provides that first and second year probationary employees may be subject to dismissal for unsatisfactory performance or for cause. SJUSD is requesting a waiver that would, in effect, result in third-year probationary employees. Because *EC* 44948.3 is not subject to waiver by the SBE, it is unclear how SJUSD could dismiss those "third-year probationary employees" as requested in the waiver application since *EC* 44948.3 only provides for dismissal of a first-year or second-year probationary employee. Similarly**,** *EC* 44932, which is also not subject to waiver by the SBE, provides for dismissal of an employee that has achieved permanent status and would also not cover these "third-year probationary employees." Again, given the potential for such consequences, with major policy implications, SJUSD is more likely to achieve the desired results through legislative action since the SBE's waiver authority is limited.

In conclusion, the CDE staff believes that the abrogation of this provision of the *EC* would result in uncertain, unequal and potentially contentious treatment of probationary teachers since the granting of this waiver would result in some teachers having longer or shorter probationary periods than others, thus jeopardizing personnel protections. All teachers should have equal access, opportunities, and outcomes.

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

Demographic Information: SJUSD has a student population of 33,306 and is located in Santa Clara County

Period of request: January 23, 2014, to January 22, 2016

Local board approval date(s): October 10, 2013

Public hearing held on date(s): October 10, 2013
San Jose USD Board minutes indicate this waiver was heard on October 24, 2013 at 6:00 pm.

Bargaining unit(s) consulted on date(s): San Jose Teachers Association
Representative: Jennifer Thomas, President
consulted on September 19, 2013

Public hearing advertised by: Published in the Central Office lobby and on the school district's website

Advisory committee(s) consulted: District Advisory Council (DAC)

Objections raised (choose one): ☒ None ☐ Objections are as follows:
Did not receive any questions or opposing statements to the waiver as submitted to CDE.

Date Consulted: February 13, 2014

SUMMARY OF PREVIOUS STATE BOARD OF EDUCATION DISCUSSION AND ACTION

This is the first time the SBE has heard a request from an LEA for an entire district versus a specific certificated probationary teacher. At its September 2008 meeting, the SBE considered an application by San Francisco Unified School District for a waiver of *EC* Section 44929.21(b). The waiver was approved, with conditions, for one certificated probationary teacher for a third year of probation. The SBE stated that granting the waiver request would afford the district and the specific teacher a reasonable opportunity to resolve a dispute as to the individual teacher's fitness to be given tenure after two years.

FISCAL ANALYSIS (AS APPROPRIATE)

There is no statewide fiscal impact of waiver approval or denial.

ATTACHMENT(S)

Attachment 1: San Jose Unified School District General Waiver Request 39-1-2014 (2 pages) (Original waiver request is a signed and on file in the Waiver Office.)

California Department of Education
WAIVER SUBMISSION - General

CD Code: 4369666 Waiver Number: 39-1-2014 Active Year: 2014

Date In: 1/23/2014 1:42:09 PM

Local Education Agency: San Jose Unified School District
Address: 855 Lenzen Ave.
San Jose, CA 95126

Start: 1/23/2014 End: 1/22/2016

Waiver Renewal: N
Previous Waiver Number: Previous SBE Approval Date:

Waiver Topic: Teacher Evaluation and Assessment
Ed Code Title: Teacher Evaluation
Ed Code Section: Chapter 4. Employment - Certificated Employees, Article 2.7, Section 44929.21
Ed Code Authority: 33050

Ed Code or *CCR* to Waive: *Education Code* Section 44929.21 (b)

[Every employee of a school district of any type or class having an average daily attendance of 250 or more who, after having been employed by the district for two complete consecutive school years in a position or positions requiring certification qualifications, is reelected for the next succeeding school year to a position requiring certification qualifications shall, at the commencement of the succeeding school year be classified as and become a permanent employee of the district. The governing board shall notify the employee, on or before March 15 of the employee's second complete consecutive school year of employment by the district in a position or positions requiring certification qualifications, of the decision to reelect or not reelect the employee for the next succeeding school year to the position. In the event that the governing board does not give notice pursuant to this section on or before March 15, the employee shall be deemed reelected for the next succeeding school year. This subdivision shall apply only to probationary employees whose probationary period commenced during the 1983-84 fiscal year or any fiscal year thereafter.]

Outcome Rationale: San Jose Unified School District (SJUSD) and the San Jose Teacher's Association have worked together over the last couple of years to try to develop and implement an innovative teacher evaluation and support system that would improve the quality of education provided to the District's students. A collaborative process, including during the course of bargaining the latest contract, led to an agreement to implement a new teacher evaluation system. As part of that new evaluation system, both parties saw it necessary to waive existing *Education Code* that prescribes the probationary period for teachers to be two years under all circumstances. Both parties believe the evaluation period should be more flexible, allowing the District to grant permanent status after one year, if appropriate, or to allow a third year of probationary status if further evaluation and support are required. The most recent contract includes an agreement to jointly pursue a waiver of the California *Education Code* as necessary to enable both the granting of permanent status after the first year of probationary status and the granting of a third year of probationary status.

This is necessary to facilitate local agency operations, particularly as it focuses on the new evaluation system and ensuring that teachers are receiving ongoing and timely feedback about their instructional practice that will contribute to their professional growth. Exceptional teachers should be granted permanent status as soon as they demonstrate the merit as evidenced by a thorough and thoughtful evaluation process. Teachers who would benefit from an additional year of support should not be subjected to the harsh consequences of non-reelection if an additional year of probationary status would ensure that they become a highly functioning component of the educational system.

If granted the waiver, SJUSD and SJTA intend to comply with all current requirements in *Education Code* 44929.21 (b) with the exception of the above alternative to the strict two year probationary period.

Student Population: 33306

City Type: Urban

Public Hearing Date: 10/10/2013
Public Hearing Advertised: Published in the Central Office lobby and on the school district's website

Local Board Approval Date: 10/10/2013

Community Council Reviewed By: None, not necessary
Community Council Reviewed Date: 8/1/2013
Community Council Objection: N
Community Council Objection Explanation:

Audit Penalty YN: N

Categorical Program Monitoring: N

Submitted by: Mr. Jason Willis
Position: Assistant Superintendent
E-mail: jwillis@sjusd.org
Telephone: 408-535-6650
Fax:

Bargaining Unit Date: 09/19/2013
Name: San Jose Teachers Association
Representative: Jennifer Thomas
Title: President
Position: Support
Comments:

California State Board of Education

Meeting Agenda Items for March 12-13, 2014

WAIVER ITEM W-20

ITEM #W-20

CALIFORNIA STATE BOARD OF EDUCATION

MARCH 2014 AGENDA

☒ **Specific Waiver**

SUBJECT	
Request by **Stanislaus Union Elementary School District**, under the authority of California *Education Code* Section 41382, for a renewal to waive portions of *Education Code* sections 41376(a), (c), and (d) and/or 41378(a) through (e), relating to class size penalties for kindergarten through grade three. For kindergarten, the overall class size average is 31 to one with no class larger than 33. For grades one through three, the overall class size average is 30 to one with no class larger than 32. Waiver Number: 9-11-2013	☒ **Action** ☒ **Consent**

SUMMARY OF THE ISSUE(S)

Request by the Stanislaus Union Elementary School District (UESD), under the authority of California *Education Code (EC)* Section 41382, for a renewal to waive portions of *EC* sections 41376(a), (c), and (d) and/or 41378(a) through (e), relating to class size penalties for kindergarten through grade three. The California Department of Education (CDE) recommends that the class size penalty for grades one through three be waived provided that for the 2013–14 fiscal year the overall average and individual class size average is not greater than the CDE recommended class size noted on Attachment 1.

Authority for Waiver: *EC* Section 33050

RECOMMENDATION

☐ **Approval** ☒ **Approval with conditions** ☐ **Denial**

The CDE recommends that the class size penalties for grades one through three be waived provided that the overall average and individual class size average is not greater than the CDE recommended class size for the 2013–14 fiscal year as noted on Attachment 1. Should the district exceed this new limit, the class size penalty would be applied per statute.

The CDE also recommends that the State Board of Education (SBE) find that the class size penalty provisions of *EC* sections 41376 and/or 41378 will, if not waived, prevent the districts from developing more effective educational programs to improve instruction in reading and mathematics for students in the classes specified in the districts' application.

SUMMARY OF KEY ISSUES

Statutes Related to Kindergarten Through Grade Three Class Size

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

- A single kindergarten class exceeds an average enrollment of 33.
- The average of all kindergarten classes exceeds 31.
- A single class in grades one through three exceeds an average enrollment of 32.
- The average of all grades one through three classes 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 approve an exemption to 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 is related to the K–3 grade-span adjustment (GSA) that increases the LCFF target funding for the K–3 grade span by 10.4 percent. (The LCFF target represents what an LEA would receive if the state had the resources to fully fund LCFF). As a condition of receiving this adjustment, school districts must meet one of the following conditions at each school site, which cannot be waived by the State Board of Education:

- If a school site's average class enrollment in K–3 was more than 24 pupils in the prior year, make progress toward maintaining, at that school site, an average class enrollment in K–3 of not more than 24 pupils.
- If a school site's average class enrollment in K–3 was 24 pupils or less in the prior year, 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 funding.

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 several reasons. For instance, the district could have negotiated an alternative to the K–3 GSA class size average that exceeds the class size penalty levels. Similarly, districts could be meeting the conditions for the K–3 GSA by making progress towards achieving an average class size of 24 at a school site, but still exceed the levels that trigger a class size penalty.

District's Request

The district is requesting, under the authority of *EC* Section 41382, that the SBE waive subdivisions (a) through (e) of *EC* Section 41378 and/or subdivisions (a), (c), and (d) of *EC* Section 41376, which provide a penalty when the district exceeds the class sizes noted above and on Attachment 1. The district states that without the waiver, the core reading and math programs will be compromised by the fiscal penalties incurred. The actual and/or estimated annual penalty, should the district increase the class size average without a waiver is provided on Attachment 1.

School districts have absorbed significant funding cuts since 2008–09 and have had to take cost-cutting measures, which include increasing class sizes, in order to remain solvent. While the outlook for school funding is better than it has been in many years, it could take several years for districts to have the resources necessary to restore fully their prior service levels. Therefore, consideration of this and similar waivers for the current and prior year is warranted.

CDE Recommendation

The CDE recommends that the class size penalties for kindergarten and/or grades one through three be waived, for the recommended period shown on Attachment 1, provided the overall average and individual class size average is not greater than the CDE recommended level shown on Attachment 1. Should the district exceed these conditions, the class size penalty will be applied per statute.

SUMMARY OF PREVIOUS STATE BOARD OF EDUCATION DISCUSSION AND ACTION

Since September 2009, the SBE has approved all kindergarten through grade three class size penalty waiver requests as proposed by the CDE through fiscal year 2013–14. Before the September 2009 board meeting, no waivers had been submitted since 1999.

FISCAL ANALYSIS (AS APPROPRIATE)

See Attachment 1 for estimated penalty amounts for each district without the waiver approval.

ATTACHMENT(S)

Attachment 1: List of Waiver Numbers, Districts, and Information Regarding Each Waiver (1 page)

Attachment 2: Stanislaus Union Elementary School District Specific Waiver 9-11-2013 (2 pages) (Original waiver request is signed and on file in the Waiver Office.)

District(s) Requesting Kindergarten Through Grade Three Class Size Penalty Waiver(s)

Education Code sections 41376 and 41378:
For Kindergarten: Overall average 31; no class larger than 33.
For Grades 1–3: Overall average 30; no class larger than 32.

Waiver Number	District/County and District Code	Period of Request	District's Request	CDE Recommended (New Maximum)	Local Board Approval Date	*Bargaining Unit, Representative(s) Consulted, Date, and Position	Potential Annual Penalty Without Waiver	Previous Waivers
9-11-2013	Stanislaus Union Elementary School District 50-71282	**Requested:** July 1, 2013, to June 30, 2014 **Recommended**: July 1, 2013, to June 29, 2014	For 1–3: Overall average 31; no class size larger than 34	For 1–3: Overall average 31; no class size larger than 34	11/14/13	Not Required	$212,575 FY 2013–14	Yes 7/1/12 to 6/29/13

*For specific waivers bargaining unit consultation is not required.

Created by California Department of Education
January 2, 2014

California Department of Education
WAIVER SUBMISSION - Specific

CD Code: 5071282 Waiver Number: 9-11-2013 Active Year: 2013

Date In: 11/17/2013 9:53:01 AM

Local Education Agency: Stanislaus Union Elementary School District
Address: 2410 Janna Ave.
Modesto, CA 95350

Start: 7/1/2013 End: 6/30/2014

Waiver Renewal: Y
Previous Waiver Number: 19-6-2013-W-13 Previous SBE Approval Date: 9/4/2013

Waiver Topic: Class Size Penalties
Ed Code Title: Over Limit on Grades 1-3
Ed Code Section: portions of 41376 (a), (c), and (d)
Ed Code Authority: 41382

Ed Code or *CCR* to Waive: Under the authority of Ed Code Section 41382 this is to request a waiver of portions of Ed Code Section 41376(a), (c) and (d) relating to class size penalities for grades one through three. The Superintendent of Public Instruction, in computing apportionments and allowance 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: (1) for grades 1 to 3, inclusive, he shall determine the number of classes, the 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 class is 30.0 or less, there shall be no excess declared. For those districts which have one or more clasaes 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.

Outcome Rationale: The district had been experiencing a continuing history of declining enrollment during the Great Recession and even after the official end of that period. In order to maintain fiscal solvency, the district negotiated reduced instructional days and furlough days with its certificated and classified units for a multiple number of years. Additionally, the district increased class sizes to help offset the steep reduction in state and federal funding to the district. The district is attempting to maximize funding while maintaining a quality educational program. We believe that this excess enrollment situation does not impede our educational delivery. With the onset of LCFF we are awaiting clarification and guidance on what the SBE regulations will be and will mean to our district in giving us the ability to maximize the new funding model to best meet the needs of all of our student populations.

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 $212,575 could be incurred by the district without this waiver.

Student Population: 3171

City Type: Urban

Local Board Approval Date: 11/14/2013

Audit Penalty YN: N

Categorical Program Monitoring: N

Submitted by: Ms. Sandy Putnam
Position: Chief Business Official
E-mail: sputnam@stanunion.k12.ca.us
Telephone: 209-529-9546 x1000
Fax:

California State Board of Education

Meeting Agenda Items for March 12-13, 2014

WAIVER ITEM W-21

ITEM #W-21

CALIFORNIA STATE BOARD OF EDUCATION

MARCH 2014 AGENDA

☒ **General Waiver**

SUBJECT	
Request by **Redwood City Elementary School District** to waive portions of California *Education Code* Section 41376(b) and (e), relating to class size penalties for grades four through eight. A district's current class size maximum is the greater of the 1964 statewide average of 29.9 to one or the district's 1964 average. Waiver Number: 28-10-2013	☒ **Action** ☒ **Consent**

SUMMARY OF THE ISSUES

Request by Redwood City Elementary School District (ESD) to waive portions of California *Education Code* (*EC*) Section 41376(b) and (e), relating to the class size penalty calculation for grades four through eight. A district's current class size maximum is the greater of the 1964 statewide average of 29.9 to one or the district's 1964 average. The California Department of Education (CDE) recommends that the class size penalty for grades four through eight be waived provided that for fiscal year 2013–14 the class size average is not greater than the CDE recommended new maximum shown on Attachment 1.

Authority for Waiver: *EC* Section 33050

RECOMMENDATION

☐ **Approval** ☒ **Approval with conditions** ☐ **Denial**

The CDE recommends that the class size penalty in grades four through eight be waived provided for fiscal year 2013–14 the class size average is not greater than the recommended maximum average shown on Attachment 1. The waiver does not exceed two years less one day, therefore, *EC* Section 33051(b) will not apply, and the district must reapply to continue the waiver. Should the district exceed this limit, the class size penalty would be calculated as required by statute.

SUMMARY OF KEY ISSUES

Statute Related to Grades Four Through Eight Class Size
The class size requirement for grades four through eight has been in law since the late 1960's and is the subject of this waiver. This law requires the CDE to apply a financial penalty to a school district's Local Control Funding Formula (LCFF) funding (class size penalties) if the district exceeds the greater of:

- The 1964 statewide class size average of 29.9 for grades four through eight; or
- The district's class size average for grades four through eight from 1964.

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 29.9 in all grade four through eight classes. *EC* Section 33051 allows the SBE to approve an exemption to this penalty under the general waiver authority.

The 4–6 and 7–8 grade span funding rates for the LCFF Target do not include an adjustment like the K–3 grade span, so there are no additional class size requirements for grades four through eight.

District's Request
The district is requesting that the SBE waive subdivisions (b) and (e) of *EC* Section 41376, which provide a penalty when the district exceeds the class sizes noted above and on Attachment 1. The actual and/or estimated annual penalty, should the district increase the class size average without a waiver, is provided on Attachment 1.

School districts have absorbed significant funding cuts since 2008–09 and have had to take cost-cutting measures, which include increasing class sizes, in order to remain solvent. While the outlook for school funding is better than it has been in many years, it could take several years for districts to have the resources necessary to restore fully their prior service levels. Therefore, consideration of this and similar waivers for the current and prior year is warranted.

The CDE recommends that the class size penalties for grades four through eight be waived, for the recommended period shown on Attachment 1, provided the overall average is not greater than the CDE recommended level shown on Attachment 1. Should the district exceed these conditions, the class size penalty will be applied per statute.

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

SUMMARY OF PREVIOUS STATE BOARD OF EDUCATION DISCUSSION AND ACTION

Since September 2009, the SBE has approved all grades four through eight class size penalty waiver requests as proposed by the CDE through fiscal year 2013–14. Before the September 2009 board meeting, no waivers had been submitted since 1999.

FISCAL ANALYSIS (AS APPROPRIATE)

See Attachment 1 for estimated penalty amounts for each district without the waiver approval.

ATTACHMENT(S)

Attachment 1: List of Waiver Numbers, Districts, and Information Regarding Each Waiver (1 page)

Attachment 2: Redwood City Elementary School District General Waiver Request 28-10-2013 (2 pages) (Original waiver request is signed and on file in the Waiver Office.)

District(s) Requesting Grades Four Through Eight Class Size Penalty Waiver(s)

California *Education Code* Section 41376(b) and (e): A district's current class size maximum is the greater of 29.9 to one (1964 statewide average) or the district's 1964 average.

Waiver Number	District/County and District Code	Period of Request	1964 Class Size Average (Current Maximum)	District's Request	CDE Recommended (New Maximum)	Bargaining Unit, Representatives Consulted, Date, and Position	Local Board & Public Hearing Approval Date	Potential Annual Penalty Without Waiver	Previous Waivers
28-10-2013	Redwood City Elementary School District 41-69005	**Requested:** July 1, 2013, to June 30, 2014 **Recommended**: July 1, 2013, to June 29, 2014	29.9	32	32	Redwood City Teachers Association, Brett Baird, President 9/17/13 **Support**	10/23/13	$1,817,441 FY 2013-14	Yes 7/1/10 to 6/29/12

Created by California Department of Education
January 8, 2014

California Department of Education
WAIVER SUBMISSION - General

CD Code: 4169005 Waiver Number: 28-10-2013 Active Year: 2013

Date In: 10/30/2013 12:04:24 PM

Local Education Agency: Redwood City Elementary School District
Address: 750 Bradford St.
Redwood City, CA 94063

Start: 7/1/2013 End: 6/30/2014

Waiver Renewal: N
Previous Waiver Number: Previous SBE Approval Date:

Waiver Topic: Class Size Penalties
Ed Code Title: Over Limit on Grades 4-8
Ed Code Section: portions of 41376 (b) and (e)
Ed Code Authority: 33050

Ed Code or *CCR* to Waive: To Waive the Class Size Penalty (Grades 4-8)
41376(b) and (e) 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.]

Outcome Rationale: Due to significant reduction in State funding, the District needs to increase its class sizes. This will allow the District to balance its budget, keep the minimum reserve required by the State, and remain solvent. This will also allow the District to educate and serve over 9000 students in the District.

Student Population: 9004

City Type: Urban

Public Hearing Date: 10/23/2013
Public Hearing Advertised: Newspaper

Local Board Approval Date: 10/23/2013

Community Council Reviewed By: School Board
Community Council Reviewed Date: 10/23/2013
Community Council Objection: N

Audit Penalty YN: N

Categorical Program Monitoring: N

Submitted by: Mr. Wael Saleh
Position: Chief Business Official
E-mail: wsaleh@rcsdk8.net
Telephone: 650-423-2232
Fax:

Bargaining Unit Date: 04/30/2010
Name: Redwood City Teacher's Association
Representative: Brett Baird
Title: President
Position: Support

California State Board of Education

Meeting Agenda Items for March 12-13, 2014

WAIVER ITEM W-22

ITEM #W-22

CALIFORNIA STATE BOARD OF EDUCATION

MARCH 2014 AGENDA

☒ **General Waiver**

SUBJECT

Request by six local educational agencies to waive portions of California *Education Code* Section 52055.740(a), regarding class size reduction requirements under the Quality Education Investment Act.

Waiver Numbers: Mt. Diablo Unified School District 25-12-2013
Mt. Diablo Unified School District 26-12-2013
Oakland Unified School District 4-1-2014
Oakland Unified School District 5-1-2014
Oakland Unified School District 6-1-2014
Oakland Unified School District 7-1-2014
Oakland Unified School District 8-1-2014
Oakland Unified School District 9-1-2014
Oakland Unified School District 10-1-2014
Oakland Unified School District 11-1-2014
Oakland Unified School District 12-1-2014
Oakland Unified School District 13-1-2014
Oakland Unified School District 14-1-2014
Oakland Unified School District 15-1-2014
Oakland Unified School District 16-1-2014
Oakland Unified School District 17-1-2014
San Jose Unified School District 33-12-2013
San Jose Unified School District 34-12-2013
Santa Ana Unified School District 35-12-2013
Santa Ana Unified School District 36-12-2013
Santa Ana Unified School District 37-12-2013
Santa Ana Unified School District 38-12-2013
Santa Maria-Bonita School District 18-12-2013
Santa Paula Unified School District 16-12-2013

☒ **Action**

☒ **Consent**

SUMMARY OF THE ISSUES

See Attachments 1, 3, 5, 7, 9, 11, 13, 15, 17, 19, 21, 23, 25, 27, 29, 31, 33, 35, 37, 39, 41, 43, 45, and 47 for details.

Authority for Waiver: *Education Code* (*EC*) Section 33050

RECOMMENDATION

☐ **Approval** ☒ **Approval with conditions** ☐ **Denial**

See Attachments 1, 3, 5, 7, 9, 11, 13, 15, 17, 19, 21, 23, 25, 27, 29, 31, 33, 35, 37, 39, 41, 43, 45, and 47 for details.

SUMMARY OF KEY ISSUES

Class Size Reduction

Schools participating in the Quality Education Investment Act (QEIA) program were monitored by their county offices of education for compliance with program requirements for the first time at the end of the 2008–09 school year. At that time, local educational agencies were required to demonstrate one-third progress toward full implementation of program requirements. Monitoring for compliance with second-year program requirements was completed to ensure that schools made two-thirds progress toward full implementation in the 2009–10 school year. QEIA schools were required to demonstrate full compliance with all program requirements at the end of the 2010–11 school year.

QEIA schools are required to reduce class sizes by 5 students compared to class sizes in the base year (either 2005–06 or 2006–07), or to an average of 25 students per classroom, whichever is lower, with no more than 27 students per classroom regardless of the average classroom size. The calculation is done by grade level, as each grade level has a target average class size based on QEIA class size reduction (CSR) rules. For small schools with a single classroom at each grade level, some grade level targets may be very low. If, for example, a school had a single grade four classroom of 15 students in 2005–06, the school's target QEIA class size for grade four is 10 students. Absent a waiver, an unusually low grade level target may result in a greater number of combination classes at the school, or very small classes at the grade level, which is prohibitively costly and may result in withdrawal or termination from the program.

QEIA schools are required to not increase any other (non-core) class sizes in the school above the size used during the 2005–06 school year.

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), available at http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=EDC&sectionNum=33051.

SUMMARY OF PREVIOUS STATEBOARD OF EDUCATION DISCUSSION AND ACTION

The California Department of Education (CDE) Waiver Office has previously presented requests to the State Board of Education (SBE) to waive the CSR target as defined by QEIA. Over 90 percent of CSR waiver requests previously presented have requested adjusted class size averages of 25.0 or lower, and have indicated a commitment to meeting that target for the life of the grant; because of the current fiscal climate, these

have been approved by the SBE. A small number of CSR waiver requests have proposed CSR targets above 25.0; these have been denied. However, it is noted that QEIA is supplemental funding. Therefore, the CDE will continue to weigh QEIA CSR in the context of fiscal changes. If class sizes are generally decreased in the coming year, the CDE would expect proportional decreases in QEIA class sizes.

FISCAL ANALYSIS (AS APPROPRIATE)

There are no statewide costs as a result of waiver approval. If the waiver is denied, the school must implement the CSR targets based on statute requirements to stay in the program. Any school in the program not meeting those targets will risk the loss of future funding. The QEIA statute calls for any undistributed annual QEIA funding to be redistributed to other schools currently in the program (no new schools are funded).

ATTACHMENT(S)

Attachment 1: Mt. Diablo Unified School District Request 25-12-2013 for a Quality Education Investment Act Class Size Reduction Waiver (2 Pages)

Attachment 2: Mt. Diablo Unified School District General Waiver Request 25-12-2013 (3 Pages) (Original waiver request is signed and on file in the Waiver Office.)

Attachment 3: Mt. Diablo Unified School District Request 26-12-2013 for a Quality Education Investment Act Class Size Reduction Waiver (2 Pages)

Attachment 4: Mt. Diablo Unified School District General Waiver Request 26-12-2013 (3 Pages) (Original waiver request is signed and on file in the Waiver Office.)

Attachment 5: Oakland Unified School District Request 4-1-2014 for a Quality Education Investment Act Class Size Reduction Waiver (2 Pages)

Attachment 6: Oakland Unified School District General Waiver Request 4-1-2014 (2 Pages) (Original waiver request is signed and on file in the Waiver Office.)

Attachment 7: Oakland Unified School District Request 5-1-2014 for a Quality Education Investment Act Class Size Reduction Waiver (2 Pages)

Attachment 8: Oakland Unified School District General Waiver Request 5-1-2014 (2 Pages) (Original waiver request is signed and on file in the Waiver Office.)

Attachment 9: Oakland Unified School District Request 6-1-2014 for a Quality Education Investment Act Class Size Reduction Waiver (2 Pages)

Attachment 10: Oakland Unified School District General Waiver Request 6-1-2014 (2 Pages) (Original waiver request is signed and on file in the Waiver Office.)

Attachment 11: Oakland Unified School District Request 7-1-2014 for a Quality Education Investment Act Class Size Reduction Waiver (1 Page)

Attachment 12: Oakland Unified School District General Waiver Request 7-1-2014 (2 Pages) (Original waiver request is signed and on file in the Waiver Office.)

Attachment 13: Oakland Unified School District Request 8-1-2014 for a Quality Education Investment Act Class Size Reduction Waiver (2 Pages)

Attachment 14: Oakland Unified School District General Waiver Request 8-1-2014 (2 Pages) (Original waiver request is signed and on file in the Waiver Office.)

Attachment 15: Oakland Unified School District Request 9-1-2014 for a Quality Education Investment Act Class Size Reduction Waiver (1 Page)

Attachment 16: Oakland Unified School District General Waiver Request 9-1-2014 (2 Pages) (Original waiver request is signed and on file in the Waiver Office.)

Attachment 17: Oakland Unified School District Request 10-1-2014 for a Quality Education Investment Act Class Size Reduction Waiver (2 Pages)

Attachment 18: Oakland Unified School District General Waiver Request 10-1-2014 (2 Pages) (Original waiver request is signed and on file in the Waiver Office.)

Attachment 19: Oakland Unified School District Request 11-1-2014 for a Quality Education Investment Act Class Size Reduction Waiver (2 Pages)

Attachment 20: Oakland Unified School District General Waiver Request 11-1-2014 (2 Pages) (Original waiver request is signed and on file in the Waiver Office.)

Attachment 21: Oakland Unified School District Request 12-1-2014 for a Quality Education Investment Act Class Size Reduction Waiver (2 Pages)

Attachment 22: Oakland Unified School District General Waiver Request 12-1-2014 (2 Pages) (Original waiver request is signed and on file in the Waiver Office.)

Attachment 23: Oakland Unified School District Request 13-1-2014 for a Quality Education Investment Act Class Size Reduction Waiver (2 Pages)

Attachment 24: Oakland Unified School District General Waiver Request 13-1-2014 (2 Pages) (Original waiver request is signed and on file in the Waiver Office.)

Attachment 25: Oakland Unified School District Request 14-1-2014 for a Quality Education Investment Act Class Size Reduction Waiver (2 Pages)

Attachment 26: Oakland Unified School District General Waiver Request 14-1-2014 (2 Pages) (Original waiver request is signed and on file in the Waiver Office.)

Attachment 27: Oakland Unified School District Request 15-1-2014 for a Quality Education Investment Act Class Size Reduction Waiver (2 Pages)

Attachment 28: Oakland Unified School District General Waiver Request 15-1-2014 (2 Pages) (Original waiver request is signed and on file in the Waiver Office.)

Attachment 29: Oakland Unified School District Request 16-1-2014 for a Quality Education Investment Act Class Size Reduction Waiver (1 Page)

Attachment 30: Oakland Unified School District General Waiver Request 16-1-2014 (2 Pages) (Original waiver request is signed and on file in the Waiver Office.)

Attachment 31: Oakland Unified School District Request 17-1-2014 for a Quality Education Investment Act Class Size Reduction Waiver (1 Page)

Attachment 32: Oakland Unified School District General Waiver Request 17-1-2014 (2 Pages) (Original waiver request is signed and on file in the Waiver Office.)

Attachment 33: San Jose Unified School District Request 33-12-2013 for a Quality Education Investment Act Class Size Reduction Waiver (1 Page)

Attachment 34: San Jose Unified School District General Waiver Request 33-12-2013 (2 Pages) (Original waiver request is signed and on file in the Waiver Office.)

Attachment 35: San Jose Unified School District Request 34-12-2013 for a Quality Education Investment Act Class Size Reduction Waiver (1 Page)

Attachment 36: San Jose Unified School District General Waiver Request 34-12-2013 (2 Pages) (Original waiver request is signed and on file in the Waiver Office.)

Attachment 37: Santa Ana Unified School District Request 35-12-2013 for a Quality Education Investment Act Class Size Reduction Waiver (2 Pages)

Attachment 38: Santa Ana Unified School District General Waiver Request 35-12-2013 (8 Pages) (Original waiver request is signed and on file in the Waiver Office.)

Attachment 39: Santa Ana Unified School District Request 36-12-2013 for a Quality Education Investment Act Class Size Reduction Waiver (2 Pages)

Attachment 40: Santa Ana Unified School District General Waiver Request 36-12-2013 (7 Pages) (Original waiver request is signed and on file in the Waiver Office.)

Attachment 41: Santa Ana Unified School District Request 37-12-2013 for a Quality Education Investment Act Class Size Reduction Waiver (2 Pages)

Attachment 42: Santa Ana Unified School District General Waiver Request 37-12-2013 (7 Pages) (Original waiver request is signed and on file in the Waiver Office.)

Attachment 43: Santa Ana Unified School District Request 38-12-2013 for a Quality Education Investment Act Class Size Reduction Waiver (1 Page)

Attachment 44: Santa Ana Unified School District General Waiver Request 38-12-2013 (6 Pages) (Original waiver request is signed and on file in the Waiver Office.)

Attachment 45: Santa Maria-Bonita School District Request 18-12-2013 for a Quality Education Investment Act Class Size Reduction Waiver (2 Pages)

Attachment 46: Santa Maria-Bonita School District General Waiver Request 18-12-2013 (3 Pages) (Original waiver request is signed and on file in the Waiver Office.)

Attachment 47: Santa Paula Unified School District Request 16-12-2013 for a Quality Education Investment Act Class Size Reduction Waiver (2 Pages)

Attachment 48: Santa Paula Unified School District General Waiver Request 16-12-2013 (2 Pages) (Original waiver request is signed and on file in the Waiver Office.)

Waiver Number: 25-12-2013 **Period of Request:** July 1, 2013, to June 29, 2015
Period Recommended: July 1, 2013, to June 30, 2014
Mt. Diablo High School **CDS Code**: 07 61754 0734566
Mt. Diablo Unified School District

Local Educational Agency Request:

Mt. Diablo Unified School District (USD) is a suburban district located in Contra Costa County with a student population of approximately 32,000 students. Mt. Diablo High School (HS) serves 1,300 students in grades nine through twelve. Monitoring performed by the Contra Costa County Office of Education indicates that the class size reduction (CSR) requirements of the Quality Education Investment Act (QEIA) were fully met by Mt. Diablo HS in school year 2012–13, but the district is asking for an alternative QEIA CSR target for school years 2013–14 and 2014–15. The school's current QEIA CSR targets for core classes of English, mathematics, history-social science, and science are an average of 17.4, 22.6, 20.1, and 20.0 in grades nine through twelve, respectively.

Mt. Diablo USD states that student enrollment attrition enabled the school to create student schedules and remain at or under the very low CSR targets, but now students do not want to leave and enrollment is increasing. Additionally, the district began a high school newcomer program for English language learners (World Academy) and enrollment is growing faster than predicted. The district states that while it could add additional sections, the school is experiencing difficulty finding highly qualified teachers to teach the plethora of specialized part-time jobs that would be created by adding these sections.

The district states that increasing CSR targets would provide the school with enough flexibility to keep students at their home school and build increased flexibility in scheduling placement of every student in the Career Tech Education academies. Further, the district considered assigning students to other schools that are not in their community, but parents, students, and staff would prefer students to remain at their home school because they recognize the importance of the community connection to the school for parents and students. In addition, the connection for high school students can be a tipping point for involvement in co-curricular or extra-curricular activities because moving students outside of their community school can impede parent involvement and keep students from achieving success.

Mt. Diablo USD requests a waiver of the QEIA CSR targets for grades nine through twelve at Mt. Diablo HS for school years 2013–14 and 2014–15, and the establishment of an alternative CSR target of 25.0 students on average in core classes in grades nine through twelve.

California Department of Education Recommendation and Conditions:

The California Department of Education (CDE) supports Mt. Diablo USD's request to increase its CSR targets for grades nine through twelve at Mt. Diablo HS for school year 2013–14.

The CDE recommends approval with the following conditions: (1) Applies only to grades nine through twelve at Mt. Diablo HS for school year 2013–14; (2) Mt. Diablo HS increases enrollment to 25.0 students on average in core classes in grades nine through twelve;

(3) No core class in grades nine through twelve may exceed 27 students per classroom regardless of the average classroom size; and (4) Within 30 days of approval of this waiver, Mt. Diablo USD must provide to the CDE a description, including costs covered by QEIA funds, of professional development activities and any other school improvement activities added to the school improvement plan as a result of the additional funding now available, if any, through this waiver of the CSR requirement.

Reviewed by Mt. Diablo HS Schoolsite Council on December 16, 2013.

Opposed by Mt. Diablo Education Association, December 17, 2013.

Local Board Approval: December 16, 2013.

California Department of Education
WAIVER SUBMISSION - General

CD Code: 0761754 Waiver Number: 25-12-2013 Active Year: 2013

Date In: 12/18/2013 1:14:46 PM

Local Education Agency: Mt. Diablo Unified School District
Address: 1936 Carlotta Dr.
Concord, CA 94519

Start: 7/1/2013 End: 6/29/2015

Waiver Renewal: N
Previous Waiver Number: Previous SBE Approval Date:

Waiver Topic: Quality Education Investment Act
Ed Code Title: Class Size Reduction Requirements
Ed Code Section: 52055.740(a)
Ed Code Authority: 33050

Ed Code or *CCR* to Waive: (C)For classes in English language arts, reading, mathematics, science, or history and social science courses in grades 4 to 12, inclusive, an average classroom size that is the lesser of clause (i) or (ii), as follows:
[(i)At least five pupils fewer per classroom than was the average in 2006-07.
(ii)An average of 25 pupils per classroom.]
(iii)For purposes of this subparagraph, average classroom size shall be calculated at the grade level based on the number of subject-specific classrooms in that grade at the schoolsite. [If the subject-specific classrooms at the school averaged fewer than 25 pupils per classroom during the 2005-06 school year that lower average shall be used as the "average in 2006-07" for purposes of this subparagraph.]A school that receives funding under this article shall not have a class in English language arts, reading, mathematics, science, or history and social science in grades 4 to 12, inclusive, with more than 27 pupils regardless of its average classroom size.

Outcome Rationale: Mt. Diablo High School's current QEIA CSR target averages for English, ELD, mathematics, history-social science, and science grades nine through twelve are 17, 22, 20, and 20, respectively. Monitoring performed by the Contra Costa County Office of Education indicates that the Class Size Reduction (CSR) requirements of the Quality Education Investment Act (QEIA) were fully met by Mt. Diablo HS for 2012-13 but the school is on track to not meet the targets for 2013-2014. We are requesting an increase in core class size averages, grades 9 – 12 to 25:1.

Historically student enrollment attrition at Mt. Diablo HS enabled the school to meet these very low targets. The school now has a delightful dilemma – students do not want to leave, and enrollment is increasing slightly. While small, the attrition enabled the school to create student schedules and remain at or under the class size averages. Additionally, the Mt. Diablo Unified School District began a high school newcomer program for English Language Learners (World Academy). This program is located at Mt. Diablo High School. Enrollment in the World Academy is growing at rates we were not able to predict. While the district could add additional sections, the school is experiencing difficulty finding highly qualified teachers to teach the

plethora of specialized tiny (one or two sections per course) part-time jobs that would be created by adding these sections.

An increase in the class size averages, grades 9 – 12 to 25:1 will provide the school with enough flexibility to keep students at their home school. The increase in class size for core content classes will also build in increased flexibility in scheduling that better supports the school's wall-to-wall academies. This year, for the first time, every student at Mt. Diablo HS is a member of an academy with a defined CTE pathway (with the exception of World Academy). This was gradually implemented at Mt. Diablo beginning in the 2010 – 2011 school year and is directly related to the school's increase in API from 618 to 679 in years 2009 to 2013. Increasing core class size averages will enable staff to have more flexibility in placing students in academies and assist the school with continuing this positive trend.

The central office and school administration considered overflowing students to other high schools that are not their community school. Parents, students, and staff would prefer students to remain at their home school. We recognize the importance of the community connection to the school for parents and students. For high school students the connection can be a tipping point for involvement in co-curricular or extra- curricular activities. Moving students outside of their community school can impede parent involvement. Mt. Diablo's ability to keep students in their community school is important for student success and to support ongoing improvements.

Student Population: 1300

City Type: Suburban

Public Hearing Date: 12/16/2013
Public Hearing Advertised: Newspaper, at the District office, and on the District's website as part of the posted Board agenda. It was also posted at the school.

Local Board Approval Date: 12/16/2013

Community Council Reviewed By: Schoolsite Council
Community Council Reviewed Date: 12/16/2013
Community Council Objection: Y
Community Council Objection Explanation: Not able to see the online submission, concerns about loss of teachers next year

Audit Penalty YN: N

Categorical Program Monitoring: N

Submitted by: Ms. Lorie O'Brien
Position: Assist. Dir. Categoricals and School Support
E-mail: obrienl@mdusd.org
Telephone: 925-682-8000 x4034
Fax: 925-689-0597

Bargaining Unit Date: 12/17/2013
Name: Mt. Diablo Education Association
Representative: Guy Moore
Title: President
Position: Oppose
Comments: no assurance that class sizes will not increase to 25 to 1 levels and result in teachers being laid

Waiver Number: 26-12-2013 **Period of Request:** July 1, 2013, to June 29, 2015
Period Recommended: July 1, 2013, to June 30, 2014
Oak Grove Middle School **CDS Code**: 07 61754 6004196
Mt. Diablo Unified School District

Local Educational Agency Request:

Mt. Diablo Unified School District (USD) is a suburban district located in Contra Costa County with a student population of approximately 32,000 students. Oak Grove Middle School (MS) serves 682 students in grades six through eight. Monitoring performed by the Contra Costa County Office of Education indicates that the class size reduction (CSR) requirements of the Quality Education Investment Act (QEIA) were fully met by Oak Grove MS in school year 2012–13, but the district is asking for an alternative QEIA CSR target for school years 2013–14 and 2014–15. The school's current QEIA CSR targets for core classes of English, mathematics, history-social science, and science are an average of 19.1, 23.7, and 20.1, in grades six through eight, respectively.

Mt. Diablo USD states that the low CSR targets are creating unique scheduling and enrollment issues as recent trends show increasing mid-year enrollment. The district further states that while it could add additional class sections, mid-year hiring creates difficulty with finding highly qualified teachers willing to come on board to teach part-time. The district also states that while school staff recognizes the benefit of small class sizes, the current class size restrictions impede the school's ability to appropriately place a student in an intervention or advanced core class appropriate to his or her needs, thus inadvertently becoming a barrier to equal access for students. Additionally, the district says it has begun a middle school newcomer program for English language learners (World Academy) at Oak Grove MS and enrollment is growing faster than predicted. Lastly, the district says that moving students outside of their community school impedes parent involvement and access so critical at a Title I school with a predominately English learner population, and would also interfere with the important early adolescent development of identity and forming positive peer groups.

Mt. Diablo USD requests a waiver of the QEIA CSR targets for grades six through eight at Oak Grove MS for school years 2013–14 and 2014–15, and the establishment of an alternative CSR target of 25.0 students on average in core classes in grades six through eight.

California Department of Education Recommendation and Conditions:

The California Department of Education (CDE) supports Mt. Diablo USD's request to increase its CSR targets for grades six through eight at Oak Grove MS for school year 2013–14.

The CDE recommends approval with the following conditions: (1) Applies only to grades six through eight at Oak Grove MS for school year 2013–14; (2) Oak Grove MS increases enrollment to 25.0 students on average in core classes in grades six through eight; (3) No core class in grades six through eight may exceed 27 students per classroom regardless of the average classroom size; and (4) Within 30 days of approval of this waiver, Mt. Diablo USD must provide to the CDE a description, including costs covered by QEIA funds, of professional development activities and any other school improvement activities added to

the school improvement plan as a result of the additional funding now available, if any, through this waiver of the CSR requirement.

Reviewed by Oak Grove MS Schoolsite Council on December 17, 2013.

Opposed by Mt. Diablo Education Teachers Association, December 17, 2013.

Local Board Approval: December 16, 2013.

California Department of Education
WAIVER SUBMISSION - General

CD Code: 0761754 Waiver Number: 26-12-2013 Active Year: 2013

Date In: 12/18/2013 1:29:00 PM

Local Education Agency: Mt. Diablo Unified School District
Address: 1936 Carlotta Dr.
Concord, CA 94519

Start: 7/1/2013 End: 6/29/2015

Waiver Renewal: N
Previous Waiver Number: Previous SBE Approval Date:

Waiver Topic: Quality Education Investment Act
Ed Code Title: Class Size Reduction Requirements
Ed Code Section: 52055.740(a)
Ed Code Authority: 33050

Ed Code or *CCR* to Waive: (C)For classes in English language arts, reading, mathematics, science, or history and social science courses in grades 4 to 12, inclusive, an average classroom size that is the lesser of clause (i) or (ii), as follows:
[(i)At least five pupils fewer per classroom than was the average in 2006-07.
(ii)An average of 25 pupils per classroom.]
(iii)For purposes of this subparagraph, average classroom size shall be calculated at the grade level based on the number of subject-specific classrooms in that grade at the schoolsite. [If the subject-specific classrooms at the school averaged fewer than 25 pupils per classroom during the 2005-06 school year that lower average shall be used as the "average in 2006-07" for purposes of this subparagraph.] A school that receives funding under this article shall not have a class in English language arts, reading, mathematics, science, or history and social science in grades 4 to 12, inclusive, with more than 27 pupils regardless of its average classroom size.

Outcome Rationale: Oak Grove Middle School's current QEIA CSR target averages for English, ELD, mathematics, history-social science, and science grades six through eight are 19.1, 23.7, and 20.1, respectively. Monitoring performed by the Contra Costa County Office of Education indicates that the Class Size Reduction (CSR) requirements of the Quality Education Investment Act (QEIA) were fully met by Oak Grove MS for 2012-13 and, at the time of the writing of this waiver request, the school is on track to meet the targets for 2013-2014. However, if mid-year enrollment continues to follow recent trends, the school may find itself unable to continue to meet these excessively low targets. While the district could add additional sections, mid-year hiring creates difficulty with finding highly qualified teachers willing to come on board to teach the specialized tiny (one or two sections per course) part-time jobs that would be created by adding these sections. Additionally, the excessively small classes that are necessary to maintain these grade level averages are creating unique scheduling and enrollment issues. We are requesting an increase in core class size averages, grades 6 – 8 to 25:1.

Oak Grove Middle School staff recognizes the benefit of small class sizes, however in the quest to ensure equity for all students, the current class size restrictions impede the school's ability to appropriately place a student in an intervention or advanced core class appropriate to their needs. Very small core class size averages have inadvertently become a barrier to equal access for students. If a student enrolls after September, staff often has the challenge of developing an appropriate schedule for students. Due to the small class sizes needed to achieve the low target averages, these more specialized classes fill quickly. Additionally, the Mt. Diablo Unified School District began a middle school newcomer program for English Language Learners (World Academy). This program is located at Oak Grove Middle School. Enrollment in the World Academy is growing at rates we were not able to predict.

The central office and school administration are considering overflowing students to other middle schools that are not their community school if class sizes continue to rise. Except for those cases where parents chose a transfer under School Choice transfer (NCLB), parents, students, and staff would prefer students to remain at their home school. We recognize the importance of the community connection to the school for parents and students. For middle school students the connection is an important one in their emerging adolescent identity and forming positive peer groups. Moving students outside of their community school can impede the parent involvement and access that is so critical at a Title I school with a predominately English learner population. Oak Grove's ability to keep students in their community school is important for student success and to support ongoing improvements.

Student Population: 682

City Type: Suburban

Public Hearing Date: 12/16/2013
Public Hearing Advertised: Newspaper, post at District office, and on the District's website as part of the posted Board agenda. It was also posted at the school.

Local Board Approval Date: 12/16/2013

Community Council Reviewed By: Schoolsite Council
Community Council Reviewed Date: 12/17/2013
Community Council Objection: Y
Community Council Objection Explanation: Skepticism about the waiver, the purpose of the chagne in class, and how it will benefit the school.

Audit Penalty YN: N

Categorical Program Monitoring: N

Submitted by: Ms. Lorie O'Brien
Position: Assist. Dir. Categoricals and School Support
E-mail: obrienl@mdusd.org
Telephone: 925-682-8000 x4034
Fax: 925-689-0597

Bargaining Unit Date: 12/17/2013
Name: Mt. Diablo Education Association
Representative: Guy Moore
Title: President
Position: Oppose
Comments: no assurance that class sizes will not increase to 25 to 1 levels and result in teachers being laid

Waiver Number: 4-1-2014 **Period of Request:** July 1, 2012, to June 30, 2013
Period Recommended: July 1, 2012, to June 30, 2013
ACORN Woodland Elementary School **CDS Code**: 01 61259 6002273
Oakland Unified School District

Local Educational Agency Request:

Oakland Unified School District (USD) is an urban district located in Alameda County with a student population of approximately 36,262 students. ACORN Woodland Elementary School (ES) serves 267 students in kindergarten and grades one through five. Monitoring performed by the Alameda County Office of Education indicated that the class size reduction (CSR) requirements of the Quality Education Investment Act (QEIA) were not fully met by ACORN Woodland ES in school year 2012–13. The school's current QEIA CSR targets for core classes of English, mathematics, history-social science, and science are 20.44 in kindergarten and grades one through three, and an average of 18.0 and 21.0 in grades four and five, respectively.

Oakland USD states that ACORN Woodland ES made a good-faith effort to stay within QEIA CSR targets in 2012–13, but more students enrolled in specific grade levels than expected. The district adds that the school made an effort to accommodate increased enrollment in kindergarten from neighborhood families during the course of the year, but alternative school placement options created a hardship for parents to transport their children. Furthermore, the district states that the percentage of students estimated to attrition, based on prior year trends, was less than expected for grades one through four. However, the district states that accommodating these students only slightly increased the grade level average.

Oakland USD requests a waiver of the QEIA CSR targets for kindergarten and grades one through four at ACORN Woodland ES for school year 2012–13, and the establishment of alternative CSR targets of 21.0, 22.0, 24.0, and 21.0 students per class in core classes in kindergarten and grades one through three, respectively, and 19.0 students on average in core classes in grade four.

California Department of Education Recommendation and Conditions:

The California Department of Education (CDE) supports Oakland USD's request to increase its QEIA CSR targets for kindergarten and grades one through four at ACORN Woodland ES for school year 2012–13.

The CDE recommends approval with the following conditions: (1) Applies only to kindergarten and grades one through four at ACORN Woodland ES for school year 2012–13; (2) ACORN Woodland ES increases enrollment to 21.0, 22.0, 24.0, and 21.0 students per class in core classes in kindergarten and grades one through three, respectively, and 19.0 students on average in core classes in grade four for school year 2012–13; (3) No core class in grades four and five may exceed 27 students per classroom regardless of the average classroom size; and (4) Within 30 days of approval of this waiver, Oakland USD must provide to the CDE a description, including costs covered by QEIA funds, of professional development activities and any other school improvement activities added to the school improvement plan as a result of the additional funding now available, if any, through this waiver of the CSR requirement.

Reviewed by ACORN Woodland ES Schoolsite Council on December 16, 2013.

Supported by Oakland Education Association, December 20, 2013.

Local Board Approval: January 6, 2014.

California Department of Education
WAIVER SUBMISSION - General

CD Code: 0161259 Waiver Number: 4-1-2014 Active Year: 2014

Date In: 1/7/2014 1:51:20 PM

Local Education Agency: Oakland Unified School District
Address: 1000 Broadway, Ste. 680
Oakland, CA 94607

Start: 7/1/2012 End: 6/30/2013

Waiver Renewal: N
Previous Waiver Number: Previous SBE Approval Date:

Waiver Topic: Quality Education Investment Act
Ed Code Title: Class Size Reduction Requirements
Ed Code Section: 52055.740(a)
Ed Code Authority: 33050

Ed Code or *CCR* to Waive: For each funded school, the county superintendent of schools for the county in which the school is located shall annually review the school and its data to determine if the school has met all of the following program requirements by the school by the end of the third full year of funding:
(1) Meet all of the following class size requirements:
(A) For kindergarten and grades 1 to 3, inclusive, no more than 20.44 pupils per class, as set forth in the Class Size Reduction Program (Chapter 6.10 (commencing with Section 52120)).
(B) For self-contained classrooms in grades 4 to 8, inclusive, an average classroom size that is the lesser of clause (i) or (ii), as follows:
(i) At least five pupils fewer per classroom than was the average in 2006-07.
(ii) An average of 25 pupils per classroom.
(iii) For purposes of this subparagraph, average classroom size shall be calculated at the grade level based on the number of self-contained classrooms in that grade at the school site. If the self-contained classrooms at the school averaged fewer than 25 pupils per classroom during the 2005-06 school year, that lower average shall be used as the "average in 2006-07" for purposes of this subparagraph. A school that receives funding under this article shall not have a self-contained classroom in grades 4 to 8, inclusive, with more than 27 pupils regardless of its average classroom size.

Outcome Rationale: Acorn Woodland Elementary School made a good-faith effort to stay within QEIA CSR targets in 2012–13. Nonetheless, more students were enrolled in the site in specific grade levels than expected for different reasons. The school made an effort to accommodate increased kindergarten students that enrolled during the course of the year from neighborhood families for which alternative school placement options would have been a hardship for transportation, increasing the grade level average slightly. For grades one, three and four, the percentage of students that was estimated to attrition, based on prior year trends was less than expected. The attrition rate for Acorn Woodland for 2011-12 was 21.1% and for 2012-13 was 15.0%. In the case of grade 2, the bilingual program needs of a specific number of students

resulted in a class size of 23.4 that could not have otherwise been mitigated, necessitating the waiver request for grade 2.

This Waiver is requesting that the Class Size Reduction Targets established for Acorn Woodland Elementary School in these grade levels for the 2012-2013 school year:
> 20.44 for kindergarten be increased to 21 students;
> 20.44 for 1st grade increased to 22 students;
> 20.44 for 2nd grade increased to 24 students;
> 20.44 for 3rd grade increased to 21 students;
> 18.0 for 4th grade be increased to 19 students :

Acorn Woodland provides a strong academic program that reflects of the spirit of the QEIA program, and is continuing to make academic gains for its students.

Student Population: 267

City Type: Urban

Public Hearing Date: 1/6/2014
Public Hearing Advertised: Newspaper

Local Board Approval Date: 1/6/2014

Community Council Reviewed By: Schoolsite Council
Community Council Reviewed Date: 12/16/2013
Community Council Objection: N
Community Council Objection Explanation:

Audit Penalty YN: N

Categorical Program Monitoring: N

Submitted by: Mr. David Montes de Oca
Position: Associate Superintendent
E-mail: david.montes@ousd.k12.ca.us
Telephone: 510-336-7570
Fax:

Bargaining Unit Date: 12/20/2013
Name: Oakland Education Association
Representative: Trish Gorham
Title: President
Position: Support
Comments:

Waiver Number: 5-1-2014 **Period of Request:** July 1, 2012, to June 30, 2013
Period Recommended: July 1, 2012, to June 30, 2013
Bridges Academy at Melrose Elementary School **CDS Code**: 01 61259 6002075
Oakland Unified School District

Local Educational Agency Request:

Oakland Unified School District (USD) is an urban district located in Alameda County with a student population of approximately 36,262 students. Bridges Academy at Melrose Elementary School (ES) serves 381 students in kindergarten and grades one through five. Monitoring performed by the Alameda County Office of Education indicates that the class size reduction (CSR) requirements of the Quality Education Investment Act (QEIA) were not fully met by Bridges Academy at Melrose ES in school year 2012–13. The school's current QEIA CSR targets for core classes of English, mathematics, history-social science, and science are 20.44 in kindergarten and grades one through three, and an average of 14.3 and 22.5 in grades four and five, respectively.

Oakland USD states that Bridges Academy at Melrose ES made a good-faith effort to stay within QEIA CSR targets in 2012–13, but more students enrolled in grades two and three than expected. The district adds that based on prior year trends, the estimated percentage of students to attrition was 10 percent less than expected, resulting in slight overages. In addition, the district states that due to the high concentration of Spanish-speaking families in the neighborhood and the lack of adequate bilingual programming in surrounding schools, Bridges Academy at Melrose ES attempted to accommodate the enrollment needs of these families.

Oakland USD requests a waiver of the QEIA CSR targets for grades two and three at Bridges Academy at Melrose ES for school year 2012–13, and the establishment of alternative CSR targets of 22.0 and 21.0 students per class in core classes in grades two and three, respectively.

California Department of Education Recommendation and Conditions:

The California Department of Education (CDE) supports Oakland USD's request to increase its QEIA CSR targets for grades two and three at Bridges Academy at Melrose ES for school year 2012–13.

The CDE recommends approval with the following conditions: (1) Applies only to grades two and three at Bridges Academy at Melrose ES for school year 2012–13; (2) Bridges Academy at Melrose ES increases enrollment to 22.0 and 21.0 students per class in core classes in grades two and three, respectively, for school year 2012–13; (3) No core class in grades four and five may exceed 27 students per classroom regardless of the average classroom size; and (4) Within 30 days of approval of this waiver, Oakland USD must provide to the CDE a description, including costs covered by QEIA funds, of professional development activities and any other school improvement activities added to the school improvement plan as a result of the additional funding now available, if any, through this waiver of the CSR requirement.

Reviewed by Bridges Academy at Melrose ES Schoolsite Council on December 19, 2013.

Supported by Oakland Education Association, December 20, 2013.

Local Board Approval: January 6, 2014.

California Department of Education
WAIVER SUBMISSION - General

CD Code: 0161259 Waiver Number: 5-1-2014 Active Year: 2014

Date In: 1/7/2014 2:29:30 PM

Local Education Agency: Oakland Unified School District
Address: 1000 Broadway, Ste. 680
Oakland, CA 94607

Start: 7/1/2012 End: 6/30/2013

Waiver Renewal: N
Previous Waiver Number: Previous SBE Approval Date:

Waiver Topic: Quality Education Investment Act
Ed Code Title: Class Size Reduction Requirements
Ed Code Section: 52055.740(a)
Ed Code Authority: 33050

Ed Code or *CCR* to Waive: For each funded school, the county superintendent of schools for the county in which the school is located shall annually review the school and its data to determine if the school has met all of the following program requirements by the school by the end of the third full year of funding:
(1) Meet all of the following class size requirements:
(A) For kindergarten and grades 1 to 3, inclusive, no more than 20.44 pupils per class, as set forth in the Class Size Reduction Program (Chapter 6.10 (commencing with Section 52120)).
(B) For self-contained classrooms in grades 4 to 8, inclusive, an average classroom size that is the lesser of clause (i) or (ii), as follows:
(i) At least five pupils fewer per classroom than was the average in 2006-07.
(ii) An average of 25 pupils per classroom.
(iii) For purposes of this subparagraph, average classroom size shall be calculated at the grade level based on the number of self-contained classrooms in that grade at the school site. If the self-contained classrooms at the school averaged fewer than 25 pupils per classroom during the 2005-06 school year, that lower average shall be used as the "average in 2006-07" for purposes of this subparagraph. A school that receives funding under this article shall not have a self-contained classroom in grades 4 to 8, inclusive, with more than 27 pupils regardless of its average classroom size.

Outcome Rationale: Bridges Academy at Melrose Elementary School made a good-faith effort to stay within QEIA CSR targets in 2012–13. Nonetheless, more students were enrolled in the site than expected in grades two and three. Due to the high concentration of Spanish Speaking Families in the neighborhood and the lack of adequate bilingual programming in surrounding schools, Bridges attempted to accommodate the enrollment needs of neighborhood families requiring a bilingual program. Additionally, for grades two and three, the percentage of students that was estimated to attrition, based on prior year trends, was less than expected. The attrition rate for Bridges Academy in 2011-12 was 26.3% and in 2012-13 it was 16.3%, which was a significant reduction in the attrition of students from one grade to the next, resulting in the slight overages.

This Waiver is requesting that the Class Size Reduction Targets established for Bridges Academy at Melrose Elementary School in these grade levels for the 2012-2013 school year:
> 20.44 for 2nd grade increased to 22 students;
> 20.44 for 3rd grade increased to 21 students

Bridges Academy at Melrose Elementary School provides a strong academic program that reflects of the spirit of the QEIA program, and is continuing to make academic gains for its students.

Student Population: 381

City Type: Urban

Public Hearing Date: 1/6/2014
Public Hearing Advertised: Newspaper

Local Board Approval Date: 1/6/2014

Community Council Reviewed By: Schoolsite Council
Community Council Reviewed Date: 12/19/2013
Community Council Objection: N
Community Council Objection Explanation:

Audit Penalty YN: N

Categorical Program Monitoring: N

Submitted by: Mr. David Montes de Oca
Position: Associate Superintendent
E-mail: david.montes@ousd.k12.ca.us
Telephone: 510-336-7570
Fax:

Bargaining Unit Date: 12/20/2013
Name: Oakland Education Association
Representative: Trish Gorham
Title: President
Position: Support
Comments:

Waiver Number: 6-1-2014 **Period of Request:** July 1, 2012, to June 30, 2013
Period Recommended: July 1, 2012, to June 30, 2013
Brookfield Elementary School **CDS Code**: 01 61259 6001663
Oakland Unified School District

Local Educational Agency Request:

Oakland Unified School District (USD) is an urban district located in Alameda County with a student population of approximately 36,262 students. Brookfield Elementary School (ES) serves 367 students in kindergarten and grades one through five. Monitoring performed by the Alameda County Office of Education indicates that the class size reduction (CSR) requirements of the Quality Education Investment Act (QEIA) were not fully met by Brookfield ES in school year 2012–13. The school's current QEIA CSR targets for core classes of English, mathematics, history-social science, and science are 20.44 in kindergarten and grades one through three, and an average of 23.0 and 25.0 in grades four and five, respectively.

Oakland USD states that Brookfield ES made a good-faith effort to stay within QEIA CSR targets in 2012–13, but more students enrolled in kindergarten and grade one than expected. The district adds that the school made an effort to accommodate the kindergarten students from the neighborhood because the school is located in an isolated section of the city and alternative school placement options created a hardship for parents to transport their children. Furthermore, the district states that enrollment had substantially decreased, but between school years 2011–12 and 2012–13, enrollment increased 18 percent and caused a single grade one class to reach 21.4 students which could not be mitigated.

Oakland USD requests a waiver of the QEIA CSR targets for kindergarten and grade one at Brookfield ES for school year 2012–13, and the establishment of alternative CSR targets of 23.0 and 22.0 students per class in core classes in kindergarten and grade one, respectively.

California Department of Education Recommendation and Conditions:

The California Department of Education (CDE) supports Oakland USD's request to increase its QEIA CSR targets for kindergarten and grade one at Brookfield ES for school year 2012–13.

The CDE recommends approval with the following conditions: (1) Applies only to kindergarten and grade one at Brookfield ES for school year 2012–13; (2) Brookfield ES increases enrollment to 23.0 and 22.0 students per class in core classes in kindergarten and grade one, respectively, for school year 2012–13; (3) No core class in grades four and five may exceed 27 students per classroom regardless of the average classroom size; and (4) Within 30 days of approval of this waiver, Oakland USD must provide to the CDE a description, including costs covered by QEIA funds, of professional development activities and any other school improvement activities added to the school improvement plan as a result of the additional funding now available, if any, through this waiver of the CSR requirement.

Reviewed by Brookfield ES Schoolsite Council on December 19, 2013.

Supported by Oakland Education Association, December 20, 2013.

Local Board Approval: January 6, 2014.

California Department of Education
WAIVER SUBMISSION - General

CD Code: 0161259 Waiver Number: 6-1-2014 Active Year: 2014

Date In: 1/7/2014 2:38:23 PM

Local Education Agency: Oakland Unified School District
Address: 1000 Broadway, Ste. 680
Oakland, CA 94607

Start: 7/1/2012 End: 6/30/2013

Waiver Renewal: N
Previous Waiver Number: Previous SBE Approval Date:

Waiver Topic: Quality Education Investment Act
Ed Code Title: Class Size Reduction Requirements
Ed Code Section: 52055.740(a)
Ed Code Authority: 33050

Ed Code or *CCR* to Waive: For each funded school, the county superintendent of schools for the county in which the school is located shall annually review the school and its data to determine if the school has met all of the following program requirements by the school by the end of the third full year of funding:
(1) Meet all of the following class size requirements:
(A) For kindergarten and grades 1 to 3, inclusive, no more than 20.44 pupils per class, as set forth in the Class Size Reduction Program (Chapter 6.10 (commencing with Section 52120)).
(B) For self-contained classrooms in grades 4 to 8, inclusive, an average classroom size that is the lesser of clause (i) or (ii), as follows:
(i) At least five pupils fewer per classroom than was the average in 2006-07.
(ii) An average of 25 pupils per classroom.
(iii) For purposes of this subparagraph, average classroom size shall be calculated at the grade level based on the number of self-contained classrooms in that grade at the school site. If the self-contained classrooms at the school averaged fewer than 25 pupils per classroom during the 2005-06 school year, that lower average shall be used as the "average in 2006-07" for purposes of this subparagraph. A school that receives funding under this article shall not have a self-contained classroom in grades 4 to 8, inclusive, with more than 27 pupils regardless of its average classroom size.

Outcome Rationale: Brookfield Elementary School made a good-faith effort to stay within QEIA CSR targets in 2012–13. Nonetheless, more students were enrolled in the site than expected for different reasons. The school made an effort to accommodate increased kindergarten students that enrolled during the course of the year from neighborhood families for which alternative school placement options would have been a hardship for transportation, increasing the grade level average slightly. The school is located in an isolated section of the city, whereby surrounding schools are located at a distance difficult for public transportation and already hosting impacted enrollment.

For grade one, due to a substantial loss in students at a rate that grew from 18.4% in 2011-12 to 38.6% in 2012-13. This resulted in a staffing consolidation for which the subsequent year enrollment increase in one 1st grade class reached 21.4 and could not otherwise be mitigated.

This Waiver is requesting that the Class Size Reduction Targets established for Brookfield Elementary School in these grade levels for the 2012-2013 school year:
> 20.44 for kindergarten increased to 23 students;
> 20.44 for 1st grade increased to 22 students

Brookfield Elementary School provides a strong academic program that reflects of the spirit of the QEIA program, and is continuing to make academic gains for its students.

Student Population: 367

City Type: Urban

Public Hearing Date: 1/6/2014
Public Hearing Advertised: Newspaper

Local Board Approval Date: 1/6/2014

Community Council Reviewed By: Schoolsite Council
Community Council Reviewed Date: 12/19/2013
Community Council Objection: N
Community Council Objection Explanation:

Audit Penalty YN: N

Categorical Program Monitoring: N

Submitted by: Mr. David Montes de Oca
Position: Associate Superintendent
E-mail: david.montes@ousd.k12.ca.us
Telephone: 510-336-7570
Fax:

Bargaining Unit Date: 12/20/2013
Name: Oakland Education Association
Representative: Trish Gorham
Title: President
Position: Support
Comments:

Waiver Number: 7-1-2014 **Period of Request:** July 1, 2012, to June 30, 2013
Period Recommended: July 1, 2012, to June 30, 2013
Frick Middle School **CDS Code**: 01 61259 6057020
Oakland Unified School District

Local Educational Agency Request:

Oakland Unified School District (USD) is an urban district located in Alameda County with a student population of approximately 36,262 students. Frick Middle School (MS) serves 353 students in grades six through eight. Monitoring performed by the Alameda County Office of Education indicates that the class size reduction (CSR) requirements of the Quality Education Investment Act (QEIA) were not fully met by Frick MS in school year 2012–13. The school's current QEIA CSR targets for core classes of English, mathematics, history-social science, and science are an average of 18.7, 20.8, and 23.5 in grades six through eight, respectively.

Oakland USD states that Frick MS made a good-faith effort to stay within QEIA CSR targets in 2012–13, but more students enrolled than expected. The district adds that for grade seven, the percentage of students estimated to attrition, based on prior year trends, was less than expected; however, accommodating these students only increased the grade level average by 0.1 students.

Oakland USD requests a waiver of the QEIA CSR target for grade seven at Frick MS for school year 2012–13, and the establishment of an alternative CSR target of 21.0 students on average in core classes in grade seven.

California Department of Education Recommendation and Conditions:

The California Department of Education (CDE) supports Oakland USD's request to increase its QEIA CSR target for grade seven at Frick MS for school year 2012–13.

The CDE recommends approval with the following conditions: (1) Applies only to grade seven at Frick MS for school year 2012–13; (2) Frick MS increases enrollment to 21.0 students on average in core classes in grade seven for school year 2012–13; (3) No core class in grades six through eight may exceed 27 students per classroom regardless of the average classroom size; and (4) Within 30 days of approval of this waiver, Oakland USD must provide to the CDE a description, including costs covered by QEIA funds, of professional development activities and any other school improvement activities added to the school improvement plan as a result of the additional funding now available, if any, through this waiver of the CSR requirement.

Reviewed by Frick MS Schoolsite Council on December 19, 2013.

Supported by Oakland Education Association, December 20, 2013.

Local Board Approval: January 6, 2014.

California Department of Education
WAIVER SUBMISSION - General

CD Code: 0161259 Waiver Number: 7-1-2014 Active Year: 2014

Date In: 1/7/2014 2:49:53 PM

Local Education Agency: Oakland Unified School District
Address: 1000 Broadway, Ste. 680
Oakland, CA 94607

Start: 7/1/2012 End: 6/30/2013

Waiver Renewal: N
Previous Waiver Number: Previous SBE Approval Date:

Waiver Topic: Quality Education Investment Act
Ed Code Title: Class Size Reduction Requirements
Ed Code Section: 52055.740(a)
Ed Code Authority: 33050

Ed Code or *CCR* to Waive: For each funded school, the county superintendent of schools for the county in which the school is located shall annually review the school and its data to determine if the school has met all of the following program requirements by the school by the end of the third full year of funding:
(1) Meet all of the following class size requirements:
(A) For kindergarten and grades 1 to 3, inclusive, no more than 20.44 pupils per class, as set forth in the Class Size Reduction Program (Chapter 6.10 (commencing with Section 52120)).
(B) For self-contained classrooms in grades 4 to 8, inclusive, an average classroom size that is the lesser of clause (i) or (ii), as follows:
(i) At least five pupils fewer per classroom than was the average in 2006-07.
(ii) An average of 25 pupils per classroom.
(iii) For purposes of this subparagraph, average classroom size shall be calculated at the grade level based on the number of self-contained classrooms in that grade at the school site. If the self-contained classrooms at the school averaged fewer than 25 pupils per classroom during the 2005-06 school year, that lower average shall be used as the "average in 2006-07" for purposes of this subparagraph. A school that receives funding under this article shall not have a self-contained classroom in grades 4 to 8, inclusive, with more than 27 pupils regardless of its average classroom size.

Outcome Rationale: Frick Middle School made a good-faith effort to stay within QEIA CSR targets in 2012–13, but more students enrolled in the site than expected for different reasons. For grade seven, the percentage of students that was estimated to attrition, based on prior year trends was less than expected.

This Waiver is requesting that the Class Size Reduction Targets established for Frick Middle School in these grade levels for the 2012-2013 school year:
> 20.77 for 7th grade increased to 21 students

Frick Middle School provides a strong academic program that reflects of the spirit of the QEIA program, and is continuing to make academic gains for its students.

Student Population: 353

City Type: Urban

Public Hearing Date: 1/6/2014
Public Hearing Advertised: Newspaper

Local Board Approval Date: 1/6/2014

Community Council Reviewed By: Schoolsite Council
Community Council Reviewed Date: 12/19/2013
Community Council Objection: N
Community Council Objection Explanation:

Audit Penalty YN: N

Categorical Program Monitoring: N

Submitted by: Mr. David Montes de Oca
Position: Associate Superintendent
E-mail: david.montes@ousd.k12.ca.us
Telephone: 510-336-7570
Fax:

Bargaining Unit Date: 12/20/2013
Name: Oakland Education Association
Representative: Trish Gorham
Title: President
Position: Support
Comments:

Waiver Number: 8-1-2014 **Period of Request:** July 1, 2012, to June 30, 2013
Period Recommended: July 1, 2012, to June 30, 2013
Garfield Elementary School **CDS Code**: 01 61259 6001846
Oakland Unified School District

Local Educational Agency Request:

Oakland Unified School District (USD) is an urban district located in Alameda County with a student population of approximately 36,262 students. Garfield Elementary School (ES) serves 582 students in kindergarten and grades one through five. Monitoring performed by the Alameda County Office of Education indicates that the class size reduction (CSR) requirements of the Quality Education Investment Act (QEIA) were not fully met by Garfield ES in school year 2012–13. The school's current QEIA CSR targets for core classes of English, mathematics, history-social science, and science are 20.44 for kindergarten and grades one through three, and an average of 25.0 in grades four and five.

Oakland USD states that Garfield ES made a good-faith effort to stay within QEIA CSR targets in 2012–13, but more students enrolled than expected. The district adds that the school made an effort to accommodate students that enrolled in grades one and two, based on five school closures in the prior year, for which alternative school placement options created a hardship for parents to transport their children. The district adds that Garfield ES provides a bilingual program for students and there are limited alternatives in surrounding schools. Furthermore, the district states that the percentage of students estimated to attrition, based on prior year trends, was less than expected for grades one and two. Students in grade five were consolidated based on scheduling requirements that, together with reduced attrition rates, resulted in a slight overage in one class by 1.6 students. Finally, the district states that even when no new students were enrolled as others withdrew, this did not ultimately reduce the class size averages to the prescribed target.

Oakland USD requests a waiver of the QEIA CSR targets for grades one, two, and five at Garfield ES for school year 2012–13, and the establishment of alternative CSR targets of 22.0 and 23.0 students per class in core classes in grades one and two, respectively, and 26.6 students on average in core classes in grade five.

California Department of Education Recommendation and Conditions:

The California Department of Education (CDE) supports Oakland USD's request to increase its QEIA CSR targets for grades one, two, and five at Garfield ES for school year 2012–13.

The CDE recommends approval with the following conditions: (1) Applies only to grades one, two, and five at Garfield ES for school year 2012–13; (2) Garfield ES increases enrollment to 22.0 and 23.0 students per class in core classes in grades one and two, respectively, and 26.6 students on average in core classes in grade five for school year 2012–13; (3) No core class in grades four and five may exceed 27 students per classroom regardless of the average classroom size; and (4) Within 30 days of approval of this waiver, Oakland USD must provide to the CDE a description, including costs covered by QEIA funds, of professional development activities and any other school improvement activities added to the school improvement plan as a result of the additional funding now available, if any, through this waiver of the CSR requirement.

Reviewed by Garfield ES Schoolsite Council on December 19, 2013.

Supported by Oakland Education Association, December 20, 2013.

Local Board Approval: January 6, 2014.

California Department of Education
WAIVER SUBMISSION - General

CD Code: 0161259 Waiver Number: 8-1-2014 Active Year: 2014

Date In: 1/7/2014 2:58:41 PM

Local Education Agency: Oakland Unified School District
Address: 1000 Broadway, Ste. 680
Oakland, CA 94607

Start: 7/1/2012 End: 6/30/2013

Waiver Renewal: N
Previous Waiver Number: Previous SBE Approval Date:

Waiver Topic: Quality Education Investment Act
Ed Code Title: Class Size Reduction Requirements
Ed Code Section: 52055.740(a)
Ed Code Authority: 33050

Ed Code or *CCR* to Waive: For each funded school, the county superintendent of schools for the county in which the school is located shall annually review the school and its data to determine if the school has met all of the following program requirements by the school by the end of the third full year of funding:
(1) Meet all of the following class size requirements:
(A) For kindergarten and grades 1 to 3, inclusive, no more than 20.44 pupils per class, as set forth in the Class Size Reduction Program (Chapter 6.10 (commencing with Section 52120)).
(B) For self-contained classrooms in grades 4 to 8, inclusive, an average classroom size that is the lesser of clause (i) or (ii), as follows:
(i) At least five pupils fewer per classroom than was the average in 2006-07.
(ii) An average of 25 pupils per classroom.
(iii) For purposes of this subparagraph, average classroom size shall be calculated at the grade level based on the number of self-contained classrooms in that grade at the school site. If the self-contained classrooms at the school averaged fewer than 25 pupils per classroom during the 2005-06 school year, that lower average shall be used as the "average in 2006-07" for purposes of this subparagraph. A school that receives funding under this article shall not have a self-contained classroom in grades 4 to 8, inclusive, with more than 27 pupils regardless of its average classroom size.

Outcome Rationale: Garfield Elementary School made a good-faith effort to stay within QEIA CSR targets in 2012–13, but more students enrolled in the site than expected for different reasons.The school made an effort to accommodate 1st and 2nd grade students that enrolled based on a five school closures that took place the prior year for which alternative school placement options would have been a hardship for transportation, increasing the grade level average. The student assignment office conducted ongoing monitoring of enrollment during the 2012-13 school year and did not enroll new students when others withdrew, however this did not ultimately reduce the class size averages to the prescribed target of 20.44 in grades 1 and 2. For grades one and two, the percentage of students that was estimated to attrition, based on prior year trends was less than expected. Additionally, Garfield provides a bilingual program to

students that has limited alternatives in surrounding schools. Students in 5th grade during 2012-13 were consolidated based on scheduling requirements that, together with reduced attrition rates, resulted in a slight overage in one 5th grade class of 1.6 students.

This Waiver is requesting that the Class Size Reduction Targets established for Garfield Elementary School in these grade levels for the 2012-2013 school year:
> 20.44 for 1st grade increased to 22 students;
> 20.44 for 2nd grade increased to 23 students;
> 25.00 for 5th grade increased to 26.6 students

Garfield Elementary School provides a strong academic program that reflects of the spirit of the QEIA program, and is continuing to make academic gains for its students.

Student Population: 582

City Type: Urban

Public Hearing Date: 1/6/2014
Public Hearing Advertised: Newspaper

Local Board Approval Date: 1/6/2014

Community Council Reviewed By: Schoolsite Council
Community Council Reviewed Date: 12/19/2013
Community Council Objection: N
Community Council Objection Explanation:

Audit Penalty YN: N

Categorical Program Monitoring: N

Submitted by: Mr. David Montes de Oca
Position: Associate Superintendent
E-mail: david.montes@ousd.k12.ca.us
Telephone: 510-336-7570
Fax:

Bargaining Unit Date: 12/20/2013
Name: Oakland Education Association
Representative: Trish Gorham
Title: President
Position: Support
Comments:

Waiver Number: 9-1-2014 **Period of Request:** July 1, 2012, to June 30, 2013
Period Recommended: July 1, 2012, to June 30, 2013
Horace Mann Elementary School **CDS Code**: 01 61259 6001929
Oakland Unified School District

Local Educational Agency Request:

Oakland Unified School District (USD) is an urban district located in Alameda County with a student population of approximately 36,262 students. Horace Mann Elementary School (ES) serves 582 students in kindergarten and grades one through five. Monitoring performed by the Alameda County Office of Education indicates that the class size reduction (CSR) requirements of the Quality Education Investment Act (QEIA) were not fully met by Horace Mann ES in school year 2012–13. The school's current QEIA CSR targets for core classes of English, mathematics, history-social science, and science are 20.44 in kindergarten and grades one through three, and an average of 19.0 and 16.0 in grades four and five, respectively.

Oakland USD states that Horace Mann ES made a good-faith effort to stay within QEIA CSR targets in 2012–13, but more students enrolled than expected. The district adds that the percentage of students estimated to attrition, based on prior year trends, was 2.6 percent less than expected for grades one through five. However, the district states that accommodating these students only slightly increased the grade level average.

Oakland USD requests a waiver of the QEIA CSR targets for grades one through five at Horace Mann ES for school year 2012–13, and the establishment of alternative CSR targets of 22.0, 23.0, and 23.0 students per class in core classes in grades one through three, respectively, and 21.0 students on average in core classes in grades four and five.

California Department of Education Recommendation and Conditions:

The California Department of Education (CDE) supports Oakland USD's request to increase its QEIA CSR targets for grades one through five at Horace Mann ES for school year 2012–13.

The CDE recommends approval with the following conditions: (1) Applies only to grades one through five at Horace Mann ES for school year 2012–13; (2) Horace Mann ES increases enrollment to 22.0, 23.0, and 23.0 students per class in core classes in grades one through three, respectively, and 21.0 students on average in core classes in grades four and five for school year 2012–13; (3) No core class in grades four and five may exceed 27 students per classroom regardless of the average classroom size; and (4) Within 30 days of approval of this waiver, Oakland USD must provide to the CDE a description, including costs covered by QEIA funds, of professional development activities and any other school improvement activities added to the school improvement plan as a result of the additional funding now available, if any, through this waiver of the CSR requirement.

Reviewed by Horace Mann ES Schoolsite Council on December 19, 2013.

Supported by Oakland Education Association, December 20, 2013.

Local Board Approval: January 6, 2014.

California Department of Education
WAIVER SUBMISSION - General

CD Code: 0161259 Waiver Number: 9-1-2014 Active Year: 2014

Date In: 1/7/2014 3:05:12 PM

Local Education Agency: Oakland Unified School District
Address: 1000 Broadway, Ste. 680
Oakland, CA 94607

Start: 7/1/2012 End: 6/30/2013

Waiver Renewal: N
Previous Waiver Number: Previous SBE Approval Date:

Waiver Topic: Quality Education Investment Act
Ed Code Title: Class Size Reduction Requirements
Ed Code Section: 52055.740(a)
Ed Code Authority: 33050

Ed Code or *CCR* to Waive: For each funded school, the county superintendent of schools for the county in which the school is located shall annually review the school and its data to determine if the school has met all of the following program requirements by the school by the end of the third full year of funding:
(1) Meet all of the following class size requirements:
(A) For kindergarten and grades 1 to 3, inclusive, no more than 20.44 pupils per class, as set forth in the Class Size Reduction Program (Chapter 6.10 (commencing with Section 52120)).
(B) For self-contained classrooms in grades 4 to 8, inclusive, an average classroom size that is the lesser of clause (i) or (ii), as follows:
(i) At least five pupils fewer per classroom than was the average in 2006-07.
(ii) An average of 25 pupils per classroom.
(iii) For purposes of this subparagraph, average classroom size shall be calculated at the grade level based on the number of self-contained classrooms in that grade at the school site. If the self-contained classrooms at the school averaged fewer than 25 pupils per classroom during the 2005-06 school year, that lower average shall be used as the "average in 2006-07" for purposes of this subparagraph. A school that receives funding under this article shall not have a self-contained classroom in grades 4 to 8, inclusive, with more than 27 pupils regardless of its average classroom size.

Outcome Rationale: Horace Mann Elementary School made a good-faith effort to stay within QEIA CSR targets in 2012–13, but more students enrolled in the site than expected for different reasons. For grade one through five, the school attempted to accommodate students within the neighborhood attending five schools closed by the district at the end of the 2011-12 school year. The percentage of students that was estimated to attrition, based on prior year trends, was less than expected. The over-all attrition rate reduced from 34.3% to 31.7% resulting in slight over-ages for each respective grade level.

This Waiver is requesting that the Class Size Reduction Targets established for Horace Mann Elementary School in these grade levels for the 2012-2013 school year:

> 20.44 for 1st grade increased to 22 students;
> 20.44 for 2nd grade increased to 23 students;
> 20.44 for 3rd grade increased to 23 students;
> 19.0 for 4th grade increased to 21 students;
> 16.0 for 5th grade increased to 21 students

Horace Mann Elementary School provides a strong academic program that reflects of the spirit of the QEIA program, and is continuing to make academic gains for its students.

Student Population: 582

City Type: Urban

Public Hearing Date: 1/6/2014
Public Hearing Advertised: Newspaper

Local Board Approval Date: 1/6/2014

Community Council Reviewed By: Schoolsite Council
Community Council Reviewed Date: 12/19/2013
Community Council Objection: N
Community Council Objection Explanation:

Audit Penalty YN: N

Categorical Program Monitoring: N

Submitted by: Mr. David Montes de Oca
Position: Associate Superintendent
E-mail: david.montes@ousd.k12.ca.us
Telephone: 510-336-7570
Fax:

Bargaining Unit Date: 12/20/2013
Name: Oakland Education Association
Representative: Trish Gorham
Title: President
Position: Support
Comments:

Waiver Number: 10-1-2014 **Period of Request:** July 1, 2012, to June 30, 2013
Period Recommended: July 1, 2012, to June 30, 2013
Madison Middle School **CDS Code**: 01 61259 6066450
Oakland Unified School District

Local Educational Agency Request:

Oakland Unified School District (USD) is an urban district located in Alameda County with a student population of approximately 36,262 students. Madison Middle School (MS) serves 375 students in grades six through nine. Monitoring performed by the Alameda County Office of Education indicates that the class size reduction (CSR) requirements of the Quality Education Investment Act (QEIA) were not fully met by Madison MS in school year 2012–13. The school's current QEIA CSR targets for core classes of English, mathematics, history-social science, and science are an average of 19.8, 19.8, and 18.7 in grades six through eight, respectively.

Oakland USD states that Madison MS made a good-faith effort to stay within QEIA CSR targets in 2012–13, but more students enrolled than expected. The district adds that for grade six, the school attempted to accommodate students for whom assignment to an alternate placement would have been a hardship based on transportation as the nearest middle school alternative is over two miles away. Also, the district states that for grade seven, the percentage of students estimated to attrition, based on prior year trends, was less than expected. Finally, the district states that the school is located in an isolated section of the city and has become increasingly popular with neighborhood families due to a grade configuration change now serving grades six through nine. The result of which, the district states, has been a much higher demand by families that live within 0.5 miles of the school; however, accommodating these students has resulted in a slight overage in grades six and seven at Madison MS.

Oakland USD requests a waiver of the QEIA CSR targets for grades six and seven at Madison MS for school year 2012–13, and the establishment of alternative CSR targets of 21.0 students on average in core classes in grades six and seven.

California Department of Education Recommendation and Conditions:

The California Department of Education (CDE) supports Oakland USD's request to increase its QEIA CSR targets for grades six and seven at Madison MS for school year 2012–13.

The CDE recommends approval with the following conditions: (1) Applies only to grades six and seven at Madison MS for school year 2012–13; (2) Madison MS increases enrollment to 21.0 students on average in core classes in grades six and seven for school year 2012–13; (3) No core class in grades six through eight may exceed 27 students per classroom regardless of the average classroom size; and (4) Within 30 days of approval of this waiver, Oakland USD must provide to the CDE a description, including costs covered by QEIA funds, of professional development activities and any other school improvement activities added to the school improvement plan as a result of the additional funding now available, if any, through this waiver of the CSR requirement.

Reviewed by Madison MS Schoolsite Council on December 19, 2013.

Supported by Oakland Education Association, December 20, 2013.

Local Board Approval: January 6, 2014.

California Department of Education
WAIVER SUBMISSION - General

CD Code: 0161259 Waiver Number: 10-1-2014 Active Year: 2014

Date In: 1/7/2014 3:12:43 PM

Local Education Agency: Oakland Unified School District
Address: 1000 Broadway, Ste. 680
Oakland, CA 94607

Start: 7/1/2012 End: 6/30/2013

Waiver Renewal: N
Previous Waiver Number: Previous SBE Approval Date:

Waiver Topic: Quality Education Investment Act
Ed Code Title: Class Size Reduction Requirements
Ed Code Section: 52055.740(a)
Ed Code Authority: 33050

Ed Code or *CCR* to Waive: For each funded school, the county superintendent of schools for the county in which the school is located shall annually review the school and its data to determine if the school has met all of the following program requirements by the school by the end of the third full year of funding:
(1) Meet all of the following class size requirements:
(A) For kindergarten and grades 1 to 3, inclusive, no more than 20.44 pupils per class, as set forth in the Class Size Reduction Program (Chapter 6.10 (commencing with Section 52120)).
(B) For self-contained classrooms in grades 4 to 8, inclusive, an average classroom size that is the lesser of clause (i) or (ii), as follows:
(i) At least five pupils fewer per classroom than was the average in 2006-07.
(ii) An average of 25 pupils per classroom.
(iii) For purposes of this subparagraph, average classroom size shall be calculated at the grade level based on the number of self-contained classrooms in that grade at the school site. If the self-contained classrooms at the school averaged fewer than 25 pupils per classroom during the 2005-06 school year, that lower average shall be used as the "average in 2006-07" for purposes of this subparagraph. A school that receives funding under this article shall not have a self-contained classroom in grades 4 to 8, inclusive, with more than 27 pupils regardless of its average classroom size.

Outcome Rationale: Madison Middle School made a good-faith effort to stay within QEIA CSR targets in 2012–13, but more students enrolled in the site than expected for different reasons. For grade six, the school attempted to accommodate students that enrolled during the course of the year for whom assignment to an alternate placement would have been a hardship based on transportation. For grade seven, the percentage of students that was estimated to attrition, based on prior year trends was less than expected. The school is located in an isolated section of the city and has become increasingly popular with neighborhood families, due to a grade configuration change now serving grades 6-9, ultimately serving grades 6-12. This has resulted in a much higher demand by families that live within 0.5 miles of the school campus. The

nearest middle school alternative is over two miles away. This resulted in the slight overages in grades 6 and 7.

This Waiver is requesting that the Class Size Reduction Targets established for Madison Middle School in these grade levels for the 2012-2013 school year:
> 19.29 for 6th grade increased to 21 students;
> 19.83 for 7th grade increased to 21 students

Madison Middle School provides a strong academic program that reflects of the spirit of the QEIA program, and is continuing to make academic gains for its students.

Student Population: 375

City Type: Urban

Public Hearing Date: 1/6/2014
Public Hearing Advertised: Newspaper

Local Board Approval Date: 1/6/2014

Community Council Reviewed By: Schoolsite Council
Community Council Reviewed Date: 12/19/2013
Community Council Objection: N
Community Council Objection Explanation:

Audit Penalty YN: N

Categorical Program Monitoring: N

Submitted by: Mr. David Montes de Oca
Position: Associate Superintendent
E-mail: david.montes@ousd.k12.ca.us
Telephone: 510-336-7570
Fax:

Bargaining Unit Date: 12/20/2013
Name: Oakland Education Association
Representative: Trish Gorham
Title: President
Position: Support
Comments:

Waiver Number: 11-1-2014 **Period of Request:** July 1, 2012, to June 30, 2013
Period Recommended: July 1, 2012, to June 30, 2013
Manzanita Community Elementary School **CDS Code**: 01 61259 6002042
Oakland Unified School District

Local Educational Agency Request:

Oakland Unified School District (USD) is an urban district located in Alameda County with a student population of approximately 36,262 students. Manzanita Community Elementary School (ES) serves 342 students in kindergarten and grades one through five. Monitoring performed by the Alameda County Office of Education indicates that the class size reduction (CSR) requirements of the Quality Education Investment Act (QEIA) were not fully met by Manzanita Community ES in school year 2012–13. The school's current QEIA CSR targets for core classes of English, mathematics, history-social science, and science are 20.44 in kindergarten and grades one through three, and an average of 18.3 and 16.3 in grades four and five, respectively.

Oakland USD states that Manzanita Community ES made a good-faith effort to stay within QEIA CSR targets in 2012–13, but more students enrolled than expected. The district adds that the school made an effort to accommodate students that enrolled in grade one, based on five school closures in the prior year, for which alternative school placement options created a hardship for parents to transport their children. The district adds that Manzanita Community ES shares a campus with a dual immersion program that does not offer a bilingual program for students ineligible for the dual immersion program, creating very limited neighborhood seats for students requiring a bilingual program option. Further, the district states that due to a staffing consolidation in grade one and the requisite bilingual program configuration, the school was required to host a class of 14 bilingual students in grade one, resulting in a class of 26 students in another. Lastly, the district states that for grade two, the percentage of students estimated to attrition, based on prior year trends, was 21.4 percent less than expected.

Oakland USD requests a waiver of the QEIA CSR targets for grades one and two at Manzanita Community ES for school year 2012–13, and the establishment of alternative CSR targets of 26.0 and 22.0 students per class in core classes in grades one and two, respectively.

California Department of Education Recommendation and Conditions:

The California Department of Education (CDE) supports Oakland USD's request to increase its QEIA CSR targets for grades one and two at Manzanita Community ES for school year 2012–13.

The CDE recommends approval with the following conditions: (1) Applies only to grades one and two at Manzanita Community ES for school year 2012–13; (2) Manzanita Community ES increases enrollment to 26.0 and 22.0 students per class in core classes in grades one and two, respectively, for school year 2012–13; and (3) Within 30 days of approval of this waiver, Oakland USD must provide to the CDE a description, including costs covered by QEIA funds, of professional development activities and any other school improvement activities added to the school improvement plan as a result of the additional funding now available, if any, through this waiver of the CSR requirement.

Reviewed by Manzanita Community ES Schoolsite Council on December 19, 2013.

Supported by Oakland Education Association, December 20, 2013.

Local Board Approval: January 6, 2014.

California Department of Education
WAIVER SUBMISSION - General

CD Code: 0161259 Waiver Number: 11-1-2014 Active Year: 2014

Date In: 1/7/2014 3:17:55 PM

Local Education Agency: Oakland Unified School District
Address: 1000 Broadway, Ste. 680
Oakland, CA 94607

Start: 7/1/2012 End: 6/30/2013

Waiver Renewal: N
Previous Waiver Number: Previous SBE Approval Date:

Waiver Topic: Quality Education Investment Act
Ed Code Title: Class Size Reduction Requirements
Ed Code Section: 52055.740(a)
Ed Code Authority: 33050

Ed Code or *CCR* to Waive: For each funded school, the county superintendent of schools for the county in which the school is located shall annually review the school and its data to determine if the school has met all of the following program requirements by the school by the end of the third full year of funding:
(1) Meet all of the following class size requirements:
(A) For kindergarten and grades 1 to 3, inclusive, no more than 20.44 pupils per class, as set forth in the Class Size Reduction Program (Chapter 6.10 (commencing with Section 52120)).
(B) For self-contained classrooms in grades 4 to 8, inclusive, an average classroom size that is the lesser of clause (i) or (ii), as follows:
(i) At least five pupils fewer per classroom than was the average in 2006-07.
(ii) An average of 25 pupils per classroom.
(iii) For purposes of this subparagraph, average classroom size shall be calculated at the grade level based on the number of self-contained classrooms in that grade at the school site. If the self-contained classrooms at the school averaged fewer than 25 pupils per classroom during the 2005-06 school year, that lower average shall be used as the "average in 2006-07" for purposes of this subparagraph. A school that receives funding under this article shall not have a self-contained classroom in grades 4 to 8, inclusive, with more than 27 pupils regardless of its average classroom size.

Outcome Rationale: Manzanita Community Elementary School made a good-faith effort to stay within QEIA CSR targets in 2012–13, but more students enrolled in the site than expected for different reasons. The school made an effort to accommodate 1st grade students that enrolled based on a five school closures that took place the prior year for which alternative school placement options would have been a hardship for transportation, increasing the grade level average. The school shares a campus with a dual immersion program, that does not otherwise offer a bilingual program for students not eligible for the Dual Immersion program, creating very limited neighborhood seats for students requiring a bilingual program option. Due to a staffing consolidation in grade 1 and the requisite bilingual program configuration, the school was required to host a class of 14 bilingual students in grade one, resulting in the one class of 26 students. For grade two, the percentage of students that was estimated to attrition, based on

prior year trends was less than expected. The attrition rate went from 34.7% in 2011-12 to 13.3% in 2012-13 in grade 2, specifically.

This Waiver is requesting that the Class Size Reduction Targets established for Manzanita Community Elementary School in these grade levels for the 2012-2013 school year:
> 20.44 for 1st grade increased to 26 students;
> 20.44 for 2nd grade increased to 22 students

Manzanita Community Elementary School provides a strong academic program that reflects of the spirit of the QEIA program, and is continuing to make academic gains for its students.

Student Population: 342

City Type: Urban

Public Hearing Date: 1/6/2014
Public Hearing Advertised: Newspaper

Local Board Approval Date: 1/6/2014

Community Council Reviewed By: Schoolsite Council
Community Council Reviewed Date: 12/19/2013
Community Council Objection: N
Community Council Objection Explanation:

Audit Penalty YN: N

Categorical Program Monitoring: N

Submitted by: Mr. David Montes de Oca
Position: Associate Superintendent
E-mail: david.montes@ousd.k12.ca.us
Telephone: 510-336-7570
Fax:

Bargaining Unit Date: 12/20/2013
Name: Oakland Education Association
Representative: Trish Gorham
Title: President
Position: Support
Comments:

Waiver Number: 12-1-2014 **Period of Request:** July 1, 2012, to June 30, 2013
Period Recommended: July 1, 2012, to June 30, 2013
Markham Elementary School **CDS Code**: 01 61259 6002059
Oakland Unified School District

Local Educational Agency Request:

Oakland Unified School District (USD) is an urban district located in Alameda County with a student population of approximately 36,262 students. Markham Elementary School (ES) serves 361 students in kindergarten and grades one through five. Monitoring performed by the Alameda County Office of Education indicates that the class size reduction (CSR) requirements of the Quality Education Investment Act (QEIA) were not fully met by Markham ES in school year 2012–13. The school's current QEIA CSR targets for core classes of English, mathematics, history-social science, and science are 20.44 in kindergarten and grades one through three, and an average of 25.0 and 17.7 in grades four and five, respectively.

Oakland USD states that Markham ES made a good-faith effort to stay within QEIA CSR targets in 2012–13, but more students enrolled in specific grade levels than expected. The district adds that the school made an effort to accommodate increased enrollment in kindergarten from neighborhood families during the course of the year, but alternative school placement options created a hardship for parents to transport their children. Furthermore, the district states that the percentage of students estimated to attrition, based on prior year trends, was less than expected for grade five. However, the district states accommodating these students only slightly increased the grade level average. Lastly, the district states that the school is situated in a deeply depressed part of the community with a high rate of crime and violence and as the quality of the school has increased, families have sought the safety of the neighborhood school rather than sending their children to greater distances.

Oakland USD requests a waiver of the QEIA CSR targets for kindergarten and grade five at Markham ES for school year 2012–13, and the establishment of alternative CSR targets of 21.0 students per class in core classes in kindergarten and 24.0 students on average in core classes in grade five.

California Department of Education Recommendation and Conditions:

The California Department of Education (CDE) supports Oakland USD's request to increase its QEIA CSR targets for kindergarten and grade five at Markham ES for school year 2012–13.

The CDE recommends approval with the following conditions: (1) Applies only to kindergarten and grade five at Markham ES for school year 2012–13; (2) Markham ES increases enrollment to 21.0 students per class in core classes in kindergarten, and 24.0 students on average in core classes in grade five for school year 2012–13; (3) No core class in grades four and five may exceed 27 students per classroom regardless of the average classroom size; and (4) Within 30 days of approval of this waiver, Oakland USD must provide to the CDE a description, including costs covered by QEIA funds, of professional development activities and any other school improvement activities added to the school improvement plan as a result of the additional funding now available, if any,

through this waiver of the CSR requirement.

Reviewed by Markham ES Schoolsite Council on December 19, 2013.

Supported by Oakland Education Association, December 20, 2013.

Local Board Approval: January 6, 2014.

California Department of Education
WAIVER SUBMISSION - General

CD Code: 0161259 Waiver Number: 12-1-2014 Active Year: 2014

Date In: 1/7/2014 3:24:13 PM

Local Education Agency: Oakland Unified School District
Address: 1000 Broadway, Ste. 680
Oakland, CA 94607

Start: 7/1/2012 End: 6/30/2013

Waiver Renewal: N
Previous Waiver Number: Previous SBE Approval Date:

Waiver Topic: Quality Education Investment Act
Ed Code Title: Class Size Reduction Requirements
Ed Code Section: 52055.740(a)
Ed Code Authority: 33050

Ed Code or *CCR* to Waive: For each funded school, the county superintendent of schools for the county in which the school is located shall annually review the school and its data to determine if the school has met all of the following program requirements by the school by the end of the third full year of funding:
(1) Meet all of the following class size requirements:
(A) For kindergarten and grades 1 to 3, inclusive, no more than 20.44 pupils per class, as set forth in the Class Size Reduction Program (Chapter 6.10 (commencing with Section 52120)).
(B) For self-contained classrooms in grades 4 to 8, inclusive, an average classroom size that is the lesser of clause (i) or (ii), as follows:
(i) At least five pupils fewer per classroom than was the average in 2006-07.
(ii) An average of 25 pupils per classroom.
(iii) For purposes of this subparagraph, average classroom size shall be calculated at the grade level based on the number of self-contained classrooms in that grade at the school site. If the self-contained classrooms at the school averaged fewer than 25 pupils per classroom during the 2005-06 school year, that lower average shall be used as the "average in 2006-07" for purposes of this subparagraph. A school that receives funding under this article shall not have a self-contained classroom in grades 4 to 8, inclusive, with more than 27 pupils regardless of its average classroom size.

Outcome Rationale: Markham Elementary School made a good-faith effort to stay within QEIA CSR targets in 2012–13, but more students enrolled in the site than expected for different reasons.The school made an effort to accommodate increased kindergarten students that enrolled during the course of the year from neighborhood families for which alternative school placement options would have been a hardship for transportation, increasing the grade level average slightly. For grade five, the percentage of students that was estimated to attrition, based on prior year trends was less than expected. The school is situated in a deeply depressed part of the community with a high rate of crime and violence. As the quality of the school has increased over-time, families have continued to seek the safety of the neighborhood

school vs. sending students a greater distance, as in the past. Over-time, this has resulted in increased retention and a higher class size average in grade 5.

This Waiver is requesting that the Class Size Reduction Targets established for Markham Elementary School in these grade levels for the 2012-2013 school year:
> 20.44 for Kindergarten increased to 21 students;
> 17.67 for 5th grade increased to 24 students

Markham Elementary School provides a strong academic program that reflects of the spirit of the QEIA program, and is continuing to make academic gains for its students.

Student Population: 361

City Type: Urban

Public Hearing Date: 1/6/2014
Public Hearing Advertised: Newspaper

Local Board Approval Date: 1/6/2014

Community Council Reviewed By: Schoolsite Council
Community Council Reviewed Date: 12/19/2013
Community Council Objection: N
Community Council Objection Explanation:

Audit Penalty YN: N

Categorical Program Monitoring: N

Submitted by: Mr. David Montes de Oca
Position: Associate Superintendent
E-mail: david.montes@ousd.k12.ca.us
Telephone: 510-336-7570
Fax:

Bargaining Unit Date: 12/20/2013
Name: Oakland Education Association
Representative: Trish Gorham
Title: President
Position: Support
Comments:

Waiver Number: 13-1-2014 **Period of Request:** July 1, 2012, to June 30, 2013
Period Recommended: July 1, 2012, to June 30, 2013
New Highland Academy Elementary School **CDS Code**: 01 61259 6001903
Oakland Unified School District

Local Educational Agency Request:

Oakland Unified School District (USD) is an urban district located in Alameda County with a student population of approximately 36,262 students. New Highland Academy Elementary School (ES) serves 298 students in kindergarten and grades one through five. Monitoring performed by the Alameda County Office of Education indicates that the class size reduction (CSR) requirements of the Quality Education Investment Act (QEIA) were not fully met by New Highland Academy ES in school year 2012–13. The school's current QEIA CSR targets for core classes of English, mathematics, history-social science, and science are 20.44 in kindergarten and grades one through three, and an average of 20.0 and 19.5 in grades four and five, respectively.

Oakland USD states that New Highland Academy ES made a good-faith effort to stay within QEIA CSR targets in 2012–13, but more students enrolled than expected. The district adds that the percentage of students estimated to attrition, based on prior year trends, was less than expected for grades three through five. Furthermore, the district states that New Highland Academy ES shares a campus with another non-QEIA elementary school, which significantly restricts the school's enrollment capacity. Nonetheless, the district states that the overages were, in most cases, a single class being over by an average of a single student.

Oakland USD requests a waiver of the QEIA CSR targets for grades three through five at New Highland Academy ES for school year 2012–13, and the establishment of alternative CSR targets of 22.0, 22.0, and 20.0 students on average in core classes in grades three through five, respectively.

California Department of Education Recommendation and Conditions:

The California Department of Education (CDE) supports Oakland USD's request to increase its QEIA CSR targets for grades three through five at New Highland Academy ES for school year 2012–13.

The CDE recommends approval with the following conditions: (1) Applies only to grades three through five at New Highland Academy ES for school year 2012–13; (2) New Highland Academy ES increases enrollment to 22.0, 22.0, and 20.0 students on average in core classes in grades three through five, respectively, for school year 2012–13; (3) No core class in grades four and five may exceed 27 students per classroom regardless of the average classroom size; and (4) Within 30 days of approval of this waiver, Oakland USD must provide to the CDE a description, including costs covered by QEIA funds, of professional development activities and any other school improvement activities added to the school improvement plan as a result of the additional funding now available, if any, through this waiver of the CSR requirement.

Reviewed by New Highland Academy ES Schoolsite Council on December 19, 2013.

Supported by Oakland Education Association, December 20, 2013.

Local Board Approval: January 6, 2014.

California Department of Education
WAIVER SUBMISSION - General

CD Code: 0161259 Waiver Number: 13-1-2014 Active Year: 2014

Date In: 1/7/2014 3:30:54 PM

Local Education Agency: Oakland Unified School District
Address: 1000 Broadway, Ste. 680
Oakland, CA 94607

Start: 7/1/2012 End: 6/30/2013

Waiver Renewal: N
Previous Waiver Number: Previous SBE Approval Date:

Waiver Topic: Quality Education Investment Act
Ed Code Title: Class Size Reduction Requirements
Ed Code Section: 52055.740(a)
Ed Code Authority: 33050

Ed Code or *CCR* to Waive: For each funded school, the county superintendent of schools for the county in which the school is located shall annually review the school and its data to determine if the school has met all of the following program requirements by the school by the end of the third full year of funding:
(1) Meet all of the following class size requirements:
(A) For kindergarten and grades 1 to 3, inclusive, no more than 20.44 pupils per class, as set forth in the Class Size Reduction Program (Chapter 6.10 (commencing with Section 52120)).
(B) For self-contained classrooms in grades 4 to 8, inclusive, an average classroom size that is the lesser of clause (i) or (ii), as follows:
(i) At least five pupils fewer per classroom than was the average in 2006-07.
(ii) An average of 25 pupils per classroom.
(iii) For purposes of this subparagraph, average classroom size shall be calculated at the grade level based on the number of self-contained classrooms in that grade at the school site. If the self-contained classrooms at the school averaged fewer than 25 pupils per classroom during the 2005-06 school year, that lower average shall be used as the "average in 2006-07" for purposes of this subparagraph. A school that receives funding under this article shall not have a self-contained classroom in grades 4 to 8, inclusive, with more than 27 pupils regardless of its average classroom size.

Outcome Rationale: New Highland Academy Elementary School made a good-faith effort to stay within QEIA CSR targets in 2012–13, but more students enrolled in the site than expected for different reasons.. For grades three, four and five, the percentage of students that was estimated to attrition, based on prior year trends was less than expected. New Highland Elementary shares a campus with another non-QEIA elementary school. This nonetheless significantly restricts the school's enrollment capacity. In an effort to ensure a sustainable enrollment, the student assignment process for 2012-13 resulted in slight increases above QEIA targets in grades 3-5. These overages where in most cases a single class being over by an average of a single student.

This Waiver is requesting that the Class Size Reduction Targets established for New Highland Academy Elementary School in these grade levels for the 2012-2013 school year:
> 20.44 for 3rd grade increased to 22 students;
> 20.0 for 4th grade increased to 22 students;
> 19.5 for 5th grade increased to 20 students

New Highland Academy Elementary School provides a strong academic program that reflects of the spirit of the QEIA program, and is continuing to make academic gains for its students.

Student Population: 298

City Type: Urban

Public Hearing Date: 1/6/2014
Public Hearing Advertised: Newspaper

Local Board Approval Date: 1/6/2014

Community Council Reviewed By: Schoolsite Council
Community Council Reviewed Date: 12/19/2013
Community Council Objection: N
Community Council Objection Explanation:

Audit Penalty YN: N

Categorical Program Monitoring: N

Submitted by: Mr. David Montes de Oca
Position: Associate Superintendent
E-mail: david.montes@ousd.k12.ca.us
Telephone: 510-336-7570
Fax:

Bargaining Unit Date: 12/20/2013
Name: Oakland Education Association
Representative: Trish Gorham
Title: President
Position: Support
Comments:

Waiver Number: 14-1-2014 **Period of Request:** July 1, 2012, to June 30, 2013
Period Recommended: July 1, 2012, to June 30, 2013
Parker Elementary School **CDS Code**: 01 61259 6002091
Oakland Unified School District

Local Educational Agency Request:

Oakland Unified School District (USD) is an urban district located in Alameda County with a student population of approximately 36,262 students. Parker Elementary School (ES) serves 180 students in kindergarten and grades one through five. Monitoring performed by the Alameda County Office of Education indicates that the class size reduction (CSR) requirements of the Quality Education Investment Act (QEIA) were not fully met by Parker ES in school year 2012–13. The school's current QEIA CSR targets for core classes of English, mathematics, history-social science, and science are 20.44 in kindergarten and grades one through three, and an average of 13.6 and 23.3 in grades four and five, respectively.

Oakland USD states that Parker ES made a good-faith effort to stay within QEIA CSR targets in 2012–13, but more students enrolled in specific grade levels than expected. The district adds that the school made an effort to accommodate the increased enrollment in kindergarten from neighborhood families during the course of the year because alternative school placement options created a hardship for parents to transport their children. Furthermore, the district states that the percentage of students estimated to attrition, based on prior year trends, was less than expected for grades three through five. In addition, the district states that Parker ES is a very small school located in a low socioeconomic, high-crime neighborhood; however, because it is one of the highest performing schools in the district, the school is in high demand.

Oakland USD requests a waiver of the QEIA CSR targets for kindergarten and grades three and four at Parker ES for school year 2012–13, and the establishment of alternative CSR targets of 23.0 and 25.0 students per class in core classes in kindergarten and grade three, respectively, and 25.0 students on average in core classes in grade four.

California Department of Education Recommendation and Conditions:

The California Department of Education (CDE) supports Oakland USD's request to increase its QEIA CSR targets for kindergarten and grades three and four at Parker ES for school year 2012–13.

The CDE recommends approval with the following conditions: (1) Applies only to kindergarten and grades three and four at Parker ES for school year 2012–13; (2) Parker ES increases enrollment to 23.0 and 25.0 students per class in core classes in kindergarten and grade three, respectively, and 25.0 students on average in core classes in grade four for school year 2012–13; (3) No core class in grades four and five may exceed 27 students per classroom regardless of the average classroom size; and (4) Within 30 days of approval of this waiver, Oakland USD must provide to the CDE a description, including costs covered by QEIA funds, of professional development activities and any other school improvement activities added to the school improvement plan as a result of the additional funding now available, if any, through this waiver of the CSR requirement.

Reviewed by Parker ES Schoolsite Council on December 11, 2013.

Supported by Oakland Education Association, December 20, 2013.

Local Board Approval: January 6, 2014.

California Department of Education
WAIVER SUBMISSION - General

CD Code: 0161259 Waiver Number: 14-1-2014 Active Year: 2014

Date In: 1/7/2014 3:45:05 PM

Local Education Agency: Oakland Unified School District
Address: 1000 Broadway, Ste. 680
Oakland, CA 94607

Start: 7/1/2012 End: 6/30/2013

Waiver Renewal: N
Previous Waiver Number: Previous SBE Approval Date:

Waiver Topic: Quality Education Investment Act
Ed Code Title: Class Size Reduction Requirements
Ed Code Section: 52055.740(a)
Ed Code Authority: 33050

Ed Code or *CCR* to Waive: For each funded school, the county superintendent of schools for the county in which the school is located shall annually review the school and its data to determine if the school has met all of the following program requirements by the school by the end of the third full year of funding:
(1) Meet all of the following class size requirements:
(A) For kindergarten and grades 1 to 3, inclusive, no more than 20.44 pupils per class, as set forth in the Class Size Reduction Program (Chapter 6.10 (commencing with Section 52120)).
(B) For self-contained classrooms in grades 4 to 8, inclusive, an average classroom size that is the lesser of clause (i) or (ii), as follows:
(i) At least five pupils fewer per classroom than was the average in 2006-07.
(ii) An average of 25 pupils per classroom.
(iii) For purposes of this subparagraph, average classroom size shall be calculated at the grade level based on the number of self-contained classrooms in that grade at the school site. If the self-contained classrooms at the school averaged fewer than 25 pupils per classroom during the 2005-06 school year, that lower average shall be used as the "average in 2006-07" for purposes of this subparagraph. A school that receives funding under this article shall not have a self-contained classroom in grades 4 to 8, inclusive, with more than 27 pupils regardless of its average classroom size.

Outcome Rationale: Parker Elementary School made a good-faith effort to stay within QEIA CSR targets in 2012–13, but more students enrolled in the site than expected for different reasons.The school made an effort to accommodate increased kindergarten students that enrolled during the course of the year from neighborhood families for which alternative school placement options would have been a hardship for transportation, increasing the grade level average slightly. For grades three through five, the percentage of students that was estimated to attrition, based on prior year trends was less than expected. Parker is a very small school serving 180 predominantly African American students. The school is the highest performing school with an API score of 840, resulting in a high quality option located in a low

socioeconomic, high crime neighborhood. This has presented high demand for very limited seats.

This Waiver is requesting that the Class Size Reduction Targets established for Parker Elementary School in these grade levels for the 2012-2013 school year:
> 20.44 for Kindergarten increased to 23 students;
> 20.44 for 3rd grade increased to 25 students;
> 14.0 for 4th grade increased to 25 students

Parker Elementary School provides a strong academic program that reflects of the spirit of the QEIA program, and is continuing to make academic gains for its students.

Student Population: 180

City Type: Urban

Public Hearing Date: 1/6/2014
Public Hearing Advertised: Newspaper

Local Board Approval Date: 1/6/2014

Community Council Reviewed By: Schoolsite Council
Community Council Reviewed Date: 12/11/2013
Community Council Objection: N
Community Council Objection Explanation:

Audit Penalty YN: N

Categorical Program Monitoring: N

Submitted by: Mr. David Montes de Oca
Position: Associate Superintendent
E-mail: david.montes@ousd.k12.ca.us
Telephone: 510-336-7570
Fax:

Bargaining Unit Date: 12/20/2013
Name: Oakland Education Association
Representative: Trish Gorham
Title: President
Position: Support
Comments:

Waiver Number: 15-1-2014 **Period of Request:** July 1, 2012, to June 30, 2013
Period Recommended: July 1, 2012, to June 30, 2013
Urban Promise Academy Middle School **CDS Code**: 01 61259 6118657
Oakland Unified School District

Local Educational Agency Request:

Oakland Unified School District (USD) is an urban district located in Alameda County with a student population of approximately 36,262 students. Urban Promise Academy Middle School (MS) serves 320 students in grades six through eight. Monitoring performed by the Alameda County Office of Education indicates that the class size reduction (CSR) requirements of the Quality Education Investment Act (QEIA) were not fully met by Urban Promise Academy MS in school year 2012–13. The school's current QEIA CSR targets for core classes of English, mathematics, history-social science, and science are an average of 16.0, 16.4, and 16.9 in grades six through eight, respectively.

Oakland USD states that Urban Promise Academy MS made a good-faith effort to stay within QEIA CSR targets in 2012–13, but more students enrolled than expected. Also, the district states that the school made an effort to accommodate increased enrollment in grade six from neighborhood families during the course of the year because alternative school placement options created a hardship for parents to transport their children. For grades seven and eight, the district states that the percentage of students estimated to attrition, based on prior year trends, was less than expected. In addition, the district states that having QEIA targets as low as 17.0 on average in all grades compounds the hardship. Furthermore, the district states that Urban Promise Academy MS is located in a densely populated, low income, Spanish-speaking neighborhood and all the surrounding non-QEIA middle schools are at capacity, in part due to the revocation of three charter middle schools that were in the Urban Promise Academy MS area.

Oakland USD requests a waiver of the QEIA CSR targets for grades six through eight at Urban Promise Academy MS for school year 2012–13, and the establishment of alternative CSR targets of 20.0, 20.0, and 22.0 students on average in core classes in grades six through eight, respectively.

California Department of Education Recommendation and Conditions:

The California Department of Education (CDE) supports Oakland USD's request to increase its QEIA CSR targets for grades six through eight at Urban Promise Academy MS for school year 2012–13.

The CDE recommends approval with the following conditions: (1) Applies only to grades six through eight at Urban Promise Academy MS for school year 2012–13; (2) Urban Promise Academy MS increases enrollment to 20.0, 20.0, and 22.0 students on average in core classes in grades six through eight, respectively, for school year 2012–13; and (3) Within 30 days of approval of this waiver, Oakland USD must provide to the CDE a description, including costs covered by QEIA funds, of professional development activities and any other school improvement activities added to the school improvement plan as a result of the additional funding now available, if any, through this waiver of the CSR requirement.

Reviewed by Urban Promise Academy MS Schoolsite Council on December 19, 2013.

Supported by Oakland Education Association, December 20, 2013.

Local Board Approval: January 6, 2014.

California Department of Education
WAIVER SUBMISSION - General

CD Code: 0161259 Waiver Number: 15-1-2014 Active Year: 2014

Date In: 1/7/2014 3:50:49 PM

Local Education Agency: Oakland Unified School District
Address: 1000 Broadway, Ste. 680
Oakland, CA 94607

Start: 7/1/2012 End: 6/30/2013

Waiver Renewal: N
Previous Waiver Number: Previous SBE Approval Date:

Waiver Topic: Quality Education Investment Act
Ed Code Title: Class Size Reduction Requirements
Ed Code Section: 52055.740(a
Ed Code Authority: 33050

Ed Code or *CCR* to Waive: For each funded school, the county superintendent of schools for the county in which the school is located shall annually review the school and its data to determine if the school has met all of the following program requirements by the school by the end of the third full year of funding:
(1) Meet all of the following class size requirements:
(A) For kindergarten and grades 1 to 3, inclusive, no more than 20.44 pupils per class, as set forth in the Class Size Reduction Program (Chapter 6.10 (commencing with Section 52120)).
(B) For self-contained classrooms in grades 4 to 8, inclusive, an average classroom size that is the lesser of clause (i) or (ii), as follows:
(i) At least five pupils fewer per classroom than was the average in 2006-07.
(ii) An average of 25 pupils per classroom.
(iii) For purposes of this subparagraph, average classroom size shall be calculated at the grade level based on the number of self-contained classrooms in that grade at the school site. If the self-contained classrooms at the school averaged fewer than 25 pupils per classroom during the 2005-06 school year, that lower average shall be used as the "average in 2006-07" for purposes of this subparagraph. A school that receives funding under this article shall not have a self-contained classroom in grades 4 to 8, inclusive, with more than 27 pupils regardless of its average classroom size.

Outcome Rationale: Urban Promise Academy Middle School made a good-faith effort to stay within QEIA CSR targets in 2012–13, but more students enrolled in the site than expected for different reasons. The school is located in a densely populated, low income, Spanish speaking neighborhood. Urban Promise Academy is a small school of 320 students with limited facility capacity. All surrounding middle schools within the attendance area are at capacity. This has created some challenges in student placement. In 2012-13, the district approved the revocation of a set of three charter schools serving 6-8th grade students living in the Urban Promise Academy catchment. As a result of the revocation decision - many attendance area families removed their students from the charter schools and enrolled within the district.

For grade six, the school attempted to accommodate students that enrolled during the course of the year for whom assignment to an alternate placement would have been a hardship based on transportation. For grades seven and eight, the percentage of students that was estimated to attrition, based on prior year trends was less than expected. This has historically been compounded by the fact that Urban Promise Academy has QEIA targets that require class size averages in 17 in all grades.

This Waiver is requesting that the Class Size Reduction Targets established for Urban Promise Academy Middle School in these grade levels for the 2012-2013 school year:
> 16.0 for 6th grade increased to 20 students;
> 16.35 for 7th grade increased to 22 students;
> 16.94 for 8th grade increased to 22 students

Urban Promise Academy Middle School provides a strong academic program that reflects of the spirit of the QEIA program, and is continuing to make academic gains for its students.

Student Population: 320

City Type: Urban

Public Hearing Date: 1/6/2014
Public Hearing Advertised: Newspaper

Local Board Approval Date: 1/6/2014

Community Council Reviewed By: Schoolsite Council
Community Council Reviewed Date: 12/19/2013
Community Council Objection: N
Community Council Objection Explanation:

Audit Penalty YN: N

Categorical Program Monitoring: N

Submitted by: Mr. David Montes de Oca
Position: Associate Superintendent
E-mail: david.montes@ousd.k12.ca.us
Telephone: 510-336-7570
Fax:

Bargaining Unit Date: 12/20/2013
Name: Oakland Education Association
Representative: Trish Gorham
Title: President
Position: Support
Comments:

Waiver Number: 16-1-2014 **Period of Request:** July 1, 2012, to June 30, 2013
Period Recommended: July 1, 2012, to June 30, 2013
Manzanita Community Elementary School **CDS Code**: 01 61259 6002042
Oakland Unified School District

Local Educational Agency Request:

Oakland Unified School District (USD) is an urban district located in Alameda County with a student population of approximately 36,262 students. Manzanita Community Elementary School (ES) serves 342 students in kindergarten and grades one through five. Monitoring performed by the Alameda County Office of Education indicates that the class size reduction (CSR) requirements of the Quality Education Investment Act (QEIA) were not fully met by Manzanita Community ES in one grade four class that exceeded the QEIA 27-student cap per classroom requirement in school year 2012–13. The school's current QEIA CSR targets for core classes of English, mathematics, history-social science, and science are 20.44 in kindergarten and grades one through three, and an average of 18.3 and 16.3 in grades four and five, respectively.

Oakland USD states that Manzanita Community ES maintained a class size average in grade four below its QEIA CSR target in school year 2012–13. However, one grade four class rose above 27 students while the school underwent student scheduling changes to reduce class sizes. The process included funding an additional teacher, above and beyond the QEIA budget allocation, in order to maintain smaller class sizes.

Oakland USD requests a waiver of the QEIA 27-student cap per core classroom requirement for one grade four class at Manzanita Community ES for school year 2012–13.

California Department of Education Recommendation and Conditions:

The California Department of Education (CDE) supports Oakland USD's request to waive the QEIA 27-student cap per core classroom CSR requirement for grade four at Manzanita Community ES for school year 2012–13.

The CDE recommends approval with the following conditions: (1) Applies only to one grade four class at Manzanita Community ES for school year 2012–13; and (2) Within 30 days of approval of this waiver, Oakland USD must provide to the CDE a description, including costs covered by QEIA funds, of professional development activities and any other school improvement activities added to the school improvement plan as a result of the additional funding now available, if any, through this waiver of the CSR requirement.

Reviewed by Manzanita Community ES Schoolsite Council on December 19, 2013.

Supported by Oakland Education Association, December 20, 2013.

Local Board Approval: January 6, 2014.

California Department of Education
WAIVER SUBMISSION - General

CD Code: 0161259 Waiver Number: 16-1-2014 Active Year: 2014

Date In: 1/7/2014 3:56:44 PM

Local Education Agency: Oakland Unified School District
Address: 1000 Broadway, Ste. 680
Oakland, CA 94607

Start: 7/1/2012 End: 6/30/2013

Waiver Renewal: N
Previous Waiver Number: Previous SBE Approval Date:

Waiver Topic: Quality Education Investment Act
Ed Code Title: Rule of 27
Ed Code Section: 52055.740(a)
Ed Code Authority: 33050

Ed Code or *CCR* to Waive: For each funded school, the county superintendent of schools for the county in which the school is located shall annually review the school and its data to determine if the school has met all of the following program requirements by the school by the end of the third full year of funding:
(1) Meet all of the following class size requirements:
(A) For kindergarten and grades 1 to 3, inclusive, no more than 20.44 pupils per class, as set forth in the Class Size Reduction Program (Chapter 6.10 (commencing with Section 52120)).
(B) For self-contained classrooms in grades 4 to 8, inclusive, an average classroom size that is the lesser of clause (i) or (ii), as follows:
(i) At least five pupils fewer per classroom than was the average in 2006-07.
(ii) An average of 25 pupils per classroom.
(iii) For purposes of this subparagraph, average classroom size shall be calculated at the grade level based on the number of self-contained classrooms in that grade at the school site. If the self-contained classrooms at the school averaged fewer than 25 pupils per classroom during the 2005-06 school year, that lower average shall be used as the "average in 2006-07" for purposes of this subparagraph. A school that receives funding under this article shall not have a self-contained classroom in grades 4 to 8, inclusive, with more than 27 pupils regardless of its average classroom size.

Outcome Rationale: This Waiver is requesting that the requirement for Manzanita Community School to keep class size maximums at 27 students or fewer be suspended for the 2011-12 school year in light of the following circumstances:

The school maintained a class size average in 4th grade below its QEIA target of 18.33 students during the 2012-13 school year. However, one class of 4th grade students rose above 27 while the school underwent student scheduling changes to reduce class sizes. This process included the District funding an additional teacher, above and beyond the QEIA budget allocation, in order to maintain smaller class sizes.

Student Population: 342

City Type: Urban

Public Hearing Date: 1/6/2014
Public Hearing Advertised: Newspaper

Local Board Approval Date: 1/6/2014

Community Council Reviewed By: Schoolsite Council
Community Council Reviewed Date: 12/19/2013
Community Council Objection: N
Community Council Objection Explanation:

Audit Penalty YN: N

Categorical Program Monitoring: N

Submitted by: Mr. David Montes de Oca
Position: Associate Superintendent
E-mail: david.montes@ousd.k12.ca.us
Telephone: 510-336-7570
Fax:

Bargaining Unit Date: 12/20/2013
Name: Oakland Education Association
Representative: Trish Gorham
Title: President
Position: Support
Comments:

Waiver Number: 17-1-2014 **Period of Request:** July 1, 2012, to June 30, 2013
Period Recommended: July 1, 2012, to June 30, 2013
Urban Promise Academy Middle School **CDS Code**: 01 61259 6118657
Oakland Unified School District

Local Educational Agency Request:

Oakland Unified School District (USD) is an urban district located in Alameda County with a student population of approximately 36,262 students. Urban Promise Academy Middle School (MS) serves 320 students in grades six through eight. Monitoring performed by the Alameda County Office of Education indicates that the class size reduction (CSR) requirements of the Quality Education Investment Act (QEIA) were not fully met by Urban Promise Academy MS in two grade six classes and four grade seven classes that exceeded the QEIA 27-student cap per classroom requirement in school year 2012–13. The school's current QEIA CSR targets for core classes of English, mathematics, history-social science, and science are an average of 16.0, 16.4, and 16.9 in grades six through eight, respectively.

Oakland USD states that Urban Promise Academy MS had class size averages in grade six of 19.4 students and class size averages in grade seven of 21.1 students in school year 2012–13, which is significantly below the districtwide class size averages for these grades. However, one student enrolled in two sections of grade six and two students enrolled in four sections of grade seven, resulting in temporary class sizes of 28. As soon as the site administration became aware of this issue, they worked with the student assignment office to ensure that attrition occurred no later than December of that year; class sizes were then maintained at 27.0 students or below.

Oakland USD requests a waiver of the QEIA 27-student cap per core classroom requirement for two grade six classes and four grade seven classes at Urban Promise Academy MS for school year 2012–13.

California Department of Education Recommendation and Conditions:

The California Department of Education (CDE) supports Oakland USD's request to waive the QEIA 27-student cap per core classroom CSR requirement for two grade six classes and four grade seven classes at Promise Academy MS for school year 2012–13.

The CDE recommends approval with the following conditions: (1) Applies only to two grade six classes and four grade seven classes at Urban Promise Academy MS for school year 2012–13; and (2) Within 30 days of approval of this waiver, Oakland USD must provide to the CDE a description, including costs covered by QEIA funds, of professional development activities and any other school improvement activities added to the school improvement plan as a result of the additional funding now available, if any, through this waiver of the CSR requirement.

Reviewed by Urban Promise Academy MS Schoolsite Council on December 19, 2013.

Supported by Oakland Education Association, December 20, 2013.

Local Board Approval: January 6, 2014.

California Department of Education
WAIVER SUBMISSION - General

CD Code: 0161259 Waiver Number: 17-1-2014 Active Year: 2014

Date In: 1/7/2014 4:01:45 PM

Local Education Agency: Oakland Unified School District
Address: 1000 Broadway, Ste. 680
Oakland, CA 94607

Start: 7/1/2012 End: 6/30/2013

Waiver Renewal: N
Previous Waiver Number: Previous SBE Approval Date:

Waiver Topic: Quality Education Investment Act
Ed Code Title: Rule of 27
Ed Code Section: 52055.740(a)
Ed Code Authority: 33050

Ed Code or *CCR* to Waive: For each funded school, the county superintendent of schools for the county in which the school is located shall annually review the school and its data to determine if the school has met all of the following program requirements by the school by the end of the third full year of funding:
(1) Meet all of the following class size requirements:
(A) For kindergarten and grades 1 to 3, inclusive, no more than 20.44 pupils per class, as set forth in the Class Size Reduction Program (Chapter 6.10 (commencing with Section 52120)).
(B) For self-contained classrooms in grades 4 to 8, inclusive, an average classroom size that is the lesser of clause (i) or (ii), as follows:
(i) At least five pupils fewer per classroom than was the average in 2006-07.
(ii) An average of 25 pupils per classroom.
(iii) For purposes of this subparagraph, average classroom size shall be calculated at the grade level based on the number of self-contained classrooms in that grade at the school site. If the self-contained classrooms at the school averaged fewer than 25 pupils per classroom during the 2005-06 school year, that lower average shall be used as the "average in 2006-07" for purposes of this subparagraph. A school that receives funding under this article shall not have a self-contained classroom in grades 4 to 8, inclusive, with more than 27 pupils regardless of its average classroom size.

Outcome Rationale: This Waiver is requesting that the requirement for Urban Promise Middle School to keep class size maximums at 27 students or fewer be suspended for the 2011-12 school year in light of the following circumstances:

The school had the class size averages in 6th grade of 19.4 students during the 2012-13 school year; and class size averages in 7th grade of 21.1 students during the 2012-13 school year, which is significantly below the district-wide class size averages for these grades. However, one student enrolled in two sections of 6th grade and two students enrolled in four sections of 7th grade resulted in temporary class sizes of 28 during the 2012-13 school year. As soon as the site administration became aware of this issue, they worked with the student assignment

office to ensure that as attrition occurred no later than December of that year - the class sizes were maintained at 27 or below.

Student Population: 320

City Type: Urban

Public Hearing Date: 1/6/2014
Public Hearing Advertised: Newspaper

Local Board Approval Date: 1/6/2014

Community Council Reviewed By: Schoolsite Council
Community Council Reviewed Date: 12/19/2013
Community Council Objection: N
Community Council Objection Explanation:

Audit Penalty YN: N

Categorical Program Monitoring: N

Submitted by: Mr. David Montes de Oca
Position: Associate Superintendent
E-mail: david.montes@ousd.k12.ca.us
Telephone: 510-336-7570
Fax:

Bargaining Unit Date: 12/20/2013
Name: Oakland Education Association
Representative: Trish Gorham
Title: President
Position: Support
Comments:

Waiver Number: 33-12-2013 **Period of Request:** July 1, 2012, to June 30, 2013
Period Recommended: July 1, 2012, to June 30, 2013
Anne Darling Elementary School **CDS Code**: 43 69666 6048433
San Jose Unified School District

Local Educational Agency Request:

San Jose Unified School District (USD) is an urban district located in Santa Clara County with a student population of approximately 33,184 students. Anne Darling Elementary School (ES) serves 534 students in kindergarten and grades one through five. Monitoring performed by the Santa Clara County Office of Education indicates that class size reduction (CSR) requirements of the Quality Education Investment Act (QEIA) were not fully met by Anne Darling ES in school year 2012–13. The school's current QEIA CSR targets for core classes of English, mathematics, history-social science, and science are 20.44 in kindergarten and grades one through three, and an average of 22.0 and 21.0 in grades four and five, respectively.

San Jose USD states that one kindergarten class began the 2012–13 school year with 23 students. In addition, the district states that on the 18th day of school, enrollment in this class dropped to 21 students and remained at that number until March 11, 2013, when it dropped to its CSR target of 20.44. The district further states that during the period of time that the enrollment stayed at 21:1, it did not have an opening where the 21st student could be placed. Lastly, the district states that it will closely monitor all grade level averages throughout the remainder of the QEIA years.

San Jose USD requests a waiver of the QEIA CSR target for kindergarten at Anne Darling ES for school year 2012–13, and the establishment of an alternative CSR target of 21.05 students per class in core classes in kindergarten.

California Department of Education Recommendation and Conditions:

The California Department of Education (CDE) supports San Jose USD's request to increase its QEIA CSR target for kindergarten at Anne Darling ES for school year 2012–13.

The CDE recommends approval with the following conditions: (1) Applies only to kindergarten at Anne Darling ES for school year 2012–13; (2) Anne Darling ES increases enrollment to 21.05 students per class in core classes in kindergarten; (3) No core class in grades four and five may exceed 27 students per classroom regardless of the average classroom size; and (4) Within 30 days of approval of this waiver, San Jose USD must provide to the CDE a description, including costs covered by QEIA funds, of professional development activities and any other school improvement activities added to the school improvement plan as a result of the additional funding now available, if any, through this waiver of the CSR requirement.

Reviewed by Anne Darling ES Schoolsite Council on December 5, 2013.

Supported by San Jose Teachers Association, November 05, 2013.

Local Board Approval: December 5, 2013.

California Department of Education
WAIVER SUBMISSION - General

CD Code: 4369666 Waiver Number: 33-12-2013 Active Year: 2013

Date In: 12/20/2013 2:01:08 PM

Local Education Agency: San Jose Unified School District
Address: 855 Lenzen Ave.
San Jose, CA 95126

Start: 7/1/2012 End: 6/30/2013

Waiver Renewal: N
Previous Waiver Number: Previous SBE Approval Date:

Waiver Topic: Quality Education Investment Act
Ed Code Title: Class Size Reduction Requirements
Ed Code Section: 52055.740(a)
Ed Code Authority: 33050

Ed Code or *CCR* to Waive: (a) For each funded school, the county superintendent of schools for the county in which the school is located shall annually review the school and its data to determine if the school has met all of the following program requirements by the end of the third full year of funding: [(A) For kindergarten and grades 1 to 3 inclusive, no more than 20 pupils per class,as set forth in the Class Size Reduction Program (Chap 6.10 (commencing with Sec 521200)]

Outcome Rationale: One kindergarten class began the school year 2012-13 with 23 students. Typically, many students who register for school end up dropping in the first few weeks, and there is an opportunity to adjust classes within the school to meet the 20:1 QEIA requirements. Students in this class did drop from 23 to 21 students by the 18th day of school. It remained 21:1 until 3/11/13. During the period of time it remained 21:1, SJUSD did not have an opening where this 21st student could be placed. On 3/12/13, another student dropped and the class then met the QEIA class size requirement of 20:1 for the remainder of the year. SJUSD will closely monitor all grade level averages throughout the remainder of the QEIA years.

Student Population: 534

City Type: Urban

Public Hearing Date: 12/12/2013
Public Hearing Advertised: Public Notice posted on District Office Door, District Website and on Board Agenda

Local Board Approval Date: 12/5/2013

Community Council Reviewed By: Anne Darling Elementary School - Schoolsite Council
Community Council Reviewed Date: 12/5/2013
Community Council Objection: N

Community Council Objection Explanation:

Audit Penalty YN: N

Categorical Program Monitoring: N

Submitted by: Ms. Janice Samuels
Position: Categorical Program Manager
E-mail: jsamuels@sjusd.org
Telephone: 408-535-6602 x14314
Fax: 408-535-6489

Bargaining Unit Date: 11/05/2013
Name: San Jose Teachers Association
Representative: Jennifer Thomas
Title: President
Position: Support
Comments:

Waiver Number: 34-12-2013 **Period of Request:** July 1, 2012, to June 30, 2013
Period Recommended: July 1, 2012, to June 30, 2013
Selma Olinder Elementary School **CDS Code**: 43 69666 6048698
San Jose Unified School District

Local Educational Agency Request:

San Jose Unified School District (USD) is an urban district located in Santa Clara County with a student population of approximately 33,184 students. Selma Olinder Elementary School (ES) serves 465 students in kindergarten and grades one through five. Monitoring performed by the Santa Clara County Office of Education indicates that class size reduction (CSR) requirements of the Quality Education Investment Act (QEIA) were not fully met by Selma Olinder ES in school year 2012–13. The school's current QEIA CSR targets for core classes of English, mathematics, history-social science, and science are 20.44 in kindergarten and grades one through three, and an average of 22.0 and 20.0 in grades four and five, respectively.

San Jose USD states that one grade two bilingual class began the 2012–13 school year with 23 students. In addition, the district states that on the 14th day of school, enrollment in this class dropped to 21 students and remained at that number until December 7, 2012, when it dropped to its CSR target of 20.44. The district further states that during the period of time that the enrollment stayed at 21:1, it did not have an opening in a bilingual class where the 21st student could be placed. Lastly, the district states that it will closely monitor all grade level averages throughout the remainder of the QEIA years.

San Jose USD requests a waiver of the QEIA CSR target for grade two at Selma Olinder ES for school year 2012–13, and the establishment of an alternative CSR target of 20.7 students per class in core classes in grade two.

California Department of Education Recommendation and Conditions:

The California Department of Education (CDE) supports San Jose USD's request to increase its QEIA CSR target for grade two at Selma Olinder ES for school year 2012–13.

The CDE recommends approval with the following conditions: (1) Applies only to grade two at Selma Olinder ES for school year 2012–13; (2) Selma Olinder ES increases enrollment to 20.7 students per class in core classes in grade two; (3) No core class in grades four and five may exceed 27 students per classroom regardless of the average classroom size; and (4) Within 30 days of approval of this waiver, San Jose USD must provide to the CDE a description, including costs covered by QEIA funds, of professional development activities and any other school improvement activities added to the school improvement plan as a result of the additional funding now available, if any, through this waiver of the CSR requirement.

Reviewed by Selma Olinder ES Schoolsite Council on December 5, 2013.

Supported by San Jose Teachers Association, November 11, 2013.

Local Board Approval: December 5, 2013.

California Department of Education
WAIVER SUBMISSION - General

CD Code: 4369666 Waiver Number: 34-12-2013 Active Year: 2013

Date In: 12/20/2013 2:41:11 PM

Local Education Agency: San Jose Unified School District
Address: 855 Lenzen Ave.
San Jose, CA 95126

Start: 7/1/2012 End: 6/30/2013

Waiver Renewal: N
Previous Waiver Number: Previous SBE Approval Date:

Waiver Topic: Quality Education Investment Act
Ed Code Title: Class Size Reduction Requirements
Ed Code Section: 52055.740(a)
Ed Code Authority: 33050

Ed Code or *CCR* to Waive: (a) For each funded school, the county superintendent of schools for the county in which the school is located shall annually review the school and its data to determine if the school has met all of the following program requirements by the end of the third full year of funding: [(A) For kindergarten and grades 1 to 3 inclusive, no more than 20 pupils per class, as set forth in the Class Size Reduction Program (Chap 6.10 (commencing with Sec 521200)]

Outcome Rationale: One second grade-bilingual class began the school year 2012-2013 with 23 students. Typically many students who register for school end up dropping in the first few weeks, and there is an opportunity to adjust classes within the school to meet the 20:1 QEIA requirements. Students in this class did drop from 23 to 21 students by the14th day of school. It remained 21:1 until 12/07/12. During the period of time it remained 21:1, SJUSD did not have an opening in a bilingual class where this 21st student could be placed. On 12/08/12, another student dropped and the class then met the QEIA class size requirement of 20:1 for the remainder of the year. SJUSD will closely monitor all grade level averages throughout the remainder of the QEIA years.

Student Population: 465

City Type: Urban

Public Hearing Date: 12/12/2013
Public Hearing Advertised: Public Notice posted on District Office Door, District Website and on Board Agenda

Local Board Approval Date: 12/6/2013

Community Council Reviewed By: Selma Olinder Elementary School Schoolsite Council
Community Council Reviewed Date: 12/6/2013

Community Council Objection: N
Community Council Objection Explanation:

Audit Penalty YN: N

Categorical Program Monitoring: N

Submitted by: Ms. Janice Samuels
Position: Categorical Program Manager
E-mail: jsamuels@sjusd.org
Telephone: 408-535-6602 x14314
Fax: 408-535-6489

Bargaining Unit Date: 11/05/2013
Name: San Jose Teachers Association
Representative: Jennifer Thomas
Title: President
Position: Support
Comments:

Waiver Number: 35-12-2013 **Period of Request:** July 1, 2012, to June 30, 2013
Period Recommended: July 1, 2012, to June 30, 2013
Century High School **CDS Code**: 30 66670 3030491
Santa Ana Unified School District

Local Educational Agency Request:

Santa Ana Unified School District (USD) is an urban district located in Orange County with a student population of approximately 54,000 students. Century High School (HS) serves 1,942 students in grades nine through twelve. Monitoring performed by the Orange County Office of Education indicates that the class size reduction (CSR) requirements of the Quality Education Investment Act (QEIA) were not fully met by Century HS in three grade nine classes, three grade ten classes, two grade eleven classes, and one grade twelve class that exceeded the QEIA 27-student cap per classroom requirement in school year 2012–13.The school's current QEIA CSR targets for core classes of English, mathematics, history-social science, and science are an average of 25.0 in grades nine through twelve.

Santa Ana USD states there can be significant complications in developing the master schedule because it is based on enrollment, trends, patterns, specific initiatives, and programs from the previous year. In addition, the district states that the school experienced an unforeseen increase in student demand for honors, Advanced Placement (AP), and high level math courses which impacted the master schedule. Further, the district states that providing open access to the higher level courses is a priority and not all courses are offered each period. Along with high school graduation, A-G, AP, and the academy requirements, the district states that scheduling becomes less flexible and challenging with midstream changes. In addition, the district states that the overages in school year 2012–13 were very small and the average for all classes at every grade level, as well as school-wide, remained well below the CSR target of 25.0. Lastly, the district adds that staff is working with the site to monitor enrollment and placement of students to ensure that grade level averages remain below 25 students.

Santa Ana USD requests a waiver of the QEIA 27-student cap per core classroom requirement for three grade nine classes, three grade ten classes, two grade eleven classes, and one grade twelve class at Century HS for school year 2012–13.

California Department of Education Recommendation and Conditions:

The California Department of Education (CDE) supports Santa Ana USD's request to waive the QEIA 27-student cap per core classroom CSR requirement for grades nine through twelve at Century HS for school year 2012–13.

The CDE recommends approval with the following conditions: (1) Applies only to three grade nine classes, three grade ten classes, two grade eleven classes, and one grade twelve class at Century HS for school year 2012–13; and (2) Within 30 days of approval of this waiver, Santa Ana USD must provide to the CDE a description, including costs covered by QEIA funds, of professional development activities and any other school improvement activities added to the school improvement plan as a result of the additional funding now available, if any, through this waiver of the CSR requirement.

Reviewed by Century HS Schoolsite Council on December 18, 2013.

Supported by Santa Ana Educators' Association, November 21, 2013.

Local Board Approval: December 10, 2013.

California Department of Education
WAIVER SUBMISSION - General

CD Code: 3066670 Waiver Number: 35-12-2013 Active Year: 2013

Date In: 12/20/2013 4:49:25 PM

Local Education Agency: Santa Ana Unified School District
Address: 1601 East Chestnut Ave.
Santa Ana, CA 92701

Start: 7/1/2012 End: 6/30/2013

Waiver Renewal: N
Previous Waiver Number: Previous SBE Approval Date:

Waiver Topic: Quality Education Investment Act
Ed Code Title: Rule of 27
Ed Code Section: 52055.740(a)
Ed Code Authority: 33050

Ed Code or *CCR* to Waive: (iii) For purposes of this subparagraph, average classroom size shall be calculated at the grade level based on the number of subject-specific classrooms in that grade at the school site. If the subject-specific classrooms at the school averaged fewer than 25 pupils per classroom during the 2005-06 school year, that lower average shall be used as the “average in 2006-07” for purposes of this subparagraph. [A school that receives funding under this article shall not have a class in English language arts, reading, mathematics, science, or history and social science in grades 4th-12th , inclusive, with more than 27 pupils regardless of its average classroom size.]

Outcome Rationale: The Santa Ana Unified School District (SAUSD) is requesting a waiver, on behalf of Century High School, to waive Quality Education Investment Act (QEIA) *Education Code* section 52055.740(C)(iii). Specifically, Century High School is requesting waiving exit from QEIA based on the Rule of 27.

Refer to Attachment Narrative

Student Population: 54000

City Type: Urban

Public Hearing Date: 12/10/2013
Public Hearing Advertised: Public hearing was announced a mon before hearing and posted

Local Board Approval Date: 12/10/2013

Community Council Reviewed By: Schoolsite Council
Community Council Reviewed Date: 12/18/2013
Community Council Objection: N
Community Council Objection Explanation:

Audit Penalty YN: N

Categorical Program Monitoring: N

Submitted by: Ms. Nuria Solis
Position: Director, EL Programs
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Bargaining Unit Date: 11/21/2013
Name: Santa Ana Educators' Association (SAEA)
Representative: Susan Mercer
Title: President, SAEA
Position: Support
Comments:

Attachment Narrative

On behalf of Century High School, the Santa Ana Unified School District (SAUSD) is seeking a waiver of the QEIA Rule of 27 during the period of July 1, 2012 through June 30, 2013. SAUSD recognizes the positive and profound impact of the QEIA's assistance in improving academic achievement during this period, and respectfully requests that Century's QEIA funding continue in order to maintain these consistent gains and student support systems.

While SAUSD sincerely acknowledges Century High School exceeded the Rule of 27, it is of imperative relevance to note that Century met or exceeded the majority of all other requirements of the QEIA statute during that same period. Century's current API of **650** represents a total average gain of 35 points over the past three years. Details of these achievements will be further clarified in this waiver request.

QEIA funding has been a vital element in assisting Century in closing the achievement gap for its under-represented students. Current QEIA funding supports approximately 27 full time teaching equivalencies. This is a significant contribution which has provided essential assistance in improving academic achievement across the full spectrum of significant student subgroups.

Century High School is a Title I school located in an urban area of Orange County with an enrollment of approximately 1,942 students, grades 9 through 12. Of this total enrollment, **68.3%** are on free or reduced price meals program, and **47.1%** are identified as English learners.

The positive academic achievement results evidenced over the past three years were supported through the careful creation of an instructional program designed to meet the diverse needs of Century's student population while also promoting accelerated academic achievement; all of which were made possible through the assistance of QEIA funding.

	API			
Century	**2011**	**2012**	**2013**	**2011 to 2013**
All students	615	652	650	**+35**

As English learners comprise 47.1% of the total student population at Century, providing an instructional program with pathways to support the linguistic and academic needs of these students is a priority. Progress toward achieving that goal is evident when examining the upward trends experienced in both reclassification and graduation rates of English learners at Century.
Over the past two years, Century has experienced markedly improved numbers and percentages of English learners who have reclassified as fluent English proficient (RFEP): A significant accomplishment. In fact, Century's 2012 – 2013 RFEP rate of 15.6% exceeded the state's RFEP rate of 12.2% as well as the county's RFEP rate of 14.3%.

	RFEP Rates	
Century	**#REP**	**RFEP %**
2011 - 2012	84	8.8%
2012 - 2013	132	14.4%
Growth	**+50**	**+5.6**

Another relevant indicator of the progress of Century's English learner students are the graduation rates for this population of students. While Century continues to strive for a 100% graduation rate for all of its students, it is important to note that the graduation rate for English learners (ELs) at Century High School exceeded both the state and the county's rates:

	2012 Graduation Rates: ELs (Source: DataQuest)	
Orange County	**California**	**Century**
67.5%	62.0%	**75.8%**

These compelling results in improvements in reclassification and graduation rates for English learners are further evidence of the effectiveness of the support made possible through QEIA funding.

For those English learners who have yet to reclassify as fluent, Century has implemented a supplemental English language arts (ELA) program: Scholastic's *Read 180*. The support QEIA has provided with funding for additional staff has made the successful implementation of this program possible. It is anticipated that this program will help provide the essential support needed to close the achievement gap for English learners to both reclassify as fluent English Proficient and successfully graduate.

In addition to support with English, a great deal of the collaborative staff time has been devoted to planning and implementing lessons in all disciplines across the curriculum which incorporate instructional strategies and activities which support English language acquisition and promote English language proficiency for this significant group of students. CHS staff has worked carefully to thoughtfully pair and organize students for active engagement during daily lessons. Students have been given multiple opportunities to use academic language to monitor and summarize their learning.

The staff at Century High School (CHS) is committed to supporting the diverse educational requirements of their student population whose broad instructional needs range from special needs, to English learners, to gifted and talented students. To support all students, CHS incorporates a variety of instructional offerings and settings during and beyond the school day. During the school day, careful and accurate placement in core academic classes (intervention to strategic support, benchmark, college preparation, honors and Advanced Placement courses) is determined to support academic success based on an instructional program which provides support in accessing the Common Core State Standards (CCSS) for all students. Teachers provide engaging, standards-based lessons with clearly stated objectives to provide meaningful opportunities to practice and interact with academic language which, is anticipated, will result in increasing English language proficiency in as well as reading comprehension and writing.

Students who have scored basic, below basic and far below basic on the California Standards Test (CST) in English Language Arts and/or mathematics have a number of options to support their educational needs. In addition, many students have been provided with double blocked classes created to support the accelerated achievement needed to catch up with their grade level peers. To provide the additional instructional assistance needed to narrow the achievement gap for these students the following support systems have been provided:

- Extension of their instructional day
- Access to summer school intervention courses
- Access to Saturday school academies

Providing for the differentiated instructional needs of the student population at CHS does not end with the aforementioned interventions for struggling students and English learners. For students who demonstrate high achievement on grade level standards, honors courses in all core content areas at all grade levels are included in the master schedule as well as a wide array of Advanced Placement (AP) courses to prepare for college and career readiness. CHS provides open access to honors and advanced placement courses for all students. Teachers in these honors and AP courses have received professional development training on Kaplan's strategies of depth and complexity, novelty and acceleration though content/thinking prompts. This training has a significant "spill-over effect" as the strategies employed by these teachers in courses outside of honors/GATE classes benefit all students.

The significant strides in closing the achievement gap at CHS could not have been realized without the collaboration time and professional development which were supported through QEIA funding. Collaborative time was utilized to strengthen the instructional program at CHS.

During these sessions, staff:

- Worked together to become familiar with the instructional shifts in transitioning to Common Core State Standards
- Identified and incorporated formative assessments to check for understanding within lessons
- Collaborated to create summative common assessments
- Reviewed data on student progress to inform instructional planning
- Determined appropriate engaging instructional strategies to accelerate achievement
- Engaged in data analysis by departments to identify common areas of strength as well as areas for focused attention by reviewing student work and/or assessments.

Century has focused its professional development efforts in supporting a transition to the Common Core State Standards. These efforts provide a vital link which build upon past professional development in best practices and effective, scientifically research-based instructional strategies such as Thinking Maps, GLAD strategies and lesson study to show how these strategies can be employed to successfully implement the Common Core State Standards. Staff across all academic disciplines worked together to create and implement a school-wide transition plan to the Common Core which included opportunities to infuse critical thinking skills and improve English language acquisition through engaging, interactive lessons which integrate speaking, reading, writing and listening activities.

While the increases in API, graduation rates and reclassification rates for English learners are compelling confirmation of the positive influence of QEIA funding, there are other anecdotal pieces of encouraging evidence of the scope of QEIA's impact on improving the educational environment for the students at Century. The smaller class sizes have allowed for more individualized teacher-student time. This has supported a more congenial classroom environment, as well as a calmer, more academically focused campus in general. Office referrals for behavioral issues, school suspensions and expulsions are down and graduation rates are up. All evidence of the positive influence QEIA funding has impacted on the educational environment at Century.

Century High School is making significant gains in closing the achievement gap for under-represented students. In fact, Century High School has been recognized for a number of notable achievements accomplished over the past three years:

- Most Improved passing rate in Orange County on the California High School Exit Exam

- SAUSD's High School with the most improved attendance
- Graduation rate: 84.1%. This is 5.2 points higher than the state average of 78.9%
- Compelling increase in students earning the state Seal of Biliteracy: From 31 recipients in 2012 to 61 in 2013

These aforementioned accomplishments were achieved by providing students with a rigorous learning environment which ensures student achievement and promotes college and career readiness: An educational environment which has been significantly aided and facilitated through the assistance of QEIA funding. With the assistance of QEIA, the administration and staff are working diligently to implement a Science, Technology, Engineering, Arts and Mathematics education transformation model: STEAM. This educational model emphasizes a curriculum which provides meaningful opportunities to connect classroom learning to career investigation and preparation. The STEAM model also incorporates collaboration with families and community members to provide support and mentorship for students, and paves the way for lifetime success for students beyond the halls of Century High.

Justification for Total Core Sections above 27 Students

The reasons that Century High School inadvertently exceeded the Rule of 27 are as follows:

- SAUSD high schools have the primary responsibility for creating their master schedules, which are normally developed in the spring of the previous school year based on enrollment, trends and patterns, as well as site specific initiatives and programs.
- Century experienced an unforeseen increase in student demand for honors, AP and high level math courses which impacted the master schedule.
- The task of realigning the master schedule was complex because high school graduation, A-G, AP and academy requirements limit schedule flexibility and midstream changes. The STEAM program at Century provides a broad array of electives to support its mission and vision. However, not every STEAM selection is offered every period. For example, students who need to take industrial technology may only attend that class during one particular period through the day. That same student may also require an intervention or access to a core honors course or AP course which may also be offered at just one period during the school day.
- Century's master schedule includes a number of honors courses in all core subjects at all grade levels served as well as a broad array of Advanced Placement courses in a number of subjects. Providing open access to these higher level courses is a priority. However, not all honors or AP courses are offered each period.
- While attempting to reconcile the access, balance and compliance issues of the old master schedule to the new one, a significant complication was encountered. To provide open access to honors and courses while also supporting the specific STEAM programs. This, unfortunately, created a situation where some class periods of core honors courses exceeded the Rule of 27.
- Of the nine, 9th through 12th grade class sections which exceeded the Rule of 27, it is significant to note that these overages were very small and that the average for all classes at every grade level, as well as school-wide, remained well below the cap of 25.

	9th Grade		10th Grade		11th Grade		12th Grade	
# Sections over 27	3 Out of 84		3 Out of 103		2 Out of 78		1 Out of 87	
Courses over 27 and actual average	Algebra I: Algebra I: Algebra I:	**27.18** **27.20** **27.60**	Chem. H: English 10: Eng 10 H:	**27.09** **28.00** **27.18**	Algebra II: English 11:	**27.09** **27.36**	Eng 12 H:	**27.20**
Average class size for that grade	20.11		22.39		22.65		23.27	

Steps Implemented to Ensure Total Core Sections Remain below 27 Students

Santa Ana Unified School District has been working closely in consultation with the Orange County Department of Education QEIA Assistance Center and re-examined the calculations for class sizes at Century High School for the 2012 - 2013 school year. While the school-wide average fell within the average of 25, it was acknowledged that there were nine sections which still exceeded the Rule of 27.

District staff is working with the site to monitor enrollment and placement of students to ensure that grade level averages remain below an average of 25. The district will collaborate with site administration to build next year's master schedule to ensure that all sections meet the Rule of 27 through effective balancing. Additional training for site administrators and counselors on student placement and creating a master schedule which makes certain proper enrollment in core classes for all students is currently in place this year. Included in the training are safeguards to ensure that both the grade level average of 25, as well as the Rule of 27 is met for the current school year. The District is ensuring compliance with Rule of 27 for the remainder of the school year. We are working with our Human Resources department to monitor and balance, if need be, monthly class loads so that no section exceeds the Rule of 27. Therefore, on behalf of Century High School, the Santa Ana Unified School District assures the maintenance of class average to 25, but respectfully requests permission to waive the Rule of 27 for 2012 - 2013.

With the assistance of QEIA funding, Century High School has the opportunity to make a significant and long-term impact on the achievement of the hundreds of under-represented students who attend the school. It is clear, on several levels, that QEIA funding has been central to closing the achievement gap. Without it, it is likely that Century High School will not have sufficient resources to make these positive changes systemically sustainable. The loss of QEIA funding for Century High School will have a significant, negative impact on the momentum for positive progress the school has made in closing the achievement gap for all, but most specifically for their under-represented student populations. SAUSD respectfully requests the granting of this waiver to continue Century's positive efforts in closing the academic achievement gap, all of which has been made possible through the support of QEIA funding.

Waiver Number: 36-12-2013 **Period of Request:** July 1, 2012, to June 30, 2013
Period Recommended: July 1, 2012, to June 30, 2013
Julia C. Lathrop Intermediate School **CDS Code**: 30 66670 6058978
Santa Ana Unified School District

Local Educational Agency Request:

Santa Ana Unified School District (USD) is an urban district located in Orange County with a student population of approximately 54,000 students. Julia C. Lathrop Intermediate School (IS) serves 1,154 students in grades six through eight. Monitoring performed by the Orange County Office of Education indicates that the class size reduction (CSR) requirements of the Quality Education Investment Act (QEIA) were not fully met by Julia C. Lathrop IS in four grade six classes and three grade eight classes that exceeded the QEIA 27-student cap per classroom requirement in school year 2012–13.The school's current QEIA CSR targets for core classes of English, mathematics, history-social science, and science are an average of 25.0 in grades six through eight.

Santa Ana USD states there can be significant complications in developing the master schedule because it is based on enrollment, trends, patterns, specific initiatives, and programs from the previous year. The district further states that an increase in reclassification rates, the implementation of the Read 180 supplemental English language-arts program, complications of providing for the unique instructional needs of all students while going from a seven-period day to a six-period day during 2012–13 school year, and other changes in enrollment created the need to restructure the original master schedule. The district further states that while the QEIA 27-student cap was not met in seven sections, the CSR QEIA targets of 25.0 were readily met in all grades. Lastly, the district adds that staff is working with the site to monitor enrollment and placement of students to ensure that grade level averages remain below 25 students.

Santa Ana USD requests a waiver of the QEIA 27-student cap per core classroom requirement for four grade six classes and three grade eight classes at Julia C. Lathrop IS for school year 2012–13.

California Department of Education Recommendation and Conditions:

The California Department of Education (CDE) supports Santa Ana USD's request to waive the QEIA 27-student cap per core classroom CSR requirement for grades six through eight at Julia C. Lathrop IS for school year 2012–13.

The CDE recommends approval with the following conditions: (1) Applies only to four grade six classes and three grade eight classes at Julia C. Lathrop IS for school year 2012–13; and (2) Within 30 days of approval of this waiver, Santa Ana USD must provide to the CDE a description, including costs covered by QEIA funds, of professional development activities and any other school improvement activities added to the school improvement plan as a result of the additional funding now available, if any, through this waiver of the CSR requirement.

Reviewed by Julia C. Lathrop IS Schoolsite Council on October 28, 2013.

Supported by Santa Ana Educators' Association, November 21, 2013.

Local Board Approval: December 10, 2013.

California Department of Education
WAIVER SUBMISSION - General

CD Code: 3066670 Waiver Number: 36-12-2013 Active Year: 2013

Date In: 12/20/2013 5:26:53 PM

Local Education Agency: Santa Ana Unified School District
Address: 1601 East Chestnut Ave.
Santa Ana, CA 92701

Start: 7/1/2012 End: 6/30/2013

Waiver Renewal: N
Previous Waiver Number: Previous SBE Approval Date:

Waiver Topic: Quality Education Investment Act
Ed Code Title: Rule of 27
Ed Code Section: 52055.740(a)
Ed Code Authority: 33050

Ed Code or *CCR* to Waive: For purposes of this subparagraph, average classroom size shall be calculated at the grade level based on the number of subject-specific classrooms in that grade at the school site. If the subject-specific classroom at the school averaged fewer than 25 pupils per classroom during the 2005-06 school year, that lower average shall be used as the "the average in 2006-07" for purposes of this subparagraph. [A school that receives funding under this article shall not have a class in English language arts, reading, mathematics, science, or history and social science in grades 4 to 12, inclusive, with more than 27 pupils regardless of its average classroom size.]

Outcome Rationale: The Santa Ana Unified School District (SAUSD) is requesting a waiver, on behalf of Lathrop Intermediate School, to waive Quality Education Investment Act (QEIA) *Education Code* section 52055.740(C)(iii). Specifically, Lathrop Intermediate School is requesting waiving exit from QEIA based on the Rule of 27.

Refer to Attachment Narrative

Student Population: 54000

City Type: Urban

Public Hearing Date: 12/10/2013
Public Hearing Advertised: Public hearing was announced a month before hearing date and posted.

Local Board Approval Date: 12/10/2013

Community Council Reviewed By: Schoolsite Council
Community Council Reviewed Date: 10/28/2013
Community Council Objection: N

Community Council Objection Explanation:

Audit Penalty YN: N

Categorical Program Monitoring: N

Submitted by: Ms. Nuria Solis
Position: Director, EL Programs
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Telephone: 714-558-5855
Fax:

Bargaining Unit Date: 11/21/2013
Name: Santa Ana Educators' Association (SAEA)
Representative: Susan Mercer
Title: President, SAEA
Position: Support
Comments:

Attachment Narrative

On behalf of Lathrop Intermediate School, the Santa Ana Unified School District (SAUSD) is seeking a waiver of the QEIA Rule of 27 during the period of July 1, 2012 through June 30, 2013. SAUSD recognizes the positive and profound impact of QEIA's assistance in improving academic achievement during this period, and respectfully requests that Lathrop Intermediate's QEIA funding continue in order to maintain consistent gains and student support systems.

While SAUSD acknowledges that Lathrop Intermediate exceeded the Rule of 27, it is of imperative relevance to note that Lathrop met or exceeded all but one of the other requirements of the QEIA statute during that same period. Lathrop's current API of 648 represents a total average gain of 46 points over the past four years. Details of these achievements will be further clarified in this waiver request.

Lathrop Intermediate is a Title I School located in an urban area of Orange County with an enrollment of approximately 1,154 students, grades 6 through 8. Of this total enrollment, **93.06%** are on free or reduced price meals program, and **45.1%** are identified as English learners.

QEIA funding has been an essential element in closing the achievement gap for Lathrop's under- represented students. This significant contribution has provided essential assistance in improving academic achievement school wide and across the full spectrum of significant student subgroups.
The positive academic achievement results evidenced over the past four years were supported through the careful creation of an instructional program designed to meet the diverse needs of Lathrop's unique student population while also promoting accelerated academic achievement; all of which were made possible through the assistance of QEIA funding.

	API				
Lathrop	**2010**	**2011**	**2012**	**2013**	**2010 to 2013**
All students	630	649	692	676	**+46**

As English learners (ELs) comprise 45.1% of the total student population at Lathrop, providing an instructional program with pathways to support the linguistic and academic needs of these students is a priority. Progress toward achieving that goal is evident when examining the upward trends experienced in the reclassification rates of English learners at Lathrop.

Over the past two years, Lathrop has experienced markedly improved numbers and percentages of English learners who have reclassified as fluent English proficient (RFEP): A significant accomplishment, and compelling evidence that the English learners at Lathrop are, indeed, making considerable progress. In fact, Lathrop's 2012 – 2013 RFEP rate of 35.1% far exceeded the state's RFEP rate of 12.2% as well as the county's RFEP rate of 14.3%.

	RFEP Rates	
Lathrop	**#REP**	**RFEP %**
2011 - 2012	86	**13.2%**
2012 - 2013	183	**35.1%**
Growth	**+97**	**+21.9**

For those English learners who have not yet reclassified and are achieving at the lowest levels of ELA on the Standardized Test and Reporting (STAR) test of Below Basic and Far Below Basic, Lathrop has implemented a supplemental English language arts (ELA) program: Scholastic's *Read 180*. The support QEIA has provided with funding for additional staff has made the successful implementation of this program possible. It is anticipated that this program will help provide the essential support needed to close the achievement gap for ELs to both reclassify as fluent English Proficient and successfully matriculate to high school.

Data-driven instruction has been central to achieving Lathrop's goal of meeting the instructional needs of its diverse population of 1,154 students. Student achievement data from a wide variety of assessments and multiple measurements are considered when determining accurate program placements, effective instructional interventions and enrichment strategies to employ to meet the ever-changing needs of its students. This includes the careful examination of the results from state assessments, district benchmark assessments, common assessments, grades and authentic assessments such as the district writing proficiency. From this examination a list of comprehensive needs are identified and academic plans of action across subject and grade levels are established. QEIA funding has been essential in supporting the collaborative processes which facilitate the meaningful data-driven planning and instruction which has resulted in the positive academic growth achieved over time at Lathrop.

Essential elements in Lathrop's formula for academic growth which have been supported through the assistance of QEIA funding include curricular offerings to support the differentiated instructional needs and promote accelerated academic achievement for students school-wide and across all significant subgroups. To promote the gateway skill of writing, the writing process is taught and supported across all disciplinary courses, including electives, through interdisciplinary writing research projects created through the assistance of QEIA funding. As mentioned earlier, for students who are struggling and performing below their grade level peers, Lathrop has implemented a supplemental English language arts (ELA) program: Scholastic's *Read 180* to provide the support these students need to fill in the instructional gaps in students' reading and writing skills and catch up with their grade level peers.

Careful consideration is made when placing students in core academic classes (intervention to strategic support to benchmark and honors courses). Curriculum at each level is deliberately designed to support equal access to and academic success with the Common Core State Standards (CCSS) for all students. Teachers have been trained on providing engaging, standards-based lessons with clearly stated objectives to break down, not dumb down, essential learning to make core content accessible and provide meaningful opportunities to practice and interact with academic language. This, in turn, is anticipated will result in increasing English language proficiency in as well as reading comprehension and writing.

Supporting the diverse educational requirements of a student population whose instructional needs range from special needs, to ELs to Gifted and Talented Education (GATE) students requires an instructional day with a variety of offerings. As mentioned earlier, for students who are struggling and performing below their grade level peers, Lathrop has implemented a supplemental English language arts (ELA) program: Scholastic's *Read 180* to provide the support these students in order to need to fill in the instructional gaps in students' reading and writing skills and catch up with their grade level peers.

For students who demonstrate high achievement on grade level standards, honors courses in all content areas at all grade levels are included in the master schedule. Teachers in these courses have received professional development training on Kaplan's strategies of depth and complexity, novelty and acceleration though content/thinking prompts. This training has a

significant “spill-over effect” as the strategies employed by these teachers in courses outside of honors/GATE classes benefit all students.

Lathrop has focused its professional development efforts in supporting a transition to the Common Core State Standards. These efforts provide a vital link which build upon past professional development in best practices and effective, scientifically research-based instructional strategies such as Thinking Maps, GLAD strategies and Sheltered Instruction Observation Protocol (SIOP), to show how these strategies can be employed to successfully implement the Common Core State Standards. Staff across all academic disciplines worked together to create and implement a school-wide transition plan to the Common Core which included opportunities to infuse critical thinking skills and improve English language acquisition through engaging, interactive lessons which integrate speaking, reading, writing and listening activities.

The instructional program, interventions, professional development and enrichment and support structures implemented at Lathrop have directly contributed to the four years of academic growth experienced at all grade levels and across all significant student subgroups. It is abundantly clear that the significant strides in closing the achievement gap at Lathrop over the past four years could not have been realized without the assistance provided to the school and its instructional program through QEIA funding.

Justification for Total Core Sections above 27 Students

The reasons that Lathrop Intermediate inadvertently exceeded the Rule of 27 are as follows:

- SAUSD intermediate schools have the primary responsibility for creating their master schedules, which are normally developed in the spring of the previous school year based on enrollment, trends and patterns, as well as site specific initiatives and programs.

- The increase in reclassification rates, the implementation of the *Read 180* supplemental ELA program coupled with the complications of providing for the unique instructional needs of all students while going from a 7 period day to a 6 period day during the 2012 – 2013 school year along with other changes in enrollment, created the need to restructure the original master schedule

- The new master schedule did meet the QEIA school-wide class size average of 25 in the core courses. However, despite creating the new master schedule, the Rule of 27 was not met in seven sections: Four in sixth grade and three in eighth grade.

- Of the seven sections which exceeded the rule of 27, it is significant to note that these overages were very small, and that the average for all classes at every grade level, as well as school-wide, remained well below the cap of 25.

	# Sections over 27	Courses over 27 and actual average		Average class size for that grade
6th Grade	4	Math 6:	**27.27**	**20.76**
		Strategic ELA:	**28.00**	
		Social Studies:	**28.00**	
		Social Studies Honors:	**29.00**	
7th Grade	0	n/a		**19.95**
8th Grade	3	ELA Honors:	**27.09**	**19.91**
		ELA Honors:	**27.09**	
		ELA Benchmark:	**27.09**	

Steps Implemented to Ensure Future Total Core Sections Remain below 27 Students

Santa Ana Unified School District has been working closely in consultation with the Orange County Department of Education QEIA Assistance Center and has reexamined the calculations for class sizes at Lathrop Intermediate for the 2012-2013 school year. While the school-wide average fell well within the average of 25, it was acknowledged that there were some sections which still exceeded the Rule of 27. It is important to note that, although the site did exceed the rule of 27, it is evident that the significant gains made over time at Lathrop can be attributed to the assistance provided by QEIA funding.

District staff is working with the site to monitor enrollment and placement of students to ensure that grade level averages remain below an average of 25. The district will collaborate with site administration to build next year's master schedule to ensure that all sections meet the Rule of 27 through effective balancing. Additional training for site administrators and counselors on student placement and creating a master schedule which makes certain proper enrollment in core classes for all students is currently in place this year. Included in the training are safeguards to ensure that both the grade level average of 25, as well as the Rule of 27 is met for the current year. The District is ensuring compliance with the Rule of 27 for the remainder of the school year. We are working with our Human Resources department to monitor and balance, if need be, monthly class loads so that no section exceeds the Rule of 27. Therefore, on behalf of Lathrop Intermediate, the Santa Ana Unified School District assures the maintenance of class averages to 25, but respectfully requests permission to waive the Rule of 27 for 2012-2013.

With the assistance of QEIA funding, Lathrop Intermediate has had the opportunity to influence a compelling and long-term impact on the achievement of the hundreds of under-represented students who attend the school. It is clear, on several levels, that QEIA funding has been central to closing the achievement gap. Without it, it is likely that Lathrop Intermediate will not have sufficient resources to make these positive changes systemically sustainable. The loss of QEIA funding for Lathrop Intermediate will have a significant, negative impact on the momentum for positive progress the school has made in closing the achievement gap for all, but most specifically for their under-represented student populations. SAUSD respectfully requests the granting of this waiver to continue in the support of Lathrop's positive efforts in closing the academic achievement gap; all of which have been made possible through the support of QEIA funding.

Waiver Number: 37-12-2013 **Period of Request:** July 1, 2012, to June 30, 2013
Period Recommended: July 1, 2012, to June 30, 2013
Sierra Intermediate School **CDS Code**: 30 66670 6030415
Santa Ana Unified School District

Local Educational Agency Request:

Santa Ana Unified School District (USD) is an urban district located in Orange County with a student population of approximately 54,000 students. Sierra Intermediate School (IS) serves 886 students in grades six through eight. Monitoring performed by the Orange County Office of Education indicates that the class size reduction (CSR) requirements of the Quality Education Investment Act (QEIA) were not fully met by Sierra IS in 14 grade six classes, 23 grade seven classes, and 10 grade eight classes that exceeded the QEIA 27-student cap per classroom requirement in school year 2012–13.The school's current QEIA CSR targets for core classes of English, mathematics, history-social science, and science are an average of 25.0 in grades six through eight.

Santa Ana USD states that because Sierra IS is a Visual and Performing Arts (VAPA) magnet serving a diverse student population of special needs, English learners, and gifted and talented students, there are significant complications in developing the master schedule. The district further states that providing for the wide variety of instructional needs for this diverse student population, while also supporting the school's vision and mission for VAPA, is difficult because the master schedule is based on enrollment, trends, patterns, specific initiatives, and programs from the previous year. The district further states that while the QEIA 27-student cap was not met in 47 sections, the CSR QEIA targets of 25.0 were readily met in all grades. Lastly, the district adds that the majority of the classes that were over the QEIA 27-student cap were Honors courses.

Santa Ana USD requests a waiver of the QEIA 27-student cap per core classroom requirement for 14 grade six classes, 23 grade seven classes, and 10 grade eight classes at Sierra IS for school year 2012–13.

California Department of Education Recommendation and Conditions:

The California Department of Education (CDE) supports Santa Ana USD's request to waive the QEIA 27-student cap per core classroom CSR requirement for grades six through eight at Sierra IS for school year 2012–13.

The CDE recommends approval with the following conditions: (1) Applies only to 14 grade six classes, 23 grade seven classes, and 10 grade eight classes at Sierra IS for school year 2012–13; and (2) Within 30 days of approval of this waiver, Santa Ana USD must provide to the CDE a description, including costs covered by QEIA funds, of professional development activities and any other school improvement activities added to the school improvement plan as a result of the additional funding now available, if any, through this waiver of the CSR requirement.

Reviewed by Sierra IS Schoolsite Council on December 10, 2013.

Supported by Santa Ana Educators' Association, November 21, 2013.

Local Board Approval: December 10, 2013.

California Department of Education
WAIVER SUBMISSION - General

CD Code: 3066670 Waiver Number: 37-12-2013 Active Year: 2013

Date In: 12/20/2013 5:44:33 PM

Local Education Agency: Santa Ana Unified School District
Address: 1601 East Chestnut Ave.
Santa Ana, CA 92701

Start: 7/1/2012 End: 6/30/2013

Waiver Renewal: N
Previous Waiver Number: Previous SBE Approval Date:

Waiver Topic: Quality Education Investment Act
Ed Code Title: Rule of 27
Ed Code Section: 52055.740(a)
Ed Code Authority: 33050

Ed Code or *CCR* to Waive: For purposes of this subparagraph, average classroom size shall be calculated at the grade level based on the number of subject-specific classrooms in that grade at the school site. If the subject-specific classroom at the school averaged fewer than 25 pupils per classroom during the 2005-06 school year, that lower average shall be used as the "the average in 2006-07" for purposes of this subparagraph. [A school that receives funding under this article shall not have a class in English language arts, reading, mathematics, science, or history and social science in grades 4 to 12, inclusive, with more than 27 pupils regardless of its average classroom size.]

Outcome Rationale: The Santa Ana Unified School District (SAUSD) is requesting a waiver, on behalf of Sierra Preparatory Academy, to waive Quality Education Investment Act (QEIA) *Education Code* section 52055.740(C)(i). Specifically, Sierra Preparatory Academy is requesting waiving exit from QEIA based on the Rule of 27.

Refer to Attachment Narrative

Student Population: 54000

City Type: Urban

Public Hearing Date: 12/10/2013
Public Hearing Advertised: Public hearing was announced a month before hearing date and posted.

Local Board Approval Date: 12/10/2013

Community Council Reviewed By: Schoolsite Council
Community Council Reviewed Date: 12/6/2013
Community Council Objection: N

Community Council Objection Explanation:

Audit Penalty YN: N

Categorical Program Monitoring: N

Submitted by: Ms. Nuria Solis
Position: Director, EL Programs
E-mail: nuria.solis@sausd.us
Telephone: 714-558-5855
Fax:

Bargaining Unit Date: 11/21/2013
Name: Santa Ana Educators' Association (SAEA)
Representative: Susan Mercer
Title: President, SAEA
Position: Support
Comments:

Attachment Narrative

On behalf of Sierra Preparatory Academy Intermediate School, the Santa Ana Unified School District (SAUSD) is seeking a waiver of the QEIA Rule of 27 during the period of July 1, 2012 through June 30, 2013. SAUSD recognizes the positive and profound impact of the QEIA's assistance in improving academic achievement during this period, and respectfully requests that Sierra's QEIA funding continue in order to maintain consistent gains and student support systems.

While SAUSD sincerely acknowledges Sierra exceeded the Rule of 27, it is of imperative relevance to the request to note that Sierra met all other requirements of the QEIA statute during that same period. Sierra's current API of **706** represents a total average gain of gain 54 points over the past four years. Details of these achievements will be further clarified in this waiver request.

QEIA funding has been a vital element in assisting Sierra with closing the achievement gap for its under-represented students. This is a significant contribution which has provided essential assistance in improving academic achievement across the full spectrum of significant student subgroups.

Sierra Preparatory Academy is a Title 1 school located in an urban area of Orange County with an enrollment of approximately 886 students, grades six through eight. Of this total enrollment, **98.5%** are on free or reduced price meals program, and **62.3%** are identified as English language learners (EL).

	API				
Sierra	**2010**	**2011**	**2012**	**2013**	**2010 to 2013**
All students	652	693	689	706	**+54**

This measurement of accountability indicates that all students have shown positive growth. Over the past two years, Sierra has experienced markedly improved numbers and percentages of English learners (EL) who have reclassified as fluent English proficient (RFEP): A significant accomplishment, and compelling evidence that the ELs at Sierra are, indeed, making considerable progress. In fact, Sierra's 2012 – 2013 RFEP rate of 41.6% far exceeded the state's RFEP rate of 12.2% as well as the county's RFEP rate of 14.3%.

	RFEP Rates	
Sierra	**#REP**	**RFEP %**
2011 - 2012	66	**12.1%**
2012 - 2013	174	**41.6%**
Growth	**+108**	**+29.5**

With 62.3% of the total student population identified as ELs, providing for the specialized needs of this significant student population is a top priority. For those ELs who are achieving at the lowest levels of ELA on the Standardized Test and Reporting (STAR) test, Below Basic and Far Below Basic, Sierra has implemented a supplemental English language arts (ELA) program: Scholastic's *Read 180*. The support QEIA has provided with funding for additional staff has made the successful implementation of this program possible. It is anticipated that this program

will help provide the essential support needed to close the achievement gap for ELs to both reclassify as fluent English Proficient and successfully matriculate.

The positive academic achievement results evidenced over the past four years were supported through the careful creation of an instructional program designed to meet the diverse needs of Sierra's student population while also promoting accelerated academic achievement; all of which were made possible through the assistance of QEIA funding.

To understand the significant role QEIA funding has played in closing the achievement gap of all students at Sierra, it is important to illustrate the steps Sierra has been making as a school which helped to realize these positive results. Sierra has been embarking on a program of true, school-wide transformation. Integral to this transformation process is the identification of their Visual and Performing Arts (VAPA) emphasis. In addition, Sierra's transformation has been facilitated through newly forged community partnerships with a number of influential community, industrial and educational organizations. They include the First Assembly of Orange County, who provides facilities, tutoring, and other services to the school, students, and families; Comunidad Latina, a branch of Schools First Credit Union who is pioneering with UCI to create student savings accounts for college; and Rocket Science, who include Boeing engineers who provide after school tutoring and mentoring while actually designing rockets for an annual launch. Another developing partnership is with The Orange County Museum of Modern Art who will be providing a constant arts presence and continual opportunities for engaging in a museum experience for Sierra's students and their families and actively supporting Sierra's VAPA emphasis.

Supporting the diverse educational requirements of a student population whose instructional needs range from special needs, to ELs to Gifted and Talented Education (GATE) students requires an instructional day with a variety of offerings. For students in need of interventions, whether they are students who are struggling academically or students who need assistance in learning English, there are a number of options and offerings to provide the specific support needed. Intervention reading courses are available for students who score at the Below Basic and Far Below Basic level on the English Language Arts (ELA) portion of the Standardized Test and Reporting (STAR). In addition, extended learning time in the form of after school classes and summer school classes were provided to students who scored at the Basic, Below Basic and Far Below Basic level on both the ELA and math portions of the STAR.

Sierra recently launched a new eighth-grade Algebra Academy by Pitsco Education. The new program incorporates nontraditional instruction, multimedia resources, cooperative student pairing, and hands-on Algebra Readiness and Algebra I activities designed to reinforce cognitive learning through psychomotor reinforcement. Individualized prescriptive Lessons are used to evaluate and address student competencies and needs, and whole-class Culminating Group Activities led by the teacher tie grade-level math concepts and curricula together.

Providing for the differentiated instructional needs of their student population does not end with the aforementioned interventions for struggling students. For students who demonstrate high achievement on grade level standards, honors courses in all core content areas at all grade levels are included in the master schedule. Teachers in these courses have received professional development training on Kaplan's strategies of depth and complexity, novelty and acceleration though content/thinking prompts. This training has a significant "spill-over effect" as the strategies employed by these teachers in courses outside of honors/GATE classes benefit all students. Finally, Sierra also offers extended learning and enrichment program after school and on Saturdays for all students.

Sierra has focused its professional development efforts in supporting a transition to the Common Core State Standards. These efforts provide a vital link which build upon past professional development in best practices and effective, scientifically research-based instructional strategies such as Thinking Maps, Guided Language Acquisition Design (GLAD) and lesson study, to show how these strategies can be employed to successfully implement the Common Core State Standards. Staff across all academic disciplines worked together to create and implement a school-wide transition plan to the Common Core which included opportunities to infuse critical thinking skills and improve English language acquisition through engaging, interactive lessons which integrated speaking, reading, writing and listening activities. The instructional program, interventions, enrichment and support structures implemented through the assistance of QEIA funding at Sierra directly contributed to the three years of academic growth at all grade levels and across all significant student subgroups.

Justification for Total Core Sections above 27 Students

The reasons that Sierra Preparatory Academy inadvertently exceeded the Rule of 27 are as follows:

Sierra Preparatory Academy is a Visual and Performing Arts (VAPA) magnet which serves a diverse student population: special needs, to English learners to gifted and talented (GATE) students. Providing for the wide variety of instructional needs for this diverse student population, while also supporting the school's vision and mission for VAPA created some significant complications to the master schedule:

- SAUSD Intermediate schools have the primary responsibility for creating their master schedules, which are normally developed in the spring of the previous school year based on enrollment, trends and patterns, as well as site specific initiatives and programs.
- The 2012-13 master schedule did meet the QEIA school-wide class size average of 25 in the core courses. However, the Rule of 27 was not met in 47 sections.
- Of the 47 combined 6th, 7th and 8th grade class sections which exceeded the Rule of 27, it is significant to note that these overages were very small and that the average for all classes at every grade level remained well below the cap of 25. It is also important to note that in 6th and 7th grade, the majority of the classes that were over 27 where Honors courses.

	6th Grade		7th Grade		8th Grade	
# Sections over 27	14 Out of 98		23 Out of 79		10 Out of 74	
Courses over 27 and actual average (amount in parenthesis)	Honors (12): Science (1); Social Science (1)	**27.21** **27.18** **27.18**	Honors (16): Science (3): Social Science (2): Pre-Algebra (2):	**27.27** **27.18** **27.14** **27.18**	Science (4): Social Science (2): Algebra (2): Honors (2):	**27.18** **27.18** **27.18** **27.36**
Average class size for each grade	21.41		24.26		22.72	

- While looking at the school year monthly averages, it is important to note that all of the 47 courses that exceeded the rule of 27 had a monthly average of less than 27 for ten out of the 11 months. The only month that the courses did not meet the Rule of 27 was in the first month of school. This was caused to a higher than expected student enrollment.
- The VAPA program at Sierra provides a broad array of electives to support its mission and vision: Fine arts, industrial arts, choral music, band and orchestra are all included in Sierra's VAPA selections for students. However, not every VAPA selection is offered every period. For example, students in advanced orchestra, may only attend that class during one particular period through the day. That same student may also require an intervention or access to a core honors course which may also be offered at just one period during the school day.
- There are five levels of ELA/ELD intervention in the district-adopted program. Not all levels are offered every period. Providing the appropriate differentiated intervention instruction needed for students who were performing below grade level, while also providing access to specific VAPA courses which were only offered one point in the school day, created the unfortunate consequence where some class periods of intervention exceeded, by a few students, the rule of 27.
- Sierra is proud to be able to offer honors courses in all core subjects at all grade levels served. Providing open access to these higher level courses is a priority. However, not all honors courses are offered each period. As with accommodating the differentiated instructional needs of students who required placement in intervention courses, providing open access to honors courses while also supporting the specific VAPA programs created a situation where some class periods of core honors courses exceeded, by a few students, the rule of 27.

Steps Implemented to Ensure Total Core Sections Remain below 27 Students

Santa Ana Unified School District has been working closely in consultation with the Orange County Department of Education QEIA Assistance Center and reexamined the calculations for class sizes at Sierra Preparatory Academy for the 2010-2011 school year. While the school-wide average fell within the average of 25, it was acknowledged that there were some sections which still exceeded the Rule of 27.

District staff is working with the site to monitor enrollment and placement of students to ensure that grade level averages remain below an average of 25. The district will collaborate with site administration to build next year's master schedule to ensure that all sections meet the Rule of 27 through effective balancing. Additional training for site administrators and counselors on student placement and creating a master schedule which makes certain proper enrollment in core classes for all students is currently in place this year. Included in the training are safeguards to ensure that both the grade level average of 25, as well as the Rule of 27 is met for the current school year. The District is ensuring compliance with Rule of 27 for the remainder of the school year. We are working with our Human Resources department to monitor and balance, if need be, monthly class loads so that no section exceeds the rule of 27. Therefore, on behalf of Sierra Preparatory Intermediate, the Santa Ana Unified School District assures the maintenance of class average to 25, but respectfully requests permission to waive the Rule of 27 for 2012-2013.

With the assistance of QEIA funding, Sierra Preparatory Academy has had the opportunity to make a significant and long-term impact on the achievement of the hundreds of under-represented students who attend the school. It is clear on several levels, that QEIA funding has been central to closing the achievement gap. Without it, it is likely that Sierra Preparatory Academy will not have sufficient resources to make these positive changes systemically sustainable. The loss of QEIA funding for Sierra will have a significant, negative impact on the momentum for positive progress the school has made in closing the achievement gap for all, but most specifically for their under-represented student populations. Santa Ana Unified respectfully requests the granting of this waiver to continue Sierra's positive efforts in closing the academic achievement gap, all of which has been made possible through the support of QEIA funding.

Waiver Number: 38-12-2013 **Period of Request:** July 1, 2012, to June 30, 2013
Period Recommended: July 1, 2012, to June 30, 2013
Willard Intermediate School **CDS Code**: 30 66670 6061758
Santa Ana Unified School District

Local Educational Agency Request:

Santa Ana Unified School District (USD) is an urban district located in Orange County with a student population of approximately 54,000 students. Willard Intermediate School (IS) serves 926 students in grades six through eight. Monitoring performed by the Orange County Office of Education indicates that the class size reduction (CSR) requirements of the Quality Education Investment Act (QEIA) were not fully met by Willard IS in 31 grade six classes, 28 grade seven classes, and 19 grade eight classes that exceeded the QEIA 27-student cap per classroom requirement in school year 2012–13.The school's current QEIA CSR targets for core classes of English, mathematics, history-social science, and science are an average of 25.0 in grades six through eight.

Santa Ana USD states there can be significant complications in developing the master schedule because it is based on enrollment, trends, patterns, specific initiatives, and programs from the previous year. In addition, the district states that the majority of the transfers came mid-year and directly impacted the master schedule. The district further states that due to intra-district transfers, and Willard IS being the only intermediate site with available space for students, the QEIA 27-student cap per core classroom requirement was not met for all of the classes. Lastly, the district adds that staff is working with the site to monitor enrollment and placement of students to ensure that grade level averages remain below 25 students.

Santa Ana USD requests a waiver of the QEIA 27-student cap per core classroom requirement for 31 grade six classes, 28 grade seven classes, and 19 grade eight classes at Willard IS for school year 2012–13.

California Department of Education Recommendation and Conditions:

The California Department of Education (CDE) supports Santa Ana USD's request to waive the QEIA 27-student cap per core classroom CSR requirement for grades six through eight at Willard IS for school year 2012–13.

The CDE recommends approval with the following conditions: (1) Applies only to 31 grade six classes, 28 grade seven classes, and 19 grade eight classes at Willard IS for school year 2012–13; and (2) Within 30 days of approval of this waiver, Santa Ana USD must provide to the CDE a description, including costs covered by QEIA funds, of professional development activities and any other school improvement activities added to the school improvement plan as a result of the additional funding now available, if any, through this waiver of the CSR requirement.

Reviewed by Willard IS Schoolsite Council on December 18, 2013.

Supported by Santa Ana Educators' Association, November 21, 2013.

Local Board Approval: December 10, 2013.

California Department of Education
WAIVER SUBMISSION - General

CD Code: 3066670 Waiver Number: 38-12-2013 Active Year: 2013

Date In: 12/20/2013 6:00:56 PM

Local Education Agency: Santa Ana Unified School District
Address: 1601 East Chestnut Ave.
Santa Ana, CA 92701

Start: 7/1/2012 End: 6/30/2013

Waiver Renewal: N
Previous Waiver Number: Previous SBE Approval Date:

Waiver Topic: Quality Education Investment Act
Ed Code Title: Rule of 27
Ed Code Section: 52055.740(a)
Ed Code Authority: 33050

Ed Code or *CCR* to Waive: For purposes of this subparagraph, average classroom size shall be calculated at the grade level based on the number of subject-specific classrooms in that grade at the school site. If the subject-specific classroom at the school averaged fewer than 25 pupils per classroom during the 2005-06 school year, that lower average shall be used as the "the average in 2006-07" for purposes of this subparagraph. [A school that receives funding under this article shall not have a class in English language arts, reading, mathematics, science, or history and social science in grades 4 to 12, inclusive, with more than 27 pupils regardless of its average classroom size.]

Outcome Rationale: The Santa Ana Unified School District (SAUSD) is requesting a waiver, on behalf of Willard Intermediate School, to waive Quality Education Investment Act (QEIA) *Education Code* section 52055.740(C)(i). Specifically, Willard Intermediate School is requesting waiving exit from QEIA based on the Rule of 27.

Refer to Narrative Attachment.

Student Population: 54000

City Type: Urban

Public Hearing Date: 12/10/2013
Public Hearing Advertised: Public hearning was announced a month before hearing and posted.

Local Board Approval Date: 12/10/2013

Community Council Reviewed By: Schoolsite Council
Community Council Reviewed Date: 12/18/2013
Community Council Objection: N
Community Council Objection Explanation:

Audit Penalty YN: N

Categorical Program Monitoring: N

Submitted by: Ms. Nuria Solis
Position: Director, EL
E-mail: nuria.solis@sausd.us
Telephone: 714-558-5855
Fax:

Bargaining Unit Date: 11/21/2013
Name: Santa Ana Educators' Association (SAEA)
Representative: Susan Mercer
Title: President (SAEA)
Position: Support
Comments:

Narrative Attachment

On behalf of Willard Intermediate School, the Santa Ana Unified School District (SAUSD) is seeking a waiver of the QEIA Rule of 27 during the period of July 1, 2012 through June 30, 2013. SAUSD recognizes the positive and profound impact of the QEIA's assistance in improving academic achievement during this period, and respectfully requests that Willard Intermediate's QEIA funding continue in order to maintain consistent gains and student support systems.

While SAUSD sincerely acknowledges Willard Intermediate School exceeded the Rule of 27, it is of imperative relevance to the request to note that Willard met or exceeded the majority of all other requirements of the QEIA statute during that same period. Willard's current API of 642 represents a total average gain of 41 points over the past four years. Details of these achievements will be further clarified in this waiver request.

QEIA funding has been a vital element in assisting Willard in closing the achievement gap for its under-represented students. This is a significant contribution which has provided essential assistance in improving academic achievement across the full spectrum of significant student subgroups.

Willard Intermediate is a Title 1 school located in an urban area of Orange County with an enrollment of approximately **926** students, grades 6 through 8. Of this total enrollment, **99.4%** are on reduced price meals program, and **59.1%** of all identified as English learners (EL).

The positive academic achievement results evidenced over the past four years were directly supported through the careful creation of an instructional program designed to meet the diverse needs of Willard's student population while also promoting accelerated academic achievement; all of which were made possible through the assistance of QEIA funding.

	API				
Willard	**2010**	**2011**	**2012**	**2013**	**2010 to 2013**
All students	601	658	666	642	**+41**

This measurement of accountability indicates that English learners have shown positive growth. Over the past two years, Willard has experienced markedly improved numbers and percentages of ELs who have reclassified as fluent English proficient (RFEP): A significant accomplishment, and compelling evidence that the ELs at Willard are, indeed, making considerable progress. In fact, Willard's 2012 – 2013 RFEP rate of 33.5% far exceeded the state's RFEP rate of 12.2% as well as the county's RFEP rate of 14.3%.

	RFEP Rates	
Willard	**#REP**	**RFEP %**
2011 - 2012	81	**15.4%**
2012 - 2013	146	**33.5%**
Growth	**+65**	**+18.1**

With 59.1% of the total student population identified as ELs, providing for the specialized needs of this significant student population is a top priority. For those ELs who are achieving at the lowest levels of ELA on the Standardized Test and Reporting (STAR) test, Below Basic and Far Below Basic, Willard has implemented a supplemental English language arts (ELA) program: Scholastic's *Read 180*. The support QEIA has provided with funding for additional staff has made the successful implementation of this program possible. It is anticipated that this program will help provide the essential support needed to close the achievement gap for ELs to both reclassify as fluent English Proficient and successfully matriculate.

To further understand the significant role QEIA funding has played in closing the achievement gap of all students at Willard, it is important to illustrate the structure of the instructional program which helped to realize these positive results.

Supporting the diverse educational requirements of a student population whose instructional needs range from special needs, to ELs to Gifted and Talented Education (GATE) students requires an instructional day with a variety of offerings. As mentioned earlier, for students who are struggling and performing below their grade level peers, Willard has implemented a supplemental English language arts (ELA) program: Scholastic's *Read 180* to provide the support these students in order to need to fill in the instructional gaps in students' reading and writing skills and catch up with their grade level peers.

An exciting extension into providing students at Willard with access to 21st century skills and technology, is the recent implementation of a school-wide program providing all students with access to iPads. Students, teachers and parents have been trained on the use of these motivating educational tools. Incorporation of EdMoto, Discovery Learning and Merriam Webster online have been welcome and engaging additions to enriching the curriculum for all students. Willard also provides school-wide access to computer labs and technology, before, during and after school which offer a wide variety of instructional software applications and internet-accessible programs that address specific reading comprehension deficiencies as determined through the individualized student progress reports provided through *Read 180*. Tutoring is offered to students who are scoring below grade level in writing. It is anticipated that the incorporation of these 21st century technology tools will contribute greatly in closing the achievement gap for the students at Willard.

Providing for the differentiated instructional needs of the student population at Willard does not end with the aforementioned interventions for struggling students. For students who demonstrate high achievement on grade level standards, honors courses in all core content areas at all grade levels are included in the master schedule. Teachers in these courses have received professional development training on Kaplan's strategies of depth and complexity, novelty and acceleration though content/thinking prompts. This training has a significant "spill-over effect" as the strategies employed by these teachers in courses outside of honors/GATE classes benefit all students.

Willard has focused its professional development efforts in supporting a transition to the Common Core State Standards. These efforts provide a vital link which build upon past professional development in best practices and effective, scientifically research-based instructional strategies such as Thinking Maps, Guided Language Acquisition Design (GLAD) strategies and Sheltered Instruction Observation Protocol (SIOP), to show how these strategies can be employed to successfully implement the Common Core State Standards. Staff across all academic disciplines worked together to create and implement a school-wide transition plan to the Common Core which included opportunities to infuse critical thinking skills and improve

English language acquisition through engaging, interactive lessons which integrated speaking, reading, writing and listening activities.

The instructional program, interventions, enrichment and support structures realized and implemented through the assistance of QEIA funding at Willard have directly contributed to the four years of academic growth at all grade levels and across all significant student subgroups.

Justification for Total Core Sections above 27 Students

The reasons that Willard Intermediate inadvertently exceeded the Rule of 27 are as follows:

- SAUSD Intermediate schools have the primary responsibility for creating their master schedules, which are normally developed in the spring of the previous school year based on enrollment, trends and patterns, as well as site specific initiatives and programs.
- Due to intra-district transfers, and Willard being the only Intermediate site with available space for students, the Rule of 27 was not met for all of the classes. The majority of the transfers came mid-year and directly impacted the master schedule.
- The new master schedule did meet the QEIA school-wide class size average of 25 in the core courses for all grade levels.

Steps Implemented to Ensure Total Core Sections Remain below 27 Students

Santa Ana Unified School District has been working closely in consultation with the Orange County Department of Education QEIA Assistance Center and reexamined the calculations for class sizes at Willard Intermediate for the 2012-2013 school year. While the school-wide average fell within the average of 25, it was acknowledged that there were some sections which still exceeded the Rule of 27.

District staff is working with the site to monitor enrollment and placement of students to ensure that grade level averages remain below an average of 25. The district will collaborate with site administration to build next year's master schedule to ensure that all sections meet the Rule of 27 through effective balancing. Additional training for site administrators and counselors on student placement and creating a master schedule which makes certain proper enrollment in core classes for all students is currently in place this year. Included in the training are safeguards to ensure that both the grade level average of 25, as well as the Rule of 27 is met for the current school year. The District is ensuring compliance with Rule of 27 for the remainder of the school year. We are working with our Human Resources department to monitor and balance, if need be, monthly class loads so that no section exceeds the Rule of 27. Therefore, on behalf of Willard Intermediate, SAUSD assures the maintenance of class average to 25, but respectfully requests permission to waive the Rule of 27 for 2012-13.

With the assistance of QEIA funding, Willard Intermediate has had the opportunity to make a significant and long-term impact on the achievement of the hundreds of under-represented students who attend the school. It is clear, on several levels, that QEIA funding has been central to closing the achievement gap. Without it, it is likely that Willard Intermediate will not

have sufficient resources to make these positive changes systemically sustainable. The loss of QEIA funding for Willard Intermediate will have a significant, negative impact on the momentum for positive progress the school has made in closing the achievement gap for all, but most specifically for their under-represented student populations. SAUSD respectfully requests the granting of this waiver to continue Willard's positive efforts in closing the academic achievement gap, all of which has been made possible through the support of QEIA funding.

Waiver Number: 18-12-2013 **Period of Request:** August 14, 2012, to June 13, 2013
Period Recommended: August 14, 2012, to June 13, 2013
Bonita Elementary School **CDS Code**: 42 69120 6045272
Santa Maria-Bonita School District

Local Educational Agency Request:

Santa Maria-Bonita School District (SD) is a suburban district located in Santa Barbara County with a student population of approximately 15,050 students. Bonita Elementary School (ES) serves 602 students in kindergarten and grades one through six. Monitoring performed by the Santa Barbara County Office of Education indicates that the class size reduction (CSR) requirements of the Quality Education Investment Act (QEIA) were not fully met by Bonita ES in school year 2012–13. The school's current QEIA CSR targets for core classes of English, mathematics, history-social science, and science are 20.44 in kindergarten and grades one through three, and an average of 17.5, 25.0, and 25.0 in grades four through six, respectively.

Santa Maria-Bonita SD states that in January 2010, it applied for a waiver to adjust its grade four QEIA CSR target from 17.5 to 21.0; this waiver was denied. The district also states that over the life of QEIA, Bonita ES has experienced a 61.9 percent enrollment growth, and currently 98 percent of the students are socioeconomically disadvantaged students and 92 percent are English language learners. Lastly, the district states that it was unable to bus students to other district schools, however, the school offers a junior high student movement instructional program model to provide additional certificated staff in English language arts and mathematics instructional sections to decrease class sizes.

Santa Maria-Bonita SD requests a waiver of the QEIA CSR targets for grades four through six at Bonita ES for school year 2012–13, and the establishment of alternative CSR targets, based on an average of the instructional section enrollments in each grade level, of 23.0, 25.4, and 26.0 students on average in core classes in grades four through six, respectively.

California Department of Education Recommendation and Conditions:

The California Department of Education (CDE) supports Santa Maria-Bonita SD's request to increase its QEIA CSR targets for grades four through six at Bonita ES for school year 2012–13.

The CDE recommends approval with the following conditions: (1) Applies only to grades four through six at Bonita ES for school year 2012–13; (2) Bonita ES increases enrollment to 23.0, 25.4, and 26.0 students on average in core classes in grades four through six, respectively; (3) No core class in grades four through six may exceed 27 students per classroom regardless of the average classroom size; and (4) Within 30 days of approval of this waiver, Santa Maria-Bonita SD must provide to the CDE a description, including costs covered by QEIA funds, of professional development activities and any other school improvement activities added to the school improvement plan as a result of the additional funding now available, if any, through this waiver of the CSR requirement.

Reviewed by Bonita ES Schoolsite Council on December 12, 2013.

Supported by Santa Maria Elementary Educators Association December 6, 2013.

Local Board Approval: December 12, 2013.

California Department of Education
WAIVER SUBMISSION - General

CD Code: 4269120 Waiver Number: 18-12-2013 Active Year: 2013

Date In: 12/13/2013 12:22:31 PM

Local Education Agency: Santa Maria-Bonita School District
Address: 708 South Miller St.
Santa Maria, CA 93454

Start: 8/14/2012 End: 6/13/2013

Waiver Renewal: N
Previous Waiver Number: Previous SBE Approval Date:

Waiver Topic: Quality Education Investment Act
Ed Code Title: Class Size Reduction Requirements
Ed Code Section: 52055.740(a)
Ed Code Authority: 33050

Ed Code or *CCR* to Waive: 52055.740.
(C) For classes in English language arts, reading, mathematics, science, or history and social science courses in grades 4 to 12, inclusive, an average classroom size that is the lesser of clause (i) or (ii), as follows:
[(i) At least five pupils fewer per classroom than was the average in 2006-07.]
[(ii) An average of 25 pupils per classroom.]
(iii) For purposes of this subparagraph, average classroom size shall be calculated at the grade level based on the number of subject-specific classrooms in that grade at the school site. If the subject-specific classrooms at the school averaged fewer than 25 pupils per classroom during the 2005-06 school year, that lower average shall be used as the “average in 2006-07” for purposes of this subparagraph. [A school that receives funding under this article shall not have a class in English language arts, reading, mathematics, science, or history and social science in grades 4th-12th , inclusive, with more than 27 pupils regardless of its average classroom size.]

Outcome Rationale: Please see attachments.

Student Population: 602

City Type: Small

Public Hearing Date: 12/12/2013
Public Hearing Advertised: Posted

Local Board Approval Date: 12/12/2013

Community Council Reviewed By: Schoolsite Council/English Language Advisory Committee
Community Council Reviewed Date: 12/12/2013
Community Council Objection: N
Community Council Objection Explanation:

Audit Penalty YN: N

Categorical Program Monitoring: N

Submitted by: Mr. Aaron Shrogin
Position: Principal
E-mail: ashrogin@smbsd.net
Telephone: 805-361-8285
Fax: 805-925-1179

Bargaining Unit Date: 12/06/2013
Name: Santa Maria Elementary Educators Association
Representative: Jose Segura
Title: President
Position: Support
Comments:

ATTACHMENT

Bonita School is applying for a one year, one time retroactive exemption from the QEIA 4th, 5th and 6th grade class size reduction targets for 2012-13. Our hope is that the California Department of Education and California State Board of Education in granting this waiver request will seek justification based on the actual intent of the QEIA legislation as stated in California Education Code 52055.710, Articles c, d & e.

(c) Improve the quality of academic instruction and the level of pupil achievement in schools in which pupils have high levels of poverty and complex educational needs.

(d) Develop exemplary school district and school practices that will create the working conditions and classroom learning environments that will attract and retain well qualified teachers, administrators, and other staff.

(e) Focus school resources, including all categorical funds, solely on instructional improvement and services to pupils.

Bonita School's QEIA CSR targets were:

- 4th grade- 17.5:1
- 5th grade- 25:1
- 6th grade- 25:1

The attached document shows that the following grade level averages applied to Bonita School's 4th, 5th and 6th grades during the 2012-13 school year when all of the instructional sections at each grade level are averaged. Bonita School, although a K-6 elementary school offers a junior high student movement instructional program model. We do this to provide additional certificated staff in English language arts and mathematics' instructional sections to decrease class sizes. When all of the instructional section enrollments in each grade level for the 2012-13 school year are averaged, the following class size ratios exist:

- 4th grade- 23:1
- 5th grade- 25.4:1
- 6th grade- 26:1

~ Please see Artifact #1

In consideration of this waiver request we respectfully request that all parties concerned take into account the following conditions that we feel are mitigating factors:

1) In the 2009-10 school year, Bonita School applied for a waiver to adjust the 4th grade QEIA CSR target from 17.5:1 to 21:1 or higher. This waiver was denied by the California State Board of Education.
2) Bonita School has experienced a 61.19% total enrollment growth between 2007-08 and 2013-14 (8.74% per annum) over the life of the QEIA Grant, (please see Artifact #2).
3) Our school district was unable to offer to bus Bonita School students to other district schools.
4) Our school district received and denied our petition to purchase and install an additional portable classroom for student use using QEIA funds in 2010-11 because of their desire to reduce the number of students being housed in portable buildings.
5) From 2006-07 to 2011-12 Bonita School experienced an average 24.05% transiency figure.
6) Bonita School offers a demographic profile of:
   - 98% Educationally Disadvantaged Youth
   - 92% English language learner
   - With 85% of our parent demographic having not completed high school (to the best of our knowledge, no other school in Santa Barbara County matches or exceeds these three characteristics.)

Waiver Number: 16-12-2013 **Period of Request:** July 1, 2012, to June 30, 2013
Period Recommended: July 1, 2012, to June 30, 2013
Barbara Webster Elementary School **CDS Code**: 56 76828 6055545
Santa Paula Unified School District

Local Educational Agency Request:

Santa Paula Unified School District (USD) is a suburban district located in Ventura County with a student population of approximately 3,757 students. Barbara Webster Elementary School (ES) serves 423 students in kindergarten and grades one through five. Monitoring performed by the Ventura County Office of Education indicates that the class size reduction (CSR) requirements of the Quality Education Investment Act (QEIA) were not fully met by Barbara Webster ES in school year 2012–13. The school's current QEIA CSR targets, approved by a 2012 waiver for school years 2012–13 and 2013–14, for core classes of English, mathematics, history-social science, and science are 23.0 in kindergarten and grades one through three, and an average of 25.0 in grades four and five.

Santa Paula USD states that all students in the neighborhood surrounding Barbara Webster ES are allowed to enroll in the school, including students who transitioned from third to fourth grade. The district adds that during the summer months, families often relocate, leaving spaces for new students in the neighborhood. However, the district states that in August 2012, more than 25 fourth-grade students arrived at the school. Further, the district states that they had no intention of exceeding the CSR waiver and made every attempt to accommodate students at other sites as quickly as possible. Because there were no buses, the district states that some parents needed additional time to arrange for transportation to the other school sites. Lastly, the district states that when the CSR average was calculated for the QEIA annual monitoring, the fourth grade enrollment average for the year for was 25.05, slightly above the CSR target of 25.0.

Santa Paula USD requests a waiver of the QEIA CSR target for grade four at Barbara Webster ES for school year 2012–13, and the establishment of an alternative CSR target of 25.05 students on average in core classes in grade four.

California Department of Education Recommendation and Conditions:

The California Department of Education (CDE) supports Santa Paula USD's request to increase its QEIA CSR target to 25.05 for grade four at Barbara Webster ES for school year 2012–13.

The CDE recommends approval with the following conditions: (1) Applies only to grade four at Barbara Webster ES for school year 2012–13; (2) Barbara Webster ES increases enrollment to 25.05 students on average in core classes in grade four; (3) No core class in grades four and five may exceed 27 students per classroom regardless of the average classroom size; and (4) Within 30 days of approval of this waiver, Santa Paula USD must provide to the CDE a description, including costs covered by QEIA funds, of professional development activities and any other school improvement activities added to the school improvement plan as a result of the additional funding now available, if any, through this waiver of the CSR requirement.

Reviewed by Barbara Webster ES Schoolsite Council on December 4, 2013.

Supported by Santa Paula Federation of Teachers, November 19, 2013.

Local Board Approval: December 12, 2013.

California Department of Education
WAIVER SUBMISSION - General

CD Code: 5676828 Waiver Number: 16-12-2013 Active Year: 2013

Date In: 12/13/2013 10:42:55 AM

Local Education Agency: Santa Paula Unified School District
Address: 201 South Steckel Dr.
Santa Paula, CA 93060

Start: 7/1/2012 End: 6/30/2013

Waiver Renewal: N
Previous Waiver Number: Previous SBE Approval Date:

Waiver Topic: Quality Education Investment Act
Ed Code Title: Class Size Reduction Requirements
Ed Code Section: 52055.740(a)
Ed Code Authority: 33050

Ed Code or *CCR* to Waive: (C) For classes in English language arts, reading, mathematics, science, or history and social science courses in grades 4 to 12, inclusive, an average classroom size that is the lesser of clause (i) or (ii), as follows:
(i)[At least five pupils fewer per classroom than was the average in 2006-07.]
(ii)[An average of 25 pupils per classroom.]
(iii) For purposes of this subparagraph, average classroom size shall be calculated at the grade level based on the number of subject-specific classrooms in that grade at the school site. If the subject-specific classrooms at the school averaged fewer than 25 pupils per classroom during the 2005-06 school year, that lower average shall be used as the “average in 2006-07” for purposes of this subparagraph. [A school that receives funding under this article shall not have a class in English language arts, reading, mathematics, science, or history and social science in grades 4th-12th , inclusive, with more than 27 pupils regardless of its average classroom size.]

Outcome Rationale: Santa Paula Unified School District is requesting a waiver of the Quality Education Investment Act (QEIA) class size reduction (CSR) target for fourth grade at Barbara Webster School for school year 2012-13 from 25 to 25.05 for the period July 1, 2012 to June 30, 2013.

All students in the Barbara Webster neighborhood are allowed to enroll, including students who transitioned from third to fourth grade. During the summer months, families often relocate, leaving spaces for new students to the neighborhood. In August, 2012, more than 25 students arrived at Barbara Webster for each fourth grade class. The District proceeded to move students to other sites where there was space. The District does not provide bus transportation, so some parents were given additional time to arrange for transportation from the Barbara Webster neighborhood to other school sites.

The District had no intention of exceeding the CSR waiver, and made every attempt to accommodate students at other sites as quickly as possible. Unfortunately, when the CSR

average was calculated for the QEIA Annual Review, the enrollment average for the year for fourth grade was 25.05, slightly above the CSR target of 25.

Student Population: 423

City Type: Suburban

Public Hearing Date: 12/12/2013
Public Hearing Advertised: Posted at District Office, City of Santa Paula, Blanchard Library, Briggs School District Office, Mupu School District Office.

Local Board Approval Date: 12/12/2013

Community Council Reviewed By: Barbara Webster Schoolsite Council
Community Council Reviewed Date: 12/4/2013
Community Council Objection: N
Community Council Objection Explanation:

Audit Penalty YN: N

Categorical Program Monitoring: N

Submitted by: Ms. Robin Freeman
Position: Assistant Superintendent, Educational Services
E-mail: rfreeman@santapaulaunified.org
Telephone: 805-933-8804
Fax: 805-933-8023

Bargaining Unit Date: 11/19/2013
Name: Santa Paula Federation of Teachers
Representative: Carolyn Ishida
Title: President
Position: Support
Comments:

California State Board of Education

Meeting Agenda Items for March 12-13, 2014

WAIVER ITEM W-23

ITEM #W-23

CALIFORNIA STATE BOARD OF EDUCATION

MARCH 2014 AGENDA

☒ **General Waiver**

SUBJECT	
Request by **Oakland Unified School District** to waive portions of California *Education Code* Section 52055.740(a), regarding Highly Qualified Teachers and/or the *Williams* case settlement requirements under the Quality Education Investment Act. Waiver Numbers: 19-1-2014 21-1-2014	☒ **Action** ☒ **Consent**

SUMMARY OF THE ISSUES

See Attachments 1 and 3 for details.

Authority for Waiver: *Education Code* (*EC*) Section 33050

RECOMMENDATION

☐ **Approval** ☒ **Approval with conditions** ☐ **Denial**

See Attachments 1 and 3 for details.

SUMMARY OF KEY ISSUES

Quality Education Investment Act

Per California *EC* Section 52055.710(c) and (d), it is the intent of the Legislature that the Quality Education Investment Act (QEIA) funding accomplish the following:

(c) Improve the quality of academic instruction and the level of pupil achievement in schools in which pupils have high levels of poverty and complex educational needs.

(d) Develop exemplary school district and school practices that will create the working conditions and classroom learning environments that will attract and retain well qualified teachers, administrators, and other staff.

To assist local educational agencies (LEAs) in properly implementing requirements to meet statutory timelines, schools participating in the QEIA program were monitored by their county offices of education for compliance with program requirements for the first time at the end of the 2008–09 school year. At that time, QEIA schools were required to

demonstrate one-third progress toward full implementation of program requirements. At the end of the 2009–10 school year, QEIA schools were required to demonstrate two-thirds progress toward full program implementation. QEIA schools were required to demonstrate full compliance with all program requirements at the end of the 2010–11 school year.

Highly Qualified Teachers

California *EC* Section 52055.740(a)(3) requires, in QEIA funded schools, that by the end of the 2010–11 school year and each year after, each teacher, including intern teachers, be highly qualified in accordance with the federal No Child Left Behind Act (NCLB) of 2001.

The federal NCLB statutes require that all elementary, middle, and high school teachers assigned to teach core academic subjects be highly qualified. In California, the NCLB core academic subjects are defined as:

- English/language arts/reading (including reading intervention and California High School Exit Exam [CAHSEE] English classes)
- Mathematics (including math intervention and CAHSEE math classes)
- Biological sciences; chemistry; geosciences; and physics
- Social science (history; government; economics; and geography)
- Foreign languages (specific)
- Drama/theater; visual arts (including dance); and music

Meeting the federal requirement for Highly Qualified Teachers (HQT) is determined based on the number of classes in core academic subjects taught by highly qualified teachers as reported in the California Longitudinal Pupil Achievement Data System (CALPADS).

Williams Case Settlement Requirements

California *EC* Section 52055.740(b)(4) requires QEIA funded schools, by the end of the 2008–09 school year and each year thereafter, to meet all of the requirements of the settlement agreement in *Eliezer Williams, et al., vs. State of California, et al.*

These requirements include:

- Ensuring students have sufficient instructional materials.
- Ensuring school facilities pose no emergency or urgent threat to health and safety.

- Ensuring there are no teacher vacancies or misassignments.

If an LEA requests a waiver of the HQT or *Williams* case settlement requirements, the California Department of Education (CDE) reviews a range of information regarding the unique circumstances of the school and the district to formulate a recommendation to the State Board of Education (SBE).

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

SUMMARY OF PREVIOUS STATEBOARD OF EDUCATION DISCUSSION AND ACTION

The CDE Waiver Office has previously presented requests to waive the HQT target and the *Williams* case settlement requirements as defined by QEIA to the SBE. All HQT and *Williams* case settlement requirement waivers previously presented have been approved by the SBE.

FISCAL ANALYSIS (AS APPROPRIATE)

There are no statewide costs as a result of waiver approval. If the waiver is denied, the school must implement the HQT targets based on statute requirements or the *Williams* case settlement requirements to stay in the program. Any school in the program not meeting those targets will risk the loss of future funding. The QEIA statute calls for any undistributed annual QEIA funding to be redistributed to other schools currently in the program (no new schools are funded).

ATTACHMENT(S)

Attachment 1: Oakland Unified School District Request for a Quality Education Investment Act Highly Qualified Teachers Waiver 19-1-2014 (1 Page)

Attachment 2: Oakland Unified School District General Waiver Request 19-1-2014 (2 Pages) (Original waiver request is signed and on file in the Waiver Office.)

Attachment 3: Oakland Unified School District Request for a Quality Education Investment Act *Williams* Waiver 21-1-2014 (1 Page)

Attachment 4: Oakland Unified School District General Waiver Request 21-1-2014 (2 Pages) (Original waiver request is signed and on file in the Waiver Office.)

Waiver Number: 19-1-2014 **Period of Request:** July 1, 2012, to June 30, 2013
Period Recommended: July 1, 2012, to June 30, 2013
Claremont Middle School **CDS Code**: 01 61259 6057004
Oakland Unified School District

Local Educational Agency Request:

Oakland Unified School District (USD) is an urban district located in Alameda County with a student population of approximately 36,262 students. Claremont Middle School (MS) serves 405 students in grades six through eight. Monitoring performed by the Alameda County Office of Education indicates that the Highly Qualified Teacher (HQT) requirements of the Quality Education Investment Act (QEIA) were not fully met by Claremont MS in school year 2012–13.

Oakland USD states that Claremont MS reported a music teacher who was not HQT compliant at the time of the CALPADS submission, and who was the substitute in the music class during various dates from August 27, 2012, to January 18, 2013. The district also states that the teacher replaced another teacher that had numerous leave of absences and, in response to community concerns regarding the instability of instruction in a popular program, the district kept the teacher as the music instructor until the replacement was found. At last, the district states that on February 4, 2013, a teacher holding a clear single subject music credential was hired, and now all teachers are highly qualified in the current school year.

Oakland USD is requesting that the HQT requirement for teachers at Claremont MS be waived for school year 2012–13.

California Department of Education Recommendation and Conditions:

The California Department of Education (CDE) supports Oakland USD's request that HQT requirements for teachers at Claremont MS be waived for school year 2012–13.

The CDE recommends approval with the following conditions: (1) Applies only to teachers at Claremont MS for school year 2012–13; and (2) Within 30 days of approval of this waiver, Oakland USD must provide to the CDE a description, including costs covered by QEIA funds, of professional development activities and any other school improvement activities added to the school improvement plan as a result of the additional funding now available, if any, through this waiver of the HQT requirements.

Reviewed by Claremont MS Schoolsite Council on December 19, 2013.

Supported by Oakland Education Association, December 20, 2013.

Local Board Approval: January 6, 2014.

California Department of Education
WAIVER SUBMISSION - General

CD Code: 0161259 Waiver Number: 19-1-2014 Active Year: 2014

Date In: 1/8/2014 2:39:08 PM

Local Education Agency: Oakland Unified School District
Address: 1000 Broadway, Ste. 680
Oakland, CA 94607

Start: 7/1/2012 End: 6/30/2013

Waiver Renewal: Y
Previous Waiver Number: 38-1-2013-W-23 Previous SBE Approval Date: 3/14/13

Waiver Topic: Quality Education Investment Act
Ed Code Title: Highly Qualified Teachers
Ed Code Section: 52055.740(a)(3)
Ed Code Authority: 33050

Ed Code or *CCR* to Waive:
California *EC* Section 52055.740(a)(3) requires, in QEIA funded schools, that by the end of the 2010–11 school year and each year after, each teacher, including intern teachers, be highly qualified in accordance with the federal No Child Left Behind Act (NCLB) of 2001.

The federal NCLB statutes require that all elementary, middle, and high school teachers assigned to teach core academic subjects be highly qualified. In California, the NCLB core academic subjects are defined as:
English/language arts/reading (including reading intervention and California High School Exit Exam [CAHSEE] English classes)
Mathematics (including math intervention and CAHSEE math classes)
Biological sciences; chemistry; geosciences; and physics
Social science (history; government; economics; and geography)
Foreign languages (specific)
Drama/theater; visual arts (including dance); and music

Meeting the federal requirement for HQT is determined based on the number of classes in core academic subjects taught by highly qualified teachers as reported in the California Longitudinal Pupil Achievement Data System (CALPADS).

Outcome Rationale:
Claremont Middle School reported a music teacher that was not HQT compliance at the time of the CALPADS reporting submission. The teacher was the substitute in the music class during various dates from August 27, 2012 to January 18, 2013 (this included numerous dates in which she was not assigned and other long-term substitutes were assigned.) The teacher replaced another teacher that had had numerous leave of absences. In response to community concerns regarding the instability of instruction in a popular program, the district kept her as the music teacher until the replacement was found. Because no substitute teacher was instructing longer than 30 days for any one assignment, the district could not enforce the substitutes to become

properly credentialed. On February 4, 2013, a teacher was hired who holds a clear single subject music credential. All teachers are highly qualified in the current school year 2013-14.

Student Population: 405

City Type: Urban

Public Hearing Date: 1/6/2014
Public Hearing Advertised: Newspaper

Local Board Approval Date: 1/6/2014

Community Council Reviewed By: Schoolsite Council
Community Council Reviewed Date: 12/19/2013
Community Council Objection: N
Community Council Objection Explanation:

Audit Penalty YN: N

Categorical Program Monitoring: N

Submitted by: Mr. David Montes de Oca
Position: Associate Superintendent
E-mail: david.montes@ousd.k12.ca.us
Telephone: 510-336-7500
Fax:

Bargaining Unit Date: 12/19/2013
Name: Oakland Education Association
Representative: Trish Gorham
Title: President
Position: Support
Comments:

Waiver Number: 21-1-2014 **Period of Request:** July 1, 2012, to June 30, 2013
Period Recommended: July 1, 2012, to June 30, 2013
Garfield Elementary School **CDS Code**: 01 61259 6001846
Oakland Unified School District

Local Educational Agency Request:

Oakland Unified School District (USD) is an urban district located in Alameda County with a student population of approximately 36,262 students. Garfield Elementary School (ES) serves 582 students in kindergarten and grades one through five. Monitoring performed by the Alameda County Office of Education indicates that the *Williams* case settlement requirement of the Quality Education Investment Act (QEIA) were not fully met by Garfield ES in school year 2012–13.

Oakland USD states that Garfield ES assigned a teacher who was not certified in Cross-cultural Language and Academic Development (CLAD) to serve English language learners for approximately three months. However, the district states that the teacher held an emergency CLAD certification while completing coursework to renew it before its expiration on March 1, 2013. In the end, the district states, the teacher did not complete the requirements for the CLAD certification. Lastly, the district states that the teacher is no longer employed at Garfield ES or with the district and all teachers are highly qualified in the current school year.

Oakland USD is requesting that the *Williams* case settlement requirement for teachers at Garfield ES be waived for school year 2012–13.

California Department of Education Recommendation and Conditions:

The California Department of Education (CDE) supports Oakland USD's request that the *Williams* case settlement requirement for teachers at Garfield ES be waived for school year 2012–13.

The CDE recommends approval with the following conditions: (1) Applies only to teachers at Garfield ES for school year 2012–13; and (2) Within 30 days of approval of this waiver, Oakland USD must provide to the CDE a description, including costs covered by QEIA funds, of professional development activities and any other school improvement activities added to the school improvement plan as a result of the additional funding now available, if any, through this waiver of the *Williams* case settlement requirement.

Reviewed by Garfield ES Council on December 19, 2013.

Supported by Oakland Education Association, December 20, 2013.

Local Board Approval: January 6, 2014.

California Department of Education
WAIVER SUBMISSION - General

CD Code: 0161259 Waiver Number: 21-1-2014 Active Year: 2014

Date In: 1/8/2014 3:32:03 PM

Local Education Agency: Oakland Unified School District
Address: 1000 Broadway, Ste. 680
Oakland, CA 94607

Start: 7/1/2012 End: 6/30/2013

Waiver Renewal: N
Previous Waiver Number: Previous SBE Approval Date:

Waiver Topic: Quality Education Investment Act
Ed Code Title: Williams Settlement
Ed Code Section: 52055.740(b)(4)
Ed Code Authority: 33050

Ed Code or *CCR* to Waive: California *EC* Section 52055.740(b)(4) requires QEIA funded schools, by the end of the 2008–09 school year and each year thereafter, to meet all of the requirements of the settlement agreement in Eliezer Williams, et al., vs. State of California, et al.

These requirements include:
· Ensuring students have sufficient instructional materials.
· Ensuring school facilities pose no emergency or urgent threat to health & safety.
· Ensuring there are no teacher vacancies or misassignment.

If an LEA requests a waiver of the HQT or Williams case settlement requirements, the CDE reviews a range of information regarding the unique circumstances of the school and the district to formulate a recommendation to the SBE.

Outcome Rationale: Garfield Elementary assigned a teacher to serve English language learners who, for a period of approximately three months, was not certified in CLAD. The teacher held an emergency CLAD credential that expired on March 1, 2013. She applied for her permanent CLAD. She was completing coursework to finalize her CLAD and renew her credentials which she should have completed prior to the expiration of her emergency CLAD. However, ultimately the teacher did not complete the requirements for her CLAD certification. She completed the school year and is no longer employed at Garfield Elementary or with the Oakland Unified School District. All teachers are highly qualified in the current school year 2013-14.

Student Population: 582

City Type: Urban

Public Hearing Date: 1/6/2014
Public Hearing Advertised: Newspaper

Local Board Approval Date: 1/6/2014

Community Council Reviewed By: Schoolsite Council
Community Council Reviewed Date: 12/19/2013
Community Council Objection: N
Community Council Objection Explanation:

Audit Penalty YN: N

Categorical Program Monitoring: N

Submitted by: Mr. David Montes de Oca
Position: Associate Superintedent
E-mail: david.montes@ousd.k12.ca.us
Telephone: 510-336-7500
Fax:

Bargaining Unit Date: 12/20/2013
Name: Oakland Education Association
Representative: Trish Gorham
Title: President
Position: Support
Comments:

California State Board of Education

Meeting Agenda Items for March 12-13, 2014

ITEM 03

CALIFORNIA STATE BOARD OF EDUCATION

MARCH 2014 AGENDA

SUBJECT	
Demonstration of the Quality Schooling Framework.	☐ Action ☒ Information ☐ Public Hearing

SUMMARY OF THE ISSUE(S)

This item presents a demonstration of the Quality Schooling Framework (QSF). An overview of the QSF will be made available on the California Comprehensive Center Quality Schooling Framework Web page at http://cacompcenter.org/quality-schooling-framework/.

RECOMMENDATION

The California Department of Education (CDE) recommends that the State Board of Education (SBE) consider this an information item with no specific action at this time.

BRIEF HISTORY OF KEY ISSUES

The QSF is a conceptual model for gauging and supporting a school's effectiveness. Organized around a research-based concept of education's role in helping students to learn and thrive, the QSF includes descriptions, characteristics, and measures of various components of a successful educational experience for students. Users can access research-based information, narrated presentations, and tools to assist a local school assessment, planning, and improvement process.

The QSF re-conceptualizes school improvement tools devoted to those schools and districts in Program Improvement (PI) status called for in the Elementary and Secondary Education Act (ESEA) and California *Education Code* Section 52055.57 (b)(1)(A). These instruments have been increasingly used over the past 10 years as more and more schools entered PI and were subject to intervention. Although these tools were documented as effective measures of the constructs being assessed and associated with improved academic achievement when fully implemented, concerns have been raised about the lack of flexibility with some of these tools and their relevance to address the needs of all schools, not just those in academic difficulty.

The QSF is not intended as the basis for a set of mandates or a checklist of "dos" and "don'ts" for schools and districts in program improvement as defined in Section 1116 of

the ESEA, though it does seek to honor the intent of the ESEA to narrow the achievement gap while expanding the definition of what it means for all students to learn and thrive. Instead, it is intended to serve as a lens that educators can use to examine their schools systemically to decide what is most likely to support student success.

The QSF reflects the State's responsibility under ESEA to provide technical assistance to all schools with a range of options for school improvement. Although the inception of the QSF precedes the Local Control Funding Formula (LCFF), QSF resources align with and complement the intent of the LCFF to empower decision-making at the local level.

Unlike previous tools that are devoted to only those schools and districts in PI, the QSF is designed to empower all schools to grow through coordinated policies and practices to create healthy environments, implement standards-based curriculum, engage students in meaningful instruction and assessment, and support teacher professional learning. The QSF supports the activities of all schools with a range of options for school improvement and the use of flexible fiscal resources.

Each of the QSF elements includes Web-based tools, best practices, and research to measure and support its implementation. Rather than operating as a repository for any and all good ideas, the CDE, along with its collaborators, is developing a process to review all resources and tools to be included. An Evidence Based Practice tool will allow CDE staff and local educators to analyze the utility of resources and tools recommended for the QSF. An iterative process will engage state and local educators in reviewing recommended tools and resources and discussing their efficacy prior to their inclusion in the Web site.

Anticipated rollout and communications activities include:

- **March 12, 2014—SBE Meeting:** The "Quality Schooling Framework Overview" video will be shown at the SBE meeting and will be temporarily posted at the California Comprehensive Center Web site. This video will then be permanently posted on the CDE Web site by early April, along with captions and a transcript.

- **March 25, 2014—Title I Conference:** CDE staff will show the QSF Overview video and provide a sample of some of the approved QSF narrative pages. Conference participants will be encouraged to provide feedback and suggestions for improvement of the QSF.

- **April, 2014:** CDE will post additional QSF implementation videos, including "Developing Effective School and District Plans," "Engaging Families and Community," and "Assessing School Effectiveness." The QSF implementation videos are designed to inform users on how to best utilize the information and tools located within the QSF.

- **May, 2014:** The QSF Resources Review Committee will discuss additional resources and tools for inclusion and recommendation for posting to the QSF.

- **June, 2014:** The QSF Web site will be launched to the public. The launch will take place in conjunction with a CDE Webinar developed for school, district, and county office personnel. Survey tools will be included in the QSF Web site to encourage users to submit feedback on the QSF utilities.

- **Ongoing:** The QSF Resources Review Committee will meet periodically to discuss and recommend resources and tools for inclusion or removal of the QSF Web site.

The development and publication of the QSF represents the next step in the CDE's movement toward a coherent flexible system of school and district support that relies more on research-based models to assess and plan for improvements. Such a conceptual model recognizes that good ideas and innovative practices can originate at any level in the system. The QSF builds upon Strategy 4 of the *Blueprint for Great Schools* by helping to build the capacity of schools as a key ingredient in improving school performance.

SUMMARY OF PREVIOUS STATE BOARD OF EDUCATION DISCUSSION AND ACTION

In 2004, the CDE developed a suite of tools for use in local educational agencies (LEAs), based on requirements in California *Education Code* Section 52055.57 (b)(1)(A) for an LEA entering PI under the ESEA to "conduct a self-assessment using materials and criteria based on current research and provided by the department." The Academic Program Survey of nine SBE-approved Essential Program Components was the anchor document among this suite of tools, which also included a District Assistance Survey, an English Learner Student Self-Assessment, and a Survey of Support and Services for Students with Disabilities.

In September 2009 the CDE, in conjunction with the California County Superintendents Association (CCSESA), the California Comprehensive Center (CA CC), and various district organizations and associations, completed a review and revision of the self-assessment tools. Each of the four tools underwent key changes for greater internal consistency, coherence, and alignment with one another.

In February 2014, an Information Memorandum to the SBE described the initial elements and planned structure of the QSF.

FISCAL ANALYSIS (AS APPROPRIATE)

CDE staff time is utilized to identify and review tools for recommendation for inclusion in the QSF. Minor costs may be associated for permission to use certain copyrighted tools.

ATTACHMENT(S)

None.

California State Board of Education

Meeting Agenda Items for March 12-13, 2014

ITEM 04

CALIFORNIA STATE BOARD OF EDUCATION

MARCH 2014 AGENDA

SUBJECT	
Approval of 2013–14 Consolidated Applications.	☒ Action ☒ Information ☐ Public Hearing

SUMMARY OF THE ISSUE(S)

Each local educational agency (LEA) must submit a complete and accurate Consolidated Application for Funding (ConApp) each fiscal year in order for the California Department of Education (CDE) to send funding to LEAs for any or all of the categorical funds contained in the ConApp for which they are eligible. The ConApp is the annual fiscal companion to the LEA Plan. The State Board of Education (SBE) is asked to annually approve ConApps for approximately 1,600 school districts, county offices of education, and direct-funded charter schools. At the January 2014 meeting, the SBE requested the four LEAs recommended for conditional approval provide an oral update to the SBE at their March 2014 meeting.

RECOMMENDATION

The CDE recommends that the SBE approve the 2013–14 ConApps submitted by LEAs in Attachment 1 and hear an update on the progress of non-compliant Federal Program Monitoring items from Brawley Elementary, Ravendale-Termo Elementary, Soledad Unified, and Victor Valley Union High.

BRIEF HISTORY OF KEY ISSUES

Each year, the CDE, in compliance with *California Code of Regulations, Title 5*, Section 3920, recommends that the SBE approve applications for funding Consolidated Categorical Aid Programs submitted by LEAs. Prior to receiving funding, the LEA must also have a SBE-approved LEA Plan that satisfies the SBE's and CDE's criteria for utilizing federal and state categorical funds.

Approximately $2.9 billion of state and federal funding is distributed annually through the ConApp process. The 2013–14 ConApp consists of six federal-funded programs and only one state-funded program. The state funding source is Economic Impact Aid carryover (which is used for State Compensatory Education and/or English learners). The federal funding sources include:

- Title I, Part A Basic Grant (Low Income);
- Title I, Part D (Delinquent);
- Title II, Part A (Teacher Quality);
- Title III, Part A (Immigrant);
- Title III, Part A (Limited English Proficient Students); and
- Title VI, Part B (Rural, Low-Income).

The CDE provides the SBE with two levels of approval recommendations. Regular approval is recommended when an LEA has submitted a correct and complete ConApp, Part I, and has no compliance issues or is making satisfactory progress toward resolving one or two noncompliant issues that are less than 365 days. Conditional approval is recommended when an LEA has submitted a correct and complete ConApp, Part I, but has one or more noncompliant issues that is/are unresolved for over 365 days. Conditional approval by the SBE provides authority to the LEA to spend its categorical funds under the condition that it will resolve or make significant progress toward resolving noncompliant issues. In extreme cases, conditional approval may include the withholding of funds.

Attachment 1 identifies the LEAs that have no outstanding noncompliant issues or are making satisfactory progress toward resolving one or two noncompliant issues that is/are unresolved for less than 365 days. The CDE recommends regular approval of the 2013–14 ConApp for these 2 LEAs. Attachment 1 also includes ConApp entitlement figures from school year 2012–13 because the figures for 2013–14 have not yet been determined. Fiscal data are absent if an LEA is new or is applying for direct funding for the first time.

SUMMARY OF PREVIOUS STATE BOARD OF EDUCATION DISCUSSION AND ACTION

To date, the SBE has approved 2013–14 ConApps for 1,618 LEAs. Attachment 1 represents the fourth set of 2013–14 ConApps presented to the SBE for approval.

FISCAL ANALYSIS (AS APPROPRIATE)

The CDE provides resources to track the SBE approval status of the ConApps for approximately 1,600 LEAs. The cost to track the noncompliant status of LEAs related to programs within the ConApp is covered through a cost pool of federal funds and Economic Impact Aid carryover funds. Through the Federal Program Monitoring process, CDE staff communicates with LEA staff on an ongoing basis to determine the evidence needed to resolve issues, reviews the evidence provided by LEA staff, and maintains a tracking system to document the resolution process.

ATTACHMENT(S)

Attachment 1: Consolidated Applications List (2013–14) - Regular Approvals (1 page)

Consolidated Applications List (2013–14) – Regular Approvals

The following local educational agencies have submitted a correct and complete Consolidated Application (ConApp), Spring Release, and have no compliance issues or are making satisfactory progress toward resolving one or two noncompliant issues that are less than 365 days. The California Department of Education (CDE) recommends regular approval of these applications.

CDS Code	Local Educational Agency Name	Total 2012–13 ConApp Entitlement	2012–13 Total Entitlement Per Student	Total 2012–13 Title I Entitlement	2012–13 Entitlement Per Free and Reduced Lunch K-12 Student	2012–13 Percent At or Above Proficiency - Language Arts (APR)	2012–13 Percent At or Above Proficiency – Math (APR)
19647330127852	Executive Preparatory Academy of Finance	$0	$0	$0	$0	0.0	0.0
19647330127894	Valor Academy Charter High	$0	$0	$0	$0	0.0	0.0

Total Number of LEAs in the report: 2
Total ConApp entitlement funds for LEAs receiving regular approval: $0

California State Board of Education

Meeting Agenda Items for March 12-13, 2014

ITEM 05

CALIFORNIA STATE BOARD OF EDUCATION

MARCH 2014 AGENDA

SUBJECT	
Pioneer Union Elementary School District: Consideration of Petition to Renew Districtwide Charter.	☒ Action ☒ Information ☒ Public Hearing

SUMMARY OF THE ISSUE(S)

Pioneer Union Elementary School District (PUESD) is currently a State Board of Education (SBE)-authorized districtwide charter with a term that expires June 30, 2014. In November 1993, PUESD became the first districtwide charter in California. PUESD was subsequently renewed for three additional five-year terms in September 1999, May 2004, and May 2009. The district currently requests renewal of its charter for the term of July 1, 2014, to June 30, 2019.

Pursuant to California *Education Code* (*EC*) Section 47606, a school district may convert all of its schools to charter schools if approved by joint action of the SBE and the State Superintendent of Public Instruction (SSPI). Renewals of districtwide charters are subject to the conditions of *EC* Section 47607 and may be granted for terms of five years.

RECOMMENDATION

The California Department of Education (CDE) recommends that the SBE hold a public hearing and approve the districtwide charter for the PUESD for a five-year term of July 1, 2014, to June 30, 2019. In accordance with the requirements of *EC* Section 47606(b), the SSPI must also approve the PUESD charter renewal.

Advisory Commission on Charter Schools Recommendation

The Advisory Commission on Charter Schools (ACCS) met on February 7, 2014, and voted unanimously to recommend approval for the renewal of the PUESD districtwide charter.

BRIEF HISTORY OF KEY ISSUES

PUESD submitted its renewal petition to the CDE on December 20, 2013.

The PUESD mission is to challenge all students to learn, achieve, and act with purpose and compassion. PUESD, in partnership with parents and the community, strives to build the foundation for student academic and social success.

PUESD is an SBE-authorized districtwide charter, consisting of three schools that currently serve 1,617 pupils in kindergarten through grade eight in Hanford, California.

Demographic data from 2012–13 show that Pioneer Elementary School, Frontier Elementary School, and Pioneer Middle School served 36.4 percent, 35.1 percent, and 29 percent of pupils from socio-economically disadvantaged families respectively; 8.6 percent, 13.4 percent, and 11.8 percent respectively are designated as English learner students; and 37.3 percent, 39.1 percent, and 39.1 percent of pupils are Hispanic or Latino respectively. Details are provided in Attachment 2 of Agenda Item 06 on the ACCS February 7, 2014, Meeting Notice for the ACCS Web page located at http://www.cde.ca.gov/be/cc/cs/documents/accs-feb14item06a2.xls.

PUESD has a 2013 Growth Academic Performance Index (API) of 865. The district had positive API growth during 2010–11 and 2011–12. PUESD's growth API declined by eight points in 2012–13. The District's statewide rank for the past three years has remained an eight. Details are provided in Attachment 2 of Agenda Item 06 on the ACCS February 7, 2014, Meeting Notice for the ACCS Web page located at http://www.cde.ca.gov/be/cc/cs/documents/accs-feb14item06a2.xls.

In considering the PUESD petition, the CDE reviewed the following:

- Educational and demographic data of districts where pupils would otherwise be required to attend, Attachment 2 of Agenda Item 06 on the ACCS February 7, 2014, Meeting Notice for the ACCS Web page located at http://www.cde.ca.gov/be/cc/cs/documents/accs-feb14item06a2.xls.

- PUESD petition, Attachment 3 of Agenda Item 06 on the ACCS February 7, 2014, Meeting Notice for the ACCS Web page located at http://www.cde.ca.gov/be/cc/cs/documents/accs-feb14item06a3.pdf.

- PUESD three-year budget, Attachment 4 of Agenda Item 06 on the ACCS February 7, 2014, Meeting Notice for the ACCS Web page located at http://www.cde.ca.gov/be/cc/cs/documents/accs-feb14item06a4.pdf.

- PUESD attachments, Attachment 5 of Agenda Item 06 on the ACCS February 7, 2014, Meeting Notice for the ACCS Web page located at http://www.cde.ca.gov/be/cc/cs/documents/accs-feb14item06a5.pdf.

- PUESD goals to address the eight state priorities, Attachment 6 of Agenda Item 06 on the ACCS February 7, 2014, Meeting Notice for the ACCS Web page located at http://www.cde.ca.gov/be/cc/cs/documents/accs-feb14item06a6.pdf.

Senate Bill 1290 amended *EC* sections 47605, 47605.6, and 47607 beginning January 1, 2013. In part, this law requires that charter school authorizers consider increase in pupil academic achievement for all subgroups served by the charter school as the most important factor in determining whether to renew or revoke a charter school.

EC Section 47607(b) states, "Commencing on January 1, 2005, or after a charter school has been in operation for four years, whichever date occurs later, a charter school shall meet at least one of the following criteria before receiving a charter renewal pursuant to paragraph (1) of subdivision (a)."

PUESD has met four of the five of the criteria as follows:

Requirement 1: Attained its API growth target in the prior year or in two of the last three years, or in the aggregate for the prior three years.

Met: PUESD met API growth targets in the 2011–12 and 2012–13 school years.

Requirement 2: Ranked in deciles 4 to 10, inclusive, on the API in the prior year or in two of the last three years.

Met: Pioneer and Frontier Elementary Schools attained an API decile rank of 8, and Pioneer Middle School attained an API decile rank of 9 for the 2012–13 academic year.

Requirement 3: Ranked in deciles 4 to 10, inclusive, on the API for a demographically comparable school API in the prior year or in two of the last three years.

Met: Pioneer Elementary School and Pioneer Middle School attained an API similar schools rank of 6, and Frontier Elementary School attained an API similar schools rank of 5 for the 2012–13 academic year.

Requirement 4: The entity that granted the charter determines that the academic performance of the charter school is at least equal to the academic performance of the public schools pupils that would otherwise have been required to attend, as well as the academic performance of the schools in the school district in which the charter schools is located, taking into account the composition of the pupil population that is served at the charter school (*EC* Section 47607(4)(A)).

Met: PUESD schools attained higher API growth than did schools in the neighboring Hanford Elementary School District.

Requirement 5: Has qualified for an alternative accountability system pursuant to subdivision (h) of *EC* Section 52052.

Not Applicable: PUESD does not qualify for an alternative accountability system.

The PUESD has a record of educational, financial, and governance success. Kings County Office of Education has received the PUESD 2013–14 adopted budget and provided a letter certifying that the district will meet its financial obligations in the current year and two subsequent years based on the PUESD's three-year projection. Refer to Attachment 5 of Agenda Item 06 on the ACCS February 7, 2014, Meeting Notice for the ACCS Web page located at http://www.cde.ca.gov/be/cc/cs/documents/accs-feb14item06a5.pdf.

CDE staff reviewed audited financial data of the 2012–13 audit report that reflected an unqualified status and consistent fiscal trends. The audit also reflects a strong ending fund balance of $7 million, net assets of $28 million, and reserves designated for economic uncertainty of 4.8 percent. Enrollment and average daily attendance are also consistent and show only minor fluctuations.

The PUESD charter petition addresses the requirements of *EC* Section 47605(b)(5)(A)(ii), including a description of the school's annual goals, for all pupils (i.e., schoolwide) and for each subgroup of pupils identified pursuant to *EC* Section 52052, for each of the applicable state priorities identified in *EC* Section 52060(d) and a description of the specific annual actions the school will take to achieve each of the identified annual goals. Attachment 6 of Agenda Item 06 on the ACCS February 7, 2014, Meeting Notice for the ACCS Web page located at http://www.cde.ca.gov/be/cc/cs/documents/accs-feb14item06a6.pdf.

The CDE finds that the petitioners are demonstrably likely to implement the program set forth in the petition, and the petition contains reasonably comprehensive descriptions of the 16 charter elements pursuant to *EC* Section 47605(b)(5). In addition, the CDE finds that PUESD has been responsive and compliant to deadlines and requests from the CDE.

SUMMARY OF PREVIOUS STATE BOARD OF EDUCATION DISCUSSION AND ACTION

The SBE and the SSPI jointly approved PUESD, initially in November 1993 and subsequently for three additional five-year terms: September 1999; May 2004; and May 2009.

Currently, eight districtwide charters are operating under SBE and SSPI approval.

The SBE delegates oversight duties of these schools to the CDE.

FISCAL ANALYSIS

Operation of PUESD has essentially no impact on the state as a whole. If approved, PUESD would continue to receive apportionment funding at the district's revenue limit.

ATTACHMENT(S)

None

California State Board of Education

Meeting Agenda Items for March 12-13, 2014

ITEM 06

CALIFORNIA STATE BOARD OF EDUCATION

MARCH 2014 AGENDA

SUBJECT	
Kings River-Hardwick Union Elementary School District**:** Consideration of Petition to Renew Districtwide Charter.	☒ Action ☒ Information ☒ Public Hearing

SUMMARY OF THE ISSUE(S)

The Kings River-Hardwick Union Elementary School District (KRHUESD) is currently a State Board of Education (SBE)-authorized districtwide charter with a term that expires June 30, 2014. In July 2001, KRHUESD received its status as a districtwide charter and was subsequently renewed for two additional five-year terms in May 2004 and May 2009. The district currently requests renewal of its charter for the term of July 1, 2014, to June 30, 2019.

Pursuant to California *Education Code* (*EC*) Section 47606, a school district may convert all of its schools to charter schools if approved by joint action of the SBE and the State Superintendent of Public Instruction (SSPI). Renewals of districtwide charters are subject to the conditions of *EC* Section 47607 and may be granted for terms of five years.

RECOMMENDATION

The California Department of Education (CDE) recommends that the SBE hold a public hearing and approve the districtwide charter for the KRHUESD for a five-year term of July 1, 2014, to June 30, 2019. In accordance with the requirements of *EC* Section 47606(b), the SSPI must also approve the KRHUESD charter renewal.

Advisory Commission on Charter Schools Recommendation

The Advisory Commission on Charter Schools (ACCS) met on February 7, 2014, and voted unanimously to recommend approval for the renewal of the KRHUESD districtwide charter.

BRIEF HISTORY OF KEY ISSUES

KRHUESD submitted its renewal petition to the CDE on December 23, 2013.

The KRHUESD mission is to strive to inspire students to learn and grow beyond their potential. The District focuses on student outcomes and offers an education program that promotes academic self-reliance, personal integrity, and a life-long love of learning.

KRHUESD is an SBE-authorized districtwide charter, consisting of one school, Kings River-Hardwick Elementary School (KRHES), which currently serves 744 pupils in kindergarten through grade eight in Hanford, California.

Demographic data from 2012–13 show that KRHUESD served 35.6 percent of pupils from socio-economically disadvantaged families; 12.9 percent of pupils are designated as English learner; 34 percent of pupils are Hispanic or Latino. Details are provided in the educational and demographic data tables located in Attachment 2 of Agenda Item 05 on the ACCS February 7, 2014 Meeting Notice for the ACCS Web Page located at http://www.cde.ca.gov/be/cc/cs/documents/accs-feb14item05a2.xls.

KRHUESD has a 2013 Academic Performance Index (API) growth of 874.The district had positive API growth during 2010–11 and 2011–12. KRHUESD's growth API declined by four points in 2012–13. The District's statewide rank for the past three years has grown from a six to an eight. Details are provided in Attachment 2 of Agenda Item 05 on the ACCS February 7, 2014, Meeting Notice for the ACCS Web page located at http://www.cde.ca.gov/be/cc/cs/documents/accs-feb14item05a2.xls.

In considering the KRHUESD petition, the CDE reviewed the following:

- Educational and demographic data of districts where pupils would otherwise be required to attend Attachment 2 of Agenda Item 05 on the ACCS February 7, 2014, Meeting Notice for the ACCS Web page located at http://www.cde.ca.gov/be/cc/cs/documents/accs-feb14item05a2.xls.

- KRHUESD petition, Attachment 3 of Agenda Item 05 on the ACCS February 7, 2014, Meeting Notice for the ACCS Web page located at http://www.cde.ca.gov/be/cc/cs/documents/accs-feb14item05a3.pdf.

- KRHUESD three-year budget, Attachment 4 of Agenda Item 05 on the ACCS February 7, 2014, Meeting Notice for the ACCS Web page located at http://www.cde.ca.gov/be/cc/cs/documents/accs-feb14item05a4.pdf.

- KRHUESD attachments, Attachment 5 of Agenda Item 05 on the ACCS February 7, 2014, Meeting Notice for the ACCS Web page located at http://www.cde.ca.gov/be/cc/cs/documents/accs-feb14item05a5.pdf.

- KRHUESD goals to address the eight state priorities, Attachment 6 of Agenda Item 05 on the ACCS February 7, 2014, Meeting Notice for the ACCS Web page located at http://www.cde.ca.gov/be/cc/cs/documents/accs-feb14item05a6.doc.

Senate Bill 1290 amended *EC* sections 47605, 47605.6, and 47607 beginning January 1, 2013. In part, this law requires that charter school authorizers consider increase in pupil academic achievement for all subgroups served by the charter school as the most important factor in determining whether to renew or revoke a charter school.

EC Section 47607(b) states, "Commencing on January 1, 2005, or after a charter school has been in operation for four years, whichever date occurs later, a charter school shall meet at least one of the following criteria before receiving a charter renewal pursuant to paragraph (1) of subdivision (a)."

KRHES has met four of the five criteria as follows:

Requirement 1: Attained its API growth target in the prior year or in two of the last three years, or in the aggregate for the prior three years.

Met: KRHES met API growth targets in the 2011–12 and 2012–13 school years.

Requirement 2: Ranked in deciles 4 to 10, inclusive, on the API in the prior year or in two of the last three years.

Met: KRHES attained an API decile rank of 8 during the 2012–13 academic year.

Requirement 3: Ranked in deciles 4 to 10, inclusive, on the API for a demographically comparable school API in the prior year or in two of the last three years.

Met: KRHES attained a 2012–13 API similar schools rank of 8.

Requirement 4: The entity that granted the charter determines that the academic performance of the charter school is at least equal to the academic performance of the public schools pupils that would otherwise have been required to attend, as well as the academic performance of the schools in the school district in which the charter schools is located, taking into account the composition of the pupil population that is served at the charter school (*EC* Section 47607(4)(A)).

Met: In 2012–13 KRHES attained a higher Growth API than did four schools in the neighboring Hanford Elementary School District. KRHES has a 2013 Growth API of 874. Hamilton, Lee Richmond, Monroe, and Roosevelt elementary schools had 2013 Growth API of 798, 749, 837, and 812 respectively. Attachment 2 of Agenda Item 05 on the ACCS February 7, 2014, Meeting Notice for the ACCS Web page located at http://www.cde.ca.gov/be/cc/cs/documents/accs-feb14item05a2.xls.

Requirement 5: Has qualified for an alternative accountability system pursuant to subdivision (h) of Section 52052.

Not Applicable: KRHES does not qualify for an alternative accountability system.

KRHUESD has a record of educational, financial, and governance success. Kings County Office of Education has received the KRHUESD 2013–14 adopted budget and provided a letter certifying that the district will meet its financial obligations in the current year and two subsequent years based on the district's three-year projection. Refer to Attachment 5 of Agenda Item 05 on the ACCS February 7, 2014, Meeting Notice for the ACCS Web page located at http://www.cde.ca.gov/be/cc/cs/documents/accs-feb14item05a5.pdf.

CDE staff reviewed audited financial data of the 2012–13 audit report that reflected an unqualified status and consistent fiscal trends. The audit also reflects a strong ending fund balance of $1 million, net assets of $3.8 million and reserves designated for economic uncertainty of 5 percent. Enrollment and average daily attendance are also consistent. Refer to Attachment 4 of Agenda Item 05 on the ACCS February 7, 2014, Meeting Notice for the ACCS Web page located at http://www.cde.ca.gov/be/cc/cs/documents/accs-feb14item05a4.pdf.

The KRHUESD charter petition addresses the requirements of *EC* Section 47605(b)(5)(A)(ii), including a description of the school's annual goals, for all pupils (i.e. schoolwide) and for each subgroup of pupils identified pursuant to *EC* Section 52052, for each of the applicable state priorities identified in *EC* Section 52060(d) and a description of the specific annual actions the school will take to achieve each of the identified annual goals. Refer to Attachment 6 of Agenda Item 05 on the ACCS February 7, 2014, Meeting Notice for the ACCS Web page located at http://www.cde.ca.gov/be/cc/cs/documents/accs-feb14item05a6.doc.

The CDE finds that the petitioners are demonstrably likely to implement the program set forth in the petition and that the petition contains reasonably comprehensive descriptions of the 16 charter elements pursuant to *EC* Section 47605(b)(5). In addition, the CDE finds that KRHUESD has been responsive and compliant to deadlines and requests from the CDE.

SUMMARY OF PREVIOUS STATE BOARD OF EDUCATION DISCUSSION AND ACTION

The SBE and the SSPI jointly approved KRHUESD, initially in July 2001 and subsequently for two additional five-year terms in May 2004 and May 2009.

Currently, eight districtwide charters are operating under SBE and SSPI approval.

FISCAL ANALYSIS (AS APPROPRIATE)

Operation of KRHUESD has essentially no fiscal impact on the state as a whole. If approved, KRHUESD would continue to receive apportionment funding at the district's revenue limit.

ATTACHMENT(S)

None

California State Board of Education

Meeting Agenda Items for March 12-13, 2014

ITEM 07

CALIFORNIA STATE BOARD OF EDUCATION

MARCH 2014 AGENDA

SUBJECT	
Ridgecrest Charter School: Consideration of Petition to Renew Charter Currently Authorized by the State Board of Education.	☒ Action ☒ Information ☒ Public Hearing

SUMMARY OF THE ISSUE

Ridgecrest Charter School (RCS) is currently a State Board of Education (SBE)-authorized charter school, with a charter term that expires on June 30, 2014.

Pursuant to California *Education Code (EC)* Section 47605(k)(3), which requires an SBE-authorized charter to submit a renewal petition to the authority that originally denied the charter, RCS submitted a renewal petition to the Sierra Sands Unified School District (SSUSD), and was denied by the district on November 21, 2013, by a vote of six to zero.

If a governing board of a school district denies a renewal petition for an SBE-authorized charter school*, EC* Section 47605(k)(3) permits the charter school to submit the renewal petition directly to the SBE. Therefore, RCS was not required to submit its appeal to a county office of education.

RECOMMENDATION

California Department of Education Recommendation

The California Department of Education (CDE) recommends that the SBE hold a public hearing and consider the CDE's recommendation to approve the RCS charter petition for a five-year term effective July 1, 2014, through June 30, 2019.

Advisory Commission on Charter Schools Recommendation

The Advisory Commission on Charter Schools (ACCS) met on February 7, 2014, and voted unanimously to recommend approval for the renewal of the RCS charter.

BRIEF HISTORY OF KEY ISSUES

RCS submitted a renewal petition to CDE on December 11, 2013.

The mission of RCS is to provide all students with an exceptional education that will allow them to excel inside and outside of the classroom. The proposed educational program aligns with the standards and is reinforced by the following pedagogical strategies: explicit instruction; massed and distributed practice; problem solving; inquiry, and project-based instruction.

The petitioner currently operates under SBE authorization and is located in Ridgecrest, California. The school serves students in transitional kindergarten through grade eight and its 2012–13 Growth Academic Performance Index (API) is 864.

On November 21, 2013, SSUSD denied the renewal petition based on the following two findings:

- The petitioners are demonstrably unlikely to successfully implement the program as presented in the petition.

- The petition fails to provide a reasonably comprehensive description of all required elements of a charter petition.

CDE has conducted a thorough analysis and does not concur with the findings presented by SSUSD.

In considering the RCS petition, the CDE reviewed the following:

- The RCS petition and Attachments 3 and 5 of Agenda Item 04 on the ACCS February 7, 2014, Meeting Notice for the ACCS Web page located at http://www.cde.ca.gov/be/cc/cs/documents/accs-feb14item04a3.pdf; http://www.cde.ca.gov/be/cc/cs/documents/accs-feb14item04a5.pdf.

- Educational and demographic data of schools where pupils would otherwise be required to attend, Attachment 2 of Agenda Item 04 on the ACCS February 7, 2014, Meeting Notice for the ACCS Web page located at http://www.cde.ca.gov/be/cc/cs/documents/accs-feb14item04a2.xls .

- RCS budget information, Attachment 4 of Agenda Item 04 on the ACCS February 7, 2014, Meeting Notice for the ACCS Web page located at http://www.cde.ca.gov/be/cc/cs/documents/accs-feb14item04a4.pdf.

- Description of changes to the petition necessary to reflect the SBE as the authorizing entity, Attachment 6 of Agenda Item 04 on the ACCS February 7, 2014, Meeting Notice for the ACCS Web page located at http://www.cde.ca.gov/be/cc/cs/documents/accs-feb14item04a6.pdf.

- Board agendas, minutes and findings from SSUSD regarding denial of the RCS renewal petition and petitioner's response to SSUSD, Attachment 7 of Agenda Item 04 on the ACCS February 7, 2014, Meeting Notice for the ACCS Web page located at http://www.cde.ca.gov/be/cc/cs/documents/accs-feb14item04a7.pdf.

Senate Bill 1290 amended *EC* sections 47605, 47605.6, and 47607 beginning January 1, 2013. In part, this law requires that charter school authorizers consider increase in pupil academic achievement for all subgroups served by the charter school as the most important factor in determining whether to renew or revoke a charter school.

Pursuant to *EC* 47607(b), before it can be considered for renewal, a charter school that has been in operation for four years shall meet at least one of five criteria as outlined. RCS has met four of the five criteria as follows:

Requirement 1: Attained its API growth target in the prior year or in two of the last three years, or in the aggregate for the prior three years.

Met: RCS has attained its API growth target in the 2012–13 school year. The 2013 API growth for RCS was 16 points with an API of 864.

Requirement 2: Ranked in deciles 4 to 10, inclusive, on the API in the prior year or in two of the last three years.

Met: RCS attained an API decile rank of 7 during the 2012–13 academic year.

Requirement 3: Ranked in deciles 4 to 10, inclusive, on the API for a demographically comparable school API in the prior year or in two of the last three years.

Met: API decile rank for a demographically comparable school was 10 during the 2012–13 academic year.

Requirement 4: The entity that granted the charter determines that the academic performance of the charter school is at least equal to the academic performance of the public schools that the charter school pupils would otherwise have been required to attend, as well as the academic performance of the schools in the school district in which the charter school is located, taking into account the composition of the pupil population that is served at the charter school.

Met: The academic performance of RCS is at least equal to the academic performance of the public schools pupils would otherwise have been required to attend, as well as the academic performance of the schools in the school district in which the charter school is located, taking into account the composition of the pupil population that is served at the charter school.

Requirement 5: Has qualified for an alternative accountability system pursuant to subdivision (h) of *EC* Section 52052.

Not Applicable: RCS does not qualify for an alternative accountability system.

RCS has a record of educational, financial, and governance success over its twelve years in operation. The school's renewal five-year financial plan projects steady enrollment growth, from 400 to 537 by the end of the fifth year. Although the school is projecting on-going operational deficits beginning in the fiscal year 2014–15, the general fund balance is still sufficient to provide adequate reserves for economic uncertainty. The operational deficits are the result of an annual debt service obligation related to capital facility project to build a multi-purpose room.

RCS is fiscally sustainable. The CDE concludes that the charter's multiyear financial plan does provide for projected operational budget surpluses (excluding capital outlays) along with adequate reserve levels.

The RCS charter petition addresses the requirements of *EC* Section 47605(b)(5)(A)(ii), including a description of the school's annual goals, for all pupils (i.e., schoolwide) and for each subgroup of pupils identified pursuant to *EC* Section 52052, for each of the applicable state priorities identified in *EC* Section 52060(d) and a description of the specific annual actions the school will take to achieve each of the identified annual goals. Details are provided in Attachment 1 of Agenda Item 04 on the ACCS February 7, 2014, Meeting Notice for the ACCS web page located at http://www.cde.ca.gov/be/cc/cs/documents/accs-feb14item04a1.doc.

The CDE finds that RCS charter petitioners present a sound educational program and that the petitioners are likely to successfully implement the program as set forth in the petition. The petition meets the 16 elements required pursuant to *EC* Section 47605(b)(5).

SUMMARY OF PREVIOUS STATE BOARD OF EDUCATION DISCUSSION AND ACTION

In December 2000, following the denial by SSUSD and the Kern County Office of Education, RCS appealed to the SBE and was approved for a three-year term from September 2001 to September 2004. In September 2004 the SBE approved RCS for a five-year term from September 2004 to September 2009. In 2009 the renewal petition submitted to SSUSD was denied. RCS appealed to the SBE in May 2009. The SBE approved an additional five-year term of July 2009 to June 2014.

Currently, 19 charter schools operate under SBE authorization as follows:

- Two statewide benefit charters, operating a total of seven school sites
- One countywide benefit charter
- Sixteen charter schools, authorized on appeal after local or county denial

The SBE delegates oversight duties of these schools to CDE.

FISCAL ANALYSIS (AS APPROPRIATE)

If approved as a SBE-authorized charter school, the CDE would receive approximately one percent of school's general purpose apportionment for CDE's oversight activities. However, no additional resources are allocated to the CDE for oversight.

ATTACHMENT(S)

None

California State Board of Education

Meeting Agenda Items for March 12-13, 2014

ITEM 08

CALIFORNIA STATE BOARD OF EDUCATION

MARCH 2014 AGENDA

SUBJECT	
Barack Obama Charter School: Consideration of Petition to Renew Charter Currently Authorized by the State Board of Education.	☒ Action ☒ Information ☒ Public Hearing

SUMMARY OF THE ISSUE

Barack Obama Charter School (BOCS) is currently a State Board of Education (SBE)-authorized charter school, with a charter term that expires on June 30, 2014.

Pursuant to California *Education Code (EC)* Section 47605(k)(3), which requires an SBE-authorized charter to submit a renewal petition to the authority that originally denied the charter, BOCS submitted a renewal petition to Compton Unified School District (CUSD) on June 21, 2013. CUSD took no action within 60 days as outlined in *EC* 47605(b). As a result, BOCS resubmitted the petition to CUSD in October 2013. CUSD denied the renewal on November 12, 2013, by a vote of five to one.

If a governing board of a school district denies a renewal petition for an SBE-authorized charter school, *EC* Section 476059(k)(3) permits the charter school to submit the renewal petition directly to the SBE. Therefore the petitioners were not required to submit its appeal to a county office of education.

RECOMMENDATION

California Department of Education Recommendation

The California Department of Education (CDE) recommends that the SBE hold a public hearing and consider the CDE's recommendation to approve the BOCS charter petition for a five-year term effective July 1, 2014, through June 30, 2019.

Advisory Commission on Charter Schools Recommendation

The Advisory Commission on Charter Schools (ACCS) met on February 7, 2014, and voted unanimously to recommend approval for the renewal of the BOCS charter.

BRIEF HISTORY OF KEY ISSUES

BOCS submitted its renewal petition to the CDE on December 1, 2013, after being denied by CUSD.

The mission of BOCS is to provide individual learning approaches for each student. Students are evaluated extensively to adequately address individual education needs. Early in the school year, a personalized approach is adopted towards supporting each student. While incorporating data from testing and assessments, each student works collaboratively with a teacher in an effort to specify goals for meeting or moving beyond the standards.

The petitioner currently operates under SBE authorization and is located in Compton, California. The school serves students in kindergarten through grade six and its 2012–13 Growth Academic Performance Index (API) is 755.

On November 12, 2013, CUSD denied the renewal petition based on the following four findings:

- The petition presents an unsound educational program.
- The petitioners are demonstrably unlikely to successfully implement the program as set forth in the petition.
- The petition does not contain the number of signatures required.
- The petition fails to provide a reasonably comprehensive description of the 16 required elements.

CDE has conducted a thorough analysis and does not concur with the findings presented by CUSD.

In considering the BOCS petition, the CDE reviewed the following:

- The BOCS petition and Attachments 3 and 5 of Agenda Item 03 on the ACCS February 7, 2014, Meeting Notice for the ACCS Web page located at http://www.cde.ca.gov/be/cc/cs/documents/accs-feb14item03a3.pdf; http://www.cde.ca.gov/be/cc/cs/documents/accs-feb14item03a5.pdf.
- Educational and demographic data of schools where pupils would otherwise be required to attend, Attachment 2 of Agenda Item 09 on the ACCS February 7, 2014, Meeting Notice for the ACCS Web page located at http://www.cde.ca.gov/be/cc/cs/documents/accs-feb14item03a2.xls.

- BOCS budget information, Attachment 4 of Agenda Item 03 on the ACCS February 7, 2014, Meeting Notice for the ACCS Web page located at http://www.cde.ca.gov/be/cc/cs/documents/accs-feb14item03a4.pdf.

- Board agendas, minutes and findings from CUSD regarding denial of the BOCS renewal petition and petitioner's response to CUSD, Attachment 6 of Agenda item 03 on the ACCS February 7, 2014, Meeting Notice for the ACCS Web page located at http://www.cde.ca.gov/be/cc/cs/documents/accs-feb14item03a6.pdf.

Senate Bill 1290 amended *EC* sections 47605, 47605.6, and 47607 beginning January 1, 2013. In part, this law requires that charter school authorizers consider increase in pupil academic achievement for all subgroups served by the charter school as the most important factor in determining whether to renew or revoke a charter school.

Before it can be considered for renewal, a charter school that has been in operation for four years shall meet at least one of five criteria outlined in *EC* Section 47607(b). BOCS has met three of the five criteria as follows:

Requirement 1: Attained its API growth target in the prior year or in two of the last three years, or in the aggregate for the prior three years.

Met: BOCS has attained its API growth target in the 2011–12 school year.

Requirement 2: Ranked in deciles 4 to 10, inclusive, on the API in the prior year or in two of the last three years.

Not Met: Over the last three years BOCS did not meet the criteria. BOCS attained an API decile rank of 2 for the 2011–12 academic year and an API decile rank of 1 for academic years 2010–11 and 2009–10.

Requirement 3: Ranked in deciles 4 to 10, inclusive, on the API for a demographically comparable school API in the prior year or in two of the last three years.

Met: During the 2011–12 school year, BOCS' API decile rank for a demographically comparable school was 5.

Requirement 4: The entity that granted the charter determines that the academic performance of the charter school is at least equal to the academic performance of the public schools that the charter school pupils would otherwise have been required to attend, as well as the academic performance of the schools in the school district in which the charter school is located, taking into account the composition of the pupil population that is served at the charter school.

Met: BOCS is a neighborhood school that borders CUSD and Los Angeles Unified School District. BOCS serves students at risk and

those who have been underserved by the traditional public school system. The CDE has determined that the academic performance of BOCS is at least equal to the academic performance of the public schools pupils would otherwise have been required to attend, as well as the academic performance of the schools in the school district in which the charter school is located, taking into account the composition of the pupil population that is served at the charter school.

Requirement 5: Has qualified for an alternative accountability system pursuant to subdivision (h) of *EC* Section 52052.

Not Applicable: BOCS does not qualify for an alternative accountability system.

BOCS has a record of educational, financial, and governance success. The five-year financial plan projects steady enrollment growth. CDE staff reviewed audited financial data from the 2012–13 audit report that reflected an unqualified status with a funding balance of $536,196 and a reserve designated for economic uncertainty of 21 percent.

The projected financial plan for BOCS is fiscally sustainable. The CDE concludes that the charter's multiyear financial plan does provide for projected operating surpluses, increasing positive fund balances and adequate reserves.

BOCS was not required to comply with *EC* Section 47605(b)(5)(A)(ii), which requires a charter petition to state the annual goals for all pupils identified pursuant to *EC* Section 52052, to be achieved in the state priorities, as described in *EC* Section 52060, because the petition was submitted to the local school district prior to the effective date of these statutes. Details are provided in Attachment 1 of Agenda Item 03 on the ACCS February 7, 2014, meeting notice for the ACCS web page located at http://www.cde.ca.gov/be/cc/cs/documents/accs-feb14item03a1.doc.

The CDE finds that the BOCS charter petitioners present a sound educational program, are likely to successfully implement the program set forth in the petition, and the petition contains a reasonably comprehensive description of the 16 charter elements pursuant to *EC* Section 47605(b)(5).

SUMMARY OF PREVIOUS STATE BOARD OF EDUCATION DISCUSSION AND ACTION

The BOCS petitioners originally appealed to the SBE on November 2008 and were granted a five-year term effective July 1, 2009, through June 30, 2014. The petitioners submitted a renewal appeal to the CDE by December 1, 2013, as outlined in the Memorandum of Understanding.

Currently, 19 charter schools operate under SBE authorization as follows:

- Two statewide benefit charters, operating a total of seven school sites
- One countywide benefit charter

- Sixteen charter schools, authorized on appeal after local or county denial

The SBE delegates oversight duties of these schools to CDE.

FISCAL ANALYSIS (AS APPROPRIATE)

If approved as a SBE-authorized charter school, the CDE would receive approximately one percent of BOCS' general purpose apportionment for CDE's oversight activities. However, no additional resources are allocated to the CDE for oversight.

ATTACHMENT(S)

None

California State Board of Education

Meeting Agenda Items for March 12-13, 2014

ITEM 09

CALIFORNIA STATE BOARD OF EDUCATION

MARCH 2014 AGENDA

SUBJECT	
Charter Revocation: Approve Commencement of the Rulemaking Process to Repeal *California Code of Regulations*, Title 5, Section 11968.5.	☒ Action ☒ Information ☐ Public Hearing

SUMMARY OF THE ISSUE(S)

The regulatory criteria specified in *California Code of Regulations*, (Title 5 *CCR*) Title 5, Section 11968.5 is inconsistent with recently enacted Senate Bill (SB) 1290 and Assembly Bill (AB) 97 (Chapter 47, Statutes of 2013) and amended by SB 97 (Chapter 357, Statutes of 2013). AB 97 establishes local control accountability plans which allow for greater flexibility and multiple measures in evaluating a charter school's success than is defined with the Academic Performance Index as a sole measure in Title 5 *CCR*, Section 11968.5. The California Department of Education (CDE) recommends the State Board of Education (SBE) take the actions necessary to repeal the regulations.

RECOMMENDATION

The CDE recommends the SBE take the following actions:

- Approve the Notice of Proposed Rulemaking (Notice);
- Approve the Initial Statement of Reasons (ISOR);
- Approve the proposed regulations;
- Direct the CDE to commence the rulemaking process; and
- Authorize the CDE to take any necessary ministerial action to respond to any direction or concern expressed by the Office of Administrative Law during its review of the Notice, ISOR, and proposed regulations.

BRIEF HISTORY OF KEY ISSUES

This year, legislative changes related to academic progress resulted both in inconsistencies with and negating necessity for the current regulations. SB 1290,

enacted January 1, 2013, amends *Education Code* (*EC*) Section 47607 to now require each chartering authority to consider increases in pupil academic achievement for all groups and subgroups of pupils served by the charter school as the most important factor in determining whether to revoke a charter or grant a charter renewal. AB 97, enacted in July, 2013, establishes a new funding formula and local control accountability plans that allow for greater flexibility in measuring a charter's success than is defined by Title 5 *CCR* 11968.5.

SUMMARY OF PREVIOUS STATE BOARD OF EDUCATION DISCUSSION AND ACTION

In the first year of implementation, 16 charter schools were identified as low performing based on academic data from the 2010–11 school year. In March 2012, the SBE's action was to continue to work with the authorizer and make further recommendations as appropriate.

In the second year of implementation, 18 charter schools were identified as low performing based on academic data from the 2011–12 school year. Four of these schools were in the second year of identification. In March 2013, the SBE's action was to continue to work with the authorizer and make further recommendations as appropriate.

FISCAL ANALYSIS (AS APPROPRIATE)

A Fiscal Impact Statement is provided as Attachment 4.

ATTACHMENT(S)

Attachment 1: Notice of Proposed Rulemaking (4 pages)

Attachment 2: Initial Statement of Reasons (3 pages)

Attachment 3: Proposed Regulations (3 pages)

Attachment 4: Economic and Fiscal Impact Statement (STD. 399) (5 pages). The Economic and Fiscal Impact Statement is available for viewing at the State Board of Education Office.

CALIFORNIA DEPARTMENT OF EDUCATION
TOM TORLAKSON, State Superintendent of Public Instruction
916-319-0800

CALIFORNIA STATE BOARD OF EDUCATION
MICHAEL W. KIRST, President
916-319-0827

1430 N Street Sacramento, CA 95814-5901

NOTICE OF PROPOSED RULEMAKING

AMENDMENT TO CALIFORNIA CODE OF REGULATIONS, TITLE 5, REGARDING REVOCATION OF, OR OTHER ACTION RELATED TO, A CHARTER BY THE STATE BOARD OF EDUCATION UPON RECOMMENDATION BY THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION (SSPI) PURSUANT TO EDUCATION CODE SECTION 47604.5(c)

[Notice published March 28, 2014]

NOTICE IS HEREBY GIVEN that the State Board of Education (SBE) proposes to adopt the regulations described below after considering all comments, objections, or recommendations regarding the proposed action.

PUBLIC HEARING

California Department of Education (CDE) staff, on behalf of the SBE, will hold a public hearing at 9:30 a.m. on May 13, 2014, at 1430 N Street, Room 1103, Sacramento, California. The room is wheelchair accessible. At the hearing, any person may present statements or arguments, orally or in writing, relevant to the proposed action described in the Informative Digest. The SBE requests, but does not require, that persons who make oral comments at the public hearing also submit a written summary of their statements. No oral statements will be accepted subsequent to this public hearing.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to:

Debra Thacker, Regulations Coordinator
Administrative Support and Regulations Adoption Unit
California Department of Education
1430 N Street, Room 5319
Sacramento, CA 95814

Comments may also be submitted by facsimile (FAX) at 916-319-0155 or by e-mail to *regcomments@cde.ca.gov*.

Comments must be received by the Regulations Coordinator prior to 5:00 p.m. on May 13, 2014. All written comments received by CDE staff during the public comment period are subject to disclosure under the Public Records Act.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

Following the public hearing and considering all timely and relevant comments received, the SBE may adopt the proposed regulations substantially as described in this Notice or may modify the proposed regulations if the modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified regulation will be available for 15 days prior to its adoption from the Regulations Coordinator and will be mailed to those persons who submit written comments related to this regulation, or who provide oral testimony at the public hearing, or who have requested notification of any changes to the proposed regulations.

AUTHORITY AND REFERENCE

Authority: Section 33031, Education Code.

References: Sections 47604.5 and 47607, Education Code.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

California Code of Regulations, title 5, provides criteria used to identify charter schools with a substantial and sustained departure from measurably successful practices for use in determining whether to revoke a charter school. Recently enacted SB 97 and SB 1290 provide the local authorizer with updated criteria for renewal, revocation, and accountability which negate the necessity of and actually conflict with the current regulations.

DISCLOSURES REGARDING THE PROPOSED ACTION/ FISCAL IMPACT

The SBE has made the following initial determinations:

There are no other matters as are prescribed by statute applicable to the specific state agency or to any specific regulations or class of regulations.

The proposed regulations do not require a report to be made.

Mandate on local agencies and school districts: None

Cost or savings to any state agency: None

Costs to any local agencies or school districts for which reimbursement would be required pursuant to Part 7 (commencing with section 17500) of division 4 of the Government Code: None

Other non-discretionary costs or savings imposed on local educational agencies: None

Costs or savings in federal funding to the state: None

Significant, statewide adverse economic impact directly affecting business including the ability of California businesses to compete with businesses in other states: None

Cost impacts on a representative private person or businesses: The SBE is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Effect on housing costs: None

Effect on small businesses: The proposed regulations would not have an effect on any small business because they relate only to charter schools, authorizers, and the CDE, and not to small business practices.

RESULTS OF THE ECONOMIC IMPACT ANALYSIS

The repealing of the regulations for section 11968.5 will remove the CDE staff from implementing regulations that are inconsistent with new legislation. Authorizing entities will not incur additional costs as the current responsibilities already include such oversight and review during the normal renewal cycle of 5 years. Therefore, repeal of these regulations will not 1) create or eliminate jobs within California; 2) create new businesses or eliminate existing businesses within California; or 3) affect the expansion of businesses currently doing business within California.

CONSIDERATION OF ALTERNATIVES

The SBE must determine that no reasonable alternative it considered or that has otherwise been identified and brought to the attention of the SBE, would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

The SBE invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations at the scheduled hearing or during the written comment period.

CONTACT PERSONS

Inquiries concerning the content of this regulation should be directed to:

Charlene Schmid, Education Programs Consultant
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Sacramento, CA 95814
Telephone: 916-323-0482
E-mail: cschmid@cde.ca.gov

Inquiries concerning the regulatory process may be directed to the Regulations Coordinator or Hillary Wirick, Regulations Analyst, at 916-319-0860.

INITIAL STATEMENT OF REASONS AND INFORMATION

The SBE has prepared an Initial Statement of Reasons for the proposed regulations and has available all the information upon which the proposal is based.

TEXT OF PROPOSED REGULATION AND CORRESPONDING DOCUMENTS

Copies of the exact language of the proposed regulations, the Initial Statement of Reasons, and all of the information upon which the proposal is based, may be obtained upon request from the Regulations Coordinator. These documents may also be viewed and downloaded from the CDE's Web site at *http://www.cde.ca.gov/re/lr/rr/*.

AVAILABILITY AND LOCATION OF THE FINAL STATEMENT OF REASONS AND RULEMAKING FILE

All the information upon which the proposed regulations are based is contained in the rulemaking file which is available for public inspection by contacting the Regulations Coordinator.

You may obtain a copy of the Final Statement of Reasons, once it has been finalized, by making a written request to the Regulations Coordinator.

REASONABLE ACCOMMODATION FOR ANY INDIVIDUAL WITH A DISABILITY

Pursuant to the *Rehabilitation Act of 1973,* the *Americans with Disabilities Act of 1990,* and the *Unruh Civil Rights Act,* any individual with a disability who requires reasonable accommodation to attend or participate in a public hearing on proposed regulations, may request assistance by contacting Charter Schools Division, 1430 N Street, Suite 5401 , Sacramento, CA, 95814; telephone, 916-319-0662. It is recommended that assistance be requested at least two weeks prior to the hearing.

INITIAL STATEMENT OF REASONS

Revocation of, or Other Action Related to, a Charter by the State Board of Education Upon Recommendation by the State Superintendent of Public Instruction (SSPI) Pursuant to Education Code Section 47604.5(c)

INTRODUCTION

At the March 2008 State Board of Education (SBE) meeting, the SBE directed the California Department of Education (CDE) to develop regulations to establish procedures to be completed by the CDE when the State Superintendent of Public Instruction (SSPI) makes a recommendation to the SBE to take appropriate action, including, but not limited to, revocation of a school's charter under California Education Code section 47604.5(c). The regulations clarified and defined "a substantial and sustained departure from measurably successful practices such that continued departure would jeopardize the educational development of the school's pupils."

This year, legislative changes related to academic progress resulted in inconsistencies with the current regulations. Senate Bill (SB) 1290, enacted January 1, 2013 amends Education Code section 47607 to now require the chartering authority to consider increases in pupil academic achievement for all groups of pupils served by the charter school as the most important factor in determining whether to revoke a charter or grant a charter renewal. Assembly Bill (AB) 97, enacted July, 2013, establishes local control accountability plans which allow for greater flexibility and multiple measures in evaluating a charter school's success than is defined with the Academic Performance Index as a sole measure in California Code of Regulations, title 5, section 11968.5.

PROBLEM AGENCY INTENDS TO ADDRESS

Through this rulemaking process, the SBE proposes to repeal Article 2.5 to Subchapter 19 of Chapter 11 of Division 1 of California Code of Regulations, title 5, section 11968.5, in its entirety, to comply with the requirements of SB 1290.

Current regulations specified academic criteria to be used by the CDE to identify schools in which the SSPI may recommend action, including revocation pursuant to Education Code section 47604.5(c).

BENEFITS ANTICIPATED FROM REGULATORY ACTION

The repeal of regulations benefits local authorizers and charter schools. SB 1290 states pupil academic achievement by subgroup is the most important factor in determining a charter petition's renewal. Local educational agencies that authorize charter schools are in the best position to evaluate the academic progress made by each school and should be provided the opportunity to recommend appropriate courses of action. Repealing the regulations also provides greater opportunities for flexibility and local control through a charter school's Local Control Accountability Plan and the associated support.

SPECIFIC PURPOSE OF EACH SECTION – GOV. CODE SECTION 11346.2(b)(1)

The specific purpose of each repeal, and the rationale for the determination that each repeal is reasonably necessary to carry out the purpose of which it is proposed, together with a description of the public problem, administrative requirement, or other condition or circumstance that each adoption or amendment is intended to address, is as follows:

SECTION 11968.5 is deleted. This is necessary because the implementation of SB 1290 will result in non-renewal of a charter that is not meeting academic growth in all subgroups.

ECONOMIC IMPACT ANALYSIS PER GOV. CODE SECTION 11346.3(b)

The repealing of the regulations for section 11968.5 will remove the CDE staff from implementing regulations that are inconsistent with new legislation. Authorizing entities will not incur additional costs as the current responsibilities already include such oversight and review during the normal renewal cycle of 5 years. Therefore, repeal of these regulations will not 1) create or eliminate jobs within California; 2) create new businesses or eliminate existing businesses within California; or 3) affect the expansion of businesses currently doing business within California.

OTHER REQUIRED SHOWINGS – GOV. CODE 11346.2(b)(2)-(4)

Studies, Reports or Documents Relied Upon – Gov. Code. Section 11346.2(b)(3):

The SBE did not rely upon any technical, theoretical, or empirical studies, reports, or documents in proposing the repeal of these regulations.

Reasonable Alternatives Considered Or Agency's Reasons For Rejecting Those Alternatives – Gov. Code Section 11346.2(b)(5)(A):

No other alternatives were presented to or considered by the SBE.

Evidence Relied Upon To Support the Initial Determination That the Regulations Will Not Have A Significant Adverse Economic Impact on Business – Gov. Code Section 11346.2(b)(6):

The proposed regulations would not have a significant adverse economic impact on any business.

Analysis Of Whether The Regulations Are An Efficient And Effective Means Of Implementing The Law In The Least Burdensome Manner – Gov. Code Section 11346.3(e)

The regulations have been determined to be the most efficient and effective means of implementing the law in the least burdensome manner.

12-6-13 [California Department of Education]

- The State Board of Education has illustrated changes to the original text in the following manner: text proposed to be deleted is displayed in ~~strikeout~~.

Title 5. EDUCATION

Division 1. California Department of Education

Chapter 11. Special Programs

Subchapter 19. Charter Schools

Article 2. General Provisions

§ 11968.5. Revocation of, or Other Action Related to, a Charter by the State Board of Education ~~u~~Upon Recommendation by the State Superintendent of Public Instruction (SSPI) Pursuant to Education Code Section 47604.5(c).

~~(a) The California Department of Education (CDE) on or before November 1 of each year shall identify and notify the State Board of Education (SBE) of each charter school that meets the conditions specified in subdivision (e) and any other charter school that the SSPI determines warrants action pursuant to Education Code section 47604.5(c).~~

~~(b) On or before November 1 of each year, the CDE shall notify the charter schools identified pursuant to subdivision (e) of these regulations and each school's authorizer in writing that:~~

~~(1) the SSPI may recommend, among other actions, revocation of the school's charter; and~~

~~(2) the SBE will consider the SSPI's recommendation and take appropriate action, including, but not limited to, revocation of the school's charter.~~

~~(c) The notice provided pursuant to subdivision (b) of these regulations shall provide that the charter school and the authorizer shall be given an opportunity to provide information in writing to the SSPI and the SBE as to why the school's charter should not be revoked. Such information may include, but is not limited to, action by the school or the local authorizer to address the departures such as the initiation of a plan of corrective action or other local authorizer board action.~~

~~(d) Any action to revoke a charter school shall be effective at the end of the fiscal year in which the action is taken, to allow sufficient time for transition in accordance with school closure regulations in section 11962 of these regulations, unless the SBE identifies cause for immediate revocation and closure and makes a public finding that~~

~~the departures at the school are so significant as to require the immediate revocation and closure of the charter school. At the beginning of the revocation review, the CDE shall require any school being reviewed to immediately provide, at their own expense, written notification to every parent, guardian, or caregiver that fully describes the revocation process, all options including specific schools available to students to transfer if it is needed or desired, and any administrative assistance required for a timely transfer.~~

~~(e) Substantial and sustained departure from measurably successful practices that jeopardize the educational development of a school's pupils within the meaning of subdivision (c) of Education Code section 47604.5 occurs when a charter school:~~

~~(1) is in operation five years or more, and~~

~~(2) the charter school has not qualified for the Alternative School Accountability Model pursuant to subdivision (h) of Education Code section 52052, and~~

~~(3) The charter school has met each of the following:~~

~~(A) a statewide rank of 1 on API base data for the last two years, and~~

~~(B) did not achieve a cumulative API growth of at least 50 points over the last three API cycles (i.e., an API cycle represents the difference between a current year growth API and the prior year's base API).~~

~~(4) These criteria do not limit the discretion of the SSPI and SBE to recommend or take action relating to a charter school that does not meet these criteria, but which otherwise demonstrates a substantial and sustained departure from measurably successful practices that jeopardize the educational development of a school's pupils within the meaning of subdivision (c) of Education Code section 47604.5.~~

~~(f) Nothing in this section shall be interpreted to relieve the chartering authority of its duties as a charter authorizer.~~

~~(g) After the CDE determines the conditions in subdivision (e) exist for any charter school, and makes notifications in accordance with subdivisions (b) and (c), the following shall occur:~~

~~(1) If the charter school or the authorizer choose to submit any supporting materials, the materials shall be received by the CDE by 5:00 p.m. on December 1.~~

~~(2) The SSPI shall deliver his/her recommendation to the executive director of the SBE no later than January 15.~~

~~(3) No later than February 1, the CDE shall send notification to the charter school and its authorizer of the SSPI's recommendation and the date of the SBE meeting when the recommendation is scheduled to be heard.~~

~~(4) The SBE shall hold a public hearing and consider action in accordance with Education Code section 47604.5 no later than March 31.~~

~~(h) The authority of the SBE pursuant to Education Code section 47604.5 is not limited to revocation. Based on additional information provided by the charter school, the school's authorizer, or teachers and parents of pupils at the school, which may include data on more recent academic gains, similar schools rankings and other analysis of similar student populations, and school safety, the SBE may offer the charter school an opportunity to take specific corrective actions in lieu of revocation for the remaining term of the charter. The specific corrective actions shall address the sustained low academic achievement and may include, but is not limited to, a plan to address any subgroups failing to make academic progress. Corrective actions may include, but are not limited to, restructuring of the school's staffing or governance to ensure that the school and all numerically significant subgroups have substantial promise of increasing academic performance in subsequent years.~~

NOTE: Authority: Section 33031, Education Code. Reference: Sections 47604.5 and 47607, Education Code.

12-4-13 [California Department of Education]

This is the official scanned version of Item 9 Attachment 4 from the California State Board of Education (SBE) Meeting Agenda for March 2014 posted at http://www.cde.ca.gov/be/ag/ag/yr14/agenda201403.asp.

An accessible version of the contents of this document is located at http://www.cde.ca.gov/be/ag/ag/yr14/mar14item09a4aav.asp

The scanned document starts following this initial page.

Instructions and Code Citations:
SAM Section 6601-6616

STATE OF CALIFORNIA — DEPARTMENT OF FINANCE

ECONOMIC AND FISCAL IMPACT STATEMENT (REGULATIONS AND ORDERS)

STD. 399 (REV. 12/2013)

ECONOMIC IMPACT STATEMENT

DEPARTMENT NAME	CONTACT PERSON	EMAIL ADDRESS	TELEPHONE NUMBER
Education	Linda M Hakala	lhakala@cde.ca.gov	(916)319-0658

DESCRIPTIVE TITLE FROM NOTICE REGISTER OR FORM 400	NOTICE FILE NUMBER
Revocation of, or Other Action Related to, a Charter by the State Board of Education	Z

A. ESTIMATED PRIVATE SECTOR COST IMPACTS *Include calculations and assumptions in the rulemaking record.*

1. Check the appropriate box(es) below to indicate whether this regulation:

- ☐ a. Impacts business and/or employees
- ☐ b. Impacts small businesses
- ☐ c. Impacts jobs or occupations
- ☐ d. Impacts California competitiveness
- ☐ e. Imposes reporting requirements
- ☐ f. Imposes prescriptive instead of performance
- ☐ g. Impacts individuals
- ☒ h. None of the above (Explain below):

The regulations would not impose any additional costs to the private sector.

If any box in Items 1 a through g is checked, complete this Economic Impact Statement.
If box in Item 1.h. is checked, complete the Fiscal Impact Statement as appropriate.

2. The _____ (Agency/Department) estimates that the economic impact of this regulation (which includes the fiscal impact) is:

- ☐ Below $10 million
- ☐ Between $10 and $25 million
- ☐ Between $25 and $50 million
- ☐ Over $50 million *[If the economic impact is over $50 million, agencies are required to submit a Standardized Regulatory Impact Assessment as specified in Government Code Section 11346.3(c)]*

3. Enter the total number of businesses impacted: _____

Describe the types of businesses (Include nonprofits): _____

Enter the number or percentage of total businesses impacted that are small businesses: _____

4. Enter the number of businesses that will be created: _____ eliminated: _____

Explain: _____

5. Indicate the geographic extent of impacts: ☐ Statewide
☐ Local or regional (List areas): _____

6. Enter the number of jobs created: _____ and eliminated: _____

Describe the types of jobs or occupations impacted: _____

7. Will the regulation affect the ability of California businesses to compete with other states by making it more costly to produce goods or services here? ☐ YES ☐ NO

If YES, explain briefly: _____

Instructions and Code Citations:
SAM Section 6601-6616

STATE OF CALIFORNIA — DEPARTMENT OF FINANCE

ECONOMIC AND FISCAL IMPACT STATEMENT
(REGULATIONS AND ORDERS)
STD. 399 (REV. 12/2013)

ECONOMIC IMPACT STATEMENT (CONTINUED)

B. ESTIMATED COSTS *Include calculations and assumptions in the rulemaking record.*

1. What are the total statewide dollar costs that businesses and individuals may incur to comply with this regulation over its lifetime? $ _____

   a. Initial costs for a small business: $ _____ Annual ongoing costs: $ _____ Years: _____

   b. Initial costs for a typical business: $ _____ Annual ongoing costs: $ _____ Years: _____

   c. Initial costs for an individual: $ _____ Annual ongoing costs: $ _____ Years: _____

   d. Describe other economic costs that may occur: _____

2. If multiple industries are impacted, enter the share of total costs for each industry: _____

3. If the regulation imposes reporting requirements, enter the annual costs a typical business may incur to comply with these requirements. *Include the dollar costs to do programming, record keeping, reporting, and other paperwork, whether or not the paperwork must be submitted.* $ _____

4. Will this regulation directly impact housing costs? ☐ YES ☐ NO

   If YES, enter the annual dollar cost per housing unit: $ _____

   Number of units: _____

5. Are there comparable Federal regulations? ☐ YES ☐ NO

   Explain the need for State regulation given the existence or absence of Federal regulations: _____

   Enter any additional costs to businesses and/or individuals that may be due to State - Federal differences: $ _____

C. ESTIMATED BENEFITS *Estimation of the dollar value of benefits is not specifically required by rulemaking law, but encouraged.*

1. Briefly summarize the benefits of the regulation, which may include among others, the health and welfare of California residents, worker safety and the State's environment: _____

2. Are the benefits the result of: ☐ specific statutory requirements, or ☐ goals developed by the agency based on broad statutory authority?

   Explain: _____

3. What are the total statewide benefits from this regulation over its lifetime? $ _____

4. Briefly describe any expansion of businesses currently doing business within the State of California that would result from this regulation: _____

D. ALTERNATIVES TO THE REGULATION *Include calculations and assumptions in the rulemaking record. Estimation of the dollar value of benefits is not specifically required by rulemaking law, but encouraged.*

1. List alternatives considered and describe them below. If no alternatives were considered, explain why not: _____

Instructions and Code Citations:
SAM Section 6601-6616

STATE OF CALIFORNIA — DEPARTMENT OF FINANCE

ECONOMIC AND FISCAL IMPACT STATEMENT
(REGULATIONS AND ORDERS)
STD. 399 (REV. 12/2013)

ECONOMIC IMPACT STATEMENT (CONTINUED)

2. Summarize the total statewide costs and benefits from this regulation and each alternative considered:

Regulation: Benefit: $ _____ Cost: $ _____

Alternative 1: Benefit: $ _____ Cost: $ _____

Alternative 2: Benefit: $ _____ Cost: $ _____

3. Briefly discuss any quantification issues that are relevant to a comparison of estimated costs and benefits for this regulation or alternatives: _____

4. Rulemaking law requires agencies to consider performance standards as an alternative, if a regulation mandates the use of specific technologies or equipment, or prescribes specific actions or procedures. Were performance standards considered to lower compliance costs? ☐ YES ☐ NO

Explain: _____

E. MAJOR REGULATIONS *Include calculations and assumptions in the rulemaking record.*

California Environmental Protection Agency (Cal/EPA) boards, offices and departments are required to submit the following (per Health and Safety Code section 57005). Otherwise, skip to E4.

1. Will the estimated costs of this regulation to California business enterprises **exceed $10 million**? ☐ YES ☐ NO

If YES, complete E2. and E3
If NO, skip to E4

2. Briefly describe each alternative, or combination of alternatives, for which a cost-effectiveness analysis was performed:

Alternative 1: _____

Alternative 2: _____

(Attach additional pages for other alternatives)

3. For the regulation, and each alternative just described, enter the estimated total cost and overall cost-effectiveness ratio:

Regulation: Total Cost $ _____ Cost-effectiveness ratio: $ _____

Alternative 1: Total Cost $ _____ Cost-effectiveness ratio: $ _____

Alternative 2: Total Cost $ _____ Cost-effectiveness ratio: $ _____

4. Will the regulation subject to OAL review have an estimated economic impact to business enterprises and individuals located in or doing business in California exceeding $50 million in any 12-month period between the date the major regulation is estimated to be filed with the Secretary of State through12 months after the major regulation is estimated to be fully implemented?

☐ YES ☐ NO

If YES, agencies are required to submit a Standardized Regulatory Impact Assessment (SRIA) as specified in Government Code Section 11346.3(c) and to include the SRIA in the Initial Statement of Reasons.

5. Briefly describe the following:

The increase or decrease of investment in the State: _____

The incentive for innovation in products, materials or processes: _____

The benefits of the regulations, including, but not limited to, benefits to the health, safety, and welfare of California residents, worker safety, and the state's environment and quality of life, among any other benefits identified by the agency: _____

Instructions and Code Citations:
SAM Section 6601-6616

STATE OF CALIFORNIA — DEPARTMENT OF FINANCE

ECONOMIC AND FISCAL IMPACT STATEMENT
(REGULATIONS AND ORDERS)
STD. 399 (REV. 12/2013)

FISCAL IMPACT STATEMENT

A. FISCAL EFFECT ON LOCAL GOVERNMENT *Indicate appropriate boxes 1 through 6 and attach calculations and assumptions of fiscal impact for the current year and two subsequent Fiscal Years.*

☐ 1. Additional expenditures in the current State Fiscal Year which are reimbursable by the State. (Approximate)
(Pursuant to Section 6 of Article XIII B of the California Constitution and Sections 17500 et seq. of the Government Code).

$ _____

☐ a. Funding provided in _____

Budget Act of _____ or Chapter _____, Statutes of _____

☐ b. Funding will be requested in the Governor's Budget Act of _____

Fiscal Year: _____

☐ 2. Additional expenditures in the current State Fiscal Year which are NOT reimbursable by the State. (Approximate)
(Pursuant to Section 6 of Article XIII B of the California Constitution and Sections 17500 et seq. of the Government Code).

$ _____

Check reason(s) this regulation is not reimbursable and provide the appropriate information:

☐ a. Implements the Federal mandate contained in _____

☐ b. Implements the court mandate set forth by the _____ Court.

Case of: _____ vs. _____

☐ c. Implements a mandate of the people of this State expressed in their approval of Proposition No. _____

Date of Election: _____

☐ d. Issued only in response to a specific request from affected local entity(s).

Local entity(s) affected: _____

☐ e. Will be fully financed from the fees, revenue, etc. from: _____

Authorized by Section: _____ of the _____ Code;

☐ f. Provides for savings to each affected unit of local government which will, at a minimum, offset any additional costs to each;

☐ g. Creates, eliminates, or changes the penalty for a new crime or infraction contained in _____

☐ 3. Annual Savings. (approximate)

$ _____

☐ 4. No additional costs or savings. This regulation makes only technical, non-substantive or clarifying changes to current law regulations.

☐ 5. No fiscal impact exists. This regulation does not affect any local entity or program.

☒ 6. Other. Explain Repeal of these regulations will not result in increased costs as the local authorizers are currently responsible for oversight and review during the normal renewal cycle.

STATE OF CALIFORNIA — DEPARTMENT OF FINANCE

ECONOMIC AND FISCAL IMPACT STATEMENT
(REGULATIONS AND ORDERS)
STD. 399 (REV. 12/2013)

Instructions and Code Citations:
SAM Section 6601-6616

FISCAL IMPACT STATEMENT (CONTINUED)

B. FISCAL EFFECT ON STATE GOVERNMENT *Indicate appropriate boxes 1 through 4 and attach calculations and assumptions of fiscal impact for the current year and two subsequent Fiscal Years.*

☐ 1. Additional expenditures in the current State Fiscal Year. (Approximate)

$ _____

It is anticipated that State agencies will:

☐ a. Absorb these additional costs within their existing budgets and resources.

☐ b. Increase the currently authorized budget level for the _____ Fiscal Year

☐ 2. Savings in the current State Fiscal Year. (Approximate)

$ _____

☐ 3. No fiscal impact exists. This regulation does not affect any State agency or program.

☒ 4. Other. Explain The repeal of the regulations would result in no cost savings as the CDE has not been provided with funding to perform the tasks as outlined in the regulations.

C. FISCAL EFFECT ON FEDERAL FUNDING OF STATE PROGRAMS *Indicate appropriate boxes 1 through 4 and attach calculations and assumptions of fiscal impact for the current year and two subsequent Fiscal Years.*

☐ 1. Additional expenditures in the current State Fiscal Year. (Approximate)

$ _____

☐ 2. Savings in the current State Fiscal Year. (Approximate)

$ _____

☒ 3. No fiscal impact exists. This regulation does not affect any federally funded State agency or program.

☐ 4. Other. Explain _____

FISCAL OFFICER SIGNATURE	DATE
Linda Hakala	February 20, 2014

The signature attests that the agency has completed the STD. 399 according to the instructions in SAM sections 6601-6616, and understands the impacts of the proposed rulemaking. State boards, offices, or departments not under an Agency Secretary must have the form signed by the highest ranking official in the organization.

AGENCY SECRETARY	DATE
Jeannie Oropeza	2/21/14

Finance approval and signature is required when SAM sections 6601-6616 require completion of Fiscal Impact Statement in the STD. 399.

DEPARTMENT OF FINANCE PROGRAM BUDGET MANAGER	DATE

AAV of Item 9 Attachment 4

Accessible Alternative Version (AAV) of Item 9 Attachment 4 for the March 2014 SBE Meeting Agenda.

This page is the Accessible Alternative Version (AAV) of Item 25 Attachment 3 from the California State Board of Education (SBE) Meeting Agenda for March 2014. The scanned Item 9 Attachment 4 (PDF) version is considered to be the official version of the document.

Economic and Fiscal Impact Statement

(REGULATIONS AND ORDERS). *User entries from the STD. 399 (REV. 12/2013) Form.*

Department Name: Education

Contact Person: Linda M. Hakala

E-mail Address: lhakala@cde.ca.gov

Telephone Number: 916-319-0658

Descriptive Title From Notice Register Or From 400: Revocation of, or Other Action Related to, a Charter by the State Board of Education

Notice File Number: Z

Economic Impact Statement

Section A. ESTIMATED PRIVATE SECTOR COST IMPACTS (Include calculations and assumptions in the rulemaking record.)

Section A.1. Check the appropriate box(es) below to indicate whether this regulation:

- Selected option is H: None of the above (Explain below)
- Option H explanation: The regulations would not impose any additional costs to the private sector.

Fiscal Impact Statement

Section A. FISCAL EFFECT ON LOCAL GOVERNMENT (Indicate appropriate boxes1 through 6 and attach calculations and assumptions of fiscal impact for the current year and two subsequent Fiscal Years.)

- Selected option is 6: Other. Explain.
- Option 6 explanation: Repeal of these regulations will not result in increased costs as the local authorizers are currently responsible for oversight and review during the normal renewal cycle.

Section B. FISCAL EFFECT ON STATE GOVERNMENT (Indicate appropriate boxes 1 through 4 and attach calculations and assumptions of fiscal impact for the current year and two subsequent Fiscal Years.)

- Selected option is 4: Other. Explain.
- Option 4 explanation: The repeal of the regulations would result in no cost savings as the CDE has not been provided with funding to perform the tasks as outlined in the regulations.

Section C. FISCAL EFFECT ON FEDERAL FUNDING OF STATE PROGRAMS (Indicate appropriate boxes1 through 4 and attach calculations and assumptions of fiscal impact for the current year and two subsequent Fiscal Years.)

- Selected option is 3: No fiscal impact exists. This regulation does not affect any federally funded State agency or program.

Fiscal Officer Signature: Signed by Linda Hakala dated February 20, 2014

The signature attests that the agency has completed the STD. 399 according to the instructions in the State Administrative Manual (SAM) sections 6601-6616, and understands the impacts of the proposed rulemaking. State boards, offices, or department not under an Agency Secretary must have the form signed by the highest ranking official in the organization.

Agency Secretary: Signed by Jeannie Oropeza dated February 21, 2014

Finance approval and signature is required when SAM sections 6601-6616 require completion of Fiscal Impact Statement in the STD. 399.

Department of Finance Program Budget Manager: No signature.

California State Board of Education

Meeting Agenda Items for March 12-13, 2014

ITEM 10

ITEM #10

CALIFORNIA STATE BOARD OF EDUCATION

MARCH 2014 AGENDA

SUBJECT	
Recommendations Regarding Revocation of Charter Schools Identified Pursuant to *California Code of Regulations*, Title 5, Section 11968.5.	☒ Action ☒ Information ☒ Public Hearing

SUMMARY OF THE ISSUE

California Code of Regulations, Title 5 (Title *5 CCR*), Section 11968.5, enacted in 2011, requires the California Department of Education (CDE) to review charter schools that are identified pursuant to the criteria specified in the regulations. These regulations also require the State Superintendent of Public Instruction (SSPI) to make a recommendation to the State Board of Education (SBE) regarding possible revocation of these schools. The regulations require the SBE to hold a public hearing and consider the SSPI's recommendation no later than March 31, 2014.

RECOMMENDATION

California Department of Education Recommendation

The CDE recommends that the SBE approve the recommended actions as provided in Attachment 1.

Advisory Commission on Charter Schools Recommendation

The Advisory Commission on Charter Schools met on February 7, 2014, and voted unanimously to move the SSPI recommendations forward to the SBE.

BRIEF HISTORY OF KEY ISSUES

California *Education Code* (*EC*) Section 47604.5 authorizes the SBE, whether or not it is the authorizer, upon recommendation of the SSPI, to take appropriate action if it makes specific findings, including the revocation of a charter school. Section 11968.5 of Title 5 *CCR* requires the CDE to identify charter schools that have a substantial and

sustained departure from measurably successful practices such that continued departure would jeopardize the educational development of the school's pupils and to make a recommendation about appropriate action, consistent with *EC* Section 47604.5(c). Relevant laws and regulations are provided in Attachment 5.

Pursuant to these regulations, 18 charter schools were identified using the most recent academic performance data available in the fall of 2013. School Summary Information is provided in Attachment 1. One of these schools, Lou Dantzler Preparatory Charter High, closed on 6/30/2013, the following attachments provide information on the remaining 17 identified schools. The Academic Performance Index (API) and Percent At or Above Proficiency in English Language Arts and Mathematics data for each of these 18 schools is provided in Attachment 3. Additionally, the 2012–13 School Quality Snapshot Web sites are provided in Attachment 4.

On November 1, 2013, the CDE notified the Executive Director of the SBE, each of the schools, and their authorizers in writing that they had been identified pursuant to Title 5 *CCR* Section 11968.5, and provided the schools with an opportunity to submit information to the CDE for why the school should not be revoked, including but not limited to the process for collaborating with the authorizer in establishing future criteria to be measured for accountability, areas of success that are not indicated through API, information regarding a Student Improvement Plan, and/or corrective action plans.

Pursuant to the regulations, the SSPI delivered a recommendation regarding the identified schools to the Executive Director of the SBE on January 15, 2014. Also, pursuant to the regulations, the SBE must hold a public hearing to consider the recommendations no later than March 31, 2014. Attachment 1, *State Superintendent of Public Instruction Recommendations Pursuant to California Code of Regulations, Title 5, Section 11968.5*, includes the following recommendation for each school:

> The CDE will continue to work with the authorizers as the authorizers continue to monitor the progress of the charter schools and take appropriate action as deemed necessary.

The schools identified by the current regulations are locally authorized charter schools. Therefore, the local educational agencies that authorized these charter schools are in the best position to evaluate the academic progress made by each school, and should be provided the opportunity to recommend appropriate courses of action.

The CDE recognizes that each of these schools proposes to meet a need in its community and that many of these schools serve pupil populations at risk of not graduating from high school. The CDE will continue to work with the authorizer of each school identified so that additional information, as needed, is collected regarding reported action plans and progress made in achieving the goals identified in such plans.

SUMMARY OF PREVIOUS STATE BOARD OF EDUCATION DISCUSSION AND ACTION

The 2012–13 school year was the second year Title 5 *CCR* Section 11968.5 was implemented. In the fall 2012, 18 charter schools were identified based on academic data from the 2011–12 school year. The recommendations from the SSPI were that the CDE work with the authorizer as they continue to monitor the progress of the school and take appropriate action as deemed necessary. Attachment 2 provides an update to the progress made by the schools that were identified as meeting the regulatory criteria in the previous year, 2012–13.

The 2011–12 school year was the first year Title 5 *CCR* Section 11968.5 was implemented. In the fall 2011, 16 charter schools were identified based on academic data from the 2010–11 school year. The recommendations from the SSPI were that the CDE work with the authorizer as they continue to monitor the progress of the school and take appropriate action as deemed necessary.

FISCAL ANALYSIS (AS APPROPRIATE)

A Fiscal Impact Statement provided to the SBE when these regulations were developed states that the proposed amendments to the regulations in proposed Section 11968.5 would add additional costs upon the state, as the activities identified are new to the CDE. The additional workload would be based upon the number of schools identified pursuant to the regulations. It is estimated that it would cost one to two full-time consultants, or approximately $150,000 to $300,000, for every five schools identified.

If the SBE directs the CDE to conduct further analysis with the schools identified, or if the SBE directs the CDE to initiate revocation proceedings against any of the schools, it is unclear how that work would be completed, given that positions have not been funded.

ATTACHMENT(S)

Attachment 1: State Superintendent of Public Instruction Recommendations, Pursuant to *California Code of Regulations*, Title 5, Section 11968.5. Current Year 2013–14 (2 pages)

Attachment 2: State Superintendent of Public Instruction Recommendations Pursuant to *California Code of Regulations*, Title 5, Section 11968.5. Previous Year 2012–13, Updates (2 pages)

Attachment 3: Annual Academic Data Summary Links (2 Pages)

Attachment 4: 2012–13 School Quality Snapshot Web site Links (4 Pages)

Attachment 5: Relevant Laws and Regulations (3 Pages)

[1]Charter school met the regulatory criteria during two of the three years of implementation.
[2]Charter school met the regulatory criteria all three years of implementation

State Superintendent of Public Instruction Recommendations
Pursuant to *California Code of Regulations*, Title 5, Section 11968.5. Current Year 2013–14

Charter #	Current Term Ends	Charter School	Authorizer	Recommendation
0677	6/30/13	ASA Charter[1]	San Bernardino City Unified School District	The California Department of Education (CDE) will work with the authorizer as they continue to monitor the progress of the school and take appropriate action as deemed necessary.
0654	6/30/14	Bert Corona Charter	Los Angeles Unified School District	The CDE will work with the authorizer as they continue to monitor the progress of the school and take appropriate action as deemed necessary.
0867	6/30/17	Butterfield Charter High	Porterville Unified School District	The CDE will work with the authorizer as they continue to monitor the progress of the school and take appropriate action as deemed necessary.
0662	6/30/17	Casa Ramona Academy for Technology, Community and Education	San Bernardino City Unified School District	The CDE will work with the authorizer as they continue to monitor the progress of the school and take appropriate action as deemed necessary.
0357	6/30/15	Denair Charter Academy[2]	Denair Unified School District	The CDE will work with the authorizer as they continue to monitor the progress of the school and take appropriate action as deemed necessary.
0502	6/30/17	Escuela Popular Accelerated Family Learning[1]	East Side Union High School District	The CDE will work with the authorizer as they continue to monitor the progress of the school and take appropriate action as deemed necessary.
0071	6/30/15	Kern Workforce 2000 Academy[1]	Kern Union High School District	The CDE will work with the authorizer as they continue to monitor the progress of the school and take appropriate action as deemed necessary.
0341	6/30/15	La Sierra High	Tulare County Office of Education	The CDE will work with the authorizer as they continue to monitor the progress of the school and take appropriate action as deemed necessary.
0362	6/30/16	Learning for Life Charter School[1]	Monterey Peninsula Unified School District	The CDE will work with the authorizer as they continue to monitor the progress of the school and take appropriate action as deemed necessary.

0832	6/30/13	Lou Dantzler Preparatory Charter High[1]	Los Angeles Unified School District	Closed
0291	6/30/15	New City[2]	Long Beach Unified School District	The CDE will work with the authorizer as they continue to monitor the progress of the school and take appropriate action as deemed necessary.
0412	6/30/16	Oasis Charter Public	Alisal Union School District	The CDE will work with the authorizer as they continue to monitor the progress of the school and take appropriate action as deemed necessary.
0737	6/30/14	Opportunities Unlimited Charter High	Los Angeles County Office of Education	The CDE will work with the authorizer as they continue to monitor the progress of the school and take appropriate action as deemed necessary.
0218	6/30/14	Reems Academy of Technology[1]	Oakland Unified School District	The CDE will work with the authorizer as they continue to monitor the progress of the school and take appropriate action as deemed necessary.
0831	6/30/16	Sequoia Charter[1]	William Hart Union High School District	The CDE will work with the authorizer as they continue to monitor the progress of the school and take appropriate action as deemed necessary.
0724	6/30/15	South Sutter Charter	Marcum-Illinois Union Elementary School District	The CDE will work with the authorizer as they continue to monitor the progress of the school and take appropriate action as deemed necessary.
0792	6/30/16	Valley Arts and Science Academy[1]	Fresno Union School District	The CDE will work with the authorizer as they continue to monitor the progress of the school and take appropriate action as deemed necessary.
0907	6/30/17	West Sacramento Early College Prep Charter[1]	Washington Unified School District	The CDE will work with the authorizer as they continue to monitor the progress of the school and take appropriate action as deemed necessary.

State Superintendent of Public Instruction Recommendations
Pursuant to *California Code of Regulations*, Title 5, Section 11968.5
Previous Year 2012–13, Updates

Charter #	Current Term Ends	Charter School	Authorizer	Update
0786	6/30/16	Animo Locke Technology High	Los Angeles Unified School District	School Closed.
0677	9/21/14	ASA Charter	San Bernardino City Unified School District	Cumulative API growth of 1 point over the last three API cycles. ASA Charter continues to meet the regulatory criteria.
0357	12/14/15	Denair Charter Academy	Denair Unified School District	Cumulative API growth of 35 points over the last three API cycles. Denair Charter Academy continues to meet the regulatory criteria.
0633	6/30/15	Diamond Mountain Charter High	Lassen Union High School District	School Closed.
0032	6/30/14	Eel River Charter	Round Valley Unified School District	Cumulative API growth of 119 points over the last three API cycles.
0811	6/30/15	Envision Academy for Arts and Technology	Alameda County Office of Education	Cumulative API growth of 69 points over the last three API cycles.
0502	6/30/17	Escuela Popular Accelerated Family Learning	East Side Union High School District	Cumulative API growth of -26 points over the last three API cycles. Escuela Popular continues to meet the regulatory criteria.
0288	6/30/15	Joe Serna Jr. Charter	Lodi Unified School District	Cumulative API growth of 57 points over the last three API cycles.
0822	6/30/14	La Vida Charter	Willits Unified School District	Cumulative API growth of 73 points over the last three API cycles.
0362	6/30/16	Learning for Life Charter	Monterey Peninsula Unified School District	Cumulative API growth of 14 points over the last three API cycles. Learning for Life Charter continues to meet the regulatory criteria.
0675	6/30/15	Los Angeles Academy of Arts and Enterprise	Los Angeles Unified School District	Cumulative API growth of 69 points over the last three API cycles.

0832	6/30/16	Lou Dantzler Preparatory Charter High	Los Angeles Unified School District	School Closed.
0291	6/30/15	New City	Long Beach Unified School District	Cumulative API growth of 11 points over the last three API cycles. New City continues to meet the regulatory criteria.
0133	6/30/17	Nubia Leadership Academy	San Diego Unified School District	School Closed.
0218	6/30/14	Reems Academy of Technology	Oakland Unified School District	Cumulative API growth of -5 points over the last three API cycles. Reems Academy continues to meet the regulatory criteria.
0831	6/30/16	Sequoia Charter	William S. Hart Union School District	Cumulative API growth of -12 points over the last three API cycles. Sequoia Charter continues to meet the regulatory criteria.
0792	6/30/16	Valley Arts and Science Academy	Fresno Unified School District	Cumulative API growth of -18 points over the last three API cycles. Valley Arts and Science Academy continues to meet the regulatory criteria.
0907	6/30/17	West Sacramento Early College Prep Charter	Washington Unified School District	Cumulative API growth of 45 points over the last three API cycles. West Sacramento Early College Prep continues to meet the regulatory criteria.

Annual Academic Data Summary Links

ASA Charter
Graphic Report (PDF):
http://webapptest2.cde.cal/schoolqualitysnapshot/charter_report.aspx?mode=PDF&code=0107730

Bert Corona Charter
Graphic Report (PDF):
http://webapptest2.cde.cal/schoolqualitysnapshot/charter_report.aspx?mode=PDF&code=0106872

Butterfield Charter High
Graphic Report (PDF):
http://webapptest2.cde.cal/schoolqualitysnapshot/charter_report.aspx?mode=PDF&code=0114348

Casa Ramona Academy for Technology, Community and Education
Graphic Report (PDF):
http://webapptest2.cde.cal/schoolqualitysnapshot/charter_report.aspx?mode=PDF&code=0114405

Denair Charter
Graphic Report (PDF):
http://webapptest2.cde.cal/schoolqualitysnapshot/charter_report.aspx?mode=PDF&code=5030267

Escuela Popular Accelerated Family Learning Center
Graphic Report (PDF):
http://webapptest2.cde.cal/schoolqualitysnapshot/charter_report.aspx?mode=PDF&code=4330726

Kern Workforce 2000 Academy
Graphic Report (PDF):
http://webapptest2.cde.cal/schoolqualitysnapshot/charter_report.aspx?mode=PDF&code=1530435

La Sierra High
Graphic Report (PDF):
http://webapptest2.cde.cal/schoolqualitysnapshot/charter_report.aspx?mode=PDF&code=5430327

Learning for Life Charter
Graphic Report (PDF):
http://webapptest2.cde.cal/schoolqualitysnapshot/charter_report.aspx?mode=PDF&code=2730240

New City
Graphic Report (PDF):
http://webapptest2.cde.cal/schoolqualitysnapshot/charter_report.aspx?mode=PDF&scode=6118269

Oasis Charter Public
Graphic Report (PDF):
http://webapptest2.cde.cal/schoolqualitysnapshot/charter_report.aspx?mode=PDF&scode=6119663

Opportunities Unlimited Charter High
Graphic Report (PDF):
http://webapptest2.cde.cal/schoolqualitysnapshot/charter_report.aspx?mode=PDF&scode=0109918

Reems Academy of Technology
Graphic Report (PDF):
http://webapptest2.cde.cal/schoolqualitysnapshot/charter_report.aspx?mode=PDF&scode=6117394

Sequoia Charter School
Graphic Report (PDF):
http://webapptest2.cde.cal/schoolqualitysnapshot/charter_report.aspx?mode=PDF&scode=0112359

South Sutter Charter
Graphic Report (PDF):
http://webapptest2.cde.cal/schoolqualitysnapshot/charter_report.aspx?mode=PDF&scode=0109793

Valley Arts and Science Academy
Graphic Report (PDF):
http://webapptest2.cde.cal/schoolqualitysnapshot/charter_report.aspx?mode=PDF&scode=0111633

West Sacramento Early College Prep Charter
Graphic Report (PDF):
http://webapptest2.cde.cal/schoolqualitysnapshot/charter_report.aspx?mode=PDF&scode=0115329

2012–13 School Quality Snapshot Website Links

ASA Charter
Graphic Report (PDF):
http://www6.cde.ca.gov/schoolqualitysnapshot/sqsreport.aspx?id=40E3B278-FA3C-4A3A-BB82-0B9A0EA1C759

Text Report (Accessible):
http://www6.cde.ca.gov/schoolqualitysnapshot/textreport.aspx?id=40E3B278-FA3C-4A3A-BB82-0B9A0EA1C759

Bert Corona Charter
Graphic Report (PDF):
http://www6.cde.ca.gov/schoolqualitysnapshot/sqsreport.aspx?id=C4DF6AFB-03D6-4E42-ABE1-416BCA637002

Text Report (Accessible):
http://www6.cde.ca.gov/schoolqualitysnapshot/textreport.aspx?id=C4DF6AFB-03D6-4E42-ABE1-416BCA637002

Butterfield Charter High
Graphic Report (PDF):
http://www6.cde.ca.gov/schoolqualitysnapshot/sqsreport.aspx?id=24ACB5CA-A7C6-4715-BD70-A3AEFD25BB92

Text Report (Accessible):
http://www6.cde.ca.gov/schoolqualitysnapshot/textreport.aspx?id=24ACB5CA-A7C6-4715-BD70-A3AEFD25BB92

Casa Ramona Academy for Technology, Community and Education
Graphic Report (PDF):
http://www6.cde.ca.gov/schoolqualitysnapshot/sqsreport.aspx?id=BA66CA22-6730-408F-98FE-C4478AC8BE8E

Text Report (Accessible):
http://www6.cde.ca.gov/schoolqualitysnapshot/textreport.aspx?id=BA66CA22-6730-408F-98FE-C4478AC8BE8E

Denair Charter
Graphic Report (PDF):
http://www6.cde.ca.gov/schoolqualitysnapshot/sqsreport.aspx?id=F6DFF47B-19AA-4282-A44A-3316CDD25B87

Text Report (Accessible):
http://www6.cde.ca.gov/schoolqualitysnapshot/textreport.aspx?id=F6DFF47B-19AA-4282-A44A-3316CDD25B87

Escuela Popular Accelerated Family Learning Center
Graphic Report (PDF):
http://www6.cde.ca.gov/schoolqualitysnapshot/sqsreport.aspx?id=02816C13-F214-41D7-B377-FC3385B0A3EF

Text Report (Accessible):
http://www6.cde.ca.gov/schoolqualitysnapshot/textreport.aspx?id=02816C13-F214-41D7-B377-FC3385B0A3EF

Kern Workforce 2000 Academy
Graphic Report (PDF):
http://www6.cde.ca.gov/schoolqualitysnapshot/sqsreport.aspx?id=D2FB92EB-6CA3-4D31-A01F-263226D43510

Text Report (Accessible):
http://www6.cde.ca.gov/schoolqualitysnapshot/textreport.aspx?id=D2FB92EB-6CA3-4D31-A01F-263226D43510

La Sierra High
Graphic Report (PDF):
http://www6.cde.ca.gov/schoolqualitysnapshot/sqsreport.aspx?id=C759ED6F-61B7-4BB4-8402-0730DE4E74BD

Text Report (Accessible):
http://www6.cde.ca.gov/schoolqualitysnapshot/textreport.aspx?id=C759ED6F-61B7-4BB4-8402-0730DE4E74BD

Learning for Life Charter
Graphic Report (PDF):
http://www6.cde.ca.gov/schoolqualitysnapshot/sqsreport.aspx?id=27152069-60ED-4F28-8D5F-D03EA2A58395

Text Report (Accessible):
http://www6.cde.ca.gov/schoolqualitysnapshot/textreport.aspx?id=27152069-60ED-4F28-8D5F-D03EA2A58395

New City
Graphic Report (PDF):
http://www6.cde.ca.gov/schoolqualitysnapshot/sqsreport.aspx?id=26EC292E-7645-4832-8797-4D6900900F89

Text Report (Accessible):
http://www6.cde.ca.gov/schoolqualitysnapshot/textreport.aspx?id=26EC292E-7645-4832-8797-4D6900900F89

Oasis Charter Public
Graphic Report (PDF):
http://www6.cde.ca.gov/schoolqualitysnapshot/sqsreport.aspx?id=BD38D16C-CF44-430C-A479-3EF553387CC6

Text Report (Accessible):
http://www6.cde.ca.gov/schoolqualitysnapshot/textreport.aspx?id=BD38D16C-CF44-430C-A479-3EF553387CC6

Opportunities Unlimited Charter High
Graphic Report (PDF):
http://www6.cde.ca.gov/schoolqualitysnapshot/sqsreport.aspx?id=3819ED5F-EDC7-4B5D-9608-603FD919F01E

Text Report (Accessible):
http://www6.cde.ca.gov/schoolqualitysnapshot/textreport.aspx?id=3819ED5F-EDC7-4B5D-9608-603FD919F01E

Reems Academy of Technology
Graphic Report (PDF):
http://www6.cde.ca.gov/schoolqualitysnapshot/sqsreport.aspx?id=47B2A615-BE87-4B0E-8581-68338E69EBA4

Text Report (Accessible):
http://www6.cde.ca.gov/schoolqualitysnapshot/textreport.aspx?id=47B2A615-BE87-4B0E-8581-68338E69EBA4

Sequoia Charter
Graphic Report (PDF):
http://www6.cde.ca.gov/schoolqualitysnapshot/sqsreport.aspx?id=B5AD93C0-73E2-4BAB-AEB4-74A358BB3DE1

Text Report (Accessible):
http://www6.cde.ca.gov/schoolqualitysnapshot/textreport.aspx?id=B5AD93C0-73E2-4BAB-AEB4-74A358BB3DE1

South Sutter Charter
Graphic Report (PDF):
http://www6.cde.ca.gov/schoolqualitysnapshot/sqsreport.aspx?id=BAC9D9B9-C617-4151-A92D-FB36D31C3DC1

Text Report (Accessible):
http://www6.cde.ca.gov/schoolqualitysnapshot/textreport.aspx?id=BAC9D9B9-C617-4151-A92D-FB36D31C3DC1

Valley Arts and Science Academy
Graphic Report (PDF):
http://www6.cde.ca.gov/schoolqualitysnapshot/sqsreport.aspx?id=9DF946AA-4F8E-491C-AFAD-F543F138318B

Text Report (Accessible):
http://www6.cde.ca.gov/schoolqualitysnapshot/textreport.aspx?id=9DF946AA-4F8E-491C-AFAD-F543F138318B

West Sacramento Early College Prep Charter
Graphic Report (PDF):
http://www6.cde.ca.gov/schoolqualitysnapshot/sqsreport.aspx?id=3A398FC5-9896-4AA3-BDBE-61C270BB4E39

Text Report (Accessible):
http://www6.cde.ca.gov/schoolqualitysnapshot/textreport.aspx?id=3A398FC5-9896-4AA3-BDBE-61C270BB4E39

Relevant Laws and Regulations

California *Education Code* Section 47604.5
State Board of Education; revocation of charter

The State Board of Education, whether or not it is the authority that granted the charter, may, based upon the recommendation of the Superintendent of Public Instruction, take appropriate action, including, but not limited to, revocation of the school's charter, when the State Board of Education finds any of the following:

(a) Gross financial mismanagement that jeopardizes the financial stability of the charter school.

(b) Illegal or substantially improper use of charter school funds for the personal benefit of any officer, director, or fiduciary of the charter school.

(c) Substantial and sustained departure from measurably successful practices such that continued departure would jeopardize the educational development of the school's pupils.

(Added by Stats.1998, c. 34 (A.B.544), § 5.)

California Code of Regulations, Title 5, Section 11968.5
Revocation of, or Other Action Related to, a Charter by the State Board of Education upon Recommendation by the State Superintendent of Public Instruction (SSPI) Pursuant to California *Education Code* Section 47604.5(c).

(a) The California Department of Education (CDE) on or before November 1 of each year shall identify and notify the State Board of Education (SBE) of each charter school that meets the conditions specified in subdivision (e) and any other charter school that the SSPI determines warrants action pursuant to Education Code section 47604.5(c).

(b) On or before November 1 of each year, the CDE shall notify the charter schools identified pursuant to subdivision (e) of these regulations and each school's authorizer in writing that:

> (1) the SSPI may recommend, among other actions, revocation of the school's charter; and
>
> (2) the SBE will consider the SSPI's recommendation and take appropriate action, including, but not limited to, revocation of the school's charter.

(c) The notice provided pursuant to subdivision (b) of these regulations shall provide that the charter school and the authorizer shall be given an opportunity to provide information in writing to the SSPI and the SBE as to why the school's charter should not be revoked. Such information may include, but is not limited to, action by the school or the local authorizer to

address the departures such as the initiation of a plan of corrective action or other local authorizer board action.

(d) Any action to revoke a charter school shall be effective at the end of the fiscal year in which the action is taken, to allow sufficient time for transition in accordance with school closure regulations in section 11962 of these regulations, unless the SBE identifies cause for immediate revocation and closure and makes a public finding that the departures at the school are so significant as to require the immediate revocation and closure of the charter school. At the beginning of the revocation review, the CDE shall require any school being reviewed to immediately provide, at their own expense, written notification to every parent, guardian, or caregiver that fully describes the revocation process, all options including specific schools available to students to transfer if it is needed or desired, and any administrative assistance required for a timely transfer.

(e) Substantial and sustained departure from measurably successful practices that jeopardize the educational development of a school's pupils within the meaning of subdivision (c) of Education Code section 47604.5 occurs when a charter school:

(1) is in operation five years or more, and

(2) the charter school has not qualified for the Alternative School Accountability Model pursuant to subdivision (h) of Education Code section 52052, and

(3) The charter school has met each of the following:

(A) a statewide rank of 1 on API base data for the last two years, and

(B) did not achieve a cumulative API growth of at least 50 points over the last three API cycles (i.e., an API cycle represents the difference between a current year growth API and the prior year's base API).

(4) These criteria do not limit the discretion of the SSPI and SBE to recommend or take action relating to a charter school that does not meet these criteria, but which otherwise demonstrates a substantial and sustained departure from measurably successful practices that jeopardize the educational development of a school's pupils within the meaning of subdivision (c) of Education Code section 47604.5.

(f) Nothing in this section shall be interpreted to relieve the chartering authority of its duties as a charter authorizer.

(g) After the CDE determines the conditions in subdivision (e) exist for any charter school, and makes notifications in accordance with subdivisions (b) and (c), the following shall occur:

(1) If the charter school or the authorizer choose to submit any supporting materials, the materials shall be received by the CDE by 5:00 p.m. on December 1.

(2) The SSPI shall deliver his/her recommendation to the executive director of the SBE no later than January 15.

(3) No later than February 1, the CDE shall send notification to the charter school and its authorizer of the SSPI's recommendation and the date of the SBE meeting when the recommendation is scheduled to be heard.

(4) The SBE shall hold a public hearing and consider action in accordance with Education Code section 47604.5 no later than March 31.

(h) The authority of the SBE pursuant to Education Code section 47604.5 is not limited to revocation. Based on additional information provided by the charter school, the school's authorizer, or teachers and parents of pupils at the school, which may include data on more recent academic gains, similar schools rankings and other analysis of similar student populations, and school safety, the SBE may offer the charter school an opportunity to take specific corrective actions in lieu of revocation for the remaining term of the charter. The specific corrective actions shall address the sustained low academic achievement and may include, but is not limited to, a plan to address any subgroups failing to make academic progress. Corrective actions may include, but are not limited to, restructuring of the school's staffing or governance to ensure that the school and all numerically significant subgroups have substantial promise of increasing academic performance in subsequent years.

Note: Authority cited: Section 33031, Education Code. Reference: Sections 47604.5 and 47607, Education Code.

California State Board of Education

Meeting Agenda Items for March 12-13, 2014

ITEM 11

CALIFORNIA STATE BOARD OF EDUCATION

MARCH 2014 AGENDA

SUBJECT	
STATE BOARD PROJECTS AND PRIORITIES. Including, but not limited to, future meeting plans; agenda items; and officer nominations and/or elections; State Board office budget, staffing, appointments, and direction to staff; declaratory and commendatory resolutions; Bylaw review and revision; Board policy; approval of minutes; Board liaison reports; training of Board members; and other matters of interest.	☒ **Action** ☒ **Information** ☐ **Public Hearing**

SUMMARY OF THE ISSUE(S)

1. State Board of Education (SBE) Draft Preliminary Report of Actions/Minutes for the January 15-16, 2014 SBE Meeting

2. Board member liaison reports

RECOMMENDATIONS

The SBE staff recommends that the SBE:

1. Approve the Preliminary Report of Actions/Minutes for the January 15-16, 2014 SBE meeting. (Attachment 1)

SUMMARY OF PREVIOUS STATE BOARD OF EDUCATION DISCUSSION AND ACTION

At each regular meeting, the SBE has traditionally had an agenda item under which to address “housekeeping” matters, such as agenda planning, non-closed session litigation updates, non-controversial proclamations and resolutions, bylaw review and revision, Board policy; Board minutes; Board liaison reports; and other matters of interest. The State Board has asked that this item be placed appropriately on each agenda.

FISCAL ANALYSIS (AS APPROPRIATE)

Not applicable.

ATTACHMENT(S)

Attachment 1: State Board of Education Draft Preliminary Report of Actions/Minutes for the January 2014 SBE meeting (28 Pages) may be viewed at the following link: http://www.cde.ca.gov/be/mt/ms/.

California State Board of Education

Meeting Agenda Items for March 12-13, 2014

ITEM 12

CALIFORNIA STATE BOARD OF EDUCATION

MARCH 2014 AGENDA

SUBJECT	
Alternative High School Equivalency Test Request for Information: List of Respondent-Vendors for Consideration and Approval.	☒ Action ☒ Information ☐ Public Hearing

SUMMARY OF THE ISSUE(S)

California *Education Code* (*EC*) Section 51420 requires that any high school equivalency test offered in California be approved by the State Board of Education (SBE). In January 2014, the California Department of Education (CDE) solicited information from potential vendors of existing high school equivalency tests through a Request for Information (RFI) process to gather sufficient information for the SBE to approve one or more high school equivalency tests. Potential vendors were required to respond to the RFI by February 18, 2014.

CDE's compliance review summary of respondents' submittals to the technical criteria outlined in the RFI and CDE's guidance to the SBE to facilitate the selection process are included in Attachment 1. Respondents may make presentations to the SBE and their full submittals are also available for review.

RECOMMENDATION

The CDE recommends that the SBE take the following actions:

- Consider submissions by test vendors and CDE's compliance review summary of respondents to the RFI for the provision of a high school equivalency test. (Attachment 1)

- Approve for implementation one or more alternative high school equivalency tests.

BRIEF HISTORY OF KEY ISSUES

On January 1, 2014, SBE-approved amendments to the high school equivalency certificate regulations went into effect. The amendments to regulations removed language referencing a single high school equivalency test for use in California. This change in regulations allowed the CDE to issue a RFI for the purpose of soliciting

Information from potential vendors of existing high school equivalency tests that can determine whether persons who take the test meet the standard of performance expected of high school graduates in the State of California.

The RFI was intended for the purpose of gathering sufficient information for the SBE to approve one or more high school equivalency tests. The SBE may exercise its discretion to reject all proposed tests, to approve one proposed test, or to approve multiple proposed tests from several potential vendors or respondents. Respondents who have developed a high school equivalency test and who chose to respond to the RFI were required to be available to make a presentation to the SBE during its regularly scheduled board meeting on March 12 and 13, 2014.

The CDE's review process will educate the SBE about the unique features and qualities about a particular high school equivalency test in order for the SBE to decide whether to approve the test. The CDE review process included a follow up period in an effort to obtain clarification on the information provided by the Respondent. The follow-up period is from February 19, 2014 through March 5, 2014. The RFI can be accessed on the CDE Web site at http://www.cde.ca.gov/fg/fo/r19/hset14rfi.asp.

The SBE may, at this meeting or at a subsequent meeting, choose to approve one or more high school equivalency tests for eligible Californians seeking a high school equivalency certificate. Potential vendors whose tests are approved by the SBE, after negotiations with the CDE, may be offered a local reimbursement contract with the CDE to offer the high school equivalency test in California and, perhaps, to provide some or all of the ancillary services necessary to administer the test and issue high school equivalency certificates.

SUMMARY OF PREVIOUS STATE BOARD OF EDUCATION DISCUSSION AND ACTION

In July 2013, the SBE approved amendments to the high school equivalency certificate regulations and directed the CDE to conduct the rulemaking process. The proposed amendments removed language referencing the GED® Test as the sole high school equivalency test for use in California. The amendments were filed in September 2013 and went into effect on January 1, 2014.

In March 2013, the SBE approved the commencement of the rulemaking process for amendments to the *California Code of Regulations*, Title 5, Sections 11530 – 11532 pertaining to the high school equivalency certificate to provide the CDE the necessary flexibility to explore new options that may lead to alternative assessments.

In February 2013, the SBE received an Information Memorandum (available on the CDE Web site at: http://www.cde.ca.gov/be/pn/im/) that provided a summary of changes related to the GED® Test, the impact of those changes on test takers and testing centers, and the CDE's interest in exploring other options for the purposes of recommending a new assessment.

FISCAL ANALYSIS (AS APPROPRIATE)

EC Section 51421(a) stipulates that the superintendent may charge a one-time only fee, established by the SBE, to be submitted by an examinee when registering for the test sufficient in an amount not greater than the amount required to pay the cost of administering the test and for the cost of providing all follow-up services related to the completion of the high school equivalency test. The amount of each fee may not exceed twenty ($20) per person.

Under the state regulations, the one-time state fee is applicable for any high school equivalency test that may be designated by the SBE, thus the fiscal impact of procuring any alternative high school equivalency test will be revenue neutral for the state.

ATTACHMENT(S)

Attachment 1: Request for Information: California High School Equivalency Test Summary of California Department of Education's Compliance Review of Submittals will be provided in an Item Addendum.

California State Board of Education

Meeting Agenda Items for March 12-13, 2014

ITEM 13

CALIFORNIA STATE BOARD OF EDUCATION

MARCH 2014 AGENDA

SUBJECT	
Update on California Assessment of Student Performance and Progress Activities, Including, but not limited to, the Smarter Balanced Digital Library, Spring 2014 Smarter Balanced Field Test, National Center and State Collaborative Activities, and Planning of the Science Assessment Stakeholder Meetings.	☐ Action ☒ Information ☐ Public Hearing

SUMMARY OF THE ISSUE(S)

This item reflects the collaboration of the Assessment Development and Administration Division (ADAD), the Special Education Division, and the Education Data Management Division of the California Department of Education (CDE).

California Assessment of Student Performance and Progress

California's new student assessment system is the California Assessment of Student Performance and Progress (CAASPP), which replaces the Standardized Testing and Reporting (STAR) Program. For the 2013–14 school year, the required CAASPP assessments include the Smarter Balanced Field Tests for mathematics and English–language arts in grades three through eight and grade eleven; the California Standards Tests for Science in grades five, eight, and ten; the California Modified Assessment for Science in grades five, eight, and ten; and the California Alternate Performance Assessment (CAPA) for Science in grades five, eight, and ten and for mathematics and English–language arts in grades two through eleven. Two optional tests also are included in this year's CAASPP: the Early Assessment Program in grade eleven for English–language arts and mathematics; and Standards-based Test in Spanish for reading/language arts in grades two through eleven for recently arrived English learner students. Among the other mandates set forth in Assembly Bill (AB) 484 is the requirement that the State Superintendent of Public Instruction (SSPI) consult with stakeholders to make a recommendation on science assessment after the State Board of Education (SBE) has adopted the new science content standards.

This item provides an update on CAASPP assessment development activities, including the National Center and State Collaborative (NCSC) Pilot Test, the Smarter Balanced Digital Library, and planning for future science assessments. In addition, this item includes an update on the Smarter Balanced Field Test, technology outreach to local

educational agencies (LEAs), the California Smarter Balanced Joint Work Group, the California K–12 High Speed Network, and the broadband map of California (see Attachment 1).

National Center and State Collaborative

Prior to the upcoming Phase I NCSC Pilot Test, the CDE participated in the English–language arts and mathematics item development and subsequent reviews, evaluated items for accessibility, and actively worked with the consortium toward a valid and technically defensible alternate assessment for students with significant cognitive disabilities.

Current recruitment efforts for the NCSC Phase I Pilot Test in California have included the ADAD and the Special Education Division's communication to the field, weekly monitoring of LEAs registration efforts, and calling the 100 largest districts to encourage participation in the pilot test. As of February 13, 2014, 177 LEAs, 466 schools, and approximately 7,100 students have volunteered to participate in the spring pilot test in grades three through eight and grade eleven in California.

Schools registered have identified classes and all students within the class who will participate in the pilot in order to maximize the sample size. The goal is to examine how students will interact with test items, and how test items and the test administration system function. No scores will be provided either on an individual or aggregate level. Additionally, students with significant cognitive disabilities will be required to take the CAPA as specified in AB 484.

It is anticipated that the operational assessment will be available to states beginning in the 2014–15 school year. California's participation in future NCSC assessments has yet to be determined.

Smarter Balanced Digital Library

The Smarter Balanced Digital Library is the formative tool and process component of the Smarter Balanced assessment system. The Digital Library will provide formative resources, tools, and professional learning opportunities for educators to tailor instruction based on students' needs. It is a Web portal that hosts resources submitted, reviewed, and approved by educators from member states who are part of a State Network of Educators (SNE). The Digital Library is an interactive social networking site that allows users to rate materials and to share their expertise with other educators across the state or across the country. Consortium-wide SNE membership consists of approximately 2,000 K–12 educators and higher education faculty, approximately 150 of whom are from California. SNE members have been receiving training for resource submission and review since last fall. They have been contributing and vetting resources against quality criteria developed by the Smarter Balanced Formative

Assessment Advisory Panel since December 2013. Smarter Balanced is scheduled to make the Digital Library available in April 2014. Approximately 400 resources are expected to be available when the library is launched, and more will be added over time.

Planning for Future Science Assessments

On September 4, 2013, the SBE adopted the Next Generation Science Standards (NGSS). AB 484 requires the SSPI to make recommendations to the SBE, as soon as is feasible after the adoption of the standards, regarding science assessments aligned with the NGSS. The recommendations must include cost estimates and an implementation plan of at least one assessment in each of the following grade spans: (1) grades three through five; (2) grades six through nine; and (3) grades ten through twelve. In order to develop these recommendations, the SSPI is required to consult with stakeholder groups, including, but not necessarily limited to, California science teachers, individuals with expertise in assessing English learners and students with disabilities, parents, and measurement experts, regarding the grade level and the type of assessment. The CDE is working with ETS to develop a plan for consulting with stakeholders to meet these legislative requirements.

RECOMMENDATION

This item is for information only. No specific action is recommended.

BRIEF HISTORY OF KEY ISSUES

California Assessment of Student Performance and Progress

Established by AB 484 and subsequently renamed, the CAASPP succeeded the STAR Program on January 1, 2014. The new statewide assessment system supports the full implementation of CCSS.

The full text of AB 484, as chaptered into law, can be accessed online at the California Legislative Information Web page at http://leginfo.legislature.ca.gov/faces/billSearchClient.xhtml.

SUMMARY OF PREVIOUS STATE BOARD OF EDUCATION DISCUSSION AND ACTION

In January 2014, the CDE provided the SBE with an update on statewide assessment transition activities, including the establishment of the CAASPP assessment system, the spring 2014 Smarter Balanced Field Test preparation activities, information about the

Smarter Balanced *Usability, Accessibility, and Accommodations Guidelines*, the CDE and ETS training modules for California LEAs, and a CAASPP technology update.

In November 2013, the CDE provided the SBE with highlights of AB 484, information on the availability of the Smarter Balanced *Usability, Accessibility, and Accommodations Guidelines*, an update on the Technology Readiness Tool, an update on changes to the new registration system with the California Longitudinal Pupil Achievement Data System, and an update on collaboration activities of the CDE and the K–12 High Speed Network.

In September 2013, the CDE presented information to the SBE on Smarter Balanced assessment development activities, including legislative developments, findings from the CDE Technology Preparedness Survey, a report on research regarding the costs of statewide student testing, research regarding computer-based versus paper-based testing, an update on the draft *Accessibility and Accommodations Guidelines*, development activities for the spring 2014 Field Test, and a comparison of costs for the development and administration of the English–language arts and mathematics portions of the STAR Program and the Smarter Balanced assessment system.

In July 2013, the SBE received an update from the CDE on Smarter Balanced assessment development activities, including the release of Practice Tests, feedback from CDE staff observations of the spring 2013 Pilot Test, California educator involvement in item development activities and Digital Library development activities, available resources to help gauge the technology readiness of LEAs, and initial cost estimates for implementing the Smarter Balanced system of assessments.

FISCAL ANALYSIS (AS APPROPRIATE)

Education Code (*EC*) Section 60640(f)(2) requires that, for the 2013–14 school year, the STAR contract be amended to administer CAASPP and that cost savings from the suspension of certain STAR assessments be used to fund the spring 2014 Smarter Balanced Field Test. The total costs for this 2013–14 test administration is $51,206,814, including $8,346,000 in costs to be incurred in 2014–15 and included in the Governor's proposed 2014–15 budget to complete the scoring and reporting of paper-pencil tests, the analyses of test results, special studies, and annual technical reports for the assessments administered as part of the CAASPP in the 2013–14 school year.

Funding for the CAASPP system is included in the Governor's proposed budget act. The final budget for the contract is negotiated and approved by CDE, SBE, and the Department of Finance.

ATTACHMENT(S)

Attachment 1: CAASPP Assessment Development Activities (3 Pages).

Smarter Balanced Field Test Preparation Activities

The California Department of Education (CDE) is supporting local educational agencies (LEAs) in their preparation for the transition to the California Assessment of Student Performance and Progress (CAASPP), including the administration of the assessment developed through the Smarter Balanced Assessment Consortium (Smarter Balanced) and implementation of computer-based and adaptive testing.

Outreach Efforts to Prepare Local Educational Agencies for the Smarter Balanced Field Test

CDE staff, in collaboration with Senior Assessment Fellows, West Ed, San Joaquin County Office of Education (SJCOE), and Educational Testing Service (ETS), continues its outreach to prepare LEAs for the Smarter Balanced Field Test. These efforts have included activities such as the following:

1. *California Online Field Test Administration Manual*

   The *California Online Field Test Administration Manual* (TAM) was made available to LEAs on February 7, 2014 on the Smarter Balanced California portal at: http://sbac.portal.airast.org/ca/field-test-ca/resources/. The TAM provides the information on policies and procedures for California test administrators and teachers with screenshots and step-by-step instructions on how to administer the Field Test.

2. Videos and Training Modules

   As part of the effort to provide support to LEAs and help educators and students become familiar with key features of the Smarter Balanced Field Test, Assessment Development and Administration Division (ADAD) staff, in collaboration with Senior Assessment Fellows, West Ed, SJCOE, and ETS are developing videos and training modules. A series of training videos for LEA staff are available on the California Smarter Balanced portal at http://sbac.portal.airast.org/ca/field-test-ca/. In addition, two videos targeted for high school and middle school students were launched in February 2014. These videos have been released publicly, and are available for districts, schools, teachers, students and their families to become familiar with the purpose of the Smarter Balanced Field Test.

3. *Field Test Flash* E-mails

   On February 7, 2014, ADAD sent the first issue of the *Field Test Flash* email to educators and public who subscribed to the CAASPP mailing list (caaspp@mlist.cde.ca.gov). The *Field Test Flash* is a new, frequent, short e-mail designed to disseminate information about the Smarter Balanced Field Test for up-to-the-minute information.

4. Smarter Balanced Field Test Training Workshops

Throughout February 2014, ETS on behalf of the CDE, conducted 30 in-person regional workshops for LEA CAASPP Coordinators and Technology Coordinators for the Smarter Balanced Field Test. ETS also hosted a live Webcast of the training with over 1,000 viewers. The archived video is available online at: http://californiatac.org/rsc/videos/archived-webcast_021114.html.

California Assessment of Student Performance and Progress Technology Update

1. **California Longitudinal Pupil Achievement Data System Integration with the Smarter Balanced Field Test**

On February 5, 2014, Cindy Kazanis, Director of Educational Data Management Division and Diane Hernandez, Director of ADAD, sent a letter to the field regarding the important role the California Longitudinal Pupil Achievement Data System (CALPADS) will have in providing student enrollment, demographic, and program data to the Smarter Balanced test registration system, known as the Test Information Distribution Engine (TIDE) system.

Specifically, the integration of the CALPADS and TIDE systems requires LEAs to update specific student-level data elements in CALPADS on a frequent and consistent basis, especially before and during the testing windows. Students who are not in CALPADS will not be able to access the field test. The letter further encouraged LEAs to keep student enrollment, demographics, and program information in CALPADS up-to-date.

The letter is available on the CDE CALPADS Communications Web page at http://www.cde.ca.gov/ds/sp/cl/communications.asp.

On February 7, CDE successfully uploaded demographic information into the TIDE system for over 3.29 million students who will participate in the Field Test. Beginning the week of February 10, 2014 LEAs were able to access TIDE to upload student accommodation and designated support information.

2. **California K–12 High Speed Network**

The CDE and K–12 High Speed Network (K12HSN) are jointly working to assist LEAs understand the role and benefit of connecting to the K12HSN to prepare for the Smarter Balanced Field Test. The K12HSN is conducting regional meetings with counties to understand the issues and barriers around connectivity to school districts. Through these regional meetings, the K12HSN is documenting areas with challenges to accessing high speed connections and examples of success stories for districts that have overcome access barriers. The K12HSN plans to release its Annual Report, which

highlights select case studies in March 2014, on the K12HSN Web site at http://www.k12hsn.org/.

The K12HSN is also working on developing a peering agreement for the Smarter Balanced Field Test to optimize the internet connectivity for local educational agencies connected through the K12HSN.

K12HSN also continues to update the DataLINK program to report connectivity data and related information for California's K-12 schools and districts. This data can be viewed through any one of the standard reports, or custom reports can be generated using the report generator feature. This information is accessible on the K12HSN DataLINK Web page at http://www.k12hsn.org/data/reporting/.

3. **California Smarter Balanced Technology Joint Work Group**

There will be a follow up meeting of the Smarter Balanced Technology Joint Work Group on February 24, 2014. The Joint Work Group will hear an update by the CDE on activities discussed at the group's December meeting. The update will facilitate further discussions regarding how to help LEAs prepare for the Smarter Balanced Field Test. A verbal update on the Joint Work Group's activities will be provided at the State Board of Education meeting.

California State Board of Education

Meeting Agenda Items for March 12-13, 2014

ITEM 14

CALIFORNIA STATE BOARD OF EDUCATION

MARCH 2014 AGENDA

SUBJECT	
Update on Issues Related to California's Implementation of the Elementary and Secondary Education Act and Other Federal Programs, Including but Not Limited to, California's Notice of Request to Waive Current Academic Assessments and Accountability from States that Participate in Field Testing of New State Assessments During the 2013–14 School Year Under the Elementary and Secondary Education Act Section 9401.	☒ Action ☒ Information ☐ Public Hearing

SUMMARY OF THE ISSUE(S)

This standing item allows the California Department of Education (CDE) to brief the State Board of Education (SBE) on timely topics related to the Elementary and Secondary Education Act (ESEA) and other federal programs.

California's Request to Waive Title I, Part A Requirements of ESEA Under Section 9401

On June 18, 2013, the U.S. Secretary of Education announced that the U.S. Department of Education (ED) will consider waiver requests for academic assessments and accountability (Section 111[b]][2] and [3] of the ESEA) from states that participate in field testing of new state assessments during the 2013–14 school year. This measure is intended to support states during the transition to new assessments aligned to the Common Core State Standards (CCSS).

RECOMMENDATION

The CDE recommends that the SBE take action as deemed necessary and appropriate. There is no specific action recommended at this time.

BRIEF HISTORY OF KEY ISSUES

California's Request to Waive Title I, Part A Requirements of ESEA Under Section 9401

Title I, Part A of the ESEA requires states to implement yearly student academic assessments in mathematics, reading or language arts, and science for specified grades/grade spans. The Standardized Testing and Reporting (STAR) Program tests have been used in California to meet that requirement as the primary means of

determining the yearly performance, or adequate yearly progress, of the state and each local educational agency (LEA).

On November 21, 2013, the CDE and SBE submitted a waiver request to the ED for flexibility in assessment administration aligned with college- and career-ready standards for the 2013–14 school year only. In addition, the waiver request seeks to allow participating schools to retain their federal accountability designations for an additional year. The one year Title I waiver pertains to how California students participate in the Smarter Balanced field tests. A copy of the Public Notice, including the waiver request and list of schools, can be accessed on the SBE Public Notices Web page at http://www.cde.ca.gov/be/pn/pn.

SUMMARY OF PREVIOUS STATE BOARD OF EDUCATION DISCUSSION AND ACTION

California's Request to Waive Title I, Part A Requirements of ESEA Under Section 9401

At its September 2013 meeting, the SBE approved the release of a draft Title I waiver request for a 10-day comment period and delegated authority to the SBE President, in consultation with the State Superintendent of Public Instruction (SSPI), to submit the Title I waiver request to ED.

At its July 2013 SBE meeting, Deputy Superintendent of Public Instruction, Deborah V.H. Sigman, presented information about the U.S. Secretary of Education's June 18, 2013, announcement that the ED will consider waiver requests from states that participate in field testing of new state assessments during the 2013–14 school year. Deputy Superintendent Sigman indicated that the California would pursue a waiver.

FISCAL ANALYSIS (AS APPROPRIATE)

Any state or LEA that does not abide by the mandates or provisions of ESEA is at risk of losing federal funding.

ATTACHMENT(S)

None.

California State Board of Education

Meeting Agenda Items for March 12-13, 2014

ITEM 15

CALIFORNIA STATE BOARD OF EDUCATION

MARCH 2014 AGENDA

SUBJECT	
Calculation of the 2014 Growth and Base and 2015 Growth Academic Performance Indexes During the Transition to the California Assessment of Student Performance and Progress.	☒ Action ☒ Information ☐ Public Hearing

SUMMARY OF THE ISSUE(S)

With the signing of Assembly Bill (AB) 484, California *Education Code* (*EC*) Section 60640 replaces the Standardized Testing and Reporting (STAR) Program with a new assessment program, referred to as the California Assessment of Student Performance and Progress (CAASPP). In addition, *EC* Section 52052(e)(2) authorizes the State Superintendent of Public Instruction (SSPI), with the approval of the State Board of Education (SBE), to determine if the 2014 and 2015 Academic Performance Indices (APIs) would be a valid measure of school and district performance.

RECOMMENDATION

The California Department of Education (CDE) recommends that the SBE approve not calculating the 2014 Growth and Base APIs and 2015 Growth API for elementary, middle, and high schools. Because there was a possibility of producing a high school API, the Public Schools Accountability Act (PSAA) Advisory Committee reviewed options for producing a high school API at its December 9, 2013 meeting. The members unanimously agreed that the 2014 Growth API for high schools should not be produced.

BRIEF HISTORY OF KEY ISSUES

A number of California Standards Tests (CSTs) in the STAR Program are no longer required in the CAASPP assessment system. For the 2013–14 school year, CAASPP will provide statewide assessment results for the following:

- Science assessments (CSTs, California Alternate Performance Assessment [CAPA], California Modified Assessment [CMA]) in grades five, eight, and ten; and

- CAPA for English-language arts (ELA) and mathematics in grades two through eleven

Currently, the API is completely based on assessment results. The limited number of available assessment results in 2014 severely limits the CDE's ability to calculate the API. The assessment results available for elementary and middle schools are the science assessment for grade five and eight and the CAPA. The 2014 Growth and Base APIs would not be a valid measure for elementary and middle schools because less than one percent of the students take the CAPA ELA and mathematics and only a small portion of students take the science assessment. For example, a K-8 school with 500 students would only have science assessment results for approximately 22 percent of their student population (if all grade levels were equal). Although schools with only grades seven and eight would have a higher percentage of their student population with assessment results, it would only represent results from one subject area.

However, more assessments will be administered for high schools in 2013–14. These assessments will include:

- California High School Exit Examination (CAHSEE) ELA and mathematics
- CST, CMA, and CAPA Life Science in grade ten
- CAPA ELA and mathematics in grades nine through eleven

The availability of the above assessments provides the possibility of calculating an abridged 2014 API for high schools.

In order to determine the validity of producing a 2014 API for high schools, the CDE produced two types of data simulations using multiple cut scores and weights. Because final 2013 CAHSEE data were not available at the time of the data simulations, 2011 and 2012 grade ten CAHSEE and Life Science data were used. High schools that met the following three criteria were included in the simulations: (1) 100 percent of enrollment in grades nine through twelve, (2) 2011 and 2012 grade ten CAHSEE or Life Science data, and (3) more than 100 valid scores. Altogether, 1,048 high schools met these criteria.

The first set of data simulations compared the current 2012 Growth API score to the proposed abridged Growth API score. This score to score comparison had a high correlation of .97.

Because schools are held accountable for meeting growth targets, the Technical Design Group (TDG) recommended a second set of data simulations to determine the correlation of the change between 2011 Base to 2012 Growth for the current API and the proposed abridged API. The results of these data simulations showed that the highest correlation was .67, significantly lower than the correlation in the first data simulation. The low correlation results in the second set of data simulations revealed that there are significant variations between the current and the abridged API. This variation shows the abridged API is not a suitable measure of school growth.

The PSAA Advisory Committee agreed with the TDG that the 2014 Growth API for high schools not be produced, because the abridged API is not a suitable measurement of school growth. Also, producing an abridged API significantly changes the API purpose and construct. The purpose of the API is to measure the academic performance and growth of schools. However, the CAHSEE, the main component of the abridged API, was designed for individual student-level accountability; not as the main measure for comparing school-level growth. In addition, the current high school API is constructed using multiple assessments and including assessment results for grades nine through twelve, but the abridged API significantly reduces the number of assessments and grades used in the API calculation. The construct of the abridged API would be substantially different than past APIs. Additionally, not calculating the 2014 Growth and Base APIs and the 2015 Growth API would be another step in supporting schools and districts as they transition to the Common Core. The SSPI supports the PSAA Advisory Committee's recommendation and also recommends that the elementary, middle, and high schools 2014 Growth and Base APIs and 2015 Growth API not be produced.

The first operational assessments aligned to the new California standards will be given in the spring of 2015. The CDE will use these assessment results to produce a 2015 Base API. The 2015 Base API can then be used to measure school and district growth in 2016.

If the SBE decides not to calculate the API as recommended, *EC* Section 52052(e)(4) provides local educational agencies and schools that do not receive an API during the transition to the Common Core with three options for meeting legislative and program requirements by using:

1. The most recent API calculation (i.e., the 2013 Growth API);

2. An average of the three most recent annual API calculations (i.e., the 2011, 2012, and 2013 Growth APIs); or

3. Alternative measures that show increases in pupil academic achievement for all groups of pupils schoolwide and among significant student groups.

For option two, the CDE will produce the three-year API average in spring 2014.

The Analysis, Measurement, and Accountability Reporting Division (AMARD) surveyed all CDE divisions to determine the programs that use results from accountability reports (API, Adequate Yearly Progress [AYP], Program Improvement [PI]), or from the STAR Program. If accountability and assessment data were used to make program decisions, the survey asked if any of the three legislative options above could be used if accountability and assessment data were not available in 2014. The AMARD received 47 responses. Thirty-eight (81%) of the respondents indicated their programs used accountability or assessment data. Out of these, 10 indicated they were uncertain if the legislative options could satisfy their program requirements. AMARD staff has met with the 10 respondents and all program concerns have been addressed. The goal is to find solutions with the least impact on schools and programs during the transition.

SUMMARY OF PREVIOUS STATE BOARD OF EDUCATION DISCUSSION AND ACTION

In November 2013, the CDE recommended that the SBE approve the PSAA Advisory Committee's recommended methodology for incorporating graduation data in the API. No action was taken by the SBE on this item. President Michael Kirst deferred this item to a future SBE meeting.

In March 2013, the SBE approved eliminating the requirement that the performance levels of students in grades eight and nine taking the General Mathematics CST be lowered by one and two performance levels, respectively, for inclusion into the 2012 Base API. This decision was implemented in the 2012 Base API Report released to the public on May 24, 2013, and were reflected in the 2013 Growth API released in September 2013.

FISCAL ANALYSIS (AS APPROPRIATE)

Fiscal impact will be minimal. All costs associated with the API are included in the Analysis, Measurement, and Accountability Reporting Division's budget.

ATTACHMENT(S)

Attachment 1: Overview of Proposed Academic Performance Index Reporting During the Smarter Balanced Assessment Transition. (1 Page)

Overview of Proposed Academic Performance Index Reporting During the Transition to the California Assessment of Student Performance and Progress

2012 | 2013 | 2014 | 2015 | 2016

2012 Base API
Assessments:
- CSTs, CAPA, CAHSEE
- CMA ELA (Gr. 3–11), math, Algebra I, Geometry, and science (Gr. 5, 8, and 10)

2013 Growth API
Assessments:
- CSTs, CAPA, CAHSEE
- CMA ELA (Gr. 3–11), math, Algebra I, Geometry, and science (Gr. 5, 8, and 10)

2013 Base API
No API calculated

2014 Growth API
No API calculated

2014 Base API
No API calculated

2015 Growth API
No API calculated

2015 Base API
Assessments:
- CAASPP
- CAHSEE

Addition of new high school indicators

2016 Growth API
Assessments:
- CAASPP
- CAHSEE

Addition of new high school indicators

API: Academic Performance Index
CAASPP: California Assessment of Student Performance and Progress
CAHSEE: California High School Exit Examination
CAPA: California Alternate Performance Assessment
CMA: California Modified Assessment

California State Board of Education

Meeting Agenda Items for March 12-13, 2014

ITEM 16

CALIFORNIA STATE BOARD OF EDUCATION

MARCH 2014 AGENDA

SUBJECT	
Elementary and Secondary Education Act: Proposed Amendments to California's Consolidated State Application Accountability Workbook for 2014.	☒ Action ☒ Information ☐ Public Hearing

SUMMARY OF THE ISSUE(S)

Since 2004, the State Board of Education (SBE) has annually approved proposed amendments to California's Consolidated State Application Accountability Workbook (hereafter referred to as the Accountability Workbook) and submitted them to the U.S. Department of Education (ED).

RECOMMENDATION

The California Department of Education (CDE) recommends that the SBE approve three amendments to California's Accountability Workbook. These amendments would impact the 2014 Adequate Yearly Progress (AYP) determinations.

BRIEF HISTORY OF KEY ISSUES

The CDE is proposing three amendments to the Accountability Workbook that would impact the 2014 AYP determinations.

The first amendment aligns the federal accountability system to our state accountability system. Because all students in grades three through eight will participate in the Smarter Balanced field test, the CDE will not have assessment results to produce 2014 AYP determinations for elementary schools, middle schools, and elementary and unified school districts. Therefore, the new numerically significant student group size will be applied to elementary and middle schools beginning with their 2015 AYP determinations.

The remaining amendments apply to high schools only. The second amendment adds an extended-year cohort graduation rate, and the third amendment removes the API as an additional indicator for high schools. Because CAHSEE results are used to make high school AYP determinations, schools and districts that serve only students in grades nine through twelve will receive a 2014 AYP Report; if approved, the following proposed amendments will apply.

1. Changing numerically significant group size (Workbook Critical Element 5.5, pages 45-46; 10.1, pages 61-62)

   A numerically significant student group is defined as having 100 or more students or 50 or more students who make up at least 15 percent of the total student population. State Budget Bill 97 (Assembly Bill [AB] 97, statutes of 2013), section 95, changed the definition of numerically significant student groups to 30. This amendment will align the AYP student group size to the API's definition of numerical significance (i.e., 30).

2. Extended-year cohort graduation rate (Workbook Critical Element 7.1, pages 50-52)

   An additional extended-year cohort graduation rate (i.e., six-year cohort rate) will be used as another alternative method to meeting the graduation rate criteria for local educational agencies (LEAs), schools, and student groups. This alternative method will only be applied for LEAs, schools, or student groups that did not make the state goal or the annual growth target for the four-year and five-year graduation rates. Meeting the state goal or the annual growth target for the four-year, five-year, or six-year graduation rate would qualify the LEA, school, or student group to meet the graduation rate criteria for AYP. Background information about the graduation rate criteria and information about the six-year graduation rate calculation methodology and growth targets can be found in Attachment 1.

3. Eliminating the API as an additional indicator for high schools (Workbook Critical Element 7.2, page 53)

   Along with meeting percent proficient and participation rate targets, the ED requires LEAs and schools to meet only one additional indicator for AYP determinations. The ED requires that the cohort graduation rate be the additional indicator for high schools, and allows each state to choose the additional indicator for elementary and middle schools.

   In California, high schools are required to meet two additional indicators: (1) the API, and (2) the cohort graduation rate. In 2012, the ED expanded the cohort graduation rate indicator requiring all numerically significant student groups to meet the cohort graduation rate for AYP. Because student groups are now required to meet the graduation rate indicator, high schools now have potentially up to 61 criteria needed to meet AYP and elementary and middle schools have potentially 49 criteria to meet AYP.

   Only one additional indicator is required to comply with the federal accountability requirements. Since California is implementing the Smarter Balanced field test statewide in 2014, and the API will undergo a transition to incorporate the results of the new operational test in 2015, the CDE recommends removing the API from AYP determinations until the transition is complete. The ED has requested that California submit Workbook amendments in March 2014.

SUMMARY OF PREVIOUS STATE BOARD OF EDUCATION DISCUSSION AND ACTION

The SBE has submitted amendments to California's Accountability Workbook each year since the initial submission in January 2003. Most amendments have been in response to changes in California's assessment system or to changes in federal requirements. The most recent changes to the Accountability Workbook include:

- For the 2013 AYP, the SBE and CDE submitted a technical amendment in response to the ED not approving the proposed calculation method used for the five-year cohort graduation rate.

- For the 2012 AYP, the SBE and CDE submitted three amendments. The first amendment was in response to a previous Title I Monitoring Visit finding by the ED. As a result, the CDE agreed to produce all LEA accountability report cards and post them on the CDE Web site. The second amendment was a technical change that revised the definition of the socioeconomically disadvantaged (SED) student group in the Accountability Workbook to align with the definition on the student answer document. A third amendment, approval of a five-year graduation rate, was not approved for 2012 AYP determinations.

- For the 2011 AYP, the SBE and CDE submitted a technical amendment that outlined the conditions for classifying a student belonging to the English learner student group for accountability purposes.

FISCAL ANALYSIS (AS APPROPRIATE)

Fiscal impact will be minimal, as the AYP reports are generated by CDE staff and posted on the CDE AYP Web page. All expenses are included in the Analysis, Measurement, and Accountability Reporting Division's budget.

ATTACHMENT(S)

Attachment 1: Six-Year Cohort Graduation Rate Background and Methodology (1 page)

Six-Year Cohort Graduation Rate Background and Methodology

Background

On October 28, 2008, the U.S. Department of Education (ED) published its final guidance to states regarding the requirement for states to use a four-year cohort graduation rate beginning with the 2012 Adequate Yearly Progress (AYP) determinations. In addition to the requirement that local educational agencies (LEAs) and schools meet the graduation rate criteria, all numerically significant student groups must also meet the graduation rate criteria beginning with the 2012 AYP determinations. The regulations also provide states with the option of using an extended-year adjusted cohort rate as long as the goal is the same for both the four-year and extended-year cohort rates. This allows states to give LEAs and schools credit for successfully graduating students who take longer than four years to graduate from high school with a regular diploma.

Six-Year Cohort Graduation Rate

Methodology

The CDE will use the following formula to calculate the six-year cohort rate:

Numerator is comprised of students in the four-year adjusted cohort graduation rate starting with the first time ninth grade students in the 2007–08 academic school year, plus the number of students from the cohorts who earned a regular high school diploma by the end of the 2011–12 and 2012–13 academic school years

divided by

Denominator is comprised of students in the four-year adjusted cohort graduation rate plus students who transfer during the 2011–12 and 2012–13 academic school years minus students who transfer out, emigrate, or die during the 2011–12 and 2012–13 academic school years

Growth Target

The six-year graduation rate target will be 1.0 percentage point higher than the four-year graduation rate.

Qualifying Eligibility Criteria

The six-year graduation rate will only be used to meet the AYP criteria if there is at least one more graduate in the six-year graduation rate than the four-year graduation rate.

California State Board of Education

Meeting Agenda Items for March 12-13, 2014

ITEM 17

CALIFORNIA STATE BOARD OF EDUCATION

MARCH 2014 AGENDA

SUBJECT	
Update on the Activities of the California Department of Education and State Board of Education Regarding Implementation of Common Core State Standards Systems.	☒ Action ☒ Information ☐ Public Hearing

SUMMARY OF THE ISSUE(S)

This agenda item is the seventeenth in a series of regular updates to inform the State Board of Education (SBE) and public regarding Common Core State Standards (CCSS) systems implementation activities.

RECOMMENDATION

The California Department of Education (CDE) recommends that the SBE take action as deemed necessary and appropriate but recommends no specific action at this time.

BRIEF HISTORY OF KEY ISSUES

When the SBE adopted the CCSS with additions in 2010, these standards became the current subject-matter standards in English language arts and mathematics. The full implementation of these standards will occur over several years as a new system of CCSS-aligned curriculum, instruction, and assessment is developed.

The *CCSS Systems Implementation Plan for California,* available on the CDE CCSS Web page at http://www.cde.ca.gov/re/cc/, was jointly presented by the SBE and State Superintendent of Public Instruction (SSPI) to the Governor and the California State Legislature in March 2012. A Web-based interactive timeline that provides detailed information regarding the statewide implementation projects included in the plan is available on the CDE CCSS Systems Implementation—Significant Milestones Web page at http://www.cde.ca.gov/re/cc/tl/index.asp.

SUMMARY OF PREVIOUS STATE BOARD OF EDUCATION DISCUSSION AND ACTION

July 2011-January 2014: The CDE presented to the SBE a series of regular updates on the implementation of the CCSS.

March 2012: The SBE unanimously voted to present, in partnership with the SSPI, the *CCSS Systems Implementation Plan for California* to the Governor and the California State Legislature thereby fulfilling the requirements of California *Education Code* Section 60605.8 (h).

June 2011: Governor Edmund G. Brown, Jr., SSPI Tom Torlakson, and SBE President Michael Kirst signed the memorandum of understanding for California's participation as a governing state in the Smarter Balanced Assessment Consortium (Smarter Balanced). California was previously a participating state in the Partnership for the Assessment of Readiness for College and Careers (PARCC).

November 2010: The CDE presented to the SBE an update on the implementation of the CCSS. This update was provided at the joint meeting between the SBE and the Commission on Teacher Credentialing (See agenda at http://www.cde.ca.gov/be/pn/pn/ctcsbeagenda08nov2010.asp).

August 2010: Pursuant to Senate Bill X5 1, the SBE adopted the academic content standards in English language arts and mathematics as proposed by the California Academic Content Standards Commission (ACSC); the standards include the CCSS and specific additional standards that the ACSC had deemed necessary to maintain the integrity and rigor of California's already high standards.

May 2009: The SSPI, the Governor of California, and the SBE President agreed to participate in the Council of Chief State School Officers and the National Governors Association Center for Best Practices initiative to develop the CCSS as part of California's application to the federal Race to the Top grant.

FISCAL ANALYSIS (AS APPROPRIATE)

The cost of implementing the CCSS is significant, but will be offset by the improved efficiencies, benefits of shared costs with other states, and the shifting of current costs to CCSS activities. Currently, the CDE is providing free professional learning support via webinars and presentations and is providing ongoing guidance to the field for transitioning to the CCSS. In terms of instructional materials, costs will span multiple years but will be offset by access to a national market of materials and greater price competition in so long as California does not add state-specific evaluation criteria. Nonetheless, the implementation of new CCSS-aligned assessments, professional learning supports, and instructional materials will require a shifting and infusion of new resources. Assembly Bill 86 (Chapter 48, Statutes of 2013), Section 85, appropriates $1.25 billion to support the integration of academic content standards in instruction

adopted pursuant to sections 60605.8, 60605.85, 60605.10, 60605.11, and 60811.3 of the California *Education Code*.

ATTACHMENT(S)

Attachment 1: Common Core State Standards Systems Implementation Plan Highlights: January—February 2014 (4 pages)

Attachment 2: Common Core State Standards Implementation Outreach: California State Board of Education and California Department of Education Activities (5 pages)

Common Core State Standards Systems Implementation Plan Highlights: January–February 2014

1. Facilitate high quality professional learning opportunities for educators to ensure that every student has access to teachers who are prepared to teach to the levels of rigor and depth required by the CCSS.

- The California Department of Education (CDE) has released a new addition to the collection of Common Core State Standards (CCSS) professional learning modules (PLMs) for educators:

  - A Deeper Dive into the California English Language Development (ELD) Standards: This module is Part 2 of the two-part ELD module series. It provides a structure and focus for ELD standards-based instruction in mainstream classrooms and designated ELD instruction and/or classrooms that describes how to use the ELD standards in tandem with the CCSS for English language arts (ELA)/Literacy. Examples in various contexts and grade spans model how suggested instructional strategies can be successfully implemented.

  Thirteen online PLMs are currently available for teachers to access independently or for schools or districts to use as facilitated professional learning. The PLMs were designed to deepen educators' understanding of the CCSS; instructional strategies to support the learning of all pupils, including English learners, pupils with disabilities, and underperforming pupils; and instructional strategies that promote creativity, innovation, critical thinking, problem solving, collaboration, and communication skills in all academic content areas.

  The modules are located on the Brokers of Expertise (BoE) Web site located at http://ccssplm.myboe.org/. The BoE Web site also offers resources and a platform for questions about the CCSS. More information is available on the CDE Professional Learning Modules for Educators Web page at http://www.cde.ca.gov/re/cc/ccssplm.asp.

- With support from a grant from the National Education Association, the CDE, the California Teachers Association (CTA), the Comprehensive Center at WestEd, and the Secondary Literacy Partnership are working collaboratively to provide California educators across the state with five day-long seminars to support implementation of the CCSS system. This seminar series is designed to offer more extensive practice with the

CCSS in the areas of curriculum, literacy strategies across the content areas, technology, assessments, and performance tasks. Seminars were held in San Jose on January 10, 2014, and Pasadena on February 7, 2014. Additional seminars will be held on March 14, 2014, in Anaheim; April 5, 2014, in Stockton; and May 3, 2014, in San Luis Obispo. More information regarding the seminars, including links to registration information, is available on the CTA Professional Development Web page at http://www.cta.org/conferences.

- CDE staff participated in the 2014 Curriculum and Instruction Steering Committee (CISC) Leadership Symposium in Monterey, California, on February 19–21, 2014. Staff presentations provided information regarding the following topics: the CCSS and their implementation, the transition to the new assessment system, the CDE professional learning modules for educators, career technical education, and the curriculum frameworks—including the adopted mathematics framework, the draft English language arts/English language development framework, and the work to develop a revised science framework aligned to the Next Generation Science Standards. Approximately 500 California educators attended this statewide conference which was sponsored by the CISC of the California County Superintendents Educational Services Association.

2. Provide CCSS-aligned instructional resources designed to meet the diverse needs of all students.

- The first 60-day public comment period on the 2014 ELA/ELD Framework draft ended on February 13. Survey comments were forwarded to the ELA/ELD Subject Matter Committee (SMC) of the Instructional Quality Commission (IQC) for consideration during its March 7, 2014 meeting. The committee reviewed the comments and considered recommendations from the writers and CDE staff for edits to the draft. The SMC has forwarded its recommended edits to the full IQC for its March 28 meeting for analysis and approval of the edits and to initiate the second 60-day public comment period. Once staff incorporates the IQC's changes into the revised draft in April, it will be posted for comment from May to June, 2014. At the end of this second public comment period, the draft will be forwarded to the SBE for action at its July meeting.

- Information regarding the approval of the draft schedule of significant events and the draft Instructional Materials Reviewer and Content Review Expert online application for the 2015 English language arts/English language development instructional materials adoption will be presented in Item 18.

- Information regarding the approval of recommended supplemental instructional materials for English language development will be presented in Item 19.

3. Develop and transition to CCSS-aligned assessment systems to inform instruction, establish priorities for professional learning, and provide tools for accountability.

- An update regarding California Assessment of Student Performance and Progress Program activities including, but not limited to, the Smarter Balanced Digital Library and spring 2014 Field Test, National Center and State Collaborative activities, and planning for science assessment stakeholder meetings will be provided in Item 13.

5. Collaborate with the postsecondary and business communities to ensure that all students are prepared for success in career and college.

- On March 2-4, 2014, the CDE sponsored the California Partnership Academies/Educating for Careers Conference in Sacramento. For the fifth straight year, these two premier conferences were joined to provide extensive instruction in all aspects of career-technical education and career and college readiness. Over 3,000 educators attended this conference for a menu of over 200 workshops to benefit career academy teams, districts implementing Linked Learning programs, and others seeking the benefits of integrating rigorous academics with career specific instruction. Included in the schedule were multiple workshops and intensive seminars on: the CCSS, education technology, STEM, University of California a-g offerings, career counseling, partnerships with industry and post-secondary, CTE Model Curriculum Standards, and the California Partnership Academies model and components.

7. Design and establish systems of effective communication among stakeholders to continuously identify areas of need and disseminate information.

- The CDE is pleased to announce the availability of a new, voluntary communications tool to support CCSS implementation across California. The online CCSS Implementation Survey was designed to provide a platform for California's local educational agencies (LEAs) to share the status of local implementation work with their community members, the CDE, and other educational agencies.

  The survey consists of 25 questions regarding general implementation, professional learning, instructional materials, assessment, and communications and outreach. The survey questions may be viewed on the CDE CCSS Implementation Survey Web page at http://www.cde.ca.gov/re/cc/survey.asp. Each LEA has been provided with a unique Web address linked to its own survey. Each question is voluntary and each LEA is free to update its survey at any time.
  Survey responses for each California LEA are available on the CDE CCSS Implementation Survey Search Web page at http://www2.cde.ca.gov/ccs/searchsurvey.aspx. Responses

will not be evaluated or used for state accountability purposes; they will be used to inform state CCSS implementation priorities.

- The CDE promotes new CCSS-related resources via the CDE CCSS Web page and listserv. Summary of Web-based Outreach Data:

	November	December	January
Listserv Subscribers	8,846	8,952	9,051
Total Web Page Hits	364,674	263,680	374,016

- A summary of select outreach and communications activities of the CDE and SBE is provided in Attachment 2 of this item.

Common Core State Standards Implementation Outreach
California State Board of Education and California Department of Education Activities

Engage partners in facilitating two-way communication and leverage local and state implementation activities.

Dates/Events	Participants	Description
January 10, 2014 **Present at Common Core and Beyond: A Practicum on Literacy in the Content Areas, Mathematics, Instructional Strategies and Assessments**	**250 educators** **California Department of Education (CDE)/State Board of Education (SBE) Team:** Tom Adams, Deborah Franklin, Stacey Greer, Jane Liang, Barbara Murchison, Jessica Valdez	Present workshops on statewide Common Core System implementation, including using the new mathematics curriculum framework, instructional resources, assessments, the professional learning modules, and resources available from CDE.
January 11-13, 2014 **Present to Region 1 math leadership team**	**50 teachers and administrators** **CDE/SBE Team:** Nancy Brownell, Marcia Trott	Present on communication strategies for mathematics instructional shifts and review of progress on Improving Teacher Quality grant evidence of learning and leadership.
January 17, 2014 **Present to Biola University students**	**15 graduate degree candidates** **CDE/SBE Team:** Tom Adams, Joy Kessel, Barbara Murchison	Present update on curriculum frameworks, instructional materials, and resources available from the CDE

Dates/Events	Participants	Description
January 23, 2014 **Present to ACSA Secondary Council**	**40 administrators** **CDE/SBE Team:** Nancy Brownell, Deborah Baumgartner	Provide update on planning strategies for implementing common and overview of Smarter Balanced Field Test expectations.
January 23 - 24, 2014 **Present to Curriculum and Instruction Steering Committee (CISC) of CA County Superintendents**	**60 county Assistant Superintendents and other staff** **CDE/SBE Team:** Lupita Cortez-Alcala, Diane Hernandez, Cindy Kazanis	Update on the Professional Learning modules, Smarter Balanced Field Test, technology readiness and other common core implementation topics.
January 29, 2014 **Attend Committee on College & Career Readiness and the Common Core meeting**	**20 Community College faculty and system leadership** **CDE/SBE Team:** Deb Sigman, Nancy Brownell, Barbara Murchison	Participate in meeting related to SBE National Governor's Association (NGA) grant for higher education, and discuss implications for community colleges.
February 5 – 27, 2014 **California Smarter Balanced Field Test Workshops**	**2,200 district assessment and technology coordinators** **350 educators** Educational Testing Service (ETS) on behalf of CDE	Provide information on the spring 2014 Smarter Balanced Field Test preparation and administration, including technology needs, administration procedures and security issues. Events were held in 15 different county offices across the state.

Dates/Events	Participants	Description
February 7, 2014 **Present at Common Core and Beyond: A Practicum on Literacy in the Content Areas, Mathematics, Instructional Strategies and Assessments**	**350 teachers and other educators** **CDE/SBE Team:** Tom Adams, Deborah Franklin, Jane Liang, Barbara Murchison, Carrie Roberts, Jessica Valdez	Provide workshops on various elements of the Common Core Standards (CCSS) system, including using the new mathematics curriculum framework, instructional resources, assessments, the professional learning modules, and resources available from the CDE
February 7, 2014 **Present to CTA Common Core Seminar**	**75 teachers** **CDE/SBE Team:** Deborah Baumgartner, Jane Liang	Present overview of Smarter Balanced assessments with a focus on Mathematics Practice Standards.
February 8, 2014 **Present to Assessment Conference for Mathematics Teachers**	**75 teachers** **CDE/SBE Team:** Jane Liang	Present overview of Smarter Balanced assessments with a focus on Mathematics Practice Standards.
February 11, 2014 **Present to Association of California School Administrators (ACSA)**	**20 district and school administrators** **CDE/SBE Team:** Linda Hooper	Present an overview of the Smarter Balanced Assessment System.

Dates/Events	Participants	Description
February 12, 2014 **Present to CSU Advocates**	**100 CSU advocates, alumni and faculty leadership** **CDE/SBE Team:** Nancy Brownell	Provide an update on Common Core State Standards implementation and communications tools for use with higher education, in support of goals of NGA grant.
February 19-21, 2014 **Provide updates at annual CISC Leadership Symposium**	**800 educators from around the state** **CDE/SBE Team:** Tom Adams, Lupita Cortez-Alcala, Kristen Cruz Allen, Brian Boyd, Deborah Franklin, Diane Hernandez, Karen Cordero Kaplan, Phil Lafontaine, Jane Liang, Carrie Roberts, Lily Roberts, Deb Sigman, Laura Watson	Present an update Common Core implementation, framework development and Smarter Balanced Assessment development activities.
February 21, 2014 **Provide update to State and Federal Program Directors**	**50 educators from across the state** **CDE/SBE Team:** Jessica Valdez	Provide an update on Smarter Balanced Assessment development activities

Dates/Events	Participants	Description
February 24, 2014 **Present to Latrobe Community meeting**	**40 parent and community members** **CDE/SBE Team:** Nancy Brownell	Provide an update on Common Core implementation and Smarter Balanced Field Test expectations.
February 26, 2014 **Present to Education Coalition (EDCO)**	**EDCO Liaisons** **CDE/SBE Team:** Jessica Valdez	Provide an update on the Smarter Balanced Assessment development activities.
February 27, 2014 **Present at Association of California Community College Administrators Conference**	**70 California Community College Administrators** **CDE/SBE Team:** Barbara Murchison	Present on the CCSS, California's implementation plan, and the role of community colleges in transforming the educational system in California.

California State Board of Education

Meeting Agenda Items for March 12-13, 2014

ITEM 18

CALIFORNIA STATE BOARD OF EDUCATION

MARCH 2014 AGENDA

SUBJECT	
2015 English Language Arts/English Language Development Instructional Materials Adoption: Approval of the draft Schedule of Significant Events (Timeline) and the draft Instructional Materials Reviewer and Content Review Expert Online Application.	☒ Action ☒ Information ☐ Public Hearing

SUMMARY OF THE ISSUE(S)

Senate Bill 201(Chapter 478, Statutes of 2013) authorizes the State Board of Education (SBE) to adopt instructional materials for kindergarten and grades one through eight (K–8), inclusive, that are aligned to both the *California Common Core State Standards for English Language Arts and Literacy in History/Social Studies, Science, and Technical Subjects* (CA CCSS ELA/Literacy) and the new *California English Language Development Standards* (CA ELD Standards) no later than November 30, 2015.

In accordance with statute and regulations, and as recommended by the Instructional Quality Commission (IQC), the SBE approval of the draft Timeline and the draft Instructional Materials Reviewer (IMR) and Content Review Expert (CRE) Online Application is required.

RECOMMENDATION

The California Department of Education (CDE) recommends that the SBE approve the draft Timeline and the draft IMR and CRE Online Application that will be used to recruit applicants to serve as reviewers during the 2015 English Language Arts/English Language Development Instructional Materials Adoption (ELA/ELD Adoption).

BRIEF HISTORY OF KEY ISSUES

SB 201 (Chapter 478, Statutes of 2013) authorizes the SBE to adopt instructional materials for K–8 inclusive, that are aligned with both the *CA CCSS ELA/Literacy* and the new CA ELD Standards by no later than November 30, 2015.

Assembly Bill (AB) X4 2 (Chapter 2, Statutes of 2009–10 Fourth Extraordinary Session) suspended the process and procedures for adopting instructional materials until the 2013–14 school year. SB 70 (Chapter 7, Statutes of 2011) extended that suspension until the 2015–16 school year.

SUMMARY OF PREVIOUS STATE BOARD OF EDUCATION DISCUSSION AND ACTION

November 2013: The IQC approved the draft Timeline and the draft IMR and CRE Online Application for the ELA/ELD Adoption.

October 2013: *Education Code* (*EC*) Section 60211 authorized the SBE to adopt basic instructional materials for (K-8) that are aligned to the CA CCSS for English/Literacy and the CA ELD Standards no later than November 30, 2015.

November 2012: The SBE approved the revised CA ELD Standards that are aligned with the CA CCSS for English/Literacy.

August 2010: The SBE adopted the Common Core State Standards for English Language Arts and Literacy in History/Social Studies, Science, and Technical Subjects, developed by the Common Core State Standards Initiative, as proposed by the California Academic Content Standards Commission (modified on March 13, 2013 per Senate Bill 1200, Statues of 2012).

FISCAL ANALYSIS (AS APPROPRIATE)

SB 201 requires the CDE, prior to conducting the ELA/ELD Adoption, to provide public notice to all publishers and manufacturers that they will be assessed a fee to offset the cost of conducting the adoption process. The CDE estimates that the cost of the upcoming ELA/ELD Adoption will be $350,000, exclusive of staff costs.

During the spring of 2015, the CDE will collect letters of intent to participate from publishers and manufacturers of ELA/ELD instructional materials. Thereafter, the CDE will assess fees that will be payable by these entities based upon the number of programs and grade levels that they indicate will be submitted. Following receipt of the assessed fees, the CDE will begin the process of associating costs via the Department's approved accounting systems process.

ATTACHMENT(S)

Attachment 1: 2015 English Language Arts/English Language Development Instructional Materials Adoption, Draft Schedule of Significant Events (1 Page)

Attachment 2: 2015 English Language Arts/English Language Development Instructional Materials Adoption, Draft Instructional Materials Reviewer and Content Review Expert Online Application (9 Pages)

Draft: 2015 English Language Arts/English Language Development Instructional Materials Adoption Schedule of Significant Events

Event	Date(s)
Instructional Quality Commission (IQC) approves reviewer application and Schedule of Significant Events (Timeline)	November 21–22, 2013
Survey of publisher interest	November 2013
State Board of Education (SBE) approves reviewer application and adoption Timeline	March 12–13, 2014
Recruitment of reviewers (at least 90 days per 5 *CCR* §9513)	April–August 2014
SBE action on IQC's recommended *ELA/ELD Framework,* includes public hearing	July 2014
IQC recommends reviewers to SBE	September 18–19, 2014
SBE appoints reviewers	November 13–14, 2014
IQC approves training materials (§9512h)	November 20–21, 2014
SBE approves training materials (§9512h)	January 2015
Invitation to Submit Meeting (Sacramento)	January 2015
Small publisher fee reduction requests due	February 2015
SBE takes action on publisher fee reduction requests	March 2015
Submission List for programs (and other forms) due	March 2015
Non-refundable publisher participation fees due	April 2015
Reviewer Training (2 sessions)	Session 1: April 13–17, 2015 Session 2: April 27–May 1, 2015
Publishers provide samples of instructional materials to reviewers and Learning Resource Display Centers	May 2015
Independent Review	April–July 2015
Reviewer Deliberations (2 sessions)	Session 1: July 13–17, 2015 Session 2: July 27–31, 2015
IQC holds public meeting to receive comment (5 *CCR* §9524(a))	August 2015
IQC makes recommendation	September 2015
SBE holds public hearing to receive comment (*Education Code* 60203 and 5 *CCR* §9524(b))	November 2015
SBE takes action on recommendation	November 2015

2015 English Language Arts/English Language Development Primary Adoption of Instructional Materials

DRAFT: Instructional Materials Reviewer and Content Review Expert Online Application

Applications must be received by 3 p.m. Thursday, August 7, 2014.

Senate Bill 201 (Chapter 478, Statutes of 2013) signed on October 3, 2013, allows the State Board of Education (SBE) to adopt instructional materials that are aligned to the *California Common Core State Standards for English Language Arts and Literacy in History/Social Studies, Science, and Technical Subjects* (*CA CCSS for ELA/Literacy*) and the *California English Language Development Standards* (*CA ELD Standards*).

The SBE and the State Superintendent of Public Instruction (SSPI) are seeking candidates to serve on review panels for the 2015 English Language Arts/English Language Development (ELA/ELD) Primary Adoption of Instructional Materials. Panel members will evaluate instructional materials for use in kindergarten and grades one through eight (K–8), inclusive, that are aligned with the *CA CCSS for ELA/Literacy* and the *CA ELD Standards*.

Each panel will consist of multiple instructional materials reviewers (IMRs) and at least one content review expert (CRE). As stated in regulation (*California Code of Regulations*, Title 5 (5 *CCR*) Section 9512):

> A majority of IMRs,… shall be teachers who teach students in kindergarten or grades 1–12 and have a “professional” credential under [California law],…and meet the definition of “highly qualified”…under federal law, and who have experience with, and expertise in, standards-based-educational programs and practices in the content field under consideration. At least one such teacher shall have experience in providing instruction to English Learners, and at least one such teacher shall have experience in providing instruction to students with disabilities.
>
> Other IMRs may be administrators, parents, local school board members, teachers not described above…and members of the public…CREs shall have a master’s degree or higher…and five or more years of experience with, and expertise in, standards-based educational programs and practices,… or…a doctoral degree and expertise in “research on how reading skills are acquired” as defined in *Education Code* (*EC*) Section 44757.5.

Panel members will attend a four-day training in Sacramento in one of two sessions in April 2015 (exact dates TBD). They will review ELA/ELD instructional materials independently at home, and will then reconvene in panels in one of two sessions for three to four days of deliberations and the preparation of a report to the SSPI in July 2015 (exact dates TBD). As specified in SB 201:

> …fees assessed…shall be budgeted as reimbursements and subject to review through the annual budget process, and may be used to pay any costs associated with the review of instructional materials, including reimbursement of substitute costs for teacher reviewers and may be used to cover stipends for content review experts.

Instructions:

- Answer all questions. An asterisk (*) denotes a required field.
- After answering all questions on a page, select the “Next” button.
- You must submit a résumé with your application on the last page.
- On the last page of the Application, select the “Preview” button.
- **On the next screen, review all of the responses, then, if accurate, select the “Submit” button on the bottom of the screen.**
- After you have submitted the Application, save your Confirmation ID provided on the next page. Select the “Print” button to obtain a hard copy. Select the “Download Application in pdf” button to download a pdf version of your application. Note that a copy of this application will be sent to your supervisor.

Personal Information

Salutations: (Mr. Ms. Mrs. Dr.–from drop down)
First Name:
Last Name:
MI:
Home Street Address:
Home City:
Home County:
Home State:
Home Zip Code:
Home Phone:
E-mail:

Employer’s Business Name:
Current Position Title:
Business Street Address:
Business City:
Business State:
Business Zip Code:

Position on the Panel:

Check one.

- o Reviewer
- o Content Review Expert ("Master's degree or higher…and 5 or more years of experience with, and expertise in, standards-based educational programs and practices, or…a doctoral degree and expertise in "research on how reading skills are acquired" as defined in *EC* Section 44757.5" is required)

Preference

Training Materials

- Print (Training materials will be provided in a 3" binder.)
- Digital (Training materials will be provided on a flash drive. Files will include Microsoft Word (97-2003 format), PDF, and JPG file formats. Reviewers will be responsible for providing their own laptop computer to use at the training.)

Instructional Materials to be Reviewed

- Print
- Digital

Technology

Technical Proficiency

- Expert
- Intermediate
- Novice

Computer Access

- PC
- Apple

Operating System

- Windows
- Mac OS X
- Ubuntu
- Android (Tablet)
- IOS (Tablet)
- Chrome
- Other

Do you have a broadband Internet connection?

- Yes
- No

Areas of Expertise:

Check the one that applies to your current position. Note that teachers must meet the requirements for a highly qualified teacher under the No Child Left Behind Act of 2001.

- o Administrator
- o Teacher in public school providing instruction to students in kindergarten or grades one to twelve.
- o Teacher in private school providing instruction to students in kindergarten or grades one to twelve.
- o Teacher not providing instruction to students in kindergarten or grades one to twelve (e.g., mentor teacher or certificated teacher employed by school districts or county offices of education who is not in a position that requires a service credential with a specialization in administrative services)
- o Parent
- o Community Member
- o School Board Member
- o College/University Instructor/Researcher
- o Self-Employed
- o Other Areas of Expertise

Describe Self-Employed Selection Above:

Describe Other Areas of Expertise:

Grade Levels of Expertise:

Check all that apply.

//MULTI CHOICE FOR {K,1–12, Other}

- o Other Grade Levels (e.g. university, college):

Years Teaching:

Experience Teaching English Learners:

Have you provided instruction to English learners? ☐ **No** ☐ **Yes**

If yes, at what grade levels and for how many years? List any specialized credential, certificate, or training in this area.

Highest Degrees/Certifications:

List your four highest academic degrees and/or certifications, including those specific to English language arts education, earned and the awarding institution. List your highest achievement first.

Degree/Certification #1:
Institution #1:

Degree/Certification #2:
Institution #2:

Degree/Certification #3:
Institution #3:

Degree/Certification #4:
Institution #4:

Knowledge of *Common Core State Standards for English and Literacy in History/Social Studies, Science, and Technical Subjects* (*CCSS for ELA/Literacy*):
Describe how the common core state standards in *CCSS for ELA/Literacy* might affect instruction and student learning (Use 2,000 characters or less).

Standards-Based Instruction Experience:
Describe a standards-based activity, lesson, or instructional unit that you have used or would use with a diverse student population, including students who are English learners, students with special needs, and students performing below and above grade level. Explain how you would assess the effectiveness of the instructional example (Use 2,000 characters or less).

Areas of Expertise and Leadership:
Describe how your education and experience prepare you to participate as a panel member. As part of your response, please describe your knowledge and use of the *CCSS for ELA/Literacy* and your experience providing effective instruction to all students, including English learners and special education students, developing curriculum or assessments, and serving as an instructional leader (Use 2,000 characters or less).

Previous Committee Experience: Have you ever served on a committee that was engaged in standards or curriculum development, or the review of instructional materials? If yes, briefly detail your experience (Use 1,000 characters or less).

Relationship with Publishers: Conflict of Interest Disclosure Statement
Your answers below will serve as the disclosure of certain information as required by the "Statement of Activities that are Inconsistent, Incompatible, or in Conflict with Duties of a Member of an Educational Policy Advisory Commission or a Committee or Panel Thereof,"

as amended January 1978, and 5 *CCR* Section 18600. Your answers will be the basis for an eligibility ruling in the event some activity appears to be inconsistent, incompatible, or in conflict with the duties assigned to the advisory framework committee.

For the questions below, “immediate family” is defined as your spouse and dependent children (*California Government Code* Section 82029).

[Add Yes/No/Uncertain radio buttons for questions 1–5]

Question 1:
Do you or a member of your immediate family have, or have you had, a business relationship at any time over the last twelve months with a publisher that produces instructional materials for California? If YES, list the company(-ies) that you have dealt with, and the amount (if any) of remuneration received (Use 1,000 characters or less).

Question 2:
Are you currently employed by or under contract to any person, firm, or organization which will do business with or submit instructional materials to the California Department of Education (CDE)? If YES or UNCERTAIN, please explain and provide as much detail as possible, including name of firm, nature of contract, dates of contract, and compensation (Use 1,000 characters or less).

Question 3:
Have you ever been employed by or had any other kind of contractual relationship with any person, firm, or organization doing business with, or submitting instructional materials to, the CDE? If YES or UNCERTAIN, please explain and provide as much detail as possible, including name of firm, nature of contract, dates of contract, and compensation (Use 1,000 characters or less).

Question 4:
Do you expect to receive any royalty payments during your period of service on the review panel? If YES or UNCERTAIN, please explain and provide as much detail as possible, including name of firm, nature of contract, dates of contract, and compensation (Use 1,000 characters or less).

Question 5:
Were you or any member of your immediate family an author, contributor, or editor of (or consultant on) any textbook, other curriculum material, or project proposal that is likely to be submitted to the CDE? If YES or UNCERTAIN, please explain and provide as much detail as possible, including name of firm, nature of contract, dates of contract, and compensation (Use 1,000 characters or less).

Question 6:
Have you received compensation, do you expect to receive compensation, or do you have any other kind of contractual relationship with any organization that is either a subsidiary, parent organization, or “sister organization” of any entity which will do business with your

advisory body or will submit materials to your advisory body? If YES or UNCERTAIN, please explain and provide as much detail as possible, including name of firm, nature of contract, dates of contract, and compensation (Use 1,000 characters or less).

Languages in which you are fluent (other than English)

Language 1:
Skill for Language 1:
- o Speak
- o Read
- o Write

Language 2:
Skill for Language 2:
- o Speak
- o Read
- o Write

Gender:
- o Male
- o Female

Ethnicity (optional):
Please select all that apply from below:
- o Hispanic/Latino
- o American Indian or Alaska Native
- o Asian
- o Black or African American
- o Native Hawaiian or Other Pacific Islander
- o White
- o Decline to state
- o Other _____

Applicant Acknowledgement/Certification

- o I understand that this application becomes public information when submitted. The answers to the questions under Relationship to Publisher: Conflict of Interest Disclosure Statement are true and correct to the best of my knowledge and belief. I and my supervisor are aware that while travel and per diem costs will be reimbursed at standard state rates, no stipend is provided to IMRs. I have discussed this application with my supervisor and have received approval for release time to participate in all related activities.

Supervisor/Employer Information

First Name:
Last Name:
Position Title:

Phone:
E-mail: (generates email message to employer)
When you submit your application form, a message will be automatically sent to the employer's email address you enter above.

> [sent from ELAAdoption@cde.ca.gov]
>
> Dear <First Name> <Last Name>,
>
> This message is being sent to notify you that <First Name> <Last Name> (<e-mail address>), a member of your staff, has submitted an application to participate as a panel member for the 2015 English Language Arts/English Language Development Primary Adoption of Instructional Materials. If appointed by the State Board of Education (SBE), the candidate is committing to attend a sequence of meetings and to perform a review of the materials as part of the adoption. Panel members will first participate in a four-day training session in April 2015 in Sacramento, then spend up to three months reviewing materials, returning to Sacramento in July 2015 for four to five days of deliberations. Travel and per diem costs are reimbursed at standard state rates, and any expenses incurred for substitute teachers will also be reimbursed to the reviewers agency.

Professional References
Please provide the names and contact information for at least one and up to three professional references.

First Name:
Last Name:
Position Title:
Institution:
Street Address:
City:
State:
Zip Code:
Phone:
E-mail:

First Name:
Last Name:
Position Title:Institution:
Street Address:
City:
State:
Zip Code:
Phone:
E-mail:

First Name:
Last Name:
Position Title:
Institution:
Street Address:
City:
State:
Zip Code:
Phone:
E-mail:

Upload a Résumé
Note: Please attach a current résumé as it relates to your educational background and experience in language arts and literacy education in K–12 and/or higher education. If you are a classroom teacher, list the classes you are currently teaching, the grade level(s), and the language of instruction, if other than English. Also, please indicate any specialized training you have had in ELA/ELD instruction in the past five years. Please limit your résumé to two or three pages and include your name on each page.

Please limit the size of the file to under 5 MB. This document will replace any previously uploaded résumé.

California Department of Education
Revised 10/22/2013
Posted November 2013

California State Board of Education

Meeting Agenda Items for March 12-13, 2014

ITEM 19

CALIFORNIA STATE BOARD OF EDUCATION

MARCH 2014 AGENDA

SUBJECT	
English Language Development Supplemental Instructional Materials Review: Approval of Recommended Supplemental Instructional Materials.	☒ Action ☒ Information ☐ Public Hearing

SUMMARY OF THE ISSUE(S)

Education Code (*EC*) Section 60605.87, created by Assembly Bill 1719 (Chapter 636, Statutes of 2012), requires the California Department of Education (CDE) to develop, and the State Board of Education (SBE) to approve, a list of English language development (ELD) supplemental instructional materials that are aligned with *California English Language Development Standards* (*CA ELD Standards*), adopted in November, 2012. The law requires the SBE to post the list of approved materials no later than May 2014.

RECOMMENDATION

The CDE recommends that the SBE approve the recommended ELD supplemental instructional materials listed on Attachment 1.

BRIEF HISTORY OF KEY ISSUES

In October 2011, Governor Edmund G. Brown, Jr. signed AB 124 into law, which requires that the State Superintendent of Public Instruction, in consultation with the SBE, update, revise, and align the *CA ELD Standards* to the adopted *California Common Core State Standards for English Language Arts and Literacy in History/Social Studies, Science, and Technical Subjects* (*CA CCSS for ELA/Literacy*).

In November 2012, the SBE adopted the *CA ELD Standards*.

AB 1719, signed by the Governor in 2012, called for ELD supplemental instructional materials that can provide a bridge between the 1999 *English-Language Development Standards for California Public Schools, Kindergarten Through Grade Twelve* and the newly revised *CA ELD Standards*, in a process that is consistent with the relevant elements of the English language arts supplemental instructional materials review

(SIMR). The legislation also called for ELD SIMR evaluation criteria that are based upon the evaluation criteria approved by the SBE pursuant to *EC* Section 60605.86(a).

In the summer and fall of 2013, teachers with expertise in literacy and in working with English learners performed their rigorous review utilizing the SBE approved evaluation criteria and subset of California English language development standards (CA ELD Standards). Of the 12 programs submitted, four have been recommended for approval. The eight programs that were not recommended did not address the requirements of the CA ELD Standards and the evaluation criteria and therefore could not provide the bridge to existing ELD materials as called for in the legislation.

SUMMARY OF PREVIOUS STATE BOARD OF EDUCATION DISCUSSION AND ACTION

May 2013: The SBE approved the list of ELD SIMR applicants in cohort 1 who were recommended for approval.

January 2013: The CDE presented to the SBE the fourth in a series of updates on the implementation of the Common Core State Standards (CCSS). The SBE approved the evaluation criteria for the ELD SIMR.

November 2012: The SBE approved the *CA ELD Standards* that are aligned with the *CA CCSS for ELA/Literacy*.

FISCAL ANALYSIS (AS APPROPRIATE)

AB 1719 directs the CDE to “use federal carryover funds received pursuant to Title I of the federal No Child Left Behind Act of 2001 (20 U.S.C. Sec. 6301 et seq.)” to carry out the ELD SIMR. The CDE has budgeted $500,000 from those funds to complete the project.

ATTACHMENT(S)

Attachment 1: 2013 English Language Development Supplemental Instructional Materials Review, Recommended Programs (1 Page).

2013 ENGLISH LANGUAGE DEVELOPMENT SUPPLEMENTAL INSTRUCTIONAL MATERIALS REVIEW RECOMMENDED PROGRAMS

Publisher	Program	Recommended Grades
Cengage Learning, Inc. d/b/a National Geographic Learning	Inside	6–8
Cengage Learning, Inc. d/b/a National Geographic Learning	Reach	K–5
Houghton Mifflin Harcourt	California on Our Way to English	K–5
WriteSteps, LLC	WriteSteps	K–5

ELD supplemental instructional materials are designed to supplement any previously SBE-adopted program that could provide a bridge between the 1999 *English-Language Development Standards for California Public Schools, Kindergarten Through Grade Twelve* and the newly revised *CA ELD Standards*.

The Reports of Findings for these programs and for a list of all programs submitted for this review are located on the CDE ELD SIMR Web page at http://www.cde.ca.gov/ci/cr/cf/eldsimr.asp.

California State Board of Education

Meeting Agenda Items for March 12-13, 2014

ITEM 20

CALIFORNIA STATE BOARD OF EDUCATION

MARCH 2014 AGENDA

SUBJECT	
PUBLIC COMMENT. Public Comment is invited on any matter **not** included on the printed agenda. Depending on the number of individuals wishing to address the State Board, the presiding officer may establish specific time limits on presentations.	☐ **Action** ☒ **Information** ☐ **Public Hearing**

SUMMARY OF THE ISSUE(S)

This is a standing item on the agenda, which allows the members of the public to address the board on any matter that is not included in this meeting's agenda.

RECOMMENDATION

Listen to public comment on matters not included on the agenda.

BRIEF HISTORY OF KEY ISSUES

Not applicable.

SUMMARY OF PREVIOUS STATE BOARD OF EDUCATION DISCUSSION AND ACTION

Not applicable.

FISCAL ANALYSIS (AS APPROPRIATE)

Not applicable.

ATTACHMENT(S)

Not applicable.

California State Board of Education

Meeting Agenda Items for March 12-13, 2014

ITEM 21

ITEM #21

CALIFORNIA STATE BOARD OF EDUCATION

MARCH 2014 AGENDA

SUBJECT	
Approval of the Charter School Numbers Assigned to Newly Established Charter Schools.	☒ Action ☒ Information ☐ Public Hearing

SUMMARY OF THE ISSUE(S)

The State Board of Education (SBE) is responsible for assigning a number to each approved charter petition. The California Department of Education (CDE) staff presents this routine request for assignment of charter numbers as a standard action item.

RECOMMENDATION

CDE recommends that the SBE assign charter numbers to the charter schools identified on the attached list.

BRIEF HISTORY OF KEY ISSUES

Since the charter school law was enacted in 1992, the SBE has assigned numbers to 1,630 charter schools, including some approved by the SBE after denial by local educational agencies. Separate from that numbering system, eight all-charter districts that currently serve a total of 18 school sites, have been jointly approved by the State Superintendent of Public Instruction and the SBE.

California *Education Code (EC)* Section 47602 requires the SBE to assign a number to a charter school that has been approved by a local entity in the chronological order in which it was received. Each number assigned shall correspond to a single petition that identifies a charter school that will operate within the geographic and site limitations of this part. Charter Schools that share educational programs and serve similar pupil populations may not be counted as separate schools. This numbering system ensures that the state stays within a statutory cap on the total number of charter schools authorized to operate within California. The cumulative statutory cap of the fiscal year 2013–14 is 1,750. The statutory cap is not subject to waiver.

The charter schools listed in Attachment 1 were recently approved by local boards of education as noted. Copies of the charter petitions are on file in the Charter Schools Division.

SUMMARY OF PREVIOUS STATE BOARD OF EDUCATION DISCUSSION AND ACTION

The SBE is responsible for assigning a number to each approved charter petition. CDE staff presents this routine request for assignment of charter numbers as a standard action item.

FISCAL ANALYSIS (AS APPROPRIATE)

There is no fiscal impact to the state resulting from the assignment of numbers to recently authorized charter schools.

ATTACHMENT(S)

Attachment 1: Assignment of Numbers for Charter School Petitions (1 page)

Assignment of Numbers for Charter School Petitions

Number	Charter Name	County	Authorizing Entity	Charter School Contact
1631	Academy of Arts and Sciences Fresno	Fresno	Orange Center School District	Sean McManus 900 A Hampshire Road Westlake Village, CA 91361
1632	EPIC Charter School	Alameda	Oakland Unified School District (USD)	Fabiola Harvey 303 Hegenberger Road, Suite 301 Oakland, CA 94621
1633	Elevate Elementary	San Diego	San Diego USD	Robert Ryan Elliott 10789 Tierrasanta Boulevard, Suite 109 San Diego, CA 92124
1634	Empower Charter School	San Diego	San Diego USD	Demetria Brown 1234 31st Street San Diego, CA 92102
1635	Kairos Public School Vacaville Academy	Solano	Vacaville USD	Jared Austin 607 Elmira Road #238 Vacaville, CA 95687
1636	SCALE Leadership Academy	Los Angeles	Acton-Agua Dulce USD	Lawrence Wynder 13089 Peyton Drive, #C452 Chino Hills, CA 91709
1637	Jefferson Charter Academy	Kings	Hanford Elementary School District	Javier Espindola 511 West Malone Street Hanford, CA 93230
1638	Renaissance Arts Academy K-12	Los Angeles	Acton-Agua Dulce USD	PK Candaux 1800 Colorado Boulevard Los Angeles, CA 90041
1639	Value Schools K-8 No. 2	Los Angeles	Los Angeles USD	Gerry Jacoby 860 Wilshire Place, Suite 315 Los Angeles, CA 90005
1640	Village Charter Academy	Los Angeles	Los Angeles USD	Diane Pritchard 5660 Valley Circle Boulevard Woodland Hills, CA 91367
1641	Clemente Charter School	Los Angeles	Los Angeles USD	Rachel Garfield 22250 Elkwood Street Canoga Park, CA 91304
1642	Global Education Academy 2	Los Angeles	Los Angeles USD	Roy Kim 1374 West 35th Street Los Angeles, CA 90007
1643	Resolute Academy	Los Angeles	Los Angeles USD	Natasha Barriga-Siperstein 7430 Arizona Avenue #18 Westchester, CA 90045

California State Board of Education

Meeting Agenda Items for March 12-13, 2014

ITEM 22

CALIFORNIA STATE BOARD OF EDUCATION

MARCH 2014 AGENDA

SUBJECT	
Consideration of Requests for Determination of Funding as Required for Nonclassroom-based Charter Schools Pursuant to California *Education Code* Sections 47612.5 and 47634.2, and Associated *California Code of Regulations,* Title 5.	☒ Action ☒ Information ☐ Public Hearing

SUMMARY OF THE ISSUE

California *Education Code* (*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 State Board of Education (SBE). The California Department of Education (CDE) reviews a charter school's determination of funding request and presents it for consideration to the Advisory Commission on Charter Schools (ACCS), pursuant to relevant *California Code of Regulations,* Title 5 (5 *CCR*).

RECOMMENDATION

The CDE recommends that the SBE approve the requests for funding determinations and the periods specified for the Nonclassroom-based charter schools as listed on Attachment 1.

Advisory Commission on Charter Schools Recommendation

The ACCS met on February 7, 2014, and voted unanimously to move the CDE's staff recommendation to the SBE for the determination of funding requests for the charter schools identified in Attachment 1.

BRIEF ANALYSIS OF THE ISSUE

Each of the Nonclassroom-based charter schools listed in Attachment 1 submitted a request to obtain a determination of full funding by the SBE to establish eligibility for receiving apportionment funding.

Pursuant to 5 *CCR* Section 11963.4(a), a Nonclassroom-based charter school may qualify for either seventy percent, eighty-five percent, 100 percent full funding, or they

could be denied. The CDE reviewed the charter schools' requests and has determined that all of these requests meet the criteria for a proposed recommendation of 100 percent based on the following criteria:

- Spend at least 40 percent of the school's public revenues on salaries and benefits for all employees who possess a valid teaching certificate.
- Spend at least 80 percent of all revenues on instruction and related services.
- The ratio of average daily attendance for independent study pupils to full-time certificated employees cannot exceed a pupil–teacher ratio of 25:1 or the pupil–teacher ratio of the largest unified school district in the county or counties in which the charter school operates.

5 *CCR* Section 11963.6(c) specifies that a determination of funding shall be for a minimum of two years and a maximum of five years in length.

5 *CCR* Section 11963.6(a) requires a determination of two years for a new charter school in its first year of operation.

EC Section 47612.5(d)(2) requires a determination of five years for a charter school that has achieved a rank of six or greater on the Academic Performance Index for the two years immediately prior to receiving a determination of funding.

SUMMARY OF PREVIOUS STATE BOARD OF EDUCATION DISCUSSION AND ACTION

The SBE is responsible for approving a determination of funding to establish eligibility for apportionment funding for charter schools that offer Nonclassroom-based instruction. The CDE notes that this request is a recurring action item for the SBE.

FISCAL ANALYSIS (AS APPROPRIATE)

If approved, the charter schools listed in Attachment 1 would receive apportionment funding under the Local Control Funding Formula model.

ATTACHMENT

Attachment 1: California Department of Education Proposed Determination of Funding Recommendation (4 Pages)

California Department of Education
Proposed Determination of Funding Recommendation

Proposed Recommendation–New Charter Schools

County- District-School Code	Charter Authorizer	County	Charter School	First Year of Operation	Charter Funding Request	CDE Proposed Recommendation
18-64162-6010763	Raven-Termo Elementary	Lassen	Long Valley Charter School	2013–14	100% for 2 Years	*100% for 2 Years (2013–14 thru 2014–15)
19-64469-0128736	Duarte USD	Los Angeles	Opportunities for Learning–Duarte	2013–14	100% for 2 Years	*100% for 2 Years (2013–14 thru 2014–15)
19-65169-0128728	Wiseburn Elementary	Los Angeles	Da Vinci Innovation Academy	2013–14	100% for 2 Years	*100% for 2 Years (2013–14 thru 2014–15)
31-66852-0127902	Newcastle Elementary	Placer	Squaw Valley Preparatory	2013–14	100% for 2 Years	*100% for 2 Years (2013–14 thru 2014–15)
31-66852-0128751	Newcastle Elementary	Placer	California Pacific Charter School-Newcastle	2013–14	100% for 2 Years	*100% for 2 Years (2013–14 thru 2014–15)
31-75085-0128561	Rocklin USD	Placer	Rocklin Independent Charter Academy	2013–14	100% for 2 Years	*100% for 2 Years (2013–14 thru 2014–15)

County- District-School Code	Charter Authorizer	County	Charter School	First Year of Operation	Charter Funding Request	CDE Proposed Recommendation
33-10330-0128397	Riverside County Office of Education	Riverside	Come Back Kids	2013-14	100% for 2 Years	*100% for 2 Years (2013–14 thru 2014–15)
36-67736-0128439	Helendale	San Bernardino	Empire Springs Charter School	2013–14	100% for 2 Years	*100% for 2 Years (2013–14 thru 2014–15)
37-67967-0128595	Alpine Union Elementary	San Diego	AEALAS Endeavour Academy	2013–14	100% for 2 Years	*100% for 2 Years (2013–14 thru 2014–15)
37-68031-0126110	Coronado USD	San Diego	Coronado Pathways Charter School	2013–14	100% for 2 Years	*100% for 2 Years (2013–14 thru 2014–15)
37-68049-0127167	Dehesa Elementary	San Diego	Community Montessori Charter School	2013–14	100% for 2 Years	*100% for 2 Years (2013–14 thru 2014–15)
37-68163-0128421	Julian Union Elementary	San Diego	Harbor Springs Charter School	2013–14	100% for 2 Years	*100% for 2 Years (2013–14 thru 2014–15)
37-68213-01270351	Mountain Empire USD	San Diego	AA & S El Cajon Elementary	2013–14	100% for 2 Years	*100% for 2 Years (2013–14 thru 2014–15)

County- District-School Code	Charter Authorizer	County	Charter School	First Year of Operation	Charter Funding Request	CDE Proposed Recommendation
37-68338-0128744	San Diego USD	San Diego	Laurel Preparatory Academy	2013–14	100% for 2 Years	*100% for 2 Years (2013–14 thru 2014–15)
42-69112-0127704	Blochman Union	Santa Barbara	Visions Academy Charter School	2013–14	100% for 2 Years	*100% for 2 Years (2013–14 thru 2014–15)
50-10504-0129023	Stanislaus County Office of Education	Stanislaus	Stanislaus Alternative Charter School	2013–14	100% for 2 Years	*100% for 2 Years (2013–14 thru 2014–15)
51-71415-0129007	Meridian	Sutter	California Virtual Academy @ Sutter	2013–14	100% for 2 Years	*100% for 2 Years (2013–14 thru 2014–15)

*– Pursuant to 5 *CCR* Section 11963.6(a), a funding determination for a charter school in its first year of operation shall be for two fiscal years.

Proposed Recommendation–Continuing Charter Schools

County- District-School Code	Charter Authorizer	County	Charter School	API Ranking Requirements Met?	Charter Funding Request	CDE Proposed Recommendation
29-10298-0126219	Nevada County Office of Education	Nevada	Forest Charter	No	100% for 5 Years	*100% for 3 Years (2014–15 thru 2016–17)
36-67587-0120592	Adelanto	San Bernardino	Alta Vista Public Charter	**N/A	100% for 4 Years	100% for 4 Years (2014–15 thru 2017–18)
44-69799-4430229	Pajaro Valley USD	Santa Cruz	Pacific Coast Charter	No	100% for 5 Years	*100% for 4 Years (2014–15 thru 2017–18)
45-69955-0121640	Cottonwood Union	Shasta	Cottonwood Creek Charter	Yes	100% for 5 Years	100% for 5 Years (2014–15 thru 2018–19)
58-72728-6115935	Camptonville USD	Yuba	Camptonville Academy	No	100% for 5 Years	*100% for 4 Years (2014–15 thru 2017–18)

*–*EC* Section 47612.5(d)(2) requires a determination of five years for a charter school that has achieved a rank of six or greater on the API for the two years (2011-12 and 2012-13) immediately prior to receiving a determination of funding.
**N/A: Not applicable to Funding Determination Request of less than five years.

California State Board of Education

Meeting Agenda Items for March 12-13, 2014

ITEM 23

CALIFORNIA STATE BOARD OF EDUCATION

MARCH 2014 AGENDA

SUBJECT	
Consideration of a "Reasonable Basis"/Mitigating Circumstances Request for Determination of Funding as Required for Nonclassroom-based Charter Schools Pursuant to California *Education Code* Sections 47612.5 and 47634.2, and Associated *California Code of Regulations,* Title 5.	☒ Action ☒ Information ☐ Public Hearing

SUMMARY OF THE ISSUE

California *Education Code* (*EC*) sections 47612.5 and 47634.2 specifies that a charter school may receive apportionment funding for Nonclassroom-based instruction only if a determination of funding is made by the State Board of Education (SBE). The California Department of Education (CDE) reviews a charter school's determination of funding request and presents it for consideration by the Advisory Commission on Charter Schools (ACCS), pursuant to relevant *California Code of Regulations Title 5 (5 CCR)*. The ACCS may include the consideration of mitigating circumstances in conjunction with a recommendation to the SBE.

The CDE received a funding determination request for full funding for four years from the Assurance Learning Academy (charter number 1458). The charter reported spending only 75.5 percent on instructional and related services (IRS). To qualify for full funding, at least 80 percent must be spent on IRS. The charter has requested a consideration of mitigating circumstances.

RECOMMENDATION

CDE recommends that the SBE accept Assurance Learning Academy's mitigating circumstances request and approve funding at 100 percent for a four-year period.

Advisory Commission on Charter Schools Recommendation

The ACCS met on February 7, 2014, and voted unanimously to move the CDE's staff recommendation to the SBE for a determination of funding for the Assurance Learning Academy at 100 percent for a four-year period specified in Attachment 1.

BRIEF ANALYSIS OF THE ISSUE

Pursuant to 5 *CCR*, Section 11963.4(a), a nonclassroom-based charter school may qualify for 70 percent, 85 percent, or 100 percent funding, or may be denied. To qualify for 100 percent funding, a nonclassroom-based charter school must meet the following criteria:

- At least 40 percent of the school's public revenues are to be spent on salaries and benefits for all employees who possess a valid teaching certificate.
- At least 80 percent of all revenues are to be spent on IRS.
- The ratio of average daily attendance for independent study pupils to full time certificated employees does not exceed a pupil to teacher ratio of 25:1.

However, 5 *CCR* Section 11963.4(e) allows the ACCS to find a "reasonable basis" (also referred to as mitigating circumstances) by which to make a recommendation other than one that results from the criteria specified in the regulations.

5 *CCR* Section 11963.6(c) specifies that a determination of funding shall be in increments of a minimum of two years and a maximum of five years in length. 5 *CCR* Section 11963.6(a) requires a determination of two years for a new charter school in its first year of operation. *EC* Section 47612.5(d)(2) require a determination of five years for a charter school that has achieved a rank of six or greater on the Academic Performance Index for the two years immediately prior to receiving a determination of funding. When making a recommendation for a funding determination, the CDE considers the number of years a charter school has been in operation and the number of years requested by a charter school.

5 *CCR* Section 11963.4(e) provides specific examples of the types of mitigating circumstances and for the ACCS to consider well documented "one-time or unique or exceptional circumstances." Mitigating circumstances described by a charter school in the funding determination process clarify and provide guidance as to whether or not a specific charter school meets the percentage requirements for a funding determination as expressed in 5 *CCR* Section 11963.4(a).

Pursuant to 5 *CCR* Section 11963.4(e):

> A reasonable basis for the ACCS to make a recommendation other than one that results from the criteria specified in subdivision (a) may include, but not be limited to, the following: the information provided by the charter school pursuant to paragraphs (2) through (8), inclusive, of subdivision (b) of Section 11963.3, documented data regarding individual circumstances of the charter school (e.g., one time or unique or exceptional expenses for facilities, acquisition of a school bus, acquisition and installation of computer hardware not related to the instructional program, special education charges levied on the charter school by a local educational agency, restricted state, federal, or private grants of funds awarded to the charter school that cannot be expended for teacher salaries, or

> contracted instructional services other than those for special education), the size of the charter school, and how many years the charter school has been in operation. The ACCS shall give charter schools with less than a total of one hundred units of prior year second period average daily attendance or that are in their first year of operation serious consideration of full funding.

Assurance Learning Academy is requesting a 100 percent determination of funding for four years (FY 2014–15 through 2017–18) with the consideration of the charter school's mitigating circumstances. The SBE previously approved for this charter school a 100 percent determination of funding for FYs 2012–13 through 2013–14.

The charter indicated that it was not able to meet the IRS minimum of 80 percent because it received a $225,000 federal grant too late in the fiscal year and was unable to spend the funds. For this reason, the charter school is requesting that the federal grant revenues be excluded in the IRS calculation. By omitting $225,000 in federal grant revenues, the charter school's IRS spending ratio would be at 83.3 percent.

The CDE administers the federal grant (Public Charter School Grant Program) in question and confirmed that the charter school was advanced $151,875 late in the fiscal year (May 2013). See Attachment 1 for details.

By excluding the federal grant revenues of $225,000, Assurance Learning Academy would have spent 83.29 percent on IRS. By including the $225,000 federal grant revenues, the IRS ratio would fall to 75.48 percent, which only qualifies the charter school for 85 percent funding.

The charter school said that it was not able to spend the federal grant funds by fiscal year end because funds were received too late in the fiscal year.

The CDE finds that the information submitted supports the charter school's mitigating circumstance. Assurance Learning Academy was advanced $151,875 late in the fiscal year, specifically in May 2013. The CDE accepts the validity of the charter school's mitigating circumstance.

SUMMARY OF PREVIOUS STATE BOARD OF EDUCATION DISCUSSION AND ACTION

The SBE is responsible for approving a determination of funding to establish eligibility for apportionment funding for charter schools that offer nonclassroom-based instruction. The CDE notes that this request is a recurring action item for the SBE.

FISCAL ANALYSIS (AS APPROPRIATE)

If approved, the charter schools listed in Attachment 1 would receive apportionment funding under the Local Control Funding Formula model.

ATTACHMENT

Attachment 1: California Department of Education Recommendation Determination of Funding (1 Page)

California Department of Education Recommendation Determination of Funding Fiscal Year 2014–15 through 2017–18

County-District-School Code	Charter Number and First Year of Operation	Charter Name	Spending on Certificated Staff	Spending on Instruction-al Related Services	Funding Determination and Years Requested by Charter School With Mitigating Circumstances	Funding Determination Without Mitigating Circumstances (5 *CCR* Section 11963.4)	CDE Recommendation Funding Determination and Years
19-75309-0127100	1458 2012–13	Assurance Learning Academy	42.86%	75.48%	100% 4 Years	85%	100% 4 Years*

California State Board of Education

Meeting Agenda Items for March 12-13, 2014

ITEM 24

CALIFORNIA STATE BOARD OF EDUCATION

MARCH 2014 AGENDA

SUBJECT	
Elementary and Secondary Education Act: Approval of Local Educational Agency Plans, Title I, Section 1112.	☒ Action ☒ Information ☐ Public Hearing

SUMMARY OF THE ISSUE(S)

The Elementary and Secondary Education Act (ESEA) provides federal funding that may be available to local educational agencies (LEAs) (defined as districts, county offices of education, and direct-funded charter schools) for a variety of programs. Currently, 24 direct-funded charter schools submitted an LEA Plan as part of the application for ESEA funding. California Department of Education (CDE) program staff review LEA Plans for compliance with the requirements of ESEA before recommending approval to the State Board of Education (SBE).

RECOMMENDATION

The CDE recommends that the SBE approve 24 direct-funded charter school LEA Plans, listed in Attachment 1.

BRIEF HISTORY OF KEY ISSUES

The federal ESEA Section 1112(e)(2) states that the state educational agency (SEA) shall approve an LEA's Plan if the SEA determines that the LEA's Plan is designed to enable its schools to substantially help children meet the academic standards expected for all children. As a requirement for receiving federal funding sub-grants for ESEA programs, the local school board and the SBE must approve the original LEA Plan. Subsequent approval of revisions to LEA Plans is made by the local school board and kept on file with the original LEA Plan. The LEA Plan includes specific descriptions and assurances as outlined in the provisions included in ESEA.

The purpose of the LEA Plan is to develop an integrated, coordinated set of actions that LEAs will take to ensure that they meet certain programmatic requirements, including student academic services designed to increase student achievement and performance, coordination of services, needs assessments, consultations, school choice, supplemental services, services to homeless students, and others as required.

CDE program staff review LEA Plans for compliance with the requirements of the ESEA including evaluation of goals and activities designed to improve student performance in reading and mathematics; improve programs for English learner students; improve professional development and ensure the provision of highly qualified teachers; ensure that school environments are safe, drug-free, and conducive to learning; and promote efforts regarding graduation rates, dropout prevention, and advanced placement. If an LEA Plan lacks the required information, CDE program staff works with the LEA to ensure the necessary information is included in the LEA Plan before recommending approval.

Following initial CDE review and SBE approval, all LEAs are expected to annually review their Plans and update them as necessary. Any changes to the LEA Plan must be approved by an LEA's local governing board.

SUMMARY OF PREVIOUS STATE BOARD OF EDUCATION DISCUSSION AND ACTION

Since the current LEA Plan process was developed in July 2003 as a requirement of the ESEA, the SBE has approved 1,715 LEA Plans.

FISCAL ANALYSIS (AS APPROPRIATE)

There is no fiscal impact to state operations.

ATTACHMENT(S)

Attachment 1: Direct-Funded Charter Schools Recommended for State Board of Education Approval (2 Pages)

Attachment 2: Academic Performance for Direct-Funded Charter Schools Recommended for State Board of Education Approval of Local Educational Agency Plans (8 Pages)

Direct-Funded Charter Schools Recommended for State Board of Education Approval

Local Educational Agency Name	County-District-School Code	Academic Performance Data
Academy of the Inland Empire	36-67876-0122572	See Attachment 2
Aspire College Academy	01-61259-0128413	None available; opened in August 2013
California Virtual Academy @Sutter	51-71414-0129007	None available; opened in August 2013
Citizens of the World 3	19-64667-0123174	None available; opened in September 2013
Connect Community Charter School	41-69005-0127282	None available; opened in August 2013
Da Vinci Design Charter High School	19-65169-0119636	See Attachment 2
Da Vinci Science Charter High School	19-65169-0119016	See Attachment 2
Environmental Charter Middle—Inglewood	19-10199-0127498	None available; opened in August 2013
Epiphany Preparatory Charter School	37-68338-0126151	None available; opened in September 2013
Equitas Academy Charter #2	19-64733-0126169	None available; opened in September 2013
Gateway International School	34-67447-0128124	None available; opened in August 2013
Global Education Academy Middle School	19-64733-0128116	None available; opened in September 2013
Hollister Prep School	35-67470-0127688	None available; opened in August 2013
Kepier Neighborhood School	10-62166-0127514	None available; opened in August 2013
Knowledge Enlightens You Academy	01-61192-0127696	None available; opened in September 2013
Laurel Preparatory Academy	37-68338-0128744	None available; opened in September 2013
Life Source International Charter	19-64667-0123174	See Attachment 2
Morrice Schaefer Charter School	49-70870-6109144	See Attachment 2
Olivet Elementary Charter School	49-70870-6066344	See Attachment 2

Direct-Funded Charter Schools Recommended for State Board of Education Approval (Cont.)

Local Educational Agency Name	County-District-School Code	Academic Performance Data
Student Empowerment Academy	19-64733-0112862	None available; opened in August 2013
Synergy School	07-76810-0125815	See Attachment 2
Urban Village Middle School	19-64733-0127951	None available; opened in August 2013
Visions Academy Charter	42-69112-0127704	None available; opened in July 2013
Woodland Polytechnic Academy	57-10579-0124305	See Attachment 2

Academic Performance for Direct-Funded Charter Schools Recommended for State Board of Education Approval of Local Educational Agency Plans

LEA Name: The Academy of the Inland Empire CDS CODE: 36-67876-0122572	Met All Adequate Yearly Progress (AYP) Criteria	English-Language Arts		Mathematics		Academic Performance Index (API)		
		Percent At or Above Proficient (88.9%)	Met 2013 AYP Criteria?	Percent At or Above Proficient (88.7%)	Met 2013 AYP Criteria?	2012 Base API	2013 Growth API	Met 2012–13 Growth API Targets***
Schoolwide	**No, met 5 of 9**	**16.7**	**Yes (SH)**	**14.1**	**No**	**479**	**503**	**Yes**
African American or Black (not of Hispanic origin)		0.0	**	0.0	**			
American Indian or Alaska Native		**	**	**	**			
Asian		**	**	**	**			
Filipino		--	--	--	--			
Hispanic or Latino		12.5	**11.5	**				
Native Hawaiian or Pacific Islander		--	--	--	--			
White (not of Hispanic origin)		63.6	**	45.5	**			
Two or More Races		--	--	--	--			
Socioeconomically Disadvantaged		21.1	**	24.2	**			
English Learners		**	**	**	**			
Students with Disabilities		**	**	**	**			

-- Indicates no data are available.

** Indicates AYP criteria are not applied because there are too few students in this subgroup to be numerically significant.

***Growth targets are 5 percent difference between the Base API and statewide target of 800. The 2013 API criteria for meeting federal AYP: a minimum “2013 Growth API” score of 740 OR “2012–13 Growth” of at least one point.

SH = Passed by safe harbor**:** The school, LEA, or student group met the criteria for safe harbor, which is an alternate method of meeting the percent proficient (AMO) if a school, an LEA, or a student group shows progress in moving students from scoring at the below proficient level to the proficient level.

Academic Performance for Direct-Funded Charter Schools Recommended for State Board of Education Approval of Local Educational Agency Plans

LEA Name: Da Vinci Design Charter High School CDS CODE: 19-65169-0119636	Met All Adequate Yearly Progress (AYP) Criteria	**English-Language Arts**		**Mathematics**		**Academic Performance Index (API)**		
		Percent At or Above Proficient (88.9%)	Met 2013 AYP Criteria?	Percent At or Above Proficient (88.7%)	Met 2013 AYP Criteria?	2012 Base API	2013 Growth API	Met 2012–13 Growth API Targets***
Schoolwide	**No, met 14 of 15**	**66.9**	**Yes (SH)**	**52.8**	**Yes (SH)**	**746**	**762**	**Yes**
African American or Black (not of Hispanic origin)		67.7	**	36.7	**			
American Indian or Alaska Native		--	--	--	--			
Asian		**	**	**	**			
Filipino		**	**	**	**			
Hispanic or Latino		62.3	No	53.7	Yes (SH)			
Native Hawaiian or Pacific Islander		**	**	**	**			
White (not of Hispanic origin)		70.8	**	57.1	**			
Two or More Races		**	**	**	**			
Socioeconomically Disadvantaged		55.8	Yes (SH)	44.3	Yes (SH)			
English Learners		**	**	**	**			
Students with Disabilities		29.4	**	17.6	**			

-- Indicates no data are available.

** Indicates AYP criteria are not applied because there are too few students in this subgroup to be numerically significant.

***Growth targets are 5 percent difference between the Base API and statewide target of 800. The 2013 API criteria for meeting federal AYP: a minimum “2013 Growth API” score of 740 OR “2012–13 Growth” of at least one point.

SH = Passed by safe harbor**:** The school, LEA, or student group met the criteria for safe harbor, which is an alternate method of meeting the percent proficient (AMO) if a school, an LEA, or a student group shows progress in moving students from scoring at the below proficient level to the proficient level.

Academic Performance for Direct-Funded Charter Schools Recommended for State Board of Education Approval of Local Educational Agency Plans

LEA Name: Da Vinci Science Charter High School CDS CODE: 19-65169-0119016	Met All Adequate Yearly Progress (AYP) Criteria	**English-Language Arts**		**Mathematics**		**Academic Performance Index (API)**		
		Percent At or Above Proficient (88.9%)	Met 2013 AYP Criteria?	Percent At or Above Proficient (88.7%)	Met 2013 AYP Criteria?	2012 Base API	2013 Growth API	Met 2012–13 Growth API Targets***
Schoolwide	**No, met 16 of 17**	**78.0**	**Yes (SH)**	**58.2**	**Yes (SH)**	**799**	**816**	**Yes**
African American or Black (not of Hispanic origin)		88.0	**	52.0	**			
American Indian or Alaska Native		**	**	**	**			
Asian		100.0	**	94.1	**			
Filipino		**	**	**	**			
Hispanic or Latino		76.8	Yes (SH)	58.3	Yes (SH)			
Native Hawaiian or Pacific Islander		**	**	**	**			
White (not of Hispanic origin)		76.1	Yes (SH)	53.4	No			
Two or More Races		66.7	**	55.6	**			
Socioeconomically Disadvantaged		77.8	Yes (SH)	63.4	Yes (SH)			
English Learners		**	**	**	**			
Students with Disabilities		51.7	**	34.5	**			

-- Indicates no data are available.

** Indicates AYP criteria are not applied because there are too few students in this subgroup to be numerically significant.

***Growth targets are 5 percent difference between the Base API and statewide target of 800. The 2013 API criteria for meeting federal AYP: a minimum “2013 Growth API” score of 740 OR “2012–13 Growth” of at least one point.

SH = Passed by safe harbor**:** The school, LEA, or student group met the criteria for safe harbor, which is an alternate method of meeting the percent proficient (AMO) if a school, an LEA, or a student group shows progress in moving students from scoring at the below proficient level to the proficient level.

Academic Performance for Direct-Funded Charter Schools Recommended for State Board of Education Approval of Local Educational Agency Plans

LEA Name: Life Source International Charter CDS CODE: 19-64667-0123174	Met All Adequate Yearly Progress (AYP) Criteria	English-Language Arts		Mathematics		Academic Performance Index (API)		
		Percent At or Above Proficient (89.2%)	Met 2013 AYP Criteria?	Percent At or Above Proficient (89.5%)	Met 2013 AYP Criteria?	2012 Base API	2013 Growth API	Met 2012–13 Growth API Targets***
Schoolwide	**No, met 8 of 17**	**28.0**	**No**	**34.1**	**No**	**725**	**682**	**No**
African American or Black (not of Hispanic origin)		22.2	No	23.8	No			
American Indian or Alaska Native		--	--	--	--			
Asian		--	--	--	--			
Filipino		**	**	**	**			
Hispanic or Latino		30.8	No	36.5	No			
Native Hawaiian or Pacific Islander		--	--	--	--			
White (not of Hispanic origin)		**	**	**	**			
Two or More Races		**	**	**	**			
Socioeconomically Disadvantaged		28.3	No	34.2	No			
English Learners		37.5	**	41.7	**			
Students with Disabilities		**	**	**	**			

-- Indicates no data are available.
** Indicates AYP criteria are not applied because there are too few students in this subgroup to be numerically significant.
***Growth targets are 5 percent difference between the Base API and statewide target of 800. The 2013 API criteria for meeting federal AYP: a minimum “2013 Growth API” score of 740 OR “2012–13 Growth” of at least one point.

Academic Performance for Direct-Funded Charter Schools Recommended for State Board of Education Approval of Local Educational Agency Plans

LEA Name: Morrice Schaefer Charter School CDS CODE: 49-70870-6109144	Met All Adequate Yearly Progress (AYP) Criteria	**English-Language Arts**		**Mathematics**		**Academic Performance Index (API)**		
		Percent At or Above Proficient (89.2%)	Met 2013 AYP Criteria?	Percent At or Above Proficient (89.5%)	Met 2013 AYP Criteria?	2012 Base API	2013 Growth API	Met 2012–13 Growth API Targets***
Schoolwide	**No, met 12 of 21**	**56.8**	**No**	**60.6**	**No**	**843**	**813**	**Yes**
African American or Black (not of Hispanic origin)		**	**	**	**			
American Indian or Alaska Native		**	**	**	**			
Asian		66.7	**	69.4	**			
Filipino		**	**	**	**			
Hispanic or Latino		52.9	No	56.5	Yes (SH)			
Native Hawaiian or Pacific Islander		**	**	**	**			
White (not of Hispanic origin)		62.4	No	67.0	No			
Two or More Races		**	**	**	**			
Socioeconomically Disadvantaged		50.3	No	56.7	No			
English Learners		51.2	No	56.7	No			
Students with Disabilities		21.7	**	20.8	**			

-- Indicates no data are available.

** Indicates AYP criteria are not applied because there are too few students in this subgroup to be numerically significant.

***Growth targets are 5 percent difference between the Base API and statewide target of 800. The 2013 API criteria for meeting federal AYP: a minimum “2013 Growth API” score of 740 OR “2012–13 Growth” of at least one point.

SH = Passed by safe harbor**:** The school, LEA, or student group met the criteria for safe harbor, which is an alternate method of meeting the percent proficient (AMO) if a school, an LEA, or a student group shows progress in moving students from scoring at the below proficient level to the proficient level.

Academic Performance for Direct-Funded Charter Schools Recommended for State Board of Education Approval of Local Educational Agency Plans

LEA Name: Olivet Elementary Charter School CDS CODE: 49-70870-6066344	Met All Adequate Yearly Progress (AYP) Criteria	English-Language Arts		Mathematics		Academic Performance Index (API)		
		Percent At or Above Proficient (89.2%)	Met 2013 AYP Criteria?	Percent At or Above Proficient (89.5%)	Met 2013 AYP Criteria?	2012 Base API	2013 Growth API	Met 2012–13 Growth API Targets***
Schoolwide	**No, met 13 of 21**	**51.1**	**No**	**57.6**	**No**	**781**	**779**	**Yes**
African American or Black (not of Hispanic origin)		45.5	**	**63.6	**			
American Indian or Alaska Native		**	**	**	**			
Asian		83.3	**	75.0	**			
Filipino		--	--	--	--			
Hispanic or Latino		41.2	Yes (SH)	48.0	Yes (SH)			
Native Hawaiian or Pacific Islander		**	**	**	**			
White (not of Hispanic origin)		57.0	No	64.5	No			
Two or More Races		**	**	**	**			
Socioeconomically Disadvantaged		40.4	No	45.6	No			
English Learners		43.8	No	47.9	No			
Students with Disabilities		27.8	**	22.2	**			

-- Indicates no data are available.

** Indicates AYP criteria are not applied because there are too few students in this subgroup to be numerically significant.

***Growth targets are 5 percent difference between the Base API and statewide target of 800. The 2013 API criteria for meeting federal AYP: a minimum “2013 Growth API” score of 740 OR “2012–13 Growth” of at least one point.

SH = Passed by safe harbor**:** The school, LEA, or student group met the criteria for safe harbor, which is an alternate method of meeting the percent proficient (AMO) if a school, an LEA, or a student group shows progress in moving students from scoring at the below proficient level to the proficient level.

Academic Performance for Direct-Funded Charter Schools Recommended for State Board of Education Approval of Local Educational Agency Plans

LEA Name: Synergy School CDS CODE: 07-76810-0125815	Met All Adequate Yearly Progress (AYP) Criteria	**English-Language Arts**		**Mathematics**		**Academic Performance Index (API)**		
		Percent At or Above Proficient (89.2%)	Met 2013 AYP Criteria?	Percent At or Above Proficient (89.5%)	Met 2013 AYP Criteria?	2012 Base API	2013 Growth API	Met 2012–13 Growth API Targets***
Schoolwide	**No, met 2 of 5**	**47.2**	**No**	**22.2**	**No**	**B**	**726**	**No**
African American or Black (not of Hispanic origin)		40.7	**	18.5	**			
American Indian or Alaska Native		--	--	--	--			
Asian		**	**	**	**			
Filipino		**	**	**	**			
Hispanic or Latino		48.3	**	17.2	**			
Native Hawaiian or Pacific Islander		**	**	**	**			
White (not of Hispanic origin)		**	**	**	**			
Two or More Races		**	**	**	**			
Socioeconomically Disadvantaged		38.0	**	18.0	**			
English Learners		**	**	**	**			
Students with Disabilities		**	**	**	**			

-- Indicates no data are available.
** Indicates AYP criteria are not applied because there are too few students in this subgroup to be numerically significant.
***Growth targets are 5 percent difference between the Base API and statewide target of 800. The 2013 API criteria for meeting federal AYP: a minimum “2013 Growth API” score of 740 OR “2012–13 Growth” of at least one point.
"B" means the school did not have a valid 2012 Base API and will not have any growth or target information.

Academic Performance for Direct-Funded Charter Schools Recommended for State Board of Education Approval of Local Educational Agency Plans

LEA Name: Woodland Polytechnic Academy CDS CODE: 57-10579-0124305	Met All Adequate Yearly Progress (AYP) Criteria	English-Language Arts		Mathematics		Academic Performance Index (API)		
		Percent At or Above Proficient (88.9%)	Met 2013 AYP Criteria?	Percent At or Above Proficient (88.7%)	Met 2013 AYP Criteria?	2012 Base API	2013 Growth API	Met 2012–13 Growth API Targets***
Schoolwide	**No, met 2 of 5**	**15.2**	**No**	**20.6**	**No**	**629**	**610**	**No**
African American or Black (not of Hispanic origin)		**	**	**	**			
American Indian or Alaska Native		--	--	--	--			
Asian		--	--	--	--			
Filipino		--	--	--	--			
Hispanic or Latino		10.5	**	15.8	**			
Native Hawaiian or Pacific Islander		--	--	--	--			
White (not of Hispanic origin)		16.7	**	25.0	**			
Two or More Races		**	**	**	**			
Socioeconomically Disadvantaged		0.0	**	9.1	**			
English Learners		**	**	**	**			
Students with Disabilities		**	**	**	**			

-- Indicates no data are available.
** Indicates AYP criteria are not applied because there are too few students in this subgroup to be numerically significant.
***Growth targets are 5 percent difference between the Base API and statewide target of 800. The 2013 API criteria for meeting federal AYP: a minimum “2013 Growth API” score of 740 OR “2012–13 Growth” of at least one point.

California State Board of Education

Meeting Agenda Items for March 12-13, 2014

ITEM 25

ITEM #25

CALIFORNIA STATE BOARD OF EDUCATION

MARCH 2014 AGENDA

SUBJECT	
Elementary and Secondary Education Act: Supplemental Educational Services Providers: Approval of Providers, Including Local Educational Agencies Identified for Improvement as Providers Based on a Waiver Granted Under Title I, Part A Section 9401 of the Elementary and Secondary Education Act to the 2014–16 State Board of Education-Approved Supplemental Educational Services Provider List.	☒ Action ☒ Information ☐ Public Hearing

SUMMARY OF THE ISSUE(S)

Section 1116(e)(4)(C) of the Elementary and Secondary Education Act (ESEA) requires the state educational agency (SEA) to develop and maintain a list of approved Supplemental Educational Services (SES) providers to provide services to eligible students.

RECOMMENDATION

The California Department of Education (CDE) recommends the State Board of Education (SBE) approve providers for a two-year period beginning July 1, 2014, through June 30, 2016, including local educational agencies (LEAs) identified for improvement or corrective action as SES providers based on the waiver granted by the U.S. Department of Education (ED). The summary list of providers recommended for approval is provided as Attachment 1. The summary list of LEAs identified for improvement recommended for approval is provided as Attachment 2.

BRIEF HISTORY OF KEY ISSUES

Title I, Part A Section 1116(e)(1) and (4) of the ESEA requires an SES provider be approved by the SBE before offering tutoring services to low-income students attending schools advancing to Program Improvement (PI) Year 2 and beyond. The CDE has established and maintained a list of SBE-approved SES providers since June 2003.

Title 34, *Code of Federal Regulations* (34 *CFR)* Section 200.47(b)(1)(iv)(A) and (B) prohibits an SEA from approving requests to provide SES services from LEAs identified for improvement or corrective action. However, the SEA may request a waiver of these provisions. A waiver request was submitted to the ED on August 26, 2013, and on November 19, 2013, the ED granted the request for a two-year period. The response letter from ED is provided as Attachment 3.

SUMMARY OF PREVIOUS STATE BOARD OF EDUCATION DISCUSSION AND ACTION

At its January 2014 meeting, the SBE removed 27 providers for failing to submit, correct and/or provide evidence of compliance for the 2012–13 Accountability Report. The total number of approved SES providers is currently 288.

At its July 2011 and January 2012 meetings, the SBE approved 21 PI LEAs based on an approved waiver of 34 *CFR* Section 200.47(b)(1)(iv)(A) and (B) granted for the 2011–12 school year.

At its January 2010 meeting, the SBE approved 14 PI LEAs based on an approved waiver for the 2009–10 school year.

FISCAL ANALYSIS (AS APPROPRIATE)

There is no fiscal impact to the state.

ATTACHMENT(S)

Attachment 1: California Department of Education Recommended 2014–16 Supplemental Educational Services Provider Applicant List (4 Pages)

Attachment 2: California Department of Education Recommended 2014–16 Program Improvement Local Educational Agencies Supplemental Educational Services Provider Applicant List (1 Page)

Attachment 3: November 19, 2013, letter from Deborah S. Delisle, Assistant Secretary, Office of Elementary and Secondary Education, U.S. Department of Education, approving the California Department of Education 's waiver request (2 Pages)

California Department of Education Recommended 2014–16 Supplemental Educational Services Provider Applicant List

Provider Name	English-Language Arts	Math	Science	English Learners (EL)	Students with Disabilities (SWD)	Online	Type of Entity
# 1 Academia de Servicio de Tutoria	X	X		X	X		For-profit agency
1 2 3 Success/Ventura County Office of Education	X	X		X	X		County Office of Education
1 to 1 Study Buddy Tutoring, Inc.	X	X		X	X		For-profit agency
60021st Century Staffing LLC	X	X		X	X		For-profit agency
A+ Educational Centers	X	X		X	X		For-profit agency
A Plus Tutorial Center	X	X		X	X		For-profit agency
Accuracy Temporary Services, DBA ATS Project Success	X	X		X	X	X	For-profit agency
Ace It! Tutoring Powered by Sylvan Learning – (Zoglin Inc.)	X	X		X	X	X	For-profit agency
Achieve Learning and Resource Center, Inc.	X	X	X	X	X		Non-profit agency
Adaptive Learning LLC	X	X		X	X	X	For-profit agency
Affluent Access	X	X		X	X	X	For-profit agency
All About Tutoring, LLC	X	X		X	X		For-profit agency
Animo Inc.	X	X		X			Non-profit agency
Applause Tutoring Service (Part of BIMS Ventures)	X	X		X	X		For-profit agency
Boys2Men Foundation Inc.	X	X		X	X		Non-profit agency
California Credentialed Tutors	X	X		X			Sole Proprietorship

Provider Name	English-Language Arts	Math	Science	English Learners (EL)	Students with Disabilities (SWD)	Online	Type of Entity
California Tutor Network dba The Learning Solution	X	X	X	X	X	X	For-profit agency
Carter, Reddy & Associates, Inc.	X	X		X	X		For-profit agency
Cullinan Education Center, Inc.	X	X		X	X		For-profit agency
Elevate Learning, LLC	X	X		X	X		For-profit agency
Elite Educational Services, LLC	X	X		X	X		For-profit agency
Empact Community Connections dba @Education Today	X	X		X	X		Non-profit agency
Foundation for Second Chances	X	X		X	X		For-profit agency
Future Stars Tutoring Services Center	X	X		X	X		For-profit agency
Gateway Educational Services	X	X		X	X		Non-profit agency
Healthy Families	X	X	X	X	X		For-profit agency
Inland Empire Learning Systems, Inc. DBA Sylvan Learning of Temecula	X	X		X	X		For-profit agency
Jump Into Math, JIM Enterprises, Inc.		X		X	X		For-profit agency
Jump Into Reading/JIR Enterprises, Inc.	X			X	X		For-profit agency
Keep Hope Alive Project	X	X		X	X		Non-profit agency
Kern County Superintendent of Schools	X	X		X	X		County Office of Education
Leading Edge Tutors Inc.	X	X		X	X		For-profit agency

Provider Name	English-Language Arts	Math	Science	English Learners (EL)	Students with Disabilities (SWD)	Online	Type of Entity
Live Oak Elementary School District	X	X		X	X		LEA not in Program Improvement
MAJICOO Tutoring	X	X		X	X	X	For-profit agency
Math Think Inc.		X		X	X		Non-profit agency
Milestones Family Learning Center	X	X		X	X		Non-profit agency
Moving Forward Education, DBA Girls Moving Forward, Boys Moving Forward	X	X		X	X		For-profit agency
Rocket Learning (DBA) Rocket Learning Partners, LLC (Legal Name)	X	X		X	X		For-profit agency
Spectrum Solutions LLC	X	X		X	X	X	Non-profit agency
Stephanie Rosales DBA: Coachella Valley Lighthouse	X	X		X	X		Sole Proprietorship
SubReady, Inc.	X	X		X	X		For-profit agency
Sullivan Learning Systems, Inc.	X			X	X	X	For-profit agency
Sure Prep Learning, LLC (DBA Sure Prep Learning)	X	X		X	X		For-profit agency
Sylvan Learning	X	X		X	X	X	For-profit agency
Teach-n-Tutor (DBA) Teach-n-Tutor, Inc. (legal name)	X	X		X	X		For-profit agency
The Stimulus Effect	X	X	X	X	X	X	For-profit agency
United Way of Santa Barbara County, Inc.	X			X			Non-profit agency

Provider Name	English-Language Arts	Math	Science	English Learners (EL)	Students with Disabilities (SWD)	Online	Type of Entity
Voice of Hope	X	X		X	X		Non-profit agency

California Department of Education Recommended 2014–16 Program Improvement Local Educational Agencies Supplemental Educational Services Provider Applicant List

Provider Name	English-Language Arts	Math	Science	English Learners (EL)	Students with Disabilities (SWD)	Online	Type of Entity
Berkeley Unified School District – BUILD	X			X	X		LEA in Program Improvement
Earlimart Elementary School District	X	X		X	X		LEA in Program Improvement
Hanford Elementary School District	X	X		X	X		LEA in Program Improvement
Hollister School District	X			X	X		LEA in Program Improvement
Hueneme Elementary School District		X		X	X	X	LEA in Program Improvement
Konocti Unified School District	X			X	X		LEA in Program Improvement
Los Angeles Unified School District – Beyond the Bell Tutoring	X	X		X	X		LEA in Program Improvement
Merced City School District	X			X	X		LEA in Program Improvement
Twin Rivers Unified School District	X	X		X	X		LEA in Program Improvement
Yucaipa-Calimesa Joint Unified School District	X			X	X		LEA in Program Improvement

This is the official scanned version of Item 25 Attachment 3 from the California State Board of Education (SBE) Meeting Agenda for March 2014 posted at http://www.cde.ca.gov/be/ag/ag/yr14/agenda201403.asp.

An accessible version of the contents of this document is located at http://www.cde.ca.gov/be/ag/ag/yr14/mar14item25a3aav.asp

The scanned document starts following this initial page.

UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF ELEMENTARY AND SECONDARY EDUCATION

NOV 19 2013

The Honorable Michael W. Kirst
President
California State Board of Education

The Honorable Tom Torlakson
State Superintendent of Public Instruction
California Department of Education

1430 N Street
Sacramento, CA 95814

Dear President Kirst and Superintendent Torlakson:

I am writing in response to the California Department of Education's (CDE) request to waive certain statutory and regulatory requirements of Title I, Part A of the Elementary and Secondary Education Act of 1965, as amended. After reviewing the CDE's request, I am pleased to grant the following waiver:

- Approving schools and local educational agencies (LEAs) identified for improvement, corrective action, or restructuring as supplemental educational services (SES) providers. I am granting a two-year waiver of 34 C.F.R. § 200.47(b)(1)(iv)(A) and (B) to permit CDE to approve a school or LEA identified for improvement, corrective action, or restructuring to serve as an SES provider for the 2014–15 and 2015–16 school years.

This waiver is granted on the condition that CDE will satisfy the condition detailed in the enclosure to this letter, including the requirement to report certain information about the use of the waiver to the U.S. Department of Education by September 30, 2016. Please be sure to review the enclosure carefully.

I appreciate the work you are doing to improve California's lowest-performing schools and to provide a high-quality education for all of its students. If you have any questions, the contact in my office is Matthew Stern: matthew.stern@ed.gov or (202) 453-6451.

Sincerely,

Deborah S. Delisle
Assistant Secretary

Enclosure

cc: Ms. Christine Swenson

CONDITIONS ON TITLE I, PART A WAIVERS

Approving schools and LEAs identified for improvement, corrective action, or restructuring as supplemental educational services (SES) providers (34 C.F.R. § 200.47(b)(1)(iv)(A) and (B))
This waiver is granted on the condition that CDE will submit to the U.S. Department of Education, by September 30, 2016, a report that includes:

- The total number of LEAs identified for improvement or corrective action that were approved to be an SES provider for the 2014–2016 school years; and
- The total number of schools identified for improvement, corrective action, or restructuring that were approved to be an SES provider for the 2014–2016 school years

AAV of Item 25 Attachment 3

Accessible Alternative Version (AAV) of Item 25 Attachment 3 for the March 2014 SBE Meeting Agenda.

This page is the Accessible Alternative Version (AAV) of Item 25 Attachment 3 from the California State Board of Education (SBE) Meeting Agenda for March 2014. The scanned Item 25 Attachment 3 (PDF) version is considered to be the official version of the document.

UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF ELEMENTARY AND SECONDARY EDUCATION

November 19, 2013

The Honorable Michael W. Kirst
President
California State Board of Education

The Honorable Tom Torlakson
State Superintendent of Public Instruction
California Department of Education

1430 N Street
Sacramento, CA 95814

Dear President Kirst and Superintendent Torlakson:

I am writing in response to the California Department of Education's (CDE) request to waive certain statutory and regulatory requirements of Title I, Part A of the Elementary and Secondary Education Act of 1965, as amended. After reviewing the CDE's request, I am pleased to grant the following waiver:

- **Approving schools and local educational agencies (LEAs) identified for improvement, corrective action, or restructuring as supplemental educational services (SES) providers.** I am granting a two-year waiver of 34 C.F.R. § 200.47(b)(1)(iv)(A) and (B) to permit the CDE to approve a school or LEA identified for improvement, corrective action, or restructuring to serve as an SES provider for the 2014–15 and 2015–16 school years.

This waiver is granted on the condition that CDE will satisfy the condition detailed in the enclosure to this letter, including the requirement to report certain information about the use of the waiver to the U.S. Department of Education by September 30, 2016. Please be sure to review the enclosure carefully.

I appreciate the work you are doing to improve California's lowest-performing schools and to provide a high-quality education for all its students. If you have any questions, the contact in my office is Matthew Stern: matthew.stern@ed.gov or 202-453-6451.

Sincerely,

/s/

Deborah S. Delisle
Assistant Secretary

Enclosure

cc: Ms. Christine Swenson

CONDITIONS ON TITLE 1, PART A WAIVERS

Approving schools and LEAs identified for improvement, corrective action, or restructuring as supplemental educational services (SES) providers (34 C.F.R. § 200.47(b)(1)(iv)(A) and (B)). This waiver is granted on the condition that CDE will submit to the U.S. Department of Education, by September 30, 2016, a report that includes:

- The total number of LEAs identified for improvement or corrective action that were approved to be an SES provider for the 2014–2016 school years; and
- The total number of schools identified for improvement, corrective action, or restructuring that were approved to be an SES provider for the 2014–2016 school years

California State Board of Education

Meeting Agenda Items for March 12-13, 2014

ITEM 26

CALIFORNIA STATE BOARD OF EDUCATION

MARCH 2014 AGENDA

SUBJECT	
Elementary and Secondary Education Act: School Improvement Grant: Renewal of Sub-grants Under Section 1003(g) for Year 3 of Cohort 2 Local Educational Agencies and Schools.	☒ Action ☒ Information ☐ Public Hearing

SUMMARY OF THE ISSUE(S)

Renewal of Funding for Year 3 of Cohort 2

Continuation of Cohort 2 funding is contingent on each Cohort 2 School Improvement Grant (SIG) local educational agency (LEA) meeting annual goals established by the LEA for student achievement or making progress on the leading indicators described in the U.S. Department of Education (ED) SIG Final Requirements. According to SIG Federal Guidance, Question I-16, the California Department of Education (CDE) "has discretion to examine factors such as the school's progress on the leading indicators in Section III of the [ED SIG] final requirements or the fidelity with which it is implementing the model in deciding whether to renew the LEAs SIG grant with respect to that school."

In lieu of the Standardized Testing and Reporting (STAR) program scores, LEAs and schools must use multiple local measures to evaluate how SIG goals are being met. These local measures may include, but are not limited to, the following: district English language arts (ELA), math, and other subject benchmark assessments; curriculum-imbedded assessments; performance measures imbedded in supplemental technology-based instructional programs and applications; local pilot measures for Common Core State Standards being implemented in classrooms; and other valid and reliable assessments of reading acquisition skills, writing skills, and math skills, and meaningful performance assessments of student learning. This may include other state assessments, where available, such as the Smarter Balanced interim assessments, when available.

Fiscal year 2014–15 will be the third year of SIG funding for Cohort 2 SIG LEAs. The CDE will conditionally award Grant Award Notifications (GAN) to LEAs listed in Attachment 1 on July 1, 2014, with the assurance that the LEA will submit a complete Renewal Application indicating progress in meeting annual goals established by the LEA for student achievement in reading/language arts and mathematics or making progress on the leading indicators described in the ED SIG Final Requirements. LEAs that do not submit a complete 2014–15 Renewal Application will be recommended to

the State Board of Education (SBE) at its November 2014 meeting for termination from the SIG program.

RECOMMENDATION

The CDE recommends that the SBE authorize SBE President Michael W. Kirst, in consultation with State Superintendent of Public Instruction (SSPI) Tom Torlakson, to approve Year 3 sub-grants for Cohort 2 SIG LEAs, with funding contingent on the LEA submitting a complete Renewal Application indicating progress in meeting annual goals established by the LEA for student achievement in reading/language arts and mathematics or making progress on the leading indicators described in Section III of the ED SIG Final Requirements. The list of Cohort 2 LEAs and schools conditionally recommended for Year 3 sub-grants is provided as Attachment 1. The Cohort 2 Year 3 LEA Renewal Application is provided as Attachment 2.

BRIEF HISTORY OF KEY ISSUES

Renewal of Funding for Year 2 of Cohort 2

Each participating SIG LEA is required to establish clear and measurable goals for student achievement. Subsequently, the LEA must monitor each Tier I and Tier II school that receives SIG funds to determine whether the school is meeting its annual goals and is making progress on the leading indicators described in Section III of the ED SIG Final Requirements. Please visit the ED SIG Final Requirements-Federal Register Notice at http://www2.ed.gov/programs/sif/2010-27313.pdf.

In deciding whether to renew an LEAs SIG, the CDE is required to review annually the LEAs progress on meeting its annual school goals for student achievement and its progress on the leading indicators for each of its Tier I and Tier II schools. According to SIG Federal Guidance, Question I-16, the CDE “has discretion to examine factors such as the school’s progress on the leading indicators in Section III of the [ED SIG] final requirements or the fidelity with which it is implementing the model in deciding whether to renew the LEAs SIG grant with respect to that school.” In cases in which one or more of the schools served in an LEA are not meeting their improvement goals, the LEAs sub-grant will be considered for a reduction equivalent to the annual award for non-achieving schools with the intent that the schools no longer receive funds.

SUMMARY OF PREVIOUS STATE BOARD OF EDUCATION DISCUSSION AND ACTION

At its March 2013 meeting, the SBE conditionally approved the CDE to issue GANs to SIG LEAs on July 1, 2013, with the assurance that the LEA would submit a complete 2013–14 Renewal Application indicating progress in meeting annual goals established by the LEA for student achievement in reading/language arts and mathematics or making progress on the leading indicators described in the ED SIG Final Requirements once state assessment data was available.

FISCAL ANALYSIS (AS APPROPRIATE)

SIG funds provide LEAs with grants ranging from $50,000 to $2 million per year per school for up to three years. A maximum of $63 million is available under Section 1003(g) for fiscal year (FY) 2012.

ATTACHMENT(S)

Attachment 1: The Cohort 2 Local Educational Agencies and Schools Conditionally Recommended for Year 3 Renewal of School Improvement Grant Sub-grants (2 Pages)

Attachment 2: School Improvement Grant Cohort 2 Year 3 2014–15 Renewal Application (21 Pages)

The Cohort 2 Local Educational Agencies and Schools Conditionally Recommended for Year 3 Renewal of School Improvement Grant Sub-grants

Region	Charter	LEA / School	Tier	Model	Year 3 Request
1		**Bellevue Union Elementary**			$274,908.00
	Yes	Kawana Elementary	I	Restart	$1,560,092.00
					$1,835,000.00
11		**Inglewood Unified**			$1,249,538.00
		Crozier (George W.) Middle	II	Transformation	$1,887,425.00
		Lane (Warren) Elementary	I	Transformation	$1,108,864.00
		Monroe (Albert F.) Middle	II	Transformation	$1,882,061.00
					$6,000,000.00*
11		**Los Angeles Unified**			$1,520,568.00
	Yes	Animo Charter Middle No. 3	I	Restart	$728,269.00
	Yes	Animo Charter Middle No. 4	I	Restart	$728,269.00
		Belmont Senior High	I	Transformation	$1,949,977.00
		Charles Drew Middle	I	Transformation	$1,818,420.00
		Crenshaw Senior High	I	Transformation	$1,801,813.00
		East Valley Senior High	I	Transformation	$1,792,927.00
		George Washington Preparatory High	I	Restart	$1,924,056.00
		Henry T. Gage Middle	I	Transformation	$1,920,000.00
		John Muir Middle	I	Transformation	$1,950,000.00
		Manual Arts Senior High	I	Turnaround	$1,950,000.00
		South East High	II	Transformation	$1,944,000.00
		William Jefferson Clinton Middle	I	Turnaround	$1,943,000.00
					$21,971,299.00
11		**Lynwood Unified**			$457,124.00
		Lynwood High	I	Transformation	$1,781,310.00
		Lynwood Middle	I	Transformation	$1,090,429.00
					$3,328,863.00
6		**Modesto City Elementary**			$129,464.00
		Robertson Road Elementary	I	Transformation	$1,155,925.00
					$1,285,389.00
4		**Mt. Diablo Unified**			$700,842.00
		Meadow Homes Elementary	I	Transformation	$2,000,000.00
		Oak Grove Middle	I	Transformation	$1,394,520.00
					$4,000,000.00*
5		**North Monterey County Unified**			$253,330.00
		Castroville Elementary	I	Transformation	$1,278,973.00
					$1,532,303.00

The Cohort 2 Local Educational Agencies and Schools Conditionally Recommended for Year 3 Renewal of School Improvement Grant Sub-grants

Region	Charter	LEA / School	Tier	Model	Year 3 Request
4		**Oakland Unified**			$694,796.00
		Alliance Academy	I	Transformation	$1,145,921.00
		ROOTS International Academy	I	Transformation	$1,145,921.00
					$2,986,638.00
5		**Pajaro Valley Unified**			$660,320.00
		E. A. Hall Middle	II	Transformation	$921,029.00
		Watsonville High	II	Transformation	$1,883,444.00
					$3,464,793.00
7		**Parlier Unified**			$326,138.00
		John C Martinez Elementary	I	Turnaround	$1,345,409.00
		Parlier Junior High	I	Transformation	$1,345,494.00
					$3,017,041.00
3		**Sacramento City Unified**			$87,810.00
		Oak Ridge Elementary	I	Turnaround	$1,326,443.00
					$1,414,253.00
6		**Stockton Unified**			$511,598.00
		Harrison Elementary	I	Transformation	$1,687,384.00
		John C. Fremont Elementary	I	Transformation	$1,817,944.00
	Yes	Nightingale Elementary	I	Restart	$1,728,402.00
	Yes	Richard A. Pittman Elementary	I	Restart	$1,563,938.00
		Roosevelt Elementary	I	Transformation	$1,421,934.00
		Taylor Leadership Academy	I	Turnaround	$1,538,477.00
		Wilhelmina Henry Elementary	I	Transformation	$1,929,815.00
					$12,199,492.00
7		**Visalia Unified**			$65,470.00
		Highland Elementary	I	Turnaround	$932,626.00
					$998,096.00
4		**West Contra Costa Unified**			$256,288.00
		De Anza Senior High	II	Turnaround	$1,912,957.00
		Helms Middle	II	Turnaround	$1,847,201.00
					$4,000,000.00*

* Total request amounts exceed maximum award and must be reduced in the Year 3 Renewal Application.

School Improvement Grant
Cohort 2, Year 3

2014–15
Renewal Application

Renewal Applications must be received by the California Department of Education (CDE) no later than July 1, 2014

California Department of Education
Improvement and Accountability Division
School Turnaround Office
California Department of Education
1430 N Street, Suite 6208
Sacramento, CA 95814-5901
916-319-0833
http://www.cde.ca.gov/sp/sw/t1/sig09.asp

Table of Contents

Timeline 3
School Improvement Grant Renewal Process 4
A. Background 4
B. Purpose 4
C. Renewal of Funding 4
D. Renewal Application Submission 5
E. Grant Awards and Payments 5
SIG Form 1—Renewal Application Cover Sheet 7
SIG Form 2—Signatures and Approvals 8
SIG Form 3—Grant Contact Information 9
SIG Form 4a—Instructions for Annual Student Achievement Goals 10
SIG Form 4.1—Annual Student Achievement Goals in English Language Arts 11
SIG Form 4.2—Annual Student Achievement Goals in Math 12
SIG Form 5—Program Evaluation of SIG Required Components 13
SIG Form 6—Evaluation and Reward Systems (Transformation Schools Only) 14
SIG Form 10—Revised Implementation Chart(s) 15
SIG Renewal Application Checklist 17
Appendix A—General Assurances 18
Appendix B—Sub-grant Conditions and Assurances 19

Timeline

Important Events	Due Date
Present School Improvement Grant (SIG) Renewal Application to State Board of Education (SBE) for approval	March 12–13, 2014
SIG Cohort 2, Year 3 Renewal Application Posted to SIG Web site	March 31, 2014*
Grant Award Notifications (GAN) sent with assurance to submit SIG Renewal Application	July 1, 2014
SIG Renewal Application due by mail and e-mail	July 1, 2014

*Pending SBE Approval

Reminders:

1. Check the name of the school district superintendent in the local educational agency (LEA) using the database on the CDE California School Directory Web page at http://www.cde.ca.gov/re/sd/index.asp and update if there are changes.

2. To obtain the National Council on Education Statistics (NCES) Identification Number, the LEA can search for a school by using the following link at http://nces.ed.gov/globallocator/.

Mail an original copy of this renewal request to:

California Department of Education
Improvement and Accountability Division
School Turnaround Office
1430 N Street, Suite 6208
Sacramento, CA 95814-5901

E-Mail a copy of this renewal request to: STO@cde.ca.gov

School Improvement Grant Renewal Process

A. Background

The Elementary and Secondary Education Act (ESEA), through use of Section 1003(g) funding, authorizes the U.S. Department of Education (ED) to issue school improvement funds to states. The California Department of Education (CDE) awards school improvement sub-grants to local educational agencies (LEAs) with persistently lowest-achieving Title I schools and to LEAs with persistently lowest-achieving secondary schools that are eligible for, but do not receive, Title I funds.

The purpose of the school improvement grant (SIG) is to enable eligible LEAs to implement selected intervention models in identified persistently lowest-achieving schools to raise academic achievement levels of students attending these schools. An LEA that has been identified with one or more persistently lowest-achieving schools is eligible to apply for SIG funds. An LEA that wishes to receive a SIG must implement one of four school intervention models: turnaround, restart, school closure, and transformation. These models are to be implemented at the beginning of the school year and throughout the term of the grant period.

B. Purpose

Continuation of Cohort 2 funding is contingent on each Cohort 2 SIG LEA meeting annual goals established by the LEA for student achievement in both reading/language arts and mathematics and making progress on the leading indicators described in the final requirements. In addition, the CDE has discretion to examine factors such as the fidelity with which it is implementing the model in deciding whether to renew the LEAs SIG grant with respect to a particular SIG school.

C. Renewal of Funding

The CDE will consider the following factors annually in determining whether to recommend to the SBE that the LEAs SIG sub-grant, in whole or in part, be renewed:

- LEA Progress on Annual School Achievement Goals

In cases in which one or more of the schools served in an LEA are not meeting their improvement goals, the LEAs sub-grant will be considered for a reduction equivalent to the annual award for the non-achieving school(s) with the intent that the school(s) no longer receive(s) funding.

- LEA Progress on SIG Plan Implementation

For each participating school, the LEA must describe the actions and activities required to implement the selected intervention model, including a timeline with specific dates of implementation. The LEA must regularly report progress on these actions and activities. The CDE will annually evaluate whether the LEA has made sufficient progress on the implementation of each school's plan. In cases in which the LEA has not made sufficient progress, the LEAs sub-grant will be considered for a reduction equivalent to the annual award for the non-achieving school(s) with the intent that the school(s) no longer receive(s) funding.

D. Renewal Application Submission

The SIG Renewal Application is due on or before July 1, 2014. **If forms are incomplete or late, the SIG grant may not be renewed**.

Applicants must submit an original and one electronic Microsoft Word 2003 or later copy (all single spaced in **12 point Arial font using one inch margins**) of each application and ensure that the original and electronic copy are received by the School Turnaround Office on or before (not postmarked by) 4 p.m., July 1, 2014. Applicants must submit an electronic copy to STO@cde.ca.gov. Mailed documents must arrive on or before the July 1, 2014, deadline and should be sent to the following address:

California Department of Education
Improvement and Accountability Division
School Turnaround Office
1430 N Street, Suite 6208
Sacramento, CA 95814-5901

To comply with Federal Americans with Disability Act (ADA) Regulations, please adhere to the following guidelines:

- Submit text-based documents only (no scanned images)
- If images are included, also include alternative text for that image
- Do not use color to convey information
- Do not include images of handwritten signatures for privacy reasons

E. Grant Awards and Payments

Under the provisions of the SIG authorized under Section 1003(g) of Title I of ESEA of 1965, as amended ([75 FR 66363] October 28, 2010), the SIG Program grant is a three-year grant awarded in three one-year increments. Once the CDE approves grant awards for renewal for 2014–15, the grant period will run from July 1, 2014, through September 30, 2015.

Grant payments will be subject to fulfillment of all reporting requirements.

Additional program and fiscal information related to the SIG Program can be found online on the CDE School Improvement Grant Program Web page at http://www.cde.ca.gov/sp/sw/t1/sig09.asp.

SIG Form 1—Renewal Application Cover Sheet

School Improvement Grant (SIG)
Renewal Application

RENEWAL APPLICATION RECEIPT DEADLINE
July 1, 2014

Submit to:
California Department of Education
Improvement and Accountability Division
School Turnaround Office
1430 N Street, Suite 6208
Sacramento, CA 95814-5901

NOTE: Please print or type all information.

County Name		**County/District Code**
Local Educational Agency (LEA) Name		**LEA NCES Number**
LEA Address		**Total Grant Amount Requested**
City	**Zip Code**	
Name of Primary Grant Contact	**Grant Contact Title**	
Telephone Number	**Fax Number**	**E-mail Address**
CERTIFICATION/ASSURANCE SECTION: As the duly authorized representative of the applicant, I have read all assurances, certifications, terms, and conditions associated with the federal SIG program; and I agree to comply with all requirements as a condition of funding. I certify that all applicable state and federal rules and regulations will be observed and that to the best of my knowledge, the information contained in this application is correct and complete.		
Printed Name of Superintendent or Designee		**Telephone Number**
Superintendent or Designee Signature (Blue Ink)		**Date**

SIG Form 2—Signatures and Approvals

School District Approval: The superintendent, or designee, at each school district involved in the renewal application must sign.

School District Name	Printed Name of Superintendent	Signature of Superintendent

School Principal Approval: The principal of each school site involved in the renewal application must sign.

School Name	Intervention Model (Transformation, Turnaround, Restart)	Printed Name of Principal	Signature of Principal

SIG Form 3—Grant Contact Information

Name of Primary Grant Contact	
Professional Title	
Address	
City, State, Zip	
Phone Number	
Fax Number	
E-mail Address	
Name of Fiscal Contact	
Professional Title	
Address	
City, State, Zip	
Phone Number	
Fax Number	
E-mail Address	

Note: Please confirm that all contacts listed above are updated in the School Improvement Grant Monitoring and Reporting Tool (SIGMART) at http://www2.cde.ca.gov/sigmart/ and in the California Accountability and Improvement System (CAIS) at http://www.cais.ca.gov.

SIG Form 4a—Instructions for Annual Student Achievement Goals

School and Sub-group Student Achievement Goals in English Language Arts and Mathematics

Each participating LEA must establish clear, measurable, and challenging goals for student achievement in English language arts (ELA), mathematics, and high school graduation rates (if applicable). This form provides the LEA with an opportunity to identify the local measures used to identify school and sub-group student achievement goals in ELA and mathematics and describe the extent to which each goal was met. In addition, the LEA will identify supporting data used to measure each goal. **Each school must submit one SIG Form 4.1 for ELA and SIG Form 4.2 for Math**.

In lieu of California Standards Test (CST) scores from Standardized Testing and Reporting (STAR) tests that will not be administered in 2014, LEAs and schools should use multiple local measures to evaluate how SIG goals are being met. These local measures may include, but are not limited to, the following: district ELA, math and other subject benchmark assessments; curriculum-imbedded assessments; performance measures imbedded in supplemental technology-based instructional programs and applications; local pilot measures for Common Core State Standards being implemented in classrooms; and other valid and reliable assessments of reading acquisition skills, writing skills, and math skills, and meaningful performance assessments of student learning. This may include other state assessments, where available.

Directions:

- Complete one SIG Form 4 for each school
- Specify which group the goal is for (school-wide, grade level, or other sub-group)
- Indicate what local assessment measure is being used
- Provide the 2012–13 school year (SY) baseline proficiency rate for the specified group on the assessment indicated
- Provide the 2013–14 SY target proficiency rate goal for the specified group on the assessment indicated
- Provide the 2013–14 SY actual proficiency rate achieved by the specified group on the assessment indicated
- Provide the 2014–15 SY target proficiency rate achieved by the specified group on the assessment indicated
- Provide a brief (200 words or less) analysis of the school’s progress on its annual student achievement goals

SIG Form 4.1—Annual Student Achievement Goals in English Language Arts

LEA	
School	
CDS	

School-wide, Grade Level, or Subgroup	ELA Local Assessment Measure	2012–13 SY Proficiency Rate	2013–14 SY Proficiency Goal	2013–14 SY Actual Proficiency	2014–15 SY Proficiency Goal

Analysis

SIG Form 4.2—Annual Student Achievement Goals in Math

LEA	
School	
CDS	

School-wide, Grade Level, or Subgroup	Math Local Assessment Measure	2012–13 SY Proficiency Rate	2013–14 SY Proficiency Goal	2013–14 SY Actual Proficiency	2014–15 SY Proficiency Goal

Analysis

SIG Form 5—Program Evaluation of SIG Required Components

- Briefly describe implementation of the SIG Required Components in year two. Describe progress made in implementing the selected intervention model and include a statement describing the greatest implementation challenge and strategies used to overcome the challenge.
- List 2–3 significant needs identified in the original application. For each, provide evidence of progress in meeting these needs.
- List goals not met in year two, including a brief analysis of the reason why these goals were not met.
- Describe any proposed revisions to the approved SIG implementation chart based on evidence and data from year one. Include specific steps planned to successfully implement the selected intervention model for each school served by the SIG.

SIG Form 6—Evaluation and Reward Systems (Transformation Schools Only)

LEAs implementing the Transformation model in any SIG-funded school are required to develop and implement strategies related to increasing teacher and school leader effectiveness. In lieu of CST scores from STAR tests that will not be administered in 2014, LEAs and schools should use multiple local measures to meet these requirements. These local measures may include, but are not limited to, the measures listed in SIG Form 4a. In the space provided, briefly describe how the LEA plans to meet each requirement or what steps are being taken to determine how the requirement will be met. Include a description of the measures to be used, a timeline for implementation, and how staff is involved.

Use rigorous, transparent, and equitable evaluation systems for teachers and principals that: (A) take into account data on student growth as a significant factor, as well as other factors such as multiple observation-based assessments of performance and ongoing collections of professional practice reflective of student achievement and increased high school graduation rates, and (B) are designed and developed with teacher and principal involvement.
Identify and reward school leaders, teachers, and other staff who, in implementing this model, have increased student achievement and high school graduation rates; and identify and remove those who, after ample opportunities have been provided for them to improve their professional practice, have not done so.

SIG Form 10—Revised Implementation Chart(s)

The LEA must revise and attach one current Form 10 Implementation Chart for each Tier I and Tier II school reflecting all activities completed in years 1 and 2 and all activities proposed in year 3.

The implementation chart must include the following:

- Proposed revisions identified in SIG Form 5–Program Evaluation of SIG Required Components
- Specific action steps completed and projected for all required components of the model
- The timeline to complete each action step, including beginning and ending implementation dates, using both month and year designations for actions completed in years 1 and 2 and actions to be completed in year 3
- Persons responsible for ensuring that each action step is completed according to the timeline
- Documentation of evidence submitted to the CDE, upon request, to verify implementation of action steps

Insert Revised Implementation Chart(s) for each Tier I and Tier II school here

SIG Renewal Application Checklist

Required Forms

The following forms must be included as part of the renewal application. Check or initial by each form, and include this form in the application package. These forms can be downloaded from the CDE School Improvement Grant Web page at http://www.cde.ca.gov/sp/sw/t1/sig09.asp. Please compile the application packet in the order provided below.

Include this completed checklist in the application packet

_____ SIG—Form 1 Renewal Application Cover Sheet
(Must be signed in **blue ink** by the LEA Superintendent or Designee)

_____SIG—Form 2 Signatures and Approvals

_____SIG—Form 3 Grant Contact Information

_____SIG—Form 4.1 Annual Student Achievement Goals in English Language Arts

_____SIG—Form 4.2 Annual Student Achievement Goals in Math

_____SIG—Form 5 Program Evaluation of SIG Required Components

_____SIG—Form 6—Evaluation and Reward Systems (Transformation Schools Only)

_____SIG—Form 10 Implementation Chart(s) for a Tier I or Tier II School (LEA must revise approved implementation chart)

Form 10.1 Turnaround Implementation Chart

Form 10.2 Transformation Implementation Chart

Form 10.3 Restart Implementation Chart

_____SIG—Renewal Application Checklist

_____Appendix A—General Assurances (keep on file; please do not submit to CDE)

_____Appendix B—Sub-grant Conditions and Assurances

Appendix A—General Assurances

Note: All sub-grantees are required to retain on file a copy of these assurances for your records and for audit purposes. Please download the General Assurances form located on the CDE Funding Tools and Materials Web Site at http://www.cde.ca.gov/fg/fo/fm/. Do **not** submit Appendix A to the CDE; retain at the LEA.

Certifications Regarding Drug-Free Workplace, Lobbying, and Debarment and Suspension (Do not submit as part of the RFA).

Download the following three forms from the CDE Funding Tools and Materials Web site at http://www.cde.ca.gov/fg/fo/fm/. The signature on the front of the application indicates acknowledgement of an agreement with all assurances.

1. Drug-Free Workplace
2. Lobbying
3. Debarment and Suspension

Appendix B—Sub-grant Conditions and Assurances

As a condition of the receipt of funds under this sub-grant program, the applicant agrees to comply with the following Sub-grant Conditions and Assurances.

The ED requires LEAs to adhere to the following assurances:

1. Use its SIG to implement fully and effectively an intervention in each Tier I and Tier II school that the LEA commits to serve consistent with the final requirements of SIG;

2. Establish challenging annual goals for student achievement in both ELA and mathematics and measure progress on the leading indicators in Section III of the final requirements in order to monitor each Tier I, Tier II, and Tier III school that it serves with school improvement funds;

3. If it implements a restart model in a Tier I or Tier II school, include in its contract or agreement terms and provisions to hold the charter operator, charter management organization, or education management organization accountable for complying with the final requirements; and

4. Report to the CDE the school-level data as described in this RFA.

Furthermore, the CDE requires LEAs to adhere to the following additional assurances:

5. Ensure that the identified strategies and related activities are incorporated in the revised LEA Plan and Single Plan for Student Achievement.

6. Follow all fiscal reporting and auditing standards required by the CDE.

7. Participate in a statewide evaluation process as determined by the California SEA and provide all required information on a timely basis.

8. Respond to any additional surveys or other methods of data collection that may be required for the full sub-grant period.

9. Use funds only for allowable costs during the sub-grant period.

10. Include in the application all required forms signed by the LEA Superintendent or designee.

Appendix B—Sub-grant Conditions and Assurances (Page 2 of 3)

11. Use fiscal control and fund accountability procedures to ensure proper disbursement of, and accounting for, federal funds paid under the sub-grant, including the use of the federal funds to supplement, and not supplant, state and local funds, and maintenance of effort (20 USC § 8891).

12. Hereby express its full understanding that not meeting all SIG requirements will result in the termination of SIG funding.

13. Ensure that funds are spent as indicated in the sub-grant proposal and agree that funds will be used **only** in the school(s) identified in the LEAs AO-400 sub-grant award letter.

14. All audits of financial statements will be conducted in accordance with Government Auditing Standards and with policies, procedures, and guidelines established by the Education Department General Administrative Regulations (EDGAR), Single Audit Act Amendments, and OMB Circular A-133.

15. Ensure that expenditures are consistent with the federal Education Department Guidelines Administrative Regulations (EDGAR) under Title 34 Education on the Web page at http://www.ed.gov/policy/fund/reg/edgarReg/edgar.html.

16. Agree that the SEA has the right to intervene, renegotiate the sub-grant, and/or cancel the sub-grant if the sub-grant recipient fails to comply with sub-grant requirements.

17. Cooperate with any site visitations conducted by representatives of the state or regional consortia for the purpose of monitoring sub-grant implementation and expenditures, and provide all requested documentation to the SEA personnel in a timely manner.

18. Repay any funds which have been determined through a federal or state audit resolution process to have been misspent, misapplied, or otherwise not properly accounted for, and further agree to pay any collection fees that may subsequently be imposed by the federal and/or state government.

19. Administer the activities funded by this sub-grant in such a manner so as to be consistent with California's adopted academic content standards.

20. Obligate all sub-grant funds by the end date of the sub-grant award period or re-pay any funding received, but not obligated, as well as any interest earned over one-hundred dollars on the funds.

Appendix B—Sub-grant Conditions and Assurances (Page 3 of 3)

21. Maintain fiscal procedures to minimize the time elapsing between the transfer of the funds from the CDE and disbursement.

22. Comply with the reporting requirements and submit any required report forms by the due dates specified.

I hereby certify that the agency identified below will comply with all sub-grant conditions and assurances described in items 1 through 22 above.

The signature on the front of this application indicates acknowledgement and agreement to all assurances.

California State Board of Education

Meeting Agenda Items for March 12-13, 2014

ITEM 27

CALIFORNIA STATE BOARD OF EDUCATION

MARCH 2014 AGENDA

SUBJECT	
California State Plan 1999–2014 for the Workforce Investment Act, Title II: Adult Education and Family Literacy Act: Extension and Updates.	☒ Action ☒ Information ☐ Public Hearing

SUMMARY OF THE ISSUE(S)

The Workforce Investment Act (WIA), Title II: Adult Education and Family Literacy Act (AEFLA) supports California adult education providers to assist adults most in need to become literate and obtain skills needed for employment and self-sufficiency. The grant funds are dispersed to 228 agencies, including the California Department of Education (CDE) adult education programs, community colleges, community-based organizations, and library literacy programs. In 2012–13, the CDE served 493,208 adult students under the WIA, Title II: AEFLA grant. The CDE received $85,948,533 under the WIA, Title II: AEFLA in 2013–14.

In order for states to receive allotments under the AEFLA, state plans are required. As a requirement of the extension of the AEFLA, the CDE must negotiate with the Office of Vocational and Adult Education (OVAE) each year on student performance measures for the upcoming program year, which in this case is 2014–15. The new performance targets must then be incorporated into the state's current plan as a revision and submitted to the State Board of Education (SBE) for approval.

Student performance of WIA, Title II: AEFLA eligible adults is measured through completion of federally defined Educational Functioning Levels (EFLs). Performance data are collected and summarized in California through the Comprehensive Adult Student Assessment System (CASAS). Student progress is reported to the OVAE of the U.S. Department of Education (ED) using standards set by the federal National Reporting System (NRS). The AEFLA performance measures include literacy level improvement, advancement or completion of EFLs, placement in postsecondary education, entrance into employment, and retention of employment.

SUMMARY OF THE ISSUE(S) (Cont.)

In 2012–13, 8,759 adult students attained a high school diploma and 12,204 received a General Educational Development certificate.

The current and projected performance goals for the upcoming year are included in Chapter 5, Section 5.3 of the California State Plan (CSP) (page 5 of Attachment 1). The projected goals are based on past performance data and historical trend data. The goals will receive formal approval from the OVAE in early March 2014. Following the incorporation of the goals into the CSP and submission for SBE approval, the revision will be due to the OVAE by April 1, 2014.

Enclosed for the SBE's review and approval is the revised Chapter 5 in Section 5.3 (page 5 of Attachment 1) of the CSP, which incorporates the 2014–15 proposed performance goals and the Program Memorandum from Brenda Dann-Messier, Assistant Secretary, OVAE, ED (Attachment 2) that describes OVAE's policy in implementing an extension of the WIA, Title II: AEFLA grant. Additionally, the CDE has conducted a public competition for the 2014–15 WIA Title II: AEFLA funds. The CDE has updated the CSP to reflect requirements and current program areas of this grant.

RECOMMENDATION

The CDE recommends that the SBE extend the CSP 1999–2014 for the WIA, Title II: AEFLA for an additional year and approve the proposed performance goals for 2014–15.

BRIEF HISTORY OF KEY ISSUES

The WIA, Title II: AEFLA legislation required eligible state agencies to prepare five-year state plans consistent with the OVAE Guide for the Development of a State Plan under AEFLA. The SBE adopted the initial submission of the CSP (1999–2004) for the WIA, Title II: AEFLA in March 1999.

Eligible state agencies that previously submitted a plan must submit revisions in their adult education plan for the upcoming program year, including performance targets for that year. The revisions enable the ED to extend the plans for one year and make allotments of federal adult education funds on July 1 of the upcoming program year.

SUMMARY OF PREVIOUS STATE BOARD OF EDUCATION DISCUSSION AND ACTION

The SBE has approved annual revisions to the CSP. The most recent approval was in March 2013, when the SBE approved the 2013–14 performance goals and a one-year extension of the CSP (through June 30, 2014).

FISCAL ANALYSIS (AS APPROPRIATE)

This is a one-year extension of the existing provisions of the CSP with changes made to Section 5.3. The extension is required for California to continue to receive funding through the AEFLA. No state funding is required or requested. Failure to approve the CSP revision may result in the loss or delay of an estimated amount of $85 million in federal WIA, Title II: AEFLA grant funds for 2014–15.

ATTACHMENT(S)

Attachment 1: Workforce Investment Act, Title II: California State Plan 1999–2004, Extended through June 30, 2014 (7 Pages). A copy of the California State Plan 2013–14, page 5.3 is available via the World Wide Web at http://www.cde.ca.gov/sp/ae/ir/documents/stateplan14.doc.

Attachment 2: Program Memorandum from Brenda Dann-Messier, Assistant Secretary, Office of Vocational and Adult Education, U.S. Department of Education (2 Pages).

Chapter 5

Performance Measures

Section 224(b)(4) requires a description of the performance measures described in Section 212 and how such performance measures will ensure the improvement of adult education and literacy activities in the state or outlying area.

5.0 Performance Measures (Section 224[b][4])

Pursuant to Section 212, the California Department of Education (CDE) will establish and implement a comprehensive performance accountability system. To optimize the return on investment of federal funds in adult education and literacy activities, the accountability system will assess the effectiveness of eligible local providers' achievement in continuously improving their adult education and literacy program delivery funded under this subtitle. All of the performance measures will apply to all funded priorities.

The CDE has established a solid basis for the development of a performance accountability system. For many years, California adult education programs have provided a competency based curriculum, instruction, and assessment that focuses on the competencies that enable learners to participate more fully within American society, as citizens, workers, and family members. The CDE has developed and implemented model curriculum standards for Adult Basic Education (ABE), English as a Second Language (ESL), which includes ESL-Citizenship, and Adult Secondary Education (ASE) and standard performance descriptors at each program level. In addition, the Comprehensive Adult Student Assessment System (CASAS) was contracted to accurately measure progress and mastery of skills and competencies for completion of a program level and promotion to the next instructional level. The CASAS provides a standardized reporting scale linked to demonstrated performance of identified skills and competencies at each instructional level. These skill level descriptors and standardized scale score ranges have been incorporated into the National Reporting System (NRS) for Adult Education.

The CDE has also implemented a local program database reporting system, Tracking of Programs and Students (TOPSpro® Enterprise) that enables local programs to collect and report all student progress and outcome measures. It provides student, class, and program reports that enable local providers to have immediate access to the data for targeting instruction based on student goals and for continuous program improvement. It provides for the collection of the data elements needed to meet the reporting requirements of Temporary Assistance for Needy Families (TANF) programs and other workforce related programs.

5.1 Eligible Agency Performance Measures (Section 212)

Eligible local provider performance measures will include student goal attainment and demonstrated student improvements in literacy levels within a program level, student completion of a program level, and student advancement to higher program levels. Additional performance measures will include receipt of a secondary school diploma or its recognized equivalent,

placement in post-secondary education, training, entered employment, and retained employment.

The tables within this section (5.1) indicate the measures, including the CASAS assessment instruments that are to be used to document improvements in literacy performance. These measures must be used by all providers for all enrolled students for each of the program priorities addressed. These priorities, described in Chapter 3, include: (1) literacy at the National Adult Literacy Survey (NALS) Level 1, including ABE and ESL, which includes ESL-Citizenship; (2) literacy at the NALS Levels 1 and 2—Workplace Literacy, including ABE and ESL, which includes ESL-Citizenship; (3) literacy at the NALS Level 2—School Based literacy, including ABE and ESL, which includes ESL-Citizenship; (4) Family literacy; and (5) ASE NALS Level 3 and above. Programs using distance learning as a mode for delivering literacy services must also meet performance measures. In addition to these measures, local providers funded for the family literacy priority must also document achievement gains of the children as well as the adults who are enrolled in the program.

In accordance with Section 212, the CDE will establish levels of performance for each of the core indicators:

1. Demonstrated improvements in literacy skill levels in reading and problem solving, numeracy, writing, English language acquisition, speaking the English language, and other literacy skills;

2. Placement in, retention in, or completion of postsecondary education, training, and employment; and

3. Receipt of a secondary school diploma or its recognized equivalent.

They will be expressed in an objective, quantifiable, and measurable form, and will show the progress of the eligible local providers in continuously improving performance.

1. Demonstrated improvements in literacy skill levels

The CDE has established literacy skill levels for ABE and ESL, which includes ESL-Citizenship, that provide a standardized definition for reporting learning gains within a literacy skill level, completion of each level, and progression to a higher literacy skill level. All participating agencies will assess a student’s literacy skill level upon entry into the program using standardized assessments provided by the CDE.

Comprehensive Adult Student Assessment System Standardized Assessment Instruments

Demonstrated Improvements in Literacy Skill Levels in:	Existing Standardized Assessment Instruments	In Progress/Planned
Reading and Problem Solving	Reading Appraisals, Life Skills Reading, Employability Reading, Life and Work Reading, Reading for Citizenship, and Workplace Reading	
Numeracy	Math Appraisals, Life Skills Math, Employability Math, and Workplace Math	Life and Work Math
Writing	Functional Writing Assessment–All Levels	
English Language Acquisition	Life Skills Listening and Employability Reading	Life and Work Listening
Speaking	Citizenship Interview Test and Workplace Speaking	
Other Literacy Skills	Pre-Employment and Work Maturity Skills Check Lists, Government and History for Citizenship, Providing Options for the Workplace, Education, and Rehabilitation	

2. Placement in, retention in, or completion of post-secondary education, training, or unsubsidized employment

Local providers will be required to obtain this information from their students and document the information on the TOPSpro® Enterprise Student Update Record. Standard definitions and documentation procedures will be identified in the CASAS Administration Manual for California. In some instances, students leave programs before this information can be obtained. To address the accurate data collection of both short-term and longer-term student outcomes resulting from participation in adult education programs, the CDE will establish several pilot projects, including, but not limited to, the following:

Placement in, Retention in, or Completion of:	Existing Standardized Reporting Instruments
Postsecondary Education and Training	TOPSpro® Enterprise and follow-up survey
Entered Employment	TOPSpro® Enterprise and follow-up survey
Retained-Employment	TOPSpro® Enterprise and follow-up survey

- Local Program Reporting: The CDE will build on the NRS to improve strategies that local providers use to follow-up on students who leave the program before completing their goal as well as for students who leave the program after meeting their primary goals.

- Data Matching: The CDE will identify the issues in developing and using a state level database that requires use of a student social security number to document longer-term student outcomes, such as those related to employment.

3. Attainment of secondary school diplomas or their recognized equivalent

Participating local providers will track and report the number of learners who pass the General Educational Development (GED®) / other approved high school equivalency test, earn credits toward a high school diploma, or attain a high school diploma for those students enrolled in ASE programs. In addition, summary data obtained through the CDE statewide reports will document the number of high school diplomas earned through adult schools. The State GED® / other approved high school equivalency test Office will report the number of GED® / other approved high school equivalency test Certificates issued each calendar year.

Receipt of a Secondary School Diploma or GED® / other approved high school equivalency test	Existing Standardized Reporting Instruments
High School Diploma	TOPSpro® Enterprise Certified list of high school diplomas
GED® / other approved high school equivalency test Certificate	CDE State GED® / other approved high school equivalency test Reports Data match for GED® / other approved high school equivalency test TOPSpro® Enterprise

5.2 Additional Indicators

Participating local providers will report additional indicators of performance for student-identified outcomes on Student Entry and Update Records. Entry Record information includes: instructional program, instructional level, reason for enrollment, special programs enrollment, personal status, and labor force status. Update Record information includes: instructional program and level (at the time of update); student's status in the instructional program; learner results pertaining to work, personal/family, community, and education; reason for leaving early; sub-sections of GED® / other approved high school equivalency test passed; and high school credits earned. Additional information may be required for workplace literacy and family literacy programs.

5.3 Levels of Performance

The initial Levels of Performance are based on student progress and outcome data from federally funded ABE 321 providers in California. During the first year of the State Plan, local providers began collecting progress and level completion data on students throughout the program year. Local providers used the data gained during the first year of the program to reassess and adjust their projected levels of performance for the second program year. Subsequent years' projected performance levels were established in similar fashion, incorporating other factors identified in Section 5.4, to (1) offset unmeasured student progress due to a new data collection requirement in the first year of the Title II of the Workforce Investment Act and (2) quantify a more accurate picture of actual performance—the proportion of students who completed an instructional level within a specific program year. The projected performance levels for 2013–14 and 2014–15 have been established based upon the performance levels achieved in 2011–12 and 2012–13, respectively, where applicable.

California State Plan 1999–2004
Extended through 6/30/14

Summary of California WIA, Title II NRS Core Performance Indicators for Literacy Goals from 2006–2014

	2006–07		2007–08		2008–09		2009–10		2010–11		2011–12		2012–13		2013–14	2014–15*
Entering Educational Functional Level	**Performance Goal**	**Performance (Against all Enrollees)**	**Performance Goal**	**Performance (Against all Enrollees)**	**Performance Goal**	**Performance (Against all Enrollees)**	**Performance Goal**	**Performance (Against all Enrollees)**	**Performance Goal**	**Performance (Against all Enrollees)**	**Performance Goal**	**Performance (Against all Enrollees)**	**Performance Goal**	**Performance (Against all Enrollees)**	**Performance Goal**	**Estimated Performance Goal**
	%	%	%	%	%	%	%	%	%	%	%	%	%	%	%	%
ABE Beginning Literacy	26.0	27.3	25.0	26.4	28.0	30.7	27.0	31.8	32.0	44.7	33.0	47.5	46.0	55.7	**48.0**	**57.0**
ABE Beginning Basic	44.0	40.0	43.0	39.0	43.0	39.5	41.0	46.7	41.0	52.7	48.0	56.1	54.0	53.7	**57.0**	**55.0**
ABE Intermediate Low	38.0	34.1	36.0	35.3	36.0	39.4	37.0	45.5	40.0	48.8	47.0	50.7	50.0	49.0	**52.0**	**50.0**
ABE Intermediate High	31.0	25.8	31.0	25.6	29.0	27.1	26.0	30.7	28.0	32.7	32.0	33.4	34.0	32.6	**34.0**	**34.0**
ASE Low	26.0	15.4	25.0	16.9	22.0	19.0	19.0	31.7	20.0	32.6	33.0	34.9	34.0	33.5	**36.0**	**35.0**
ASE High	27.0	25.2	--	25.2	--	26.9	--	24.3	--	28.3	--	29.5	--	29.1	--	--
ESL Beginning Literacy	40.0	41.0	41.0	41.6	42.0	43.0	43.0	61.6	44.0	61.6	63.0	63.8	63.0	62.3	**65.0**	**64.0**
ESL Low Beginning	34.0	29.7	35.0	31.1	35.0	34.1	33.0	62.1	35.0	63.0	63.0	65.1	64.0	64.1	**66.0**	**65.0**
ESL High Beginning	34.0	47.3	36.0	47.2	48.0	49.3	48.0	58.2	50.0	61.0	59.0	61.4	62.0	60.3	**62.0**	**61.0**
ESL Intermediate Low	44.0	43.5	44.0	44.2	44.0	45.8	46.0	51.8	47.0	53.4	53.0	53.7	54.0	52.2	**55.0**	**53.0**
ESL Intermediate High	44.0	42.0	44.0	41.6	43.0	43.1	43.0	47.4	44.0	48.2	48.0	49.5	49.0	47.6	**51.0**	**49.0**
ESL Advanced	23.0	19.1	23.0	19.8	22.0	20.5	21.0	22.4	21.0	22.6	23.0	23.1	24.0	23.2	**24.0**	**24.0**
Core Follow-Up Outcome Measures	**%**	**%**	**%**	**%**	**%**	**%**	**%**	**%**	**%**	**%**	**%**	**%**	%	**%**	**%**	**%**
GED® / other approved high school equivalency test / High School Completion	30.0	32.4	30.0	36.2	35.0	39.2	38.0	38.8	40.0	41.2	40.0	42.0	42.0	52.2	**43.0**	**53.0**
Entered Employment	56.0	52.7	53.0	56.9	53.0	53.4	59.0	44.0	59.0	44.6	45.0	47.3	45.0	44.9	**48.0**	**46.0**
Retained Employment	88.0	92.0	91.0	92.9	91.0	92.0	95.0	90.8	95.0	93.1	95.0	94.3	60.0	96.5	**95.0**	**98.0**
Entered Postsecondary Education	58.0	47.8	57.0	42.4	60.0	41.7	44.0	43.1	44.0	46.6	44.0	40.8	45.0	40.6	**42.0**	**42.0**

*As in standard annual practice, amounts in this column to be negotiated with the Office of Vocational and Adult Education.

5.4 Factors (Section 212[b][3][A][IV])

Student progress and outcome data in California indicate significant differences in levels of performance based on individual student characteristics. These characteristics include initial literacy skill level upon entry into the program, literacy levels of limited English proficient students in their home language, the number of years of education completed before entering the adult education program, learning and developmental disabilities, and other demographic and socioeconomic variables. California serves large numbers of students who are most in need, including immigrants with low literacy skills in their native language as well as in English, institutionalized adults, adults in homeless shelters, migrant workers, and those that are unemployed or underemployed in hourly, minimum wage jobs.

Service delivery factors also affect performance such as the intensity, duration, and quality of the instructional program; convenience and accessibility of the instructional program; and the ability of the program to address specific learning goals and provide targeted instruction in a competency-based context related directly to student goals.

California serves an extremely diverse adult student population with a broad range of skill levels and different short- and long-term learning goals. Many students initially enter the program with a short-term goal but as they make progress toward their goal and experience success, they remain in the program to achieve longer term learning goals. Some, such as TANF/California Work Opportunity and Responsibility to Kids recipients and the homeless, may be unable to attend an instructional program on a regular basis because of time limits on educational participation. As a result, the performance measures must address both short- and long-term goals, length of participation, initial skill levels at program entry, and use multiple student performance measures related to student goals.

Based on student characteristics and service delivery factors, the CDE has identified expected levels of performance for each of the core indicators provided for ABE and ESL, which includes ESL-Citizenship programs. The projected skill levels for each of these programs are indicated. The CASAS Scale Score ranges at each level address the significant differences in performance for the special and diverse populations that are served by local providers. Local providers must be encouraged to continue to serve the least educated and most in need, and to evaluate with measures of performance that are most appropriate for the populations they serve. Over the life of this *State Plan*, the levels of performance will be analyzed and adjusted as appropriate to ensure that California continues to promote continuous improvement in performance on appropriate measures and ensure optimal return on the investment of federal funds.

Further Information—Annual Report

The CDE will annually prepare and submit to the Secretary of the Office of Vocational and Adult Education of the U.S. Department of Education a report on the progress of California in achieving the stated performance measures, including information on the levels of performance achieved on the core indicators of performance. The report will include the demographic characteristics of the populations served, the attainment of student goals, progress on the core indicators of performance by program and program level, and learning gains within literacy levels, as well as level completion and movement to higher instructional levels. In the third year of the State Plan, the CDE will begin to report the number of Certificates of Proficiency awarded by program level. Sub-set analyses of special populations groups will be provided and

adjustments to levels of performance for these groups may be recommended based on the findings.

Levels of performance achieved for other core indicators will include student outcomes related to post-secondary education, training, unsubsidized employment or career advancement, and receipt of a high school diploma or GED® / other approved high school equivalency test Certificate.

Performance Measures for English Literacy and Civics Education

Funded providers will establish observable, measurable, and meaningful goals and objectives for participants in programs that are either uniquely funded by the English Literacy and Civics Education (EL Civics) funds or supplemented by them.

All funded providers will use the CASAS assessment, evaluation, and data collection system to document participant outcomes as required in Section 212. The state will provide funded agencies all the necessary software and test forms for efficient implementation of this assessment process. Given the innovative nature of the EL Civics initiative and the range of targeted outcomes that extend beyond literacy gains that can be easily captured on pencil and paper tests, in addition to the CASAS assessments, providers must also develop and/or utilize alternative strategies for documenting student outcomes. All such strategies must yield clearly identified observable, measurable, and meaningful outcomes.

All funded programs will be required to have participants submit demographic and other student outcome information through completion of student Entry and Update Records. The TOPSpro® Enterprise data collection system collects and transmits the required data in an acceptable format.

UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF VOCATIONAL AND ADULT EDUCATION

PROGRAM MEMORANDUM OVAE/DAEL FY 2012-01

TO: State Directors of Adult Education

FROM: Brenda Dann-Messier

SUBJECT: Extension of *Adult Education and Family Literacy Act*

This memorandum describes our policy in implementing an extension of the *Adult Education and Family Literacy Act* (AEFLA). This action is necessary to give States as much advance notice and flexibility as possible in submitting any revisions needed in current State plans, including establishment of performance levels for the coming program year.

Need for Revising Current State Plans

State plans are required for States to receive allotments under AEFLA. Last year, the Office of Vocational and Adult Education (OVAE) approved a one-year extension of operating plans, but those extensions will expire on June 30, 2012. The States and OVAE need to agree upon new performance targets for the coming year, and the new targets must be incorporated into the existing State plans as revision.

As you know, there is a great variation in adult education performance outcomes among the States. We have in place a data quality checklist that State directors must use to certify data accuracy, when data is submitted to OVAE.

Requirements for Revision Current State Plans

Set forth here is the process to complete State plan revisions (See AEFLA sections 224(c) and (d)):

1. Revisions, including the agreed upon new performance targets, must be submitted to OVAE no later than April 2, 2012. Each State must indicate whether it intends to extend current grants for one year, or conduct a one-year competition.

2. It is advisable to discuss proposed targets with OVAE prior to submission, to ensure that levels are appropriate and approvable. Beginning in late February, OVAE will start contacting State directors by telephone to discuss the proposed Program Year 2012-2013 performance levels.

3. Revisions must be submitted to the Governor, and any comments made by the Governor must be submitted to OVAE with the plan revisions.

4. Revisions must include any new uses of funds incorporated in the existing State plan.

5. Revisions must include updated certifications and assurances with original signatures.

Please feel free to contact your area coordinator for technical assistance in meeting these requirements. We look forward to working with you.

Attachments

California State Board of Education

Meeting Agenda Items for March 12-13, 2014

ITEM 28

CALIFORNIA STATE BOARD OF EDUCATION

MARCH 2014 AGENDA

SUBJECT	
Update of Special Education Regulations— Adopt Proposed *California Code of Regulations,* Title 5, Sections 3001-3088.	☒ Action ☒ Information ☐ Public Hearing

SUMMARY OF THE ISSUE(S)

Many of the regulations that govern the special education program in California have not been updated since the State Board of Education (SBE) adopted substantive amendments in December 1987. Since those regulations became operative on April 20, 1988, there have been numerous changes to state statutes and federal statutes and regulations. The attached amendments to *California Code of Regulations*, Title 5 (5 *CCR),* sections 3001–3088, are being proposed to update these regulations by bringing them into alignment with existing state statutes and federal requirements. In addition, proposed Sections 3051 through 3051.24 represent a significant reorganization and merger of existing regulations in order to clarify that the same regulations or related services apply to both public and nonpublic schools.

RECOMMENDATION

The California Department of Education (CDE) recommends the State Board of Education (SBE) take the following actions:

- Approve the Final Statement of Reasons;
- Formally adopt the proposed regulations approved by the SBE at the November 2013 meeting. No amendments or edits have been made to the proposed regulations.
- Direct the CDE to resubmit the rulemaking file to the Office of Administrative Law (OAL) for approval; and

- Authorize the CDE to take any necessary ministerial action to respond to any direction or concern expressed by the OAL during its review of the rulemaking file.

BRIEF HISTORY OF KEY ISSUES

The regulations implementing special education and related services to children ages birth to 22 in California have not been substantially updated since 1987. In the intervening years, state statutes and federal statutes and regulations have continued to change, and the federal Individuals with Disabilities Education Act (IDEA) has been reauthorized twice.

In 2010, the Special Education Division (SED) began an internal process for reviewing and updating 5 *CCR*, sections 3001–3088. The SED internal review process involved division management and staff at all levels in a series of meetings and comment periods that resulted in technical and substantive proposed amendments to the regulations.

In August 2012, pursuant to Title 1, *CCR,* Section 100, the CDE SED, sought from the Office of Administrative Law (OAL) approval for proposed technical, nonsubstantive amendments to the regulations under review. In September 2012, the OAL approved technical, nonsubstantive amendments to the following 5 *CCR* sections: 3000, 3010, 3021, 3021.1, 3022, 3023, 3024, 3025, 3027, 3028, 3042, 3051.4, 3051.75, 3051.8, 3051.9, 3051.12, 3051.13, 3051.17, 3051.18, 3052, 3053, 3062, 3063, 3064, 3067, 3069, 3080, 3082, 3083, 3084, 3085, 3086, 3087, 3088, 3088.1, 3088.2, 3089, 3090, 3091, 3092, 3093, 3094, 3096, 3096.1, 3096.2, 3097, 3098, 3098.1, 3098.2, 3099, and 3100. These regulatory sections were updated in the California Code of Regulations, Title 5, and the amendments were posted to the CDE Web site at http://www.cde.ca.gov/sp/se/ac/.

On October 15, 2012, the SED solicited—by e-mail through the division's established mailing lists—assistance and advice from hundreds of education stakeholders regarding which sections of the existing regulations they thought should be maintained, amended, deleted, or added. Stakeholder groups that the SED contacted included members of the Advisory Commission on Special Education (ACSE), Assembly Bill 114 Transition Workgroup, the Association of California School Administrators, the California Association of Resource Specialists PLUS, Community Advisory Committee members, the Family Empowerment and Disability Council, members of the Improving Special Education Services group, representatives of Institutes of Higher Education, Nonpublic School/Agency Administrators, directors of Special Education Local Plan Areas (SELPAs), Special Education Administrators of County Offices, members of the California Teachers Association board, and WorkAbility administrators. In addition, SED staff asked SELPA directors to forward the request for assistance and advice to district special education directors.

To facilitate these stakeholders in providing the SED with their comments, an electronic assistance and advice form was sent to them along with instructions for using the form.

The form had a field that allowed stakeholders to indicate for each regulation whether the regulation should be maintained, amended, deleted, or added. The form also allowed respondents to enter proposed amendments of up to 400 characters, and it provided a field in which respondents could offer a rationale for each comment, also of up to 400 characters. The SED received responses from ten persons, and these responses were compiled into one document, which was provided to ACSE.

Pursuant to California *Education Code* Section 33595, the ACSE is mandated to "Comment publicly on any rules or regulations proposed by the state regarding the education of individuals with exceptional needs." During the ACSE's January 2013 meeting, and in preparation for the ACSE's March 2013 meeting, SED staff provided the commissioners with an information package that contained the draft amendments to the regulations, the draft initial statement of reasons, a compilation of public comments received so far, and information about the rulemaking process.

A second informal public comment period was also conducted from December 28, 2012, through February 15, 2013. The SED staff, in partnership with the ACSE, once again contacted the education stakeholders noted above and asked them to provide the ACSE with comments on the proposed amended regulations. This round of comments was provided to all of the commissioners on February 21, 2013, in anticipation of the ACSE's March 2013 meeting.

On March 6, 2013, the ACSE deliberated on the proposed amendments to 5 *CCR* sections 3001–3088 and provided the SED with its comments, many of which were incorporated into the regulatory package. The ACSE approved a motion that the CDE should forward the proposed regulations to the SBE for approval to commence the formal rulemaking process.

On May 9, 2013, the SBE approved the commencement of the rulemaking process. The CDE received 328 public comments on the proposed regulations during a 45-day public comment period from May 25, 2013, through July 8, 2013. The SED accepted some of the comments, amended the regulations accordingly, and prepared the attached Final Statement of Reasons.

On November 7, 2013, the CDE requested and the SBE approved the commencement of a 15-day public comment period to address new amendments made in response to comments received during the 45-day public comment period. The CDE received another 32 public comments during the comment period from November 9, 2013, through November 25, 2013; however, the majority of these comments did not address the amendments made following the 45-day public comment period. The SED determined that on the basis of the comments received during the 15-day comment period, no further amendments were required to the proposed regulations. The rulemaking file was submitted to OAL on December 16, 2013.

During OAL's review, it was determined that "relevant" comments had been received during the 15-day public comment period. A comment is considered "relevant" not

because it should be accepted but, in this case, because it simply addresses amendments made to the regulations in response to the comments received during the 45-day comment period. For this reason, although further amendments to the proposed regulations are not necessary, the proposed regulations are required to be placed on the SBE's agenda for adoption. The rulemaking file has been withdrawn, and will be resubmitted to OAL once the SBE has adopted the rulemaking file.

SUMMARY OF PREVIOUS STATE BOARD OF EDUCATION DISCUSSION AND ACTION

On May 9, 2013, the SBE approved the commencement of the rulemaking process.

The 45-day public comment period ran from May 25, 2013, through July 8, 2013. A public hearing was held on July 8, 2013, in accordance with the Administrative Procedure Act.

On November 9, 2013, the SBE approved commencement of a 15-day comment period, which ran from November 9, 2013, through November 25, 2013.

FISCAL ANALYSIS (AS APPROPRIATE)

A Fiscal Impact Statement is provided as Attachment 3.

ATTACHMENT(S)

Attachment 1: Proposed Regulations (60 pages)

Attachment 2: Final Statement of Reasons (98 pages)

Attachment 3: Economic and Fiscal Impact Statement (STD. 399) (5 pages)

- The State Board of Education has illustrated changes to the original text in the following manner: text originally proposed to be added is underlined; text proposed to be deleted is displayed in ~~strikeout~~.
- The 15-day text proposed to be added is in "**bold underline**", deleted text is displayed in "~~**bold strikeout**~~".

TITLE 5. EDUCATION

DIVISION 1. CALIFORNIA DEPARTMENT OF EDUCATION

CHAPTER 3. INDIVIDUALS WITH EXCEPTIONAL NEEDS

SUBCHAPTER 1. SPECIAL EDUCATION

ARTICLE 1. GENERAL PROVISIONS

§ 3001. Definitions.

In addition to those found in Education Code sections 56020 - ~~56033~~ 56035, ~~Public Law 94-142 as amended (~~20 U.S.C. Sections 1401(1) to (35) ~~et seq.)~~, and 34 C.F.R. ~~Title 34, Code of Federal Regulations,~~ ~~Part~~ Sections 300.4 - 300.45 ~~and 301~~, the following definitions are provided:

(a) "Access" means that the nonpublic, nonsectarian school shall provide State Board of Education (SBE)-adopted, standards-aligned core curriculum and instructional materials for kindergarten and grades 1 to 8 (K-8), inclusive; and provide standards-aligned core curriculum and instructional materials for grades 9 to 12 (9-12), inclusive, used by a local educational agency (LEA) that contracts with the nonpublic school.

. . .

~~**(d) "Behavioral emergency" is the demonstration of a serious behavior problem:**~~

~~**(1) which has not previously been observed and for which a behavioral intervention plan has not been developed; or**~~

~~**(2) for which a previously designed behavioral intervention is not effective. Approved behavioral emergency procedures must be outlined in the special education local planning area (SELPA) local plan.**~~

~~**(e) "Behavioral intervention" means the systematic implementation of procedures that result in lasting positive changes in the individual's behavior. "Behavioral intervention" means the design, implementation, and evaluation of**~~

individual or group instructional and environmental modifications, including programs of behavioral instruction, to produce significant improvements in human behavior through skill acquisition and the reduction of problematic behavior. “Behavioral interventions” are designed to provide the individual with greater access to a variety of community settings, social contacts and public events; and ensure the individual's right to placement in the least restrictive educational environment as outlined in the individual's IEP. “Behavioral interventions” do not include procedures which cause pain or trauma. “Behavioral interventions” respect the individual's human dignity and personal privacy. Such interventions shall assure the individual's physical freedom, social interaction, and individual choice

(f) "Behavioral intervention case manager" means a designated certificated school/district/county/nonpublic school or agency staff member(s) or other qualified personnel pursuant to subdivision (ac)(v) contracted by the school district or county office or nonpublic school or agency who has been trained in behavior analysis with an emphasis on positive behavioral interventions. The "behavioral intervention case manager" is not intended to be a new staffing requirement and does not create any new credentialing or degree requirements. The duties of the "behavioral intervention case manager" may be performed by any existing staff member trained in behavioral analysis with an emphasis on positive behavioral interventions, including, but not limited to, a teacher, resource specialist, school psychologist, or program specialist.

(g) "Behavioral intervention plan" is a written document which is developed when the individual exhibits a serious behavior problem that significantly interferes with the implementation of the goals and where applicable, benchmarks or short-term objectives of the individual's IEP. The "behavioral intervention plan" shall become part of the IEP. The plan shall describe the frequency of the consultation to be provided by the behavioral intervention case manager to the staff members and parents who are responsible for implementing the plan. A copy of the plan shall be provided to the person or agency responsible for implementation in noneducational settings. The plan shall include

~~**the following:**~~

~~**(1) a summary of relevant and determinative information gathered from a functional analysis assessment;**~~

~~**(2) an objective and measurable description of the targeted maladaptive behavior(s) and replacement positive behavior(s);**~~

~~**(3) the individual's goals and objectives specific to the behavioral intervention plan;**~~

~~**(4) a detailed description of the behavioral interventions to be used and the circumstances for their use;**~~

~~**(5) specific schedules for recording the frequency of the use of the interventions and the frequency of the targeted and replacement behaviors; including specific criteria for discontinuing the use of the intervention for lack of effectiveness or replacing it with an identified and specified alternative;**~~

~~**(6) criteria by which the procedure will be faded or phased-out, or less intense/frequent restrictive behavioral intervention schedules or techniques will be used;**~~

~~**(7) those behavioral interventions which will be used in the home, residential facility, work site or other noneducational settings; and**~~

~~**(8) specific dates for periodic review by the IEP team of the efficacy of the program.**~~

~~(h) "Board" means the California State Board of Education.~~

(d)~~(h)~~~~(i)~~ "CDE" means the California Department of Education.

(e)~~(i)~~~~(j)~~ "Certification" means authorization by the California State Superintendent of Public Instruction (SSPI) for a nonpublic school or nonpublic agency to service individuals with exceptional needs under a contract pursuant to the provisions of Education Code section 56366(d).

(f)~~(j)~~~~(k)~~ "Contracting education agency," means school district, a SELPA, a charter school participating as a member of a ~~special education local plan~~ ~~area~~ SELPA, or county office of education.

(g)~~(k)~~~~(l)~~ "Credential" means any valid credential, life diploma, or document in special education or **P**~~p~~upil **P**~~p~~ersonnel **S**~~s~~ervices issued by, or under the jurisdiction of, the

California SBE ~~State Board of Education~~ prior to 1970 or the California Commission on Teacher Credentialing **(CTC)**, which entitles the holder thereof to perform services for which certification qualifications are required.

(h)~~(l)~~(m) "Department of Consumer Affairs" means the California Department of Consumer Affairs.

(i)~~(m)~~(n) "Dual enrollment" means the concurrent attendance of the individual in a public education agency and a nonpublic school and/or a nonpublic agency.

~~(o) "Feasible" as used in Education Code section 56363(a) means the IEP team:~~

~~(1) has determined the regular class teacher, special class teacher, and/or resource specialist possesses the necessary competencies and credentials/certificates to provide the designated instruction and service specified in the IEP, and~~

~~(2) has considered the time and activities required to prepare for and provide the designated instruction and services and related services by the regular class teacher, special class teacher, and/or resource specialist.~~

~~(p) "Free appropriate public education" means special education and related services that:~~

~~(1) have been provided at public expense, under public supervision and direction and without charge;~~

~~(2) meets any of the standards established by state or federal law;~~

~~(3) include an appropriate preschool, elementary, or secondary school education in California; and~~

~~(4) are provided in conformity with the IEP required under state and federal law.~~

(j)~~(n)~~(q) "Individual Services Agreement" means a document, prepared by the LEA, that specifies the length of time for which special education ~~and designated instruction and services~~ and related services are to be provided, by nonpublic schools and/or nonpublic agencies, to individuals with exceptional needs.

(k)~~(o)~~(r) "Instructional day" shall be the same period of time as constitutes the regular school day for that chronological peer group unless otherwise specified in the IEP.

(l)~~(p)~~(s) "License" means a valid nonexpired document issued by a licensing agency within the California Department of Consumer Affairs or other state licensing office

authorized to grant licenses and authorizing the bearer of the document to provide certain professional services or refer to themselves using a specified professional title. If a license is not available through an appropriate state licensing agency, a certificate of registration with the appropriate professional organization at the national or state level, which has standards established for the certificate that are equivalent to a license, shall be deemed to be a license.

(m)~~**(q)**(t)~~ "Linguistically appropriate goals, objectives, and programs" means:

. . .

~~(u) "Local educational agency" (LEA) means a school district, a county office of education, a charter school participating as a member of a special education local plan area, or a special education local plan area.~~

(n)~~**(r)**(v)~~ "Local governing board," means either district or county board of education.

(o)~~**(s)**(w)~~ "Master contract" means the legal document that binds the public education agency and the nonpublic school or nonpublic agency.

(p)~~**(t)**(x)~~ "Nonsectarian" means a private, nonpublic school or agency that is not owned, operated, controlled by, or formally affiliated with a religious group or sect, whatever might be the actual character of the education program or the primary purpose of the facility and whose articles of incorporation and/or by-laws stipulate that the assets of such agency or corporation will not inure to the benefit of a religious group.

(q)~~**(u)**(y)~~ "Primary language" means the language other than English, or other mode of communication, the person first learned, or the language which is ~~spoken~~ used in the person's home.

(r)~~**(v)**(z)~~ "Qualified" means that a person has met federal and state certification, licensing, registration, or other comparable requirements which apply to the area in which he or she is providing special education or related services, or, in the absence of such requirements, the state-education-agency-approved or recognized requirements, and adheres to the standards of professional practice established in federal and state law or regulation, including the standards contained in the California Business and Professions Code **and the scope of practice as defined by the licensing or credentialing body**. Nothing in this definition shall be construed as restricting the activities ~~in~~ or services of a graduate needing direct hours leading to licensure, or of a

student teacher or intern leading to a graduate degree at an accredited or approved college or university, as authorized by state laws or regulations.

~~(aa) "Related services" means transportation, and such developmental, corrective, and other supportive services (including speech pathology and audiology, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, social work services, counseling services, including rehabilitation counseling, and medical services, except that such medical services shall be for diagnostic and evaluation purposes only) as required to assist an individual with exceptional needs to benefit from special education, and includes the early identification and assessment of disabling conditions in children. Related services include, but are not limited to, designated instruction and services. The list of related services is not exhaustive and may include other developmental, corrective, or supportive services if they are required to assist a child with a disability to benefit from special education. Each related service defined under this part may include appropriate administrative and supervisory activities that are necessary for program planning, management, and evaluation.~~

(w)~~(ab) "Serious behavior problems" means the individual's behaviors which are self-injurious, assaultive, or cause serious property damage and other severe behavior problems that are pervasive and maladaptive for which instructional/behavioral approaches specified in the student's IEP are found to be ineffective.~~

~~(ac) "Special education" means specially designed instruction, at no cost to the parents, to meet the unique needs of individuals with exceptional needs whose educational needs cannot be met with modification of the regular instruction program, and related services, at no cost to the parent, that may be needed to assist these individuals to benefit from specially designed instruction.~~

(s)~~(x)~~~~(ad)~~ "Specialized physical health care services" means those health services, including catheterization, gastric tube feeding, suctioning or other services prescribed by the individual's licensed physician and surgeon requiring medically related training for the individual who performs the services and which are necessary during the school day to enable the individual to attend school.

(t)~~(y)~~~~(ae)~~ "Specified education placement" means that unique combination of

facilities, personnel, location or equipment necessary to provide instructional services to an individual with exceptional needs, as specified in the IEP, in any one or a combination of public, private, home and hospital, or residential settings. The IEP team shall document its rationale for placement in other than the pupil's school and classroom in which the pupil would otherwise attend if the pupil were not disabled. The documentation shall indicate why the pupil's disability prevents his or her needs from being met in a less restrictive environment even with the use of supplementary aids and services.

(u)~~(z)~~~~(af)~~ "SSPI" means the California State Superintendent of Public Instruction.

(v)~~(aa)~~~~(ag)~~ "Temporary physical disability" means a disability incurred while an individual was in a regular education class and which at the termination of the temporary physical disability, the individual can, without special intervention, reasonably be expected to return to his or her regular education class.

NOTE: Authority cited: Section~~s~~ 56100 ~~and 56523~~, Education Code. Reference: Sections ~~33000, 33126,~~ 33300, 49423.5~~,~~ and ~~56026, 56026.3, 56034,~~ 56320, ~~56361, 56366, 56366.10, 56520 and 56523~~, Education Code; ~~Section 2, Article IX, Constitution of the State of California; 20 U.S.C. Section 1401;~~ and 34 C.F.R. Sections 300.4 - 300.45 and 300.320.

ARTICLE 3. IDENTIFICATION, REFERRAL AND ASSESSMENT

§ 3023. Assessment and Reassessment.

(a) In addition to provisions of Education Code ~~S~~sections 56320 and 56381, assessments and reassessments shall be administered by qualified personnel who are competent in both the oral or sign language skills and written skills of the individual's primary language or mode of communication and have a knowledge and understanding of the cultural and ethnic background of the pupil. If it clearly is not feasible to do so, an interpreter must be used, and the assessment report shall document this condition and note that the validity of the assessment may have been affected.

(b) The normal process of second-language acquisition, as well as manifestations of dialect and sociolinguistic variance shall not be diagnosed as a ~~handicapping~~ disabling condition.

NOTE: Authority cited: Section 56100~~(a), (i) and (j)~~, Education Code. Reference: Sections 56001, 56320, 56324, ~~and~~ 56327~~,~~ and 56381, Education Code; and 34 C.F.R. Sections 300.304, 300.305 and 300.310 ~~300.530, 300.532 and 300.543~~.

§ 3025. Assessment Option: Referral to State Schools for Further Assessment.

(a) Prior to referring a pupil for further assessment to California Schools for the Deaf or Blind or the Diagnostic Centers ~~Schools~~, districts, ~~special education local plan areas~~ SELPAs, counties, or other agencies providing education services, shall first conduct assessments at the local level within the capabilities of that agency. Results of local assessments shall be provided to parent(s) and shall state the reasons for referral to the State School. Results of local assessments shall accompany the referral request.

(b) The Schools for the Deaf and Blind and the Diagnostic Centers ~~Schools~~ shall conduct assessments pursuant to the provisions of Education Code section 56320, et seq.

(c) A representative of the district, ~~special education local plan areas~~ SELPAs, or county ~~individualized education program~~ IEP team shall participate in the staffing meeting and shall receive the final report and recommendations. Conference calls are acceptable forms of participation, provided that written reports and recommendations have been received by the representative prior to the meeting.

NOTE: Authority cited: Section 56100~~(a)~~, Education Code. Reference: Section 56326, Education Code.

§ 3029. Contracting for Individually Administered Tests of Psychological Functioning Due to the Unavailability of School Psychologists.

(a) School districts, county offices, and ~~special education local plan areas~~ SELPAs shall ensure that credentialed school psychologists are available to perform individually administered tests of intellectual or emotional functioning pursuant to Education Code ~~S~~section 56320(b)(3) ~~of the Education Code~~.

(b) Due to the temporary unavailability of a credentialed school psychologist, a school district or county office may contract with qualified personnel to perform individually administered tests of intellectual or emotional functioning including

necessary reports pursuant to Education Code ~~S~~section 56327~~ of the Education Code~~.

(c) The district or county office shall seek appropriately credentialed school psychologists for employment. These efforts, which include, but are not limited to, contacting institutions of higher education having approved school psychology programs and utilizing established personnel recruitment practices, shall be documented and available for review.

~~(d) The only persons qualified to provide assessment services under this section shall be educational psychologists licensed by the Board of Behavioral Science Examiners.~~

NOTE: Authority cited: Section~~s~~ 56100~~(a) and 56320(f)~~, Education Code. Reference: Sections **49422(e)(1),** 56320~~(b)~~ and 56327, Education Code.

ARTICLE 3.1. INDIVIDUALS WITH EXCEPTIONAL NEEDS

§ 3030. Eligibility Criteria.

(a) A ~~pupil~~ child shall qualify as an individual with exceptional needs, pursuant to Education Code ~~S~~section 56026 ~~of the Education Code~~, if the results of the assessment as required by Education Code ~~S~~section 56320 demonstrate that the degree of the ~~pupil's~~ child's impairment as described in ~~Section 3030~~ subdivisions ~~(a)~~(b)(1) through (b)(13)~~(j)~~ requires special education in one or more of the program options authorized by Education Code ~~S~~section 56361 ~~of the Education Code~~. The decision as to ~~the~~ whether or not the assessment results demonstrate that the degree of the ~~pupil's~~ child's impairment requires special education shall be made by the ~~individualized education program~~ IEP team, including personnel in accordance with Education Code ~~S~~section 56341~~(d)~~(b) ~~of the Education Code~~. The ~~individualized education program~~ IEP team shall take into account all the relevant material which is available on the ~~pupil~~ child. No single score or product of scores shall be used as the sole criterion for the decision of the ~~individualized education program~~ IEP team as to the ~~pupil's~~ child's eligibility for special education. ~~The specific processes and procedures for implementation of these criteria shall be developed by each Special Education Local Plan Area and be included in the local plan pursuant to Section 56220(a) of the Education Code~~.

~~(a) A pupil has a hearing impairment, whether permanent or fluctuating, which~~

~~impairs the processing of linguistic information through hearing, even with amplification, and which adversely affects educational performance. Processing linguistic information includes speech and language reception and speech and language discrimination.~~

~~(b) A pupil has concomitant hearing and visual impairments, the combination of which causes severe communication, developmental, and educational problems.~~

(b) The disability terms used in defining an individual with exceptional needs are as follows:

(1) Autism means a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age three, and adversely affecting a child's educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences.

(A) Autism does not apply if a child's educational performance is adversely affected primarily because the child has an emotional disturbance, as defined in subdivision (b)(4) of this section.

(B) A child who manifests the characteristics of autism after age three could be identified as having autism if the criteria in subdivision (b)(1) of this section are satisfied.

(2) Deaf-blindness means concomitant hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational needs that they cannot be accommodated in special education programs solely for children with deafness or children with blindness.

(3) Deafness means a hearing impairment that is so severe that the child is impaired in processing linguistic information through hearing~~,~~ with or without amplification that adversely affects a child's educational performance.

(4) Emotional disturbance means a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a child's educational performance:

(A) An inability to learn that cannot be explained by intellectual, sensory, or health factors.

(B) An inability to build or maintain satisfactory interpersonal relationships with peers

and teachers.

(C) Inappropriate types of behavior or feelings under normal circumstances.

(D) A general pervasive mood of unhappiness or depression.

(E) A tendency to develop physical symptoms or fears associated with personal or school problems.

(F) Emotional disturbance includes schizophrenia. The term does not apply to children who are socially maladjusted, unless it is determined that they have an emotional disturbance under subdivision (b)(4) of this section.

(5) Hearing impairment means an impairment in hearing, whether permanent or fluctuating, that adversely affects a child's educational performance but that is not included under the definition of deafness in this section.

(6) Intellectual disability means significantly subaverage general intellectual functioning, existing concurrently with deficits in adaptive behavior and manifested during the developmental period that adversely affects a child's educational performance.

(7) Multiple disabilities means concomitant impairments, such as intellectual disability-blindness or intellectual disability-orthopedic impairment, the combination of which causes such severe educational needs that they cannot be accommodated in special education programs solely for one of the impairments. **"**Multiple disabilities**"** does not include deaf-blindness.

(8) Orthopedic impairment means a severe orthopedic impairment that adversely affects a child's educational performance. The term includes impairments caused by a congenital anomaly, impairments caused by disease (e.g., poliomyelitis, bone tuberculosis), and impairments from other causes (e.g., cerebral palsy, amputations, and fractures or burns that cause contractures).

(9) Other health impairment means having limited strength, vitality, or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment that:

(A) Is due to chronic or acute health problems such as asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia, and

Tourette syndrome; and

(B) Adversely affects a child's educational performance.

(10) Specific learning disability means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may have manifested itself in the imperfect ability to listen, think, speak, read, write, spell, or do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. The basic psychological processes include attention, visual processing, auditory processing, sensory-motor skills, cognitive abilities including association, conceptualization and expression.

(A) Specific learning disabilities do not include learning problems that are primarily the result of visual, hearing, or motor disabilities, of intellectual disability, of emotional disturbance, or of environmental, cultural, or economic disadvantage.

(B) In determining whether a pupil has a specific learning disability, the public agency may consider whether a pupil has a severe discrepancy between intellectual ability and achievement in oral expression, listening comprehension, written expression, basic reading skill, reading comprehension, mathematical calculation, or mathematical reasoning. The decision as to whether or not a severe discrepancy exists shall take into account all relevant material which is available on the pupil. No single score or product of scores, test or procedure shall be used as the sole criterion for the decisions of the IEP team as to the pupil's eligibility for special education. In determining the existence of a severe discrepancy, the IEP team shall use the following procedures:

1. When standardized tests are considered to be valid for a specific pupil, a severe discrepancy is demonstrated by: first, converting into common standard scores, using a mean of 100 and standard deviation of 15, the achievement test score and the intellectual ability test score to be compared; second, computing the difference between these common standard scores; and third, comparing this computed difference to the standard criterion which is the product of 1.5 multiplied by the standard deviation of the distribution of computed differences of students taking these achievement and ability tests. A computed difference which equals or exceeds this standard criterion, adjusted by one standard error of measurement, the adjustment not to exceed 4 common

standard score points, indicates a severe discrepancy when such discrepancy is corroborated by other assessment data which may include other tests, scales, instruments, observations and work samples, as appropriate.

2. When standardized tests are considered to be invalid for a specific pupil, the discrepancy shall be measured by alternative means as specified on the assessment plan.

3. If the standardized tests do not reveal a severe discrepancy as defined in subdivisions 1. or 2. above, the IEP team may find that a severe discrepancy does exist, provided that the team documents in a written report that the severe discrepancy between ability and achievement exists as a result of a disorder in one or more of the basic psychological processes. The report shall include a statement of the area, the degree, and the basis and method used in determining the discrepancy. The report shall contain information considered by the team which shall include, but not be limited to:

(i) Data obtained from standardized assessment instruments;

(ii) Information provided by the parent;

(iii) Information provided by the pupil's present teacher;

(iv) Evidence of the pupil's performance in the regular and/or special education classroom obtained from observations, work samples, and group test scores;

(v) Consideration of the pupil's age, particularly for young children; and

(vi) Any additional relevant information.

4. A severe discrepancy shall not be primarily the result of limited school experience or poor school attendance.

(C) Whether or not a pupil exhibits a severe discrepancy as described in subdivision (b)(10)(B) above, a pupil may be determined to have a specific learning disability if:

1. The pupil does not achieve adequately for the pupil’s age or to meet State-approved grade-level standards in one or more of the following areas, when provided with learning experiences and instruction appropriate for the pupil's age or State-approved grade-level standards:

(i) Oral expression.

(ii) Listening comprehension.

(iii) Written expression.

(iv) Basic reading skill.

(v) Reading fluency skills.

(vi) Reading comprehension.

(vii) Mathematics calculation.

(viii) Mathematics problem solving, and

2.(i) The pupil does not make sufficient progress to meet age or State-approved grade-level standards in one or more of the areas identified in subdivision (b)(10)(C)(1) of this section when using a process based on the pupil's response to scientific, research-based intervention; or

(ii) The pupil exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, State-approved grade-level standards, or intellectual development, that is determined by the group to be relevant to the identification of a specific learning disability, using appropriate assessments, consistent with 34 C.F.R. sections 300.304 and 300.305; and

3. The findings under subdivisions (b)(10)(C)(1) and (2) of this section are not primarily the result of:

(i) A visual, hearing, or motor disability;

(ii) Intellectual disability;

(iii) Emotional disturbance;

(iv) Cultural factors;

(v) Environmental or economic disadvantage; or

(vi) Limited English proficiency.

4. To ensure that underachievement in a pupil suspected of having a specific learning disability is not due to lack of appropriate instruction in reading or math, the group making the decision must consider:

(i) Data that demonstrate that prior to, or as a part of, the referral process, the pupil was provided appropriate instruction in regular education settings, delivered by qualified personnel; and

(ii) Data-based documentation of repeated assessments of achievement at reasonable intervals, reflecting formal assessment of student progress during instruction, which was provided to the pupil's parents.

5. In determining whether a pupil has a specific learning disability, the public agency must ensure that the pupil is observed in the pupil's learning environment in accordance with 34 C.F.R. section 300.310.~~, and~~ **In the case of a child of less than school age or out of school, a qualified professional must observe the child in an environment appropriate for a child of that age. T~~t~~**he eligibility determination must be documented in accordance with 34 C.F.R. section 300.311.

(11)~~(c)~~ A pupil has a language or speech disorder as defined in Education Code ~~S~~section 56333 ~~of the Education Code~~, and it is determined that the pupil's disorder meets one or more of the following criteria:

(A)~~(1)~~ Articulation disorder.

1.~~(A)~~ The pupil displays reduced intelligibility or an inability to use the speech mechanism which significantly interferes with communication and attracts adverse attention. Significant interference in communication occurs when the pupil's production of single or multiple speech sounds on a developmental scale of articulation competency is below that expected for his or her chronological age or developmental level, and which adversely affects educational performance.

2.~~(B)~~ A pupil does not meet the criteria for an articulation disorder if the sole assessed disability is an abnormal swallowing pattern.

(B)~~(2)~~ Abnormal Voice. A pupil has an abnormal voice which is characterized by persistent, defective voice quality, pitch, or loudness.

(C)~~(3)~~ Fluency Disorders. A pupil has a fluency disorder when the flow of verbal expression including rate and rhythm adversely affects communication between the pupil and listener.

(D)~~(4)~~ Language Disorder. The pupil has an expressive or receptive language disorder when he or she meets one of the following criteria:

1.~~(A)~~ The pupil scores at least 1.5 standard deviations below the mean, or below the 7th percentile, for his or her chronological age or developmental level on two or more standardized tests in one or more of the following areas of language development: morphology, syntax, semantics, or pragmatics. When standardized tests are considered to be invalid for the specific pupil, the expected language performance level shall be determined by alternative means as specified on the assessment plan, or

2.~~(B)~~ The pupil scores at least 1.5 standard deviations below the mean or the score is below the 7th percentile for his or her chronological age or developmental level on one or more standardized tests in one of the areas listed in subsection (A) and displays inappropriate or inadequate usage of expressive or receptive language as measured by a representative spontaneous or elicited language sample of a minimum of fifty utterances. The language sample must be recorded or transcribed and analyzed, and the results included in the assessment report. If the pupil is unable to produce this sample, the language, speech, and hearing specialist shall document why a fifty utterance sample was not obtainable and the contexts in which attempts were made to elicit the sample. When standardized tests are considered to be invalid for the specific pupil, the expected language performance level shall be determined by alternative means as specified in the assessment plan.

(12) Traumatic brain injury means an acquired injury to the brain caused by an external physical force, resulting in total or partial functional disability or psychosocial impairment, or both, that adversely affects a child's educational performance. Traumatic brain injury applies to open or closed head injuries resulting in impairments in one or more areas, such as cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem-solving; sensory, perceptual, and motor abilities; psychosocial behavior; physical functions; information processing; and speech.

(A) Traumatic brain injury does not apply to brain injuries that are congenital or degenerative, or to brain injuries induced by birth trauma.

(13) Visual impairment including blindness means an impairment in vision that, even with correction, adversely affects a child's educational performance. The term includes both partial sight and blindness.

~~(d) A pupil has a visual impairment which, even with correction, adversely affects a pupil's educational performance.~~

~~(e) A pupil has a severe orthopedic impairment which adversely affects the pupil's educational performance. Such orthopedic impairments include impairments caused by congenital anomaly, impairments caused by disease, and impairments from other causes.~~

~~(f) A pupil has limited strength, vitality or alertness, due to chronic or acute health~~

~~problems, including but not limited to a heart condition, cancer, leukemia, rheumatic fever, chronic kidney disease, cystic fibrosis, severe asthma, epilepsy, lead poising, diabetes, tuberculosis and other communicable infectious diseases, and hematological disorders such as sickle cell anemia and hemophilia which adversely affects a pupil's educational performance. In accordance with Section 5626(e) of the Education Code, such physical disabilities shall not be temporary in nature as defined by Section 3001(v).~~

~~(g) A pupil exhibits any combination of the following autistic-like behaviors, to include but not limited to:~~

~~(1) An inability to use oral language for appropriate communication.~~

~~(2) A history of extreme withdrawal or relating to people inappropriately and continued impairment in social interaction from infancy through early childhood.~~

~~(3) An obsession to maintain sameness.~~

~~(4) Extreme preoccupation with objects or inappropriate use of objects or both.~~

~~(5) Extreme resistance to controls.~~

~~(6) Displays peculiar motoric mannerisms and motility patterns.~~

~~(7) Self-stimulating, ritualistic behavior.~~

~~(h) A pupil has significantly below average general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period, which adversely affect a pupil's educational performance.~~

~~(i) Because of a serious emotional disturbance, a pupil exhibits one or more of the following characteristics over a long period of time and to a marked degree, which adversely affect educational performance:~~

~~(1) An inability to learn which cannot be explained by intellectual, sensory, or health factors.~~

~~(2) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers.~~

~~(3) Inappropriate types of behavior or feelings under normal circumstances exhibited in several situations~~.

~~(4) A general pervasive mood of unhappiness or depression.~~

~~(5) A tendency to develop physical symptoms or fears associated with personal or~~

~~school problems.~~

~~(j) A pupil has a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, which may manifest itself in an impaired ability to listen, think, speak, read, write, spell, or do mathematical calculations, and has a severe discrepancy between intellectual ability and achievement in one or more of the academic areas specified in Section 56337(a) of the Education Code. For the purpose Section 3030(j)~~

~~(1) Basic psychological processes include attention, visual processing, auditory processing, sensory-motor skills, cognitive abilities including association, conceptualization and expression.~~

~~(2) Intellectual ability includes both acquired learning and learning potential and shall be determined by a systematic assessment of intellectual functioning.~~

~~(3) The level of achievement includes the pupil's level of competence in materials and subject matter explicitly taught in school and shall be measured by standardized achievement tests.~~

~~(4) The decision as to whether or not a severe discrepancy exists shall be made by the individualized education program team, including assessment personnel in accordance with Section 56341(d), which takes into account all relevant material which is available on the pupil. No single score or product of scores, test or procedure shall be used as the sole criterion for the decisions of the individualized education program team as to the pupil's eligibility for special education. In determining the existence of a severe discrepancy, the individualized education program team shall use the following procedures:~~

~~(A) When standardized tests are considered to be valid for a specific pupil, a severe discrepancy is demonstrated by: first, converting into common standard scores, using a mean of 100 and standard deviation of 15, the achievement test score and the ability test score to be compared; second, computing the difference between these common standard scores; and third, comparing this computed difference to the standard criterion which is the product of 1.5 multiplied by the standard deviation of the distribution of computed differences of students taking these achievement and ability tests. A computed difference which equals or exceeds this standard criterion, adjusted by one~~

~~standard error of measurement, the adjustment not to exceed 4 common standard score points, indicates a severe discrepancy when such discrepancy is corroborated by other assessment data which may include other tests, scales, instruments, observations and work samples, as appropriate.~~

~~(B) When standardized tests are considered to be invalid for a specific pupil, the discrepancy shall be measured by alternative means as specified on the assessment plan.~~

~~(C) If the standardized tests do not reveal a severe discrepancy as defined in subparagraphs (A) or (B) above, the individualized education program team may find that a severe discrepancy does exist, provided that the team documents in a written report that the severe discrepancy between ability and achievement exists as a result of a disorder in one or more of the basic psychological processes. The report shall include a statement of the area, the degree, and the basis and method used in determining the discrepancy. The report shall contain information considered by the team which shall include, but not be limited to:~~

~~1. Data obtained from standardized assessment instruments;~~

~~2. Information provided by the parent;~~

~~3. Information provided by the pupil's present teacher;~~

~~4. Evidence of the pupil's performance in the regular and/or special education classroom obtained from observations, work samples, and group test scores;~~

~~5. Consideration of the pupil's age, particularly for young children; and~~

~~6. Any additional relevant information.~~

~~(5) The discrepancy shall not be primarily the result of limited school experience or poor school attendance.~~

NOTE: Authority cited: ~~Statutes of 1981, Chapter 1094, Section 25(a); and~~ Section 56100~~(a), (g) and (i)~~, Education Code. Reference: Sections 56026, 56320, 56333 and 56337, Education Code; 20 U.S.C. Sections 1401~~**(a)**(15)~~(3)**(A)** and ~~1412(5)~~ 1414(a) and (b); 34 C.F.R. Sections ~~300.5(b)(7) and (9), 300.532(a)(2), (d) and (e), 300.533, 300.540, 300.541-43~~ 300.8, 300.300, 300.301, 300.304, 300.305, 300.306, 300.307, 300.308, 300.309 and 300.311~~; and sections 56026, 56320, 56333 and 56337, Education Code~~.

§ 3031. Additional Eligibility Criteria for Individuals with Exceptional Needs - Age Birth to ~~Four~~ Younger Than Three Years ~~and Nine Months~~.

(a) A child, age birth to ~~four~~ younger than three years ~~and nine months~~, shall qualify as an individual with exceptional needs pursuant to Education Code ~~S~~section 56026(c)(1) ~~and (2)~~ and Government Code section 95014 if the Individualized ~~Education Program~~ Family Service Plan (IFSP) ~~T~~team determines that the child meets the following criteria:

(1) Is identified as an individual with exceptional needs pursuant to ~~S~~section 3030, and

(2) Is identified as requiring intensive special education and services by meeting one of the following **criteria**:

(A) The child **has a developmental delay as determined by a significant difference between the expected level of development for their age and their current level of functioning in one or more of the following five developmental areas** ~~**is functioning at or below 50 percent % of his or her chronological age level in any one of the following skill areas**~~:

1. ~~**gross or fine motor**~~ **cognitive** development;

2. ~~**receptive or expressive language**~~ **physical and motor** development**, including vision and hearing**;

3. ~~**social,**~~ ~~or~~ ~~**emotional or adaptive**~~ **communication** development;

4. ~~**cognitive**~~ **social or emotional** development; ~~**and**~~ **or**

5. ~~**visual and hearing**~~ **adaptive** development.

A significant difference is defined as a 33 percent delay in one developmental area before 24 months of age, or, at 24 months of age or older, either a delay of 50 percent in one developmental area or a 33 percent delay in two or more developmental areas.

~~**(B) The child is functioning between 51% and 75% of his or her chronological age level in any two of the skill areas with at least a 33 percent delay in two or more developmental areas identified in Section 3031(2)(A)**~~.

(B)~~**(C)**~~ The child has a disabling medical condition or congenital syndrome which the

~~Individualized Education Program~~ IFSP ~~T~~team determines has a high predictability of requiring intensive special education and services.

(b) Programs for individuals with exceptional needs younger than three years of age are permissive in accordance with Education Code ~~S~~section**s** 56001(c) **and (d)** ~~of the Education Code~~ except for those programs mandated pursuant to Education Code ~~S~~section 56425 ~~of the Education Code~~.

NOTE: Authority cited: ~~Statutes of 1981, Chapter 1094, Section 25(a); and~~ Section 56100~~(a), (g) and (i)~~, Education Code. Reference: Sections 56001 and 56026, Education Code; Section 95014, Government Code; 20 U.S.C. Section 1401**(a)**~~(15)~~(3)(B), 20 U.S.C. Section 1432~~(a)~~(5); 34 C.F.R. Sections ~~300.5~~ 303.21, 300.25~~;~~ ~~Statutes of 1981, Chapter 1094, Section 25(a); and Sections 56026; 56030.5, 56333, and 56337, Education Code~~.

ARTICLE 4. INSTRUCTIONAL PLANNING AND INDIVIDUALIZED EDUCATION PROGRAM

§ 3040. Individualized Education Program Implementation. ~~[Repealed]~~

~~(a) Upon completion of the individualized education program, that individualized education program shall be implemented as soon as possible following the individualized education program team meeting.~~

(a)~~(b)~~ **The LEA shall give the parent or guardian a copy of the IEP in his or her primary language at his or her request.** ~~A copy of the individualized education program shall be provided to the parents at no cost, and a copy of the individualized education program shall be provided in the primary language at the request of the parent.~~

(b)~~(c)~~ **The ~~individualized education program~~ IEP shall show a direct relationship between the present levels of performance, the goals and objectives, and the specific educational services to be provided.**

NOTE: Authority cited: Section 56100~~(a), (i) and (j)~~, Education Code. Reference: Section 56341, Education Code; and 34 C.F.R. Sections 300.342 - 300.345.

§ 3043. Extended School Year.

Extended school year services shall be provided, in accordance with 34 C.F.R. section 300.106, for each individual with exceptional needs who has unique needs and requires special education and related services in excess of the regular academic year. Such individuals shall have ~~handicaps~~ disabilities which are likely to continue indefinitely or for a prolonged period, and interruption of the pupil's educational programming may cause regression, when coupled with limited recoupment capacity, rendering it impossible or unlikely that the pupil will attain the level of self-sufficiency and independence that would otherwise be expected in view of his or her ~~handicapping~~ disabling condition. The lack of clear evidence of such factors may not be used to deny an individual an extended school year program if the ~~individualized education program~~ IEP team determines the need for such a program and includes extended school year in the ~~individualized education program~~ IEP pursuant to subdivision ~~subsection~~ (**~~f~~e**).

(a) Extended year special education and related services shall be provided by a school district, SELPA ~~special education local plan area~~, or county office offering programs during the regular academic year.

(b) Individuals with exceptional needs who may require an extended school year are those who:

(1) Are placed in special classes ~~or centers~~; or

(2) Are individuals with exceptional needs whose IEPs ~~individualized education programs~~ specify an extended year program as determined by the ~~Individualized Education Program~~ IEP ~~T~~team.

. . .

(d) An extended year program shall be provided for a minimum of 20 instructional days, including holidays. ~~**For reimbursement purposes:**~~

~~**(1) A maximum of 55 instructional days excluding holidays shall be allowed for individuals in special classes or centers for pupils with severe disabilities the severely handicapped; and**~~

~~**(2) A maximum of 30 instructional days excluding holidays shall be allowed for all other eligible pupils needing extended year.**~~

~~**(e) A local governing board may increase the number of instructional days**~~

~~**during the extended year period, but shall not claim revenue for average daily attendance generated beyond the maximum instructional days allowed in subdivisions subsection (d)(1) and (2).**~~

(e)~~**(f)**~~ An extended year program, when needed, as determined by the IEP ~~Individualized Education Program~~ team, shall be included in the pupil's IEP ~~individualized education program~~.

(f)~~**(g)**~~ In order to qualify for average daily attendance revenue for extended year pupils, all of the following conditions must be met:

(1) Extended year special education shall be the same length of time as the school day for pupils of the same age level attending summer school in the district in which the extended year program is provided, but not less than the minimum school day for that age unless otherwise specified in the IEP ~~individualized education program~~ to meet a pupil's unique needs.

(2) The special education and related services offered during the extended year period are comparable in standards, scope and quality to the special education program offered during the regular academic year.

(g)~~**(h)**~~ If during the regular academic year an individual's IEP ~~individualized education program~~ specifies integration in the regular classroom, a public education agency is not required to meet that component of the IEP ~~individualized education program~~ if no regular summer school programs are being offered by that agency.

. . .

NOTE: Authority cited: Section 56100~~(a) and (j)~~, Education Code. Reference: Sections 37600, 41976.5 and 56345, Education Code; and 34 C.F.R. Section ~~300.346~~ 300.106.

ARTICLE 5. IMPLEMENTATION (PROGRAM COMPONENTS)

§ 3051. Standards for ~~Designated Instruction and Services (DIS) and~~ Related Services and Staff Qualifications.

(a) General Provisions.

(1) ~~Designated instruction and services and r~~Related services may be provided to individuals or to small groups in a specialized area of educational need, and throughout the full continuum of educational settings.

(2) ~~Designated instruction and services and r~~Related services, when needed are determined by the IEP.

~~(3) All entities and individuals providing designated instruction and services and related services shall be qualified pursuant to sections 3060-3065 of this title.~~

(3)~~(4)~~ All entities and individuals providing ~~designated instruction and services and~~ related services shall meet the qualifications found in 34 C.F.R. section**s** 300.156(b) **and section 3001(r) and the relevant portion of section 3051 et seq.** and shall be either:

(A) Employees of the school district or county office, or

(B) Employed under contract pursuant to Education Code sections 56365-56366, or

(C) Employees, vendors or contractors of the State Departments of Health Care Services or State Hospitals ~~Mental Health~~, or any designated local public health or mental health agency.

(4) To be eligible for certification to provide related services to individuals with exceptional needs, nonpublic schools and nonpublic agencies shall meet the requirements of this section.

(5) An individual providing related services out of state, pursuant to sections 56365 and 56366 of the Education Code, as required in a pupil's IEP, must:

(A) Hold a current valid credential or license to render that related service as required by that state, and

(B) Be employed by a nonpublic, nonsectarian school or agency certified by the CDE.

NOTE: Authority cited: Sections 33031, 56100 and 56366.1, Education Code. Reference: Sections 56363, 56365 and 56366, Education Code; and 34 C.F.R. Sections 300.12, **300.18,** 300.34 and 300.156(b).

§ 3051.1. Language, Speech and Hearing Development and Remediation.

(a) ~~An individual holding an appropriate credential with specialization in language, speech and hearing may provide services~~ Language, Speech and Hearing Development and Remediation services ~~which~~ include:

(1) Referral and assessment of individuals suspected of having a disorder of

language, speech, or hearing. Such individuals are not considered as part of the caseload pursuant to Education Code ~~S~~section 56363.3 ~~of the Education Code~~ unless an IEP ~~individualized education program~~ is developed and services are provided pursuant to ~~S~~sections 3051.1(a)(2) and (3).

(2) Specialized instruction and services for individuals with disorders of language, speech, and hearing, including monitoring of pupil progress on a regular basis, providing information for the review, and when necessary participating in the review and revision of ~~individualized educational programs~~ IEPs of pupils.

. . .

(b) Caseloads of full-time equivalent language, speech and hearing specialists providing instruction and services within the district, SELPA ~~special education local plan area~~, or county office shall not exceed a district-wide, ~~special education local plan area~~ SELPA-wide, or county-wide average of ~~fifty-five (~~55~~)~~ individuals unless prior written approval has been granted by the SSPI ~~State Superintendent of Public Instruction~~.

~~(c) Services may be provided by an aside~~ aide ~~working under the direct supervision of a credentialed~~ qualified ~~language, speech, and hearing specialist if specified in the IEP individualized education program. No more than two aides may be supervised by one credentialed~~ qualified ~~language, speech, and hearing specialist. The case loads of persons in subsection~~ subdivision ~~(b) shall not be increased by the use of~~ aides ~~noncertificated personnel.~~

~~(c)(d) Individuals providing I~~Language**~~,~~ and** speech **~~and hearing~~** development and remediation **~~services~~** shall be **provided only by personnel who possess: ~~qualified.~~**

(1) a license in Speech-Language Pathology issued by a licensing agency within the Department of Consumer Affairs; or

(2) a credential authorizing language or speech services.

(d) Services may also be provided by speech-language pathology assistants working under the direct supervision of a qualified language, speech, and hearing specialist, as defined in Business and Professions Code section 2530.2(i), and if specified in the IEP. No more than two assistants may be supervised by one qualified language, speech, and hearing specialist. The caseloads of persons in

subdivision (b) shall not be increased by the use of assistants.

NOTE: Authority cited: Section**s** 56100~~(a) and (i)~~ **and 56366.1**, Education Code. Reference: **Section 2530, Business and Professions Code;** Sections 56363~~(b)(1)~~ and 56363.3, ~~and~~ Education Code; and 34 C.F.R. Sections ~~300.13(b)(12)~~ 300.34 and 300.156(b)(1).

§ 3051.2. Audiological Services.

(a) In addition to provisions of ~~Title~~ 34~~, Code of Federal Regulations,~~ C.F.R. Section ~~300.13(b)(1)~~ 300.34, ~~**designated**~~ audiological instruction and services may include:

. . .

(3) Planning, organizing, and implementing an audiology program for individuals with auditory dysfunctions, as specified in the IEP ~~individualized education program~~.

. . .

(b) ~~The person~~ ~~**Individuals providing a**~~**A**udiological services shall ~~hold a valid credential with a specialization in clinical or rehabilitative services in audiology~~ be **provided only by personnel who possess: ~~qualified~~.**

(1) a license in Audiology issued by a licensing agency within the Department of Consumer Affairs; or

(2) a credential authorizing audiology services.

NOTE: Authority cited: Section**s** 56100~~(a) and (i)~~ **and 56366.1**, Education Code~~; 20 U.S.C. 1414(c) (2) (B); and 34 C.F.R. 300.600~~. Reference: **Section 2530, Business and Professions Code;** Section**s 49422 and** 56363~~(b)(2)~~, Education Code; and 34 C.F.R. ~~300.13(b)(1)~~ Sections 300.34 and 300.156(b)(1).

§ 3051.3. Orientation and Mobility Instruction.

(a) Orientation and ~~**M**~~**m**obility instruction may include:

(1) Specialized instruction for individuals in orientation and mobility techniques.

(2) Consultative services to other educators and parents regarding instructional planning and implementation of the IEP ~~individualized education program~~ relative to the development of orientation and mobility skills and independent living skills.

(b) ~~The person~~ ~~**Individuals providing o**~~**O**rientation and mobility instruction ~~**and**~~

~~**services**~~ shall ~~hold a credential as an orientation and mobility specialist~~ be **provided only by personnel who possess a credential that authorizes services in orientation and mobility instruction ~~qualified~~**.

NOTE: Authority cited: Section**s** 56100~~(a) and (i)~~ **and 56366.1**, Education Code~~; 20 U.S.C. 1414(c) (2) (B); and 34 C.F.R. 300.600~~. Reference: Section 56363, Education Code; and 34 C.F.R. Sections 300.34 and 300.156(b)(1).

§ 3051.4. Instruction in the Home or Hospital.

. . .

(e) Instruction in the home or hospital shall be provided by a regular class teacher, the special class teacher or the resource specialist teacher, if the teacher or specialist is competent to provide such instruction and services and if the provision of such instruction and services by the teacher or specialist is feasible. If not, the appropriate ~~designated instruction and~~ related services specialist shall provide such instruction.

. . .

NOTE: Authority cited: Section**s** 56100 **and 56366.1**, Education Code. Reference: Sections 56001 and 56363, Education Code**; and 34 C.F.R. Sections 300.34 and 300.156(b)(1)**.

§ 3051.5. Adapted Physical Education for Individuals with Exceptional Needs.

. . .

(b) ~~The person~~ **~~Individuals providing~~** ~~instruction and services~~ **~~a~~A**dapted physical education shall ~~have a credential authorizing the teaching of adapted physical education as established by the Commission on Teacher Credentialing~~ be **provided only by personnel who possess a credential issued by the California CTC that authorizes service in adapted physical education ~~qualified~~**.

NOTE: Authority cited: Section**s** 56100~~(a) and (i)~~ **and 56366.1**, Education Code. Reference: ~~34 CFR 300.307~~ Section 56363, Education Code**; and 34 C.F.R. Sections 300.34 and 300.156(b)(1)**.

§ 3051.6. Physical and Occupational Therapy.

(a) When the district, ~~special education local plan area~~ SELPA, or county office contracts for the services of a physical therapist or an occupational therapist, the following standards shall apply:

(1) Occupational or physical therapists shall provide services based upon recommendation of the ~~individual education program~~ IEP team. Physical therapy and occupational therapy services for infants are limited by Education Code section 5642~~5~~6.6. Physical therapy services may not exceed the services specified in the Business and Professions Code ~~at S~~section 2620. Occupational therapy services may not exceed the services specified in the Business and Professions Code section 2570.2(k).

(2) The district, ~~special education local plan area~~ SELPA, or county office shall assure that the therapist has available safe and appropriate equipment.

(b) ~~Qualifications of therapists.~~ Individuals providing physical or occupational therapy shall be qualified~~:~~.

(1) Physical therapy shall be provided only by personnel who possess a valid license in Physical Therapy issued by a licensing agency within the Department of Consumer Affairs.

(2) Occupational therapy shall be provided only by personnel who possess a license in occupational therapy issued by a licensing agency within the Department of Consumer Affairs. Services provided by a Certified Occupational Therapist Assistant shall be supervised by a registered occupational therapist in accordance with professional standards outlined by the American Occupational Therapy Association.

~~(1) The therapists shall have graduated from an accredited school.~~

~~(2) A physical therapist shall be currently licensed by the Board of Medical Quality Assurance of the State of California and meet the educational standards of the Physical Therapy Examining Committee.~~

~~(3) An occupational therapist shall be currently registered with the American Occupational Therapy Association.~~

NOTE: Authority cited: Section**s** 56100~~(a) and (i)~~ **and 56366.1**, Education Code.

Reference: **Sections 2570.2 and 2620, Business and Professions Code;** Section 56363~~(b)(6)~~, Education Code; and 34 C.F.R. ~~300.13(b) (5) and (7) and 300.600~~ Sections 300.34 and 300.156(b)(1).

§ 3051.7. Vision Services.

(a) Vision services ~~shall be provided by a Credentialed teacher of the visually handicapped and~~ may include:

. . .

(b) An assessment of and provision for services to visually impaired pupils may be conducted by an eye specialist who has training and expertise in low vision disabilities and has available the appropriate low vision aids for the purpose of assessment. The eye specialist may provide consultation to the pupil, parents, teacher and other school personnel as may be requested by ~~individualized education program~~ an IEP team.

. . .

(e) **~~Individuals providing v~~V**ision services shall be **provided only by personnel who possess: ~~qualified.~~**

(1) a license as an Optometrist, Ophthalmologist, Physician or Surgeon, issued by a licensing agency within the Department of Consumer Affairs and authorizing the licensee to provide the services rendered, or

(2) a valid credential authorizing vision instruction or services.

NOTE: Authority cited: Section**s** 56100~~(a)~~ ~~and (i)~~ **and 56366.1**, Education Code. Reference: Section**s** ~~44265.5 and~~ **49422 and** 56363~~(b)(7)~~, Education Code**; and 34 C.F.R. Sections 300.34 and 300.156(b)(1)**.

§ 3051.7.5. Vision Therapy.

. . .

NOTE: Authority cited: Section**s** 56100 **and 56366.1**, Education Code**~~; 20 U.S.C. Section 1414(c)(2)(B); and 34 C.F.R. Section 300.600~~**. Reference: Section 56363, Education Code**; and 34 C.F.R. Sections 300.34 and 300.156(b)(1)**.

§ 3051.8. Specialized Driver Training Instruction.

. . .

NOTE: Authority cited: Section**s** 56100 **and 56366.1**, Education Code. Reference: Sections 41906, 41907 and 56363, Education Code**; and 34 C.F.R. Sections 300.34 and 300.156(b)(1)**.

§ 3051.9. Counseling and Guidance Services.

. . .

(c) ~~**Individuals performing c**~~**C**ounseling and guidance ~~**services**~~ shall be **provided only by personnel who posses a:** ~~**qualified.**~~

(1) license as a Marriage and Family Therapist, or Marriage and Family Therapist Registered Intern who is under the supervision of a Licensed Marriage and Family Therapist, a Licensed Clinical Social Worker, a Licensed Professional Clinical Counselor, a Licensed Psychologist, or a Physician who is certified in psychiatry by the Medical Board of California, the Board of Behavioral Sciences, or the Board of Psychology, within the Department of Consumer Affairs.

(2) license as a Clinical Social Worker, or Associate Clinical Social Worker who is under the supervision of either a Licensed Clinical Social Worker or a licensed Mental Health Professional by the Board of Behavioral Sciences, within the Department of Consumer Affairs; or

(3) license as an Educational Psychologist issued by a licensing agency within the Department of Consumer Affairs; or

(4) license in psychology, or who are working under supervision of a licensed psychologist, both regulated by the Board of Psychology, within the Department of Consumer Affairs; or

(5) Pupil Personnel Services Credential, which authorizes school counseling or school psychology.

(6) license as a Licensed Professional Clinical Counselor, or a Professional Clinical Counselor Registered Intern who is under the supervision of a Licensed Professional Clinical Counselor, a Licensed Marriage and Family Therapist, a Licensed Clinical Social Worker, a Licensed Clinical Psychologist, or a Physician who is certified in psychiatry by the American Board of Psychiatry and

Neurology.

NOTE: Authority cited: Section**s** 56100 **and 56366.1,** Education Code. Reference: **Sections 2903, 2905, 4980.02, 4989.24, 4996.9 and 4999.10, Business and Professions Code;** Section**s 49422 and** 56363, Education Code; and 34 C.F.R. Sections 300.34 and 300.156(b)(1).

§ 3051.10. Psychological Services Other Than Assessment and Development of the ~~Individualized Education Program~~ IEP.

(a) Psychological services may include:

(1)~~(a)~~ **Counseling provided to an individual with exceptional needs by a credentialed or licensed psychologist or other qualified personnel.**

(2)~~(a)~~~~(b)~~ Consultative services to parents, pupils, teachers, and other school personnel.

(3)~~(b)~~~~(c)~~ Planning and implementing a program of psychological counseling for individuals with exceptional needs and parents.

(4) Assisting in developing positive behavioral intervention strategies.

(5) This term does not include assessment services and the development of an IEP.

(b)~~(c) Individuals providing p~~Psychological services **~~shall be qualified~~ required by a student's IEP may be rendered by any of the following professionals who possess the credential or license required by law for the performance of particular psychological services by members of that profession:**

(1) Licensed Educational Psychologist pursuant to Business and Professions Code section 4989.14;

(2) Licensed Marriage and Family Therapist pursuant to Business and Professions Code section 4980.02;

(3) Licensed Clinical Social Worker pursuant to Business and Professions Code section 4996.9; or

(4) Licensed Psychologist pursuant to Business and Professions Code section 2903; or

(5) Pupil Personnel Services Credential that authorizes school psychology.

NOTE: Authority cited: Section**s** 56100~~(a) and (i)~~ **and 56366.1**, Education Code~~; 20 U.S.C. 1414(c) (2) (B); and 34 C.F.R. 300.600~~. Reference: Section 56363~~(b)(10)~~, Education Code; and 34 C.F.R. ~~300.13 (b) (8)~~ Sections 300.34 and 300.156(b)(1).

§ 3051.11. Parent Counseling and Training.

(a) Parent counseling and training may include:

(1)~~**(a)**~~ Assisting parents in understanding the special needs of their child, and

(2)~~**(b)**~~ Providing parents with information about child development.

(b)~~**(c)**~~ ~~**Individuals providing p**~~**P**arent counseling and training shall be **provided only by personnel who possess a:** ~~**qualified.**~~

(1) credential that authorizes special education instruction; or

(2) credential that authorizes health and nursing services; or

(3) license as a Marriage and Family Therapist, or Marriage and Family Therapist Registered Intern who is under the supervision of a Licensed Marriage and Family Therapist, a Licensed Clinical Social Worker, a Licensed Professional Clinical Counselor, a Licensed Psychologist, or a Physician who is certified in psychiatry by the Medical Board of California, the Board of Behavioral Sciences, or the Board of Psychology, within the Department of Consumer Affairs; or

(4) license as a Clinical Social Worker, or Associate Clinical Social Worker who is under the supervision of either a Licensed Clinical Social Worker or a licensed Mental Health Professional by the Board of Behavioral Sciences, within the Department of Consumer Affairs; or

(5) license as an Educational Psychologist, issued by a licensing agency within the Department of Consumer Affairs; or

(6) license as a Psychologist, or who are working under the supervision of a licensed Psychologist, both regulated by the Board of Psychology, within the Department of Consumer Affairs; or

(7) Pupil Personnel Services Credential that authorizes school counseling or school psychology or school social work.

(8) license as a Licensed Professional Clinical Counselor, or a Professional Clinical Counselor Registered Intern who is under the supervision of a Licensed

Professional Clinical Counselor, a Licensed Marriage and Family Therapist, a Licensed Clinical Social Worker, a Licensed Clinical Psychologist, or a Physician who is certified in psychiatry by the American Board of Psychiatry and Neurology.

NOTE: Authority cited: ~~Education Code~~ Section**s** 56100 **and 56366.1** ~~(a) and (i); 20 U.S.C. 1414(c) (2) (B); and 34 C.F.R. 300.600~~, Education Code. Reference: **Sections 2903, 2905, 4980.02, 4989.14, 4996.9 and 4999.10, Business and Professions Code;** Section**s 49422 and** 56363~~(b)(11)~~, Education Code; and 34 C.F.R. ~~300.13(b)(6)~~ Sections 300.34 and 300.156(b)(1).

§ 3051.12. Health and Nursing Services.

. . .

(a)(5) Maintaining communication with health agencies providing care to individuals **with disabilities**.

NOTE: Authority cited: Section**s** 56100 **and 56366.1**, Education Code. Reference: Sections **49422,** 49423.5 and 56363, Education Code; and 34 C.F.R. Sections 300.34 and 300.156(b)(1).

§ 3051.13. Social Worker Services.

~~**(a) Personnel providing social worker services shall be qualified.**~~

(a)~~**(b)**~~ Social work services may include:

(1) Individual and group counseling with the individual and his or her immediate family.

(2) Consultation with pupils, parents, teachers, and other personnel regarding the effects of family and other social factors on the learning and developmental requirements of individual pupils with exceptional needs.

(3) Developing a network of community resources, making appropriate referral and maintaining liaison relationships among the school, the pupil with exceptional needs, the family, and the various agencies providing social, income maintenance, employment development, mental health, or other developmental services.

(b) Social worker services shall be provided only by personnel who possess a:

(1) license as a Clinical Social Worker, or Associate Clinical Social Worker who is under the supervision of either a Licensed Clinical Social Worker or a licensed Mental Health Professional by the Board of Behavioral Sciences, within the Department of Consumer Affairs; or

(2) license as a Marriage and Family Therapist, or Marriage and Family Therapist Registered Intern who is under the supervision of a Licensed Marriage and Family Therapist, a Licensed Clinical Social Worker, a Licensed Professional Clinical Counselor, a Licensed Psychologist, or a Physician who is certified in psychiatry by the Medical Board of California, the Board of Behavioral Sciences, or the Board of Psychology, within the Department of Consumer Affairs; or

(3) credential authorizing school social work.

(4) license as a Licensed Professional Clinical Counselor, or a Professional Clinical Counselor Registered Intern who is under the supervision of a Licensed Professional Clinical Counselor, a Licensed Marriage and Family Therapist, a Licensed Clinical Social Worker, a Licensed Clinical Psychologist, or a Physician who is certified in psychiatry by the American Board of Psychiatry and Neurology.

NOTE: Authority cited: Section**s** 56100 **and 56366.1**, Education Code. Reference: **Sections 2903, 2905, 4980.02, 4989.14, 4996.9 and 4999.10, Business and Professions Code;** Section**s 49422 and** 56363, Education Code; and 34 C.F.R. Sections 300.34 and 300.156(b)(1).

§ 3051.14. Specially Designed Vocational Education and Career Development.

(a) Specially designed vocational education and career development for individuals with exceptional needs regardless of severity of disability may include:

(1)~~**(a)**~~ Providing prevocational programs and assessing work-related skills, interests, aptitudes, and attitudes.

(2)~~**(b)**~~ Coordinating and modifying the regular vocational education program.

(3)~~**(c)**~~ Assisting individuals in developing attitudes, self-confidence, and vocational competencies to locate, secure, and retain employment in the community or sheltered

environment, and to enable such individuals to become participating members of the community.

(4)~~(d)~~ Establishing work training programs within the school and community.

(5)~~(e)~~ Assisting in job placement.

(6)~~(f)~~ Instructing job trainers and employers as to the unique needs of the individuals.

(7)~~(g)~~ Maintaining regularly scheduled contact with all work stations and job-site trainers

(8)~~(h)~~ Coordinating services with the Department of Rehabilitation and other agencies as designated in the ~~individualized education program~~ IEP.

(b)~~(i)~~ ~~Individuals providing s~~Specially designed vocational education and career development shall be **provided only by personnel who possess: ~~qualified.~~**

(1) an adult education credential with a career development authorization; or

(2) a credential that authorizes instruction in special education or vocational education; or

(3) a Pupil Personnel Services Credential that authorizes school counseling.

NOTE: Authority cited: Section**s** 56100 **and 56366.1** ~~(a) and (i)~~, Education Code. Reference: Section 56363~~(b)(14)~~, Education Code; 34 C.F.R. ~~300.14(b)(3)~~ Sections 300.34 and 300.156(b)(1).

§ 3051.15. Recreation Services.

(a) Recreation services include but are not limited to:

(1)~~(a)~~ Therapeutic recreation services which are those specialized instructional programs designed to assist pupils in becoming as independent as possible in leisure activities, and when possible and appropriate, facilitate the pupil's integration into regular recreation programs.

(2)~~(b)~~ Recreation programs in schools and the community which are those programs that emphasize the use of leisure activity in the teaching of academic, social, and daily living skills; and, the provision of nonacademic and extracurricular leisure activities and the utilization of community recreation programs and facilities.

(3)~~(c)~~ Leisure education programs which are those specific programs designed to

prepare the pupil for optimum independent participation in appropriate leisure activities, including teaching social skills necessary to engage in leisure activities, and developing awareness of personal and community leisure resources.

(b)~~(d)~~ ~~Individuals providing r~~**R**ecreation services shall be **provided only by personnel who possess:** ~~qualified.~~

(1) a certificate issued by the California Board of Recreation and Park Certification; or

(2) a certificate issued by the National Council for Therapeutic Recreation; or

(3) the National Recreation and Park Association, authorizing services in recreation or therapeutic recreation.

NOTE: Authority cited: Section**s** 56100 **and 56366.1** ~~(a) and (l)~~, Education Code. Reference: Section 56363~~(b)(15)~~, Education Code; and 34 C.F.R. ~~300.13(b)(9)~~ Sections 300.34 and 300.156(b)(1).

§ 3051.16. Specialized Services for Low-Incidence Disabilities.

(a) Specialized ~~S~~services for low-incidence disabilities may include:

. . .

~~(b) Certification requirements for educational interpreters for deaf and hard of hearing pupils.~~

~~(1) By July 1, 2008, an educational interpreter shall be certified by the national Registry of Interpreters for the Deaf (RID), or equivalent; in lieu of RID certification or equivalent, an educational interpreter shall have achieved a score of 3.0 or above on the Educational Interpreter Performance Assessment (EIPA), the Educational Sign Skills Evaluation-Interpreter and Receptive (ESSE-I/R), or the National Association of the Deaf/American Consortium of Certified Interpreters (NAD/ACCI) assessment. If providing Cued Language transliteration, a transliterator shall possess Testing/Evaluation and Certification Unit (TECUnit) certification, or have achieved a score of 3.0 or above on the EIPA - Cued Speech.~~

~~(2) By July 1, 2008, an educational interpreter shall be certified by the national RID, or equivalent; in lieu of RID certification or equivalent, an educational interpreter must have achieved a score of 3.5 or above on the EIPA, the ESSE-I/R, or the NAD/ACCI~~

~~assessment. If providing Cued Language transliteration, a transliterator shall possess TECUnit certification, or have achieved a score of 3.5 or above on the EIPA - Cued Speech.~~

(b)~~(c)~~ An "educational interpreter" provides communication facilitation between students who are deaf or hard of hearing, and others, in the general education classroom and for other school-related activities, including extracurricular activities, as designated in a student's ~~Individualized Educational Program (~~IEP~~)~~.

(c)~~(b)~~~~(3) By July 1, 2009, and thereafter, a~~An educational interpreter shall be certified by the national Registry of Interpreters for the Deaf (RID), or equivalent; in lieu of RID certification or equivalent, an educational interpreter must have achieved a score of 4.0 or above on the Educational Interpreter Performance Assessment (EIPA), the Educational Sign Skills Evaluation-Interpreter and Receptive (ESSE-I/R), or the National Association of the Deaf/American Consortium of Certified Interpreters (NAD/ACCI) assessment. If providing Cued Language transliteration, a transliterator shall possess Testing/Evaluation and Certification Unit (TECUnit) certification, or have achieved a score of 4.0 or above on the EIPA - Cued Speech.

(d) Specialized services for pupils with low-incidence disabilities shall be provided only by personnel who possess a credential that authorizes services in special education or clinical rehabilitation services in the appropriate area of disability.

NOTE: Authority cited: Section**s** 56100 **and 56366.1** ~~(a) and (i)~~, Education Code. Reference: Section 56363, Education Code; and 34 C.F.R. Sections 300.34 and 300.156(b)(1)~~, Title 34, Code of Federal Regulations~~.

§ 3051.17. Services for Pupils with Chronic Illnesses or Acute Health Problems.

. . .

NOTE: Authority cited: Section**s** 56100 **and 56366.1**, Education Code. Reference: Section 56363, Education Code**; and 34 C.F.R Sections 300.34 and 300.156(b)(1)**.

§ 3051.18. ~~DESIGNATED INSTRUCTION AND~~ RELATED SERVICES FOR THE DEAF AND HARD OF HEARING.

. . .

NOTE: Authority cited: Section**s** 56100 **and 56366.1**, Education Code. Reference: Section 56363, Education Code; and 34 C.F.R. Sections 300.34 and 300.156(b)(1).

§ 3051.19. Assistive Technology Service.

(a) "Assistive technology service" means any service that directly assists an individual with exceptional needs in the selection or use of an assistive technology device that is educationally necessary. The term includes the evaluation of the needs of an individual with exceptional needs including a functional evaluation of the individual in the individual's customary environment; coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education programs and rehabilitation plans and programs; training or technical assistance for an individual with exceptional needs or, where appropriate, the family of an individual with exceptional needs or, if appropriate, that individual's family; and training or technical assistance for professionals (including individuals providing education and rehabilitation services), employers or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of individuals with exceptional needs.

(b) Assistive technology services shall be provided only by personnel who possess a:

(1) license in Physical Therapy issued by a licensing agency within the Department of Consumer Affairs, where the utilization of assistive technology services falls within the scope of practice of physical therapy as defined in Business and Professions Code section 2620 and implementing regulations; or

(2) license in Occupational Therapy issued by a licensing agency within the Department of Consumer Affairs; or

(3) license in Speech-Language Pathology issued by a licensing agency within the Department of Consumer Affairs or a valid document, issued by the California

CTC, where the function of the assistive technology service is augmentative communication; or

(4) baccalaureate degree in engineering with emphasis in assistive technology; or

(5) baccalaureate degree in a related field of engineering with a graduate certificate in rehabilitation technology or assistive technology; or

(6) certification from the Rehabilitation Engineering and Assistive Technology Society of North America and Assistive Technology Provider (RESNA/ATP); or

(7) certificate in assistive technology applications issued by a regionally accredited post-secondary institution; or

(8) credential that authorizes special education of physically impaired ~~handicapped~~, orthopedically impaired, or severely impaired pupils.

NOTE: Authority cited: Sections 56100 and 56366.1, Education Code. Reference: Sections 2530, 2570.2, and 2620, Business and Professions Code; Section 56363, Education Code; 20 U.S.C. Section 1401; and 34 C.F.R. Sections 300.5, 300.6, 300.105, 300.34, and 300.156(b)(1).

§ 3051.20. Early Education Programs.

(a) "Early education" means the program and services specified by Education Code section 56425 et. seq.

(b) Early education programs for children with disabilities, as defined in Education Code section 56426, shall be provided only by personnel who meet the appropriate personnel qualifications set forth in this article and comply with Education Code section 56426.2.

NOTE: Authority cited: Sections 56100 and 56366.1, Education Code. Reference: Sections 56363 and 56430, Education Code; and 34 C.F.R. Sections 300.34 and 300.156(b)(1).

§ 3051.21. Music Therapy.

(a) According to the Certification Board for Music Therapists "Music therapy is the specialized use of music by a credentialed professional who develops

individualized treatment and supportive interventions for people of all ages and ability levels to address their social, communication, emotional, physical, cognitive, sensory and spiritual needs."

(b) Music therapy shall be provided only by personnel who hold a Music Therapist – Board Certified credential from the Certification Board for Music Therapists (CBMT) on the completion of all academic and clinical training requirements, and after successfully passing the CBMT National Board Certification Examination.

NOTE: Authority cited: Sections 56100 and 56366.1, Education Code. Reference: Section 56363, Education Code; and 34 C.F.R. Sections 300.34 and 300.156(b)(1).

§ 3051.22. Transcription Services.

Transcribers for visually impaired pupils shall have a certificate issued by the Library of Congress as a Braille Transcriber.

NOTE: Authority cited: Sections 56100 and 56366.1, Education Code. Reference: Section 56363, Education Code; and 34 C.F.R. Sections 300.34 and 300.156(b)(1).

§ 3051.23. Behavioral Intervention.

(a) Pursuant to Education Code section 56520, behavioral interventions shall be designed or planned only by personnel who have a:

(1) Pupil Personnel Services Credential that authorizes school counseling or school psychology; or

(2) credential authorizing the holder to deliver special education instruction; or

(3) license as a Marriage and Family Therapist certified by the Board of Behavioral Sciences, within the Department of Consumer Affairs; or

(4) license as a Clinical Social Worker by the Board of Behavioral Sciences, within the Department of Consumer Affairs; or

(5) license as an Educational Psychologist issued by a licensing agency within the Department of Consumer Affairs; or

(6) license in psychology regulated by the Board of Psychology, within the Department of Consumer Affairs; or

(7) master's degree issued by a regionally accredited post-secondary institution in education, psychology, counseling, behavior analysis, behavior science, human development, social work, rehabilitation, or in a related field.

(b) To provide behavioral intervention, including implementation of behavior intervention plans, but not including development or modification of behavior intervention plans, an LEA shall deliver those services using personnel who:

(1) possess the qualifications under subdivision (a); or

(2)(A) are under the supervision of personnel qualified under subdivision (a); and

(B) possess a high school diploma or its equivalent; and

(C) receive the specific level of supervision required in the pupil's IEP.

NOTE: Authority cited: Sections 56100 and 56366.1, Education Code. Reference: Sections 56363 and 56520, Education Code; and 34 C.F.R. Sections 300.34 and 300.156(b)(1).

§ 3051.24. Other Related Services.

Other related services not identified in this section shall be provided only by staff who possess a:

(a) license issued by an entity within the Department of Consumer Affairs or another state licensing office; or

(b) credential issued by the California CTC authorizing the service.

NOTE: Authority cited: Sections 56100 and 56366.1, Education Code. Reference: Section 56363, Education Code; and 34 C.F.R. Sections 300.18, 300.34 and 300.156(b)(1).

§ 3054. Special Center. [Repealed]

~~(a) Standards. Special centers operating under this section shall:~~

~~(1) Provide pupils in a special center with an educational program in accordance with their individualized education programs for at least the same length of time as the regular school day for that chronological peer group:~~

~~(A) When an individual can benefit by attending a regular class(es) or other program~~

~~part of the day, the amount of time shall be written in the individualized education program.~~

~~(B) When the individualized education program team determines than an individual cannot function for the period of time of a regular school day, and when it is so specified in the individualized education program, an individual may be permitted to attend a special center for less time than the regular school day for that chronological peer group.~~

~~(2) Be staffed by qualified personnel at a pupil/adult ratio to enable implementation of the pupils' individualized education programs.~~

~~(3) Provide an emergency communication system for the health and safety of individuals with exceptional needs, such as fire, earthquake, and smog alerts.~~

~~(4) Have specialized equipment and facilities to meet the needs of individuals served in the special centers.~~

~~(b) Special centers should be located to promote maximum, appropriate interaction with regular educational programs.~~

NOTE: Authority cited: Section 56100~~(a) and (i)~~, Education Code; 20 U.S.C. Section 1414(c)(2)(B); and 34 C.F.R. Section 300.600. References: Sections 56001 and 56364, Education Code; and 34 C.F.R. Sections 300.550 - 554.

ARTICLE 6. NONPUBLIC, NONSECTARIAN SCHOOL AND AGENCY SERVICES

§ 3060. Application for Certification.

. . .

(c) Each nonpublic school or nonpublic agency application shall include all information required by the CDE's application pursuant to Education Code sections 56366.1(a) and (b) and:

(1) the name and address of the nonpublic school or nonpublic agency;

(2) the name of the administrator and contact person;

(3) the telephone and FAX number and e-mail address;

(4) for nonpublic schools, the name of the teacher(s) with a credential authorizing service in special education;

(5) the types of disabling conditions served;

(6) the age, gender and grade levels served;

(7) the total student capacity of the program;

(8) a brief description of the program including entrance criteria and exit criteria for transition back to the public school setting, and specific services designed to address student needs as listed on the student's IEP;

(9) for nonpublic schools, SBE-adopted core-curriculum (K-8) and standards-aligned core-curriculum (9-12) and instructional materials used by general education students;

(10) per hour, per day or monthly fees for services provided;

(11) written directions and a street map describing the location of the nonpublic school from the major freeways, roads, streets, thoroughfares and closest major airport;

(12) annual operating budget, including projected costs and revenues for each agency and school program, providing documentation that demonstrates that the rates to be charged are reasonable to support the operation of the agency or school program~~.~~;

(13) an entity-wide audit in accordance with generally accepted accounting and auditing principles including each entity's costs and revenues by individual cost center~~.~~;

(14) ~~A~~a list of all qualified staff, including subcontractors identifying their assignment and qualifications in providing services to pupils~~.~~;

(15) tuberculosis clearance dates for all staff;

(16) criminal record summary or criminal history clearance dates for all staff, including subcontractors, who have contact with pupils;

(17) a list of contracting LEAs for whom the applicant has a contract to provide school and/or related services;

(18) for out-of-state applicants, a copy of the current certification or license by the state education agency to provide education services to individuals with exceptional needs under the Individuals with Disabilities Education Act;

(19) a copy of the current school year calendar weekly class schedule, and daily schedule with number of instructional minutes by each grade level served;

(20) a fire inspection clearance completed within the past 12 ~~twelve~~ months;

(21) For new or relocating nonpublic schools, the following documents shall be available for inspection during any onsite visit made by the CDE:

(A)~~(a)~~ a copy of a business license (if applicable);

(B)~~(b)~~ a written disaster and mass casualty plan of action;

(C)~~(c)~~ a building safety inspection clearance; and

(D)~~(d)~~ a health inspection clearance.

(22) For each nonpublic school with a residential component the application shall include:

(A) the name of the residential program attached to the nonpublic school;

(B) the proprietary status of the residential program;

(C) a list of all residential facilities affiliated with the nonpublic school;

(D) the total capacity of all the residential facilities affiliated with the nonpublic school;

(E) the rate ~~of care~~ classification level (California schools only) for each residential facility affiliated with the nonpublic school~~.~~; and

(F) a copy of the current residential care license.

(d) The applicant shall submit a signed assurance statement that the nonpublic school will maintain compliance with the following:

(1) Fair Employment Act;

(2) Drug Free Workplace Act;

(3) Section 504 of the Rehabilitation Act;

(4) Individuals with Disabilities Education Act;

(5) Civil Rights Act;

(6) Nonsectarian status;

(7) Prohibition of Corporal Punishment of Pupils under Education Code section 49001; use of Positive Behavior**al** Interventions pursuant to ~~Education Code section~~ **Education Code sections 56520 through 56525** ~~49001 and **California Code of Regulations, title 5, section 3052**~~;

. . .

NOTE: Authority cited: Sections 33031~~,~~ and 56100, ~~56366 and 56366.1,~~ Education Code. Reference: Sections 49001, 56366.1, ~~and~~ 56366.10, and 56520, Education Code.

§ 3061. Service Fees, Finance and Maintenance of Records.

All certified nonpublic schools and nonpublic agencies shall:

(a) make available any books and records associated with the delivery of education ~~and designated instruction and services~~ and related services to individuals with exceptional needs for audit inspection or reproduction by the SSPI or the SSPI's authorized representatives. These records shall include those management records associated with the delivery of education and ~~designated instruction and services and~~ related services, and the costs of providing services and personnel records necessary to ensure that staff qualifications comply with the requirements contained in ~~a~~Article 6 of these regulations; and

. . .

NOTE: Authority cited: Sections 33031~~,~~ and 56100 ~~and 56366~~, Education Code. Reference: Sections 56366.1 and 56366.10, Education Code; 20 U.S.C. Section 1401(26); and 34 C.F.R. Section 300.34.

§ 3064. Staff Qualifications - Special Education Instruction.

(a) In each classroom for which the nonpublic school is seeking certification, the nonpublic school shall deliver instruction utilizing personnel who possess a credential authorizing the holder to deliver special education instruction according to the age range and disabling conditions of individuals with exceptional needs enrolled in the nonpublic school.

(1) During situations when instructional personnel leave the employ of the nonpublic school with little or no notice, the nonpublic school may employ a person who holds a Provisional Internship Permit or a Short Term Staff Permit ~~or a Temporary County Certificate for a period of time not to exceed the remainder of the school year~~.

. . .

NOTE: Authority cited: Sections 33031 and 56100, Education Code. Reference: Sections 45340, 45350, 56366.1 and 56425, Education Code.

§ 3065. Staff Qualifications - Related Services.

(a) To be eligible for certification to provide ~~designated instruction and~~ related

services to individuals with exceptional needs, nonpublic schools and nonpublic agencies shall meet the ~~following~~ requirements **of section 3051 et seq.**~~:~~

(b) Pursuant to Education Code section 56366.1(n), only those nonpublic, nonsectarian schools or agencies located outside of California that employ staff who hold a current valid credential or license to render special education and related services as required by that state shall be eligible to be certified.

~~(a)(1) "Adapted physical education" means:~~

~~(A) a modified general physical education program, or a specially designed physical education program in a special class; or~~

~~(B) consultative services provided to pupils, parents, teachers, or other school personnel for the purpose of identifying supplementary aids and services or modifications necessary for successful participation in the general physical education program or specially designed physical education programs.~~

~~**(a)(2) Adapted physical education, as defined in section 3051.5, shall be provided only by personnel who possess a credential issued by the California Commission on Teacher Credentialing that authorizes service in adapted physical education.**~~

~~**(b)(1) "Assistive technology service" means any service that directly assists an individual with exceptional needs in the selection or use of an assistive technology device that is educationally necessary. The term includes the evaluation of the needs of an individual with exceptional needs including a functional evaluation of the individual in the individual's customary environment; coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education programs and rehabilitation plans and programs; training or technical assistance for an individual with exceptional needs or, where appropriate, the family of an individual with exceptional needs or, if appropriate, that individual's family; and training or technical assistance for professionals (including individuals providing education and rehabilitation services), employers or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of individuals with exceptional needs.**~~

~~(2) Assistive technology services shall be provided only by personnel who possess a:~~

~~(A) license in Physical Therapy issued by a licensing agency within the Department of Consumer Affairs, where the utilization of assistive technology services falls within the scope of practice of physical therapy as defined in Business and Professions Code section 2620 and implementing regulations; or~~

~~(B) license in Occupational Therapy issued by a licensing agency within the Department of Consumer Affairs; or~~

~~(C) license in Speech-Language Pathology issued by a licensing agency within the Department of Consumer Affairs or a valid document, issued by the California Commission on Teacher Credentialing, where the function of the assistive technology service is augmentative communication; or~~

~~(D) baccalaureate degree in engineering with emphasis in assistive technology; or~~

~~(E) baccalaureate degree in a related field of engineering with a graduate certificate in rehabilitation technology or assistive technology; or~~

~~(F) certification from the Rehabilitation Engineering and Assistive Technology Society of North America and Assistive Technology Provider (RESNA/ATP); or~~

~~(G) a certificate in assistive technology applications issued by~~ a ~~regionally accredited post-secondary institution; or~~

~~(H) a credential that authorizes special education of physically~~ impaired ~~handicapped , orthopedically~~ impaired ~~handicapped, or severely~~ impaired ~~handicapped pupils.~~

~~(c)(1) "Audiological services" means aural rehabilitation (auditory training, speech reading, language habilitation, and speech conservation) and habilitation with individual pupils in the general classroom; monitoring hearing levels, auditory behavior, and amplification for all pupils requiring personal or group amplification in the instructional setting; planning, organizing, and implementing an audiology program for individuals with auditory dysfunctions, as specified in the IEP; or consultative services regarding test finding, amplification needs and equipment, otological referrals, home training programs, acoustic treatment of rooms, and coordination of educational services to~~

~~hearing-impaired individuals.~~

~~(c)(2) Audiological services, as defined in section 3051.2, shall be provided only by personnel who possess:~~

~~(1)(A) a license in Audiology issued by a licensing agency within the Department of Consumer Affairs; or~~

~~(2)(B) a credential authorizing audiology services.~~

~~(d) Behavior intervention shall be designed or planned only by personnel who have:~~

~~(1) pupil personnel services credential that authorizes school counseling or school psychology; or~~

~~(2) credential authorizing the holder to deliver special education instruction; or~~

~~(3) license as a Marriage and Family Therapist certified by the Board of Behavioral Sciences, within the Department of Consumer Affairs; or~~

~~(4) license as a Clinical Social Worker by the Board of Behavioral Sciences, within the Department of Consumer Affairs; or~~

~~(5) license as an Educational Psychologist issued by a licensing agency within the Department of Consumer Affairs; or~~

~~(6) license in psychology regulated by the Board of Psychology, within the Department of Consumer Affairs; or~~

~~(7) master's degree issued by a regionally accredited post-secondary institution in education, psychology, counseling, behavior analysis, behavior science, human development, social work, rehabilitation, or in a related field.~~

~~(e) To be eligible for certification to provide behavior intervention, including implementation of behavior modification intervention plans, but not including development or modification of behavior intervention plans, a nonpublic school or agency shall deliver those services utilizing personnel who:~~

~~(1) possess the qualifications under subdivision (d); or~~

~~(2)(A) are under the supervision of personnel qualified under subdivision (d); and~~

~~(B) possess a high school diploma or its equivalent; and~~

~~(C) receive the specific level of supervision required in the pupil's IEP.~~

~~(f)(1) "Counseling and guidance" means educational counseling in which the pupil is assisted in planning and implementing his or her immediate and long-range educational program; career counseling in which the pupil is assisted in assessing his or her aptitudes, abilities, and interests in order to make realistic career decisions; personal counseling in which the pupil is helped to develop his or her ability to function with social and personal responsibility; or counseling with parents and staff members on learning problems and guidance programs for pupils.~~

~~(f)(2) Counseling and guidance, as defined in section 3051.9, shall be provided only by personnel who possess a:~~

~~(1)(A) license as a Marriage and Family Therapist, or Marriage, and Family Intern under supervision of either a Marriage and Family Therapist, licensed Clinical Social Worker, licensed Psychologist, or a Physician who is certified in psychiatry by either the Medical Board of California, the Board of Behavioral Sciences, or the Board of Psychology, within the Department of Consumer Affairs; or~~

~~(2)(B) license as a Clinical Social Worker, or Associate Clinical Social Worker under supervision of either a licensed Clinical Social Worker or a licensed Mental Health Professional by the Board of Behavioral Sciences, within the Department of Consumer Affairs; or~~

~~(3)(C) license as an Educational Psychologist issued by a licensing agency within the Department of Consumer Affairs; or~~

~~(4)(D) license in psychology, or who are working under supervision of a licensed psychologist, both regulated by the Board of Psychology, within the Department of Consumer Affairs; or~~

~~(5)(E) pupil personnel services credential, which authorizes school counseling or school psychology.~~

~~(g)(1) "Early education programs for children with disabilities" means the program and services specified by Education Code, part 30, section 56425 et seq.~~

~~(g)(2) Early education programs for children with disabilities, as defined in Education Code section 56426, shall be provided only by personnel who meet the appropriate personnel qualifications set forth in this article and comply with all~~

other requirements of Education Code, chapter 4.4 commencing with section 56425 56426.2.

(h) An "educational interpreter" provides communication facilitation between students who are deaf or hard of hearing, and others, in the general education classroom and for other school related activities, including extracurricular activities, as designated in a student's IEP.

(1) Interpreters for deaf and hard of hearing pupils shall meet the following qualification standards:

(A) By July 1, 2008, an educational interpreter shall be certified by the national RID, or equivalent; in lieu of RID certification or equivalent, an educational interpreter shall have achieved a score of 3.0 or above on the EIPA, the ESSE-I/R, or the NAD/ACCI assessment. If providing Cued Language transliteration, a transliterator shall possess TECUnit certification, or have achieved a score of 3.0 or above on the EIPA - Cued Speech.

(1)(B) By July 1, 2009, and thereafter, aAn educational interpreter shall be certified by the national RID, or equivalent; in lieu of RID certification or equivalent, an educational interpreter shall have achieved a score of 4.0 or above on the EIPA, the ESSE-I/R, or the NAD/ACCI assessment. If providing Cued Language transliteration, a transliterator shall possess TECUnit certification, or have achieved a score of 4.0 or above on the EIPA - Cued Speech.

(i)(1) "Health and nursing services" means:

(A) managing the child's health problems on the school site;

(B) consulting with pupils, parents, teachers, and other personnel;

(C) group and individual counseling with parents and pupils regarding health problems;

(D) maintaining communication with health agencies providing care to individuals with disabilities; or

(E) providing services by qualified personnel.

(i)(2) Health and nursing services, as defined in section 3051.12, shall be provided only by personnel who possess:

(1)(A) a license as a Registered Nurse, issued by a licensing agency within the

Department of Consumer Affairs; or

(2)(B) a license as a Vocational Nurse, issued by a licensing agency within the Department of Consumer Affairs, under the supervision of a licensed Registered Nurse; or

(3)(C) a school nurse credential; or

(4)(D) demonstrated competence in cardio-pulmonary resuscitation, current knowledge of community emergency medical resources, and skill in the use of equipment and performance of techniques necessary to provide specialized physical health care services for individuals with exceptional needs. In addition, possession of training in these procedures to a level of competence and safety that meets the objectives of the training as provided by the school nurse, public health nurse, licensed physician and surgeon, or other training programs. "Demonstrated competence in cardio-pulmonary resuscitation" means possession of a current valid certificate from an approved program; or

(5)(E) a valid license, certificate, or registration appropriate to the health service to be designated, issued by the California agency authorized by law to license, certificate, or register persons to practice health service in California.

(j)(1) "Home and hospital services" means instruction delivered to children with disabilities, individually, in small groups, or by teleclass, whose medical condition such as those related to surgery, accidents, short-term illness or medical treatment for a chronic illness prevents the individual from attending school.

(j)(2) Home or hospital instruction, as defined in section 3051.4, shall be provided only by personnel who possess a credential issued by the California Commission on Teacher Credentialing authorizing the holder to deliver special education instruction according to age range and disabling condition of the individual(s).

(k)(1) "Language and speech development and remediation" means screening, assessment, IEP development and direct speech and language services delivered to children with disabilities who demonstrate difficulty understanding or using spoken language to such an extent that it adversely affects their educational performance and cannot be corrected without special education and related services.

(k)(2) Language and speech development and remediation, as defined in section 3051.1, shall be provided only by personnel who possess:

(1)(A) a license in Speech-Language Pathology issued by a licensing agency within the Department of Consumer Affairs; or

(2)(B) a credential authorizing language or speech services.

(A) Services provided by a Speech-Language Pathology Assistant shall be supervised by a Speech-Language Pathologist as defined in Business and Professions Code section 2530.2(i).

(l)(1) "Occupational therapy" means the use of various treatment modalities including self-help skills, language and educational techniques as well as sensory motor integration, physical restoration methods, and pre-vocation exploration to facilitate physical and psychosocial growth and development.

(l) Music therapy shall be provided only by personnel who hold a Music Therapist – Board Certified credential from the Certification Board for Music Therapists (CBMT) upon the completion of all academic and clinical training requirements, and after successfully passing the CBMT National Board Certification Examination.

(m)(2) Occupational therapy, as defined in section 3051.6, shall be provided only by personnel who possess a license in occupational therapy issued by a licensing agency within the Department of Consumer Affairs. Services provided by a Certified Occupational Therapist Assistant (COTA) shall be supervised by a registered occupational therapist in accordance with professional standards outlined by the American Occupational Therapy Association.

(m)(1) "Orientation and mobility instruction" means specialized instruction for individuals in orientation and mobility techniques or consultative services to other educators and parents regarding instructional planning and implementation of the IEP relative to the development of orientation and mobility skills and independent living skills.

(n)(2) Orientation and mobility instruction, as defined in section 3051.3, shall be provided only by personnel who possess a credential that authorizes services in orientation and mobility instruction.

~~(n)(1) "Parent counseling and training" means assisting parents in understanding the special needs of their child and providing parents with information about child development.~~

~~(o)(2) Parent counseling and training, as defined in section 3051.11, shall be provided only by personnel who possess a:~~

~~(1)(A) credential that authorizes special education instruction; or~~

~~(2)(B) credential that authorizes health and nursing services; or~~

~~(3)(C) license as a Marriage and Family Therapist, or Marriage, and Family Intern under supervision of either a Marriage and Family Therapist, licensed Clinical Social Worker, licensed Psychologist, or a Physician who is certified in psychiatry by either the Medical Board of California, the Board of Behavioral Sciences, or the Board of Psychology, within the Department of Consumer Affairs; or~~

~~(4)(D) license as a Clinical Social Worker, or Associate Clinical Social Worker under supervision of either a licensed Clinical Social Worker or a licensed Mental Health Professional by the Board of Behavioral Sciences, within the Department of Consumer Affairs; or~~

~~(5)(E) license as an Educational Psychologist, issued by a licensing agency within the Department of Consumer Affairs; or~~

~~(6)(F) license as a psychologist, or who are working under the supervision of a licensed psychologist, both regulated by the Board of Psychology, within the Department of Consumer Affairs; or~~

~~(7)(G) pupil personnel services credential that authorizes school counseling or school psychology or school social work.~~

~~(o)(1) "Physical therapy" means the:~~

~~(A) administration of active, passive, and resistive therapeutic exercises and local or general massage, muscle training and corrective exercises and coordination work;~~

~~(B) administration of hydrotherapy treatments;~~

~~(C) assistance in administering various types of electrotherapy including ultraviolet, infrared, diathermy and inductothermy;~~

~~(D) teaching of parents of hospitalized pupils exercises which are to be continued at~~

~~home and interpret to them the significance of physical therapy services; and~~

~~(E) instruction in walking, standing, balance, use of crutches, cane, or walker and in the care of braces and artificial limbs.~~

~~(p)(2) Physical therapy, as defined in section 3051.6, shall be provided only by personnel who possess a valid license in Physical Therapy issued by a licensing agency within the Department of Consumer Affairs.~~

~~(q)(p)(1) "Psychological services" means:~~

~~(A) the application of psychological principles and methods including, but not limited to, procedures on interviewing, psycho-educational assessment, diagnosis of specific learning and behavioral disabilities, and amelioration of learning and behavioral problems of individuals or groups through applied psychotherapy.~~

~~(B) This term does not include assessment services and the development of an IEP.~~

~~(2) Psychological services required by a student's IEP may be rendered by any of the following professionals employed by a nonpublic school or agency who possess the credential or license required by law for the performance of particular psychological services by members of that profession:~~

~~(A) Educational Psychologist pursuant to Business and Professions Code section 4989.14;~~

~~(B) Marriage and Family Therapist pursuant to Business and Professions Code section 4980.02;~~

~~(C) Licensed Clinical Social Worker pursuant to Business and Professions Code section 4996.9; or~~

~~(D) Licensed Psychologist pursuant to Business and Professions Code section 2903.~~

~~(E) pupil personnel services credential that authorizes school psychology.~~

~~(q)(1) "Recreation services" means:~~

~~(A) therapeutic recreation and specialized instructional programs designed to assist pupils to become as independent as possible in leisure activities, and when possible and appropriate, facilitate the pupil's integration into general recreation programs;~~

~~(B) recreation programs in schools and the community which are those programs that emphasize the use of leisure activity in the teaching of academic, social, and daily living skills and the provision of nonacademic and extracurricular leisure activities and the utilization of community recreation programs and facilities; or~~

~~(C) leisure education programs which are those specific programs designed to prepare the pupil for optimum independent participation in appropriate leisure activities, and developing awareness of personal and community leisure resources.~~

~~(r)(2) Recreation services, as defined in section 3051.15, shall be provided only by personnel who possess a:~~

~~(1)(A) certificate, issued by the California Board of Recreation and Park Certification; or~~

~~(2)(B) certificate issued by the National Council for Therapeutic Recreation; or~~

~~(3)(C) the National Recreation and Park Association, authorizing services in recreation or therapeutic recreation.~~

~~(r)(1) "Social worker services" means:~~

~~(A) individual and group counseling with the individual and his or her immediate family;~~

~~(B) consultation with pupils, parents, teachers, and other personnel regarding the effects of family and other social factors on the learning and developmental requirements of children with disabilities; or~~

~~(C) developing a network of community resources, making appropriate referral and maintaining liaison relationships among the school, the pupil, the family, and the various agencies providing social income maintenance, employment development, mental health, or other developmental services.~~

~~(s)(2) Social worker services, as defined in section 3051.13, shall be provided only by personnel who possess a:~~

~~(1)(A) license as a Clinical Social Worker, or Associate Clinical Social Worker under supervision of either a licensed Clinical Social Worker or a licensed Mental Health Professional by the Board of Behavioral Sciences, within the Department of Consumer Affairs; or~~

~~(2)(B) license as a Marriage and Family Therapist, or Marriage, and Family~~

~~Intern under supervision of either a Marriage and Family Therapist, licensed Clinical Social Worker, licensed Psychologist, or a Physician who is certified in psychiatry by either the Medical Board of California, the Board of Behavioral Sciences, or the Board of Psychology, within the Department of Consumer Affairs; or~~

~~(3)(C) credential authorizing school social work.~~

~~(s)(1) "Specialized driver training instruction" means instruction to children with disabilities to supplement the general driver-training program.~~

~~(t)(2) Specialized driver education and driver training instruction, as defined in section 3051.8, shall be provided only by personnel who possess a credential that authorizes service in driver education and driver training.~~

~~(t)(1) "Specially designed vocational education and career development" means:~~

~~(A) providing prevocational programs and assessing work-related skills, interests, aptitudes, and attitudes;~~

~~(B) coordinating and modifying the general vocational education program;~~

~~(C) assisting pupils in developing attitudes, self-confidence, and vocational competencies to locate, secure, and retain employment in the community or shelter environment, and to enable such individuals to become participating members of the community;~~

~~(D) establishing work training programs within the school and community;~~

~~(E) assisting in job placement;~~

~~(F) instructing job trainers and employers as to the unique needs of the individuals;~~

~~(G) maintaining regularly scheduled contract with all work stations and job-site trainers; or~~

~~(H) coordinating services with the Department of Rehabilitation, the Employment Development Department and other agencies as designated in the IEP.~~

~~(u)(2) Specially designed vocation education and career development, as defined in section 3051.14, shall be provided only by personnel who possess a:~~

~~(1)(A) adult education credential with a career development authorization; or~~

~~(2)(B) credential that authorizes instruction in special education or vocational education; or~~

~~(3)(C) pupil personnel services credential that authorizes school counseling.~~

~~(u)(1) "Specialized services for low-incidence disabilities" means:~~

~~(A) specially designed instruction related to the unique needs of pupils with low-incidence disabilities; or~~

~~(B) specialized services related to the unique needs of individuals with low-incidence disabilities.~~

~~(v)(2) Specialized services for pupils with low-incidence disabilities, as defined in section 3051.16, shall be provided only by personnel who possess a credential that authorizes services in special education or clinical or rehabilitation services in the appropriate area of disability.~~

~~(w)(v) Transcribers for visually impaired pupils shall have a certificate issued by the Library of Congress as a Braille Transcriber.~~

~~(w)(1) "Vision services" means:~~

~~(A) adaptations in curriculum, media, and the environment, as well as instruction in special skills; or~~

~~(B) consultative services to pupils, parents, teachers, and other school personnel.~~

~~(x)(2) Vision services, as defined in section 3051.7, shall be provided only by personnel who possess:~~

~~(1)(A) a license as an Optometrist, Ophthalmologist, Physician or Surgeon, issued by a licensing agency within the Department of Consumer Affairs and authorizing the licensee to provide the services rendered, or~~

~~(2)(B) a valid credential authorizing vision instruction or services.~~

~~(y)(x) Other related services not identified in this section shall only be provided by staff who possess a:~~

~~(1) license issued by an entity within the Department of Consumer Affairs or another state licensing office; or~~

~~(2) credential issued by the California Commission on Teacher Credentialing authorizing the service.~~

NOTE: Authority cited: Sections 33031**, ~~and~~** 56100 **and 56366**, Education Code. Reference: Sections **~~2530, 2570.2,~~** 2620, 2903, 2905, 4980.02, 4989.14~~,~~ **~~and~~** 4996.9 **and 17505.2**, Business and Professions Code; Sections 49422**~~,~~ and ~~56363,~~** 56366.1,

~~**56426, 56426.1, and 56430**~~, Education Code; 20 U.S.C. Section 1401; and 34 C.F.R. Sections 300.18, 300.34 and 300.156(b)(1).

§ 3068. Appeals ~~and Waivers~~ Information.

. . .

~~(e) LEAs and nonpublic schools and agencies may request the SSPI to waive Education Code sections 56365, 56366, 56366.3 and 56366.6. Such petitions shall be made in accordance with the provisions of Education Code section 56366.2 and shall be necessary in order to provide services to individuals with exceptional needs consistent with their IEP.~~

NOTE: Authority cited: Sections 33031~~,~~ and 56100 ~~and 56366~~, Education Code. Reference: Sections ~~56101,~~ 56366.2 and 56366.6, Education Code.

Article 7. Procedural Safeguards

§ 3083. Service Notice.

Notwithstanding Government Code section 11440.20 of the APA, service of notice, motions, or other writings pertaining to special education due process hearing procedures to the California ~~Special Education Hearing Office~~ ~~**public**~~ agency **or nonprofit organization or entity** that is responsible for conducting due process hearings and any other person or entity are subject to the following provisions:

(a) The notice, motion, or writing shall be delivered personally or sent by mail or other means to the ~~Hearing Office~~ ~~**public**~~ agency **or nonprofit organization or entity** that is responsible for conducting due process hearings, person, or entity at their last known address and, if the person or entity is a party with an attorney or other authorized representative of record in the proceeding, to the party's attorney or other authorized representative.

(b) Unless a provision specifies the form of mail, service or notice by mail may be by first-class mail, registered mail, or certified mail, by mail delivery service, by facsimile transmission if complete and without error, or by other electronic means as provided by regulation, in the discretion of the sender.

(c) Service must be made by a method that ensures receipt by all parties and the

~~Hearing Office~~ ~~**public**~~ agency **or nonprofit organization or entity** that is responsible for conducting due process hearings in a comparable and timely manner.

NOTE: Authority cited: Section 56100, Education Code. Reference: Sections 56500, 56501, 56502, 56503, 56504, 56505, 56506 and 56507, Education Code; Section 11440.20, Government Code; 20 U.S.C. Sections 1415(b)(2) and (c); and 34 C.F.R. Sections 300.507, 300.508, 300.509, 300.510, 300.511 and 300.512.

§ 3084. Ex Parte Communications.

(a) Notwithstanding Government Code sections 11425.10(a)(8), 11430.20, and 11430.30 of the APA, while special education due process hearing proceedings are pending, there shall be no communication, direct or indirect, regarding any issue in the proceeding, to a hearing officer from an employee or representative of a party or from an interested person unless the communication is made on the record at the hearing.

(b) A proceeding is pending from the date of receipt by the California ~~Special Education Hearing Office~~ ~~**public**~~ agency **or nonprofit organization or entity** that is responsible for conducting due process hearings of the request for hearing.

. . .

NOTE: Authority cited: Section 56100, Education Code. Reference: Sections 56500, 56501, 56502, 56503, 56504, 56505, 56506 and 56507, Education Code; Sections 11425.10, 11430.10-11430.30, 11430.50 and 11430.60, Government Code; 20 U.S.C. Sections 1415(b)(2) and (c); and 34 C.F.R. Sections 300.507, 300.508, 300.509, 300.510, 300.511 and 300.512.

§ 3088. Sanctions.

. . .

(e) The presiding hearing officer may, with approval from the General Counsel of the CDE, order a party, the party's attorney or other authorized representative, or both, to pay reasonable expenses, including costs of personnel, to the California ~~Special Education Hearing Office~~ ~~**public**~~ agency **or nonprofit organization or entity** that is responsible for conducting due process hearings for the reasons set forth in Government Code section 11455.30(a).

NOTE: Authority cited: Section 56100, Education Code. Reference: Sections 56500, 56501, 56502, 56503, 56504, 56505, 56506 and 56507, Education Code; Sections 11455.10, 11455.20 and 11455.30, Government Code; 20 U.S.C. Sections 1415(b)(2) and (c); and 34 C.F.R. Section 300.511.

8-28-13 [California Department of Education]

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FINAL STATEMENT OF REASONS
Special Education Regulations

UPDATE OF INITIAL STATEMENT OF REASONS

The original proposed text was made available for public comment for at least 45 days from May 25, 2013, through July 8, 2013. The California Department of Education (CDE) received 328 written comments during that time.

A public hearing was held at 9 a.m. on July 8, 2013, at the CDE. The CDE received comments from 18 individuals.

SUMMARY AND RESPONSE TO COMMENTS RECEIVED DURING THE INITIAL NOTICE PERIOD OF MAY 25, 2013 THROUGH JULY 8, 2013.

Elana Artson
George Buzzetti, Director of Policy, and Celes King IV, Vice Chair, Government Policy and Community Relations, Congress of Racial Equality of California (CORE-CA)
Rebecca Cervenak, Staff Attorney, and Lauren Giardina, Staff Attorney, Disability Rights California (DRC)
Marcia Eichelberger, Steering Committee Representative, Alliance of California Autism Organizations
Laura Faer, Statewide Education Rights Director, Public Counsel Law Center
Kelly D. Fair, Managing Associate, Denton's Litigation and Dispute Resolution (on behalf of her client Janeen Steel, Learning Rights Law Center)
Maureen Graves, Co-Chair; Roberta S. Savage, Co-Chair; and John Nolte, Attorney; California Association of Parent-Child Advocacy (CAPCA)
Judy McKinley, Governmental Affairs Chairperson, Learning Disabilities Association of California
Paula Pearlman, Executive Director, Disability Rights Legal Center
Janeen Steel, Founder/Director of Litigation and Advocacy, Learning Rights Law Center
Angela Sutherland
Valerie Vanaman, Attorney, Newman, Aaronson, Vanaman
Comment: The commenters recommend that the 45-day public comment period provided for in Government Code be extended given the magnitude of the work involved in reviewing the proposed regulations and the inadequacy of the 45-day comment period. Some commenters say that the public has not had sufficient time to fully review and comprehend the proposed regulatory amendments, especially since the public comment period coincided with a busy time of year for child advocates.
Reject: In 2010, the Special Education Division (SED) began the process for reviewing and updating 5 CCR, sections 3001–3088. In August 2012, pursuant to Title 1, California Code of Regulations, section 100, the CDE SED, sought from the Office of Administrative Law (OAL) approval for proposed technical, nonsubstantive amendments to the regulations under review. In September 2012, the OAL approved technical,

nonsubstantive amendments to 51 regulatory sections that were updated in the California Code of Regulations These amendments were also posted to the CDE Web site at http://www.cde.ca.gov/sp/se/ac/.

On October 15, 2012, the SED solicited—by e-mail through the division's established mailing lists—assistance and advice from hundreds of education stakeholders regarding which sections of the existing regulations they thought should be maintained, amended, deleted, or added. Stakeholder groups that the SED contacted included members of the Advisory Commission on Special Education (ACSE), Assembly Bill 114 Transition Workgroup, the Association of California School Administrators, the California Association of Resource Specialists PLUS, Community Advisory Committee members, the Family Empowerment and Disability Council, members of the Improving Special Education Services group, representatives of Institutes of Higher Education, Nonpublic School/Agency Administrators, directors of Special Education Local Plan Areas (SELPAs), Special Education Administrators of County Offices, members of the California Teachers Association board, and WorkAbility administrators. In addition, SED staff asked SELPA directors to forward the request for assistance and advice to district special education directors. The SED received responses from ten persons, and these responses were compiled into one document, which was provided to ACSE.

Pursuant to California Education Code section 33595, the ACSE is mandated to "Comment publicly on any rules or regulations proposed by the state regarding the education of individuals with exceptional needs." During the ACSE's January 2013 meeting, and in preparation for the ACSE's March 2013 meeting, SED staff provided the commissioners with an information package that contained the draft amendments to the regulations, the draft initial statement of reasons (ISOR), a compilation of public comments received so far, and information about the rulemaking process.

A second informal public comment period was also conducted from December 28, 2012, through February 15, 2013. The SED staff, in partnership with the ACSE, once again contacted hundreds of education stakeholders and asked them to provide the ACSE with comments on the proposed amended regulations. This round of comments was provided to all of the commissioners on February 21, 2013, in anticipation of the ACSE's March 2013 meeting.

On March 6, 2013, the ACSE deliberated on the proposed amendments to California Code of Regulations, title 5, sections 3001–3088 and provided the SED with its comments, many of which were incorporated into the regulatory package. The ACSE approved a motion that the CDE should forward the proposed regulations to the SBE for approval to commence the formal rulemaking process.

On July 26, 2013, the SED Director, Fred Balcom, sent a letter to the persons requesting an extension of the public comment period. The letter provided them with the chronology of events in the CDE's process for reviewing the regulations and explained the CDE's reason for deciding not to provide an extension in the public comment period.

The CDE has accepted recommendations from commenters during the 45-day public comment period that will result in substantive amendments to some regulatory sections. The CDE anticipates requesting from the State Board of Education (SBE) during its November 2013 meeting permission to pursue another 15-day public comment period.

Richard Schnetzer, Governmental Consultant, California Association of Private Special Education Schools (CAPSES)
Comment: Commenter noted he would not be submitting a request to postpone the public hearing for the Title 5, California Code of Regulations, as CAPSES has been following the process since last fall.
No response required.

Judy McKinley, Governmental Affairs Chairperson, Learning Disabilities Association of California
Comment: The commenter expresses concern about renumbering the section of the regulations. The commenter notes that when the Special Education Division, California Department of Education discontinued publishing *A Composite of Laws* in 2009, it denied parents, educators, and professionals the ability to easily access special education laws. The commenter notes that the "Laws and Regulations: Special Education and Related Laws" Web site is not accessible to many, and it is very difficult to locate the sections of law one needs for a specific purpose.
Reject: The renumbering of certain sections of the regulations is inevitable in the amending process and follows the format for all state regulations.

Janeen Steel, Founder/Director of Litigation and Advocacy, Learning Rights Law Center
Comment: The commenter notes that there are several changes within the proposed amendments to Title 5, California Code of Regulations, section 3001-3088, that may adversely impact on business, including, but not limited to:

1. Adverse impact on regional centers, departments of mental health, and healthcare industries;
2. Change to qualifications for related services will have an impact on the schools that provide the certification/credentialing; and
3. Differential requirements for public and certified nonpublic programs may greatly reduce the financial viability of the latter and/or substantially raise costs of nonpublic school programs.

A thorough analysis of the proposed amendments' economic impact demonstrates that several businesses and professions will be adversely impacted by this proposed regulation. As there is no evidence that the CDE adequately analyzed this issue, further review is warranted or the proposed regulation must be rejected.
Reject: Staff at the California Department of Finance have determined that the proposed regulatory amendments will not adversely impact business.

Sylvia Youngblood, Representative, Governmental Affairs Committee, Los Angeles Learning Disabilities Association
Comment: The commenter believes as a parent and as someone who has about 20 years' of experience - going through the laws and working with the districts - that the proposed revisions are going to make it harder for parents to navigate through the laws because the CDE is taking away all of the references to federal law and other Education Codes. Now those are going to be taken away so parents who are trying to get services for their child and get an appropriate education for their child will have a hard time doing that on their own, especially if they can't afford an attorney or find an agency that can help them.
Response: Although it is not clear to which regulatory sections these comments apply, the CDE has carefully updated the state and federal statutory citations and the federal regulatory citations in the bodies, the notes, and the references of the regulations. These citations may be helpful to parents trying to navigate through what is admittedly a complex system of laws and regulations. In any case, the CDE hopes that parents will benefit from consulting special education regulations that are updated and that provide citations to current state and federal requirements.

SECTION 3001

Maureen Burness, Policy Committee Chair, Advisory Commission on Special Education
Comment: Sections 3001(d); 3001(e); 3001(f); 3001(g); 3001(ab): The commenter recommends that these sections of the regulations be deleted during this regulatory action in compliance with Assembly Bill 86.
Accept: The CDE will propose that the following subdivisions of 3001 be deleted from the regulations pursuant to AB 86**:** 3001(d); 3001(e); 3001(f); 3001(g): and 3001(ab).

George Buzzetti, Director of Policy, and Celes King IV, Vice Chair, Government Policy and Community Relations, Congress of Racial Equality of California (CORE-CA)
Comment: Section 3001(o); 3001(p); 3001(u); 3001(aa); 3001(ac): Commenter asks why these definitions are eliminated.
Response: Please refer to pages 3 through 5 of the ISOR.

Rebecca Cervenak, Staff Attorney, and Lauren Giardina, Staff Attorney, Disability Rights California (DRC)
Paula Pearlman, Executive Director, Disability Rights Legal Center
Comment: Section 3001: The commenters say that many of the proposed definitions in this section do not align with the definitions of the identical terms in other areas of these regulations, particularly in the areas of certification, licensing, and qualifications.
Response: No substantive amendments have been proposed for section 3001(i) the definition of certification; 3001(p) the definition of license; or 3001(v) the definition of qualified. Without specific reference to the numbers of the sections wherein definitions are said to be misaligned, it is not possible to respond more fully to this comment.

Anjanette Pelletier, Senior SELPA Administrator, San Mateo County SELPA
Comment: Section 3001: The commenter is in favor of aligning the definitions in the California regulations with the federal regulations. The current misalignment is challenging and confusing and causes problems.
No response required.

Janeen Steel, Founder/Director of Litigation and Advocacy, Learning Rights Law Center
Comment: Section 3001: The commenter says that definitions of section 3001 need to be maintained. The California Code of Regulations section 3001 provides the definitions for special education. The purpose of these definitions is to provide a clear and unambiguous understanding of the terms used in the regulations. CDE's reasoning for removing these definition in the proposed amendment are that the terms are found in other sections of the law. However, requiring families, advocates, and district staff to weed through numerous statutes to find information to consistently apply the regulation is an unreasonable burden that will result in increased costs, confusion, and a greater likelihood of noncompliance with the regulation.
Reject: The CDE understands that, according to Government Code section 11342.600, the purpose of regulations is to "implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure." Repeating definitions that already exist in Education Code is duplicative and potentially confusing if the definitions are not identical. The CDE believes that parents and their advocates have the same access to Education Code Part 30, Chapter 1, Article 2, Definitions (sections 56020–56035) as they do to state regulations.

Valerie Vanaman, Attorney, Newman, Aaronson, Vanaman
Comment: Section 3001: The commenter says that the existing regulations provide in section 3001 definitions that are necessary to understand the language used in the regulations. The commenter also says that without any explanation for doing so, the CDE intends to make the regulations much more difficult of all for the stakeholders to access by removing essential definitions. As with many of the other proposed changes, it creates a situation in which there will be as many definitions in use as there are local educational agencies.
Reject: Please see pages 2 and 3 of the ISOR for an explanation of the amendments proposed for this section of the regulations. The CDE understands that, according to Government Code section 11342.600, the purpose of regulations is to "implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure." Repeating definitions that already exist in Education Code is duplicative and potentially confusing if the definitions are not identical. The CDE believes that stakeholders and LEAs have the same access to Education Code Part 30, Chapter 1, Article 2, Definitions (sections 56020–56035) as they do to state regulations.

Judy McKinley, Governmental Affairs Chairperson, Learning Disabilities Association of California
Comment: Section 3001(a): The commenter recommends that "local education[al] agency" should be spelled using initial capital letters.

Reject: The style of this term as used in the regulations follows the style of this term as used in Education Code (e.g., see sections 56026, 56026.3, 56028, 56028.5).

Judy McKinley, Governmental Affairs Chairperson, Learning Disabilities Association of California
Comment: Section 3001(d)(2): The commenter recommends that "special education local plan area" should be spelled using initial capital letters.
Reject: The style of this term as used in the regulations follows the style of this term as used in Education Code (e.g., see sections 56026.3, 56028.5).

Heather DiFede, Senior Director, East County SELPA
Comment: Section 3001(g): The commenter opposes the proposed addition of the words "benchmarks or short-term" before the word "objectives." The commenter notes that under federal law, not all students are required to have benchmarks or short-term objectives; only those students who take an alternate assessment. The commenter also notes that benchmarks or short-term objectives are not required for grades kindergarten through twelve or high school students not participating in the statewide assessments.
Reject: Assembly Bill (AB) 86, the 2013 education omnibus budget trailer bill, mandates that the State Superintendent of Public Instruction repeal subdivisions (d), (e), (f), (g), and (ab) of section 3001. This section of the regulations no longer has the force of law. The SSPI is taking action to repeal it in this regulatory package.

Judy McKinley, Governmental Affairs Chairperson, Learning Disabilities Association of California
Comment: Section 3001, proposed subdivision (k): The commenter recommends that "pupil personnel services" should be spelled using initial capital letters.
Accept: The term "Pupil Personnel Services" refers to the name of a kind of credential and should be put into initial upper case letters.

Janeen Steel, Founder/Director of Litigation and Advocacy, Learning Rights Law Center
Comment: Section 3001(o): The commenter says that the term "feasible" should remain a defined term, because the term is used in related regulation sections 3023(a) and in 3051.4 regarding home instruction. If the term is to be used at all within the regulations, it should remain a defined term to eliminate confusion.
Reject: Section 3001(o) before amendment read "'Feasible" as used in Education Code section 56363(a)…." In response to the reauthorization of the IDEA, the word "feasible" was edited out of Education Code section 56363(a) (through AB 1662, Chapter 653, Statutes of 2005). Although the word "feasible" is used in other sections of the regulations, the definition in section 3001 pertained explicitly to a section of Education Code that no longer uses the word "feasible."

Rebecca Cervenak, Staff Attorney, and Lauren Giardina, Staff Attorney, Disability Rights California (DRC)
Laura Faer, Statewide Education Rights Director, Public Counsel Law Center

Maureen Graves, Co-Chair, and Roberta S. Savage, Co-Chair, California Association of Parent-Child Advocacy (CAPCA)
Judy McKinley, Governmental Affairs Chairperson, Learning Disabilities Association of California
Paula Pearlman, Executive Director, Disability Rights Legal Center
Janeen Steel, Founder/Director of Litigation and Advocacy, Learning Rights Law Center
Angela Sutherland
Comment: Section 3001, current subdivision (p): The commenters express concern about deleting the definition in the regulations of a "free, appropriate public education." One commenter says parents have a hard enough time searching through Web sites to find the special education laws and regulations. One commenter expresses concern that school administrators will also be confused and may believe that substantive changes are being made that are not in fact being contemplated. One commenter expresses concerns that without this definition, families, districts, and providers will believe that the definition of FAPE has changed or is no longer applicable. Other commenters note that the definition of FAPE should be retained in the existing regulations because the Education Code does not create a specific definition and its deletion from the regulations could create significant confusion as to why this critical term was deleted. In particular, it might be interpreted as the state undermining the rights contained in such term.
Reject: The CDE understands that, according to Government Code section 11342.600, the purpose of regulations is to "implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure." Repeating definitions that already exist in federal statute and regulations is duplicative and potentially confusing if the definitions are not identical in all places. Information about FAPE can be found in Education Code, and definitions of FAPE are available in Title 34, Code of Federal Regulations, section 300.17, and in Title 20, United States Code, section 1401(9). Since FAPE is a cornerstone of special education, the CDE thinks it unlikely that because a definition of FAPE does not also appear in the state regulations district personnel will conclude that it is no longer the law.

Judy McKinley, Governmental Affairs Chairperson, Learning Disabilities Association of California
Roberta S. Savage, Co-Chair, California Association of Parent-Child Advocacy (CAPCA)
Comment: Section 3001, current subdivision (u): The commenters recommend retaining in the regulations the definition of "local educational agency," which has been proposed for deletion from the regulations. One commenter expresses concern that school administrators will be confused and may believe that substantive changes are being made that are not in fact being contemplated.
Reject: The CDE understands that, according to Government Code section 11342.600, the purpose of regulations is to "implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure." Repeating definitions that already exist in Education Code is duplicative and potentially confusing if the definitions are not identical. The CDE believes that school administrators have the same access to

Education Code Part 30, Chapter 1, Article 2, Definitions (sections 56020–56035) as they have to state regulations.

Rebecca Cervenak, Staff Attorney, and Lauren Giardina, Staff Attorney, Disability Rights California (DRC)
Maureen Graves, Co-Chair, California Association of Parent-Child Advocacy (CAPCA)
Paula Pearlman, Executive Director, Disability Rights Legal Center
Comment: Section 3001, proposed subdivision (u): The commenters commend the CDE for amending the definition of "primary language" to language that is "used" rather than "spoken." Commenters note that this amendment is more inclusive toward the deaf and hard of hearing community and other communities where sign language or the use of an assistive technology device is the primary mode of communication.
No response required.

Sara Kashing, Staff Attorney, and Jill Epstein, Executive Director, California Association of Marriage and Family Therapists (CAMFT)
Comment: Section 3001, proposed subdivision (v): The commenters say that subdivision (v) of this section is vague and unclear in violation of Government Code section 11349(c). The commenters say that the proposed definition of the term "qualified" should clarify that trainees or pre-licensees who have not completed their degrees and are working in practicum settings are considered qualified service providers.
Reject: The commenters say that adding the word "trainees" would make the definition of "qualified" less vague and unclear thus fulfilling the requirements of Government Code section 11349(c). Section 3001(v), as amended, says in pertinent part "Nothing in this definition shall be construed as restricting the activities ~~in~~ <u>or</u> services of a graduate needing direct hours leading to licensure, or of a student teacher or intern leading to a graduate degree at an accredited or approved college or university, as authorized by state laws or regulations."

State statutes pertaining to marriage and family therapists do not define the term "pre-licensee." Business and Professions Code section 4980.03, pertinent to marriage and family therapists, defines a trainee as an "unlicensed person who is currently enrolled in a master's or doctor's degree program…" and who, therefore, is not a graduate. Adding marriage and family trainees to this definition does not provide clarification; such an amendment represents a policy change that is beyond the scope of this regulatory action, which seeks to align state regulations pertaining to special education with current state statute and federal statute and regulations.

Rebecca Cervenak, Staff Attorney, and Lauren Giardina, Staff Attorney, Disability Rights California (DRC)
Paula Pearlman, Executive Director, Disability Rights Legal Center
Comment: Section 3001, proposed subdivision (x): The commenters note that the definition of "specialized physical health care services" has been amended to include "catheterization, g-tube feeding, suctioning, or other services. The commenters note

that since Education Code section 49423.5(d) [not (c) as cited by the commenters] contains largely the same definition, this amendment is unnecessary.
Reject: The CDE believes that the definition currently contained in general Education Code should be used in special education regulations since it is not extant in special education statute and the definitions should be consistent between the two sources.

Rebecca Cervenak, Staff Attorney, and Lauren Giardina, Staff Attorney, Disability Rights California (DRC)
Laura Faer, Statewide Education Rights Director, Public Counsel Law Center
Maureen Graves, Co-Chair, and Roberta S. Savage, Co-Chair, California Association of Parent-Child Advocacy (CAPCA)
Paula Pearlman, Executive Director, Disability Rights Legal Center
Janeen Steel, Founder/Director of Litigation and Advocacy, Learning Rights Law Center
Angela Sutherland
Comment: Section 3001, current subdivision (aa): Commenters express concern with deleting the definition in the regulations of “related services.” One commenter says parents have a hard enough time searching through Web sites to find the special education laws and regulations.

One commenter expresses concern that school administrators will also be confused and may believe that substantive changes are being made that are not in fact being contemplated.

Commenters express concerns that if the term “related services” is allowed to remain undefined and vague, children who rely heavily on such services will be at risk of losing services or facing a delay in the provision of necessary services while the definition of the term is interpreted by IEP team members.

One commenter says it is critical that districts and families realize the breadth of potentially required services and to understand that any enumeration of services under the regulations are without limitation. One commenter recommends that the deleted section include language to ensure that there is no confusion that services listed in section 56363 and 34 C.F.R. section 300.34 are “not exhaustive;” resulting in unnecessary litigation regarding the state’s intent. A commenter suggests that to reflect that the inclusion of another service in an IEP, where a specific serviced is required for a child to derive educational benefit, is required under federal and state law, the following language should be inserted into the regulation: “The list of related services in section 56363 and 34 C.F.R. section 300.34 is not exhaustive and includes other developmental, corrective and supportive services as required for a child to benefit from special education.”

One commenter expressed concern about the deletion of the following sentence: “Each related service defined under this subdivision may include appropriate administrative and supervisory activities that are necessary for program planning, management and evaluation.” The commenter is concerned that the deletion of this sentence may create

confusion or incorrectly reflect that such administrative and supervisory activities are no longer included, as appropriate. The commenter suggests that the above sentence be retained.
Reject: The definition of "related services" exists in Education Code section 56363; Title 20, United States Code, section 1401(26); and in Title 34, Code of Federal Regulations, section 300.34. It seems unlikely that not repeating the same language also in state regulations will prove confusing for parents or school administrators.

As for the term "related services" being vague, a review of existing statutes and regulations will confirm the specificity of the existing definitions, obviating the risk that students will lose services or face a delay because of confusion on the part of IEP team members. The current definition of "related services" in Education Code has been in place since 2005.

Regarding the important point that any list of related services cannot be exhaustive, Education Code section 56363 prefaces a list of related services by stating that "These services may include, but are not limited to" the enumerated services. Further, Title 34, Code of Federal Regulations, section 300.34, says "Related services means…such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education…."

The federal Office of Special Education Programs (OSEP) provides further guidance in the "Analysis of Comments and Changes" section of the final IDEA regulations, pertaining to section 300.34:

> Section 300.34(a) and Section 602(26) of the Act state that related services include other supportive services that are required to assist a child with a disability to benefit from special education. We believe this clearly conveys that the list of services in § 300.34 is not exhaustive and may include other developmental, corrective, or supportive services if they are required to assist a child with a disability to benefit from special education. It would be impractical to list every service that could be a related service, and therefore, no additional language will be added to the regulations.
>
> Consistent with §§ 300.320 through 300.328, each child's IEP team, which includes the child's parent along with school officials, determines the instruction and services that are needed for an individual child to receive FAPE. In all cases concerning related services, the IEP team's determination about appropriate services must be reflected in the child's IEP, and those listed services must be provided in accordance with the IEP at public expense and at no cost to the parents. Nothing in the Act or in the definition of related services requires the provision of a related service to a child unless the child's IEP team has determined that the related service is required in order for the child to benefit from special education and has included that service in the child's IEP. 71 Federal Register 46569 (August 14, 2006)

Regarding concern that administrative and supervisory activities will be construed as no longer required if direct reference is not made to them in the state regulations, the foregoing discussion clarifies that federal law is unequivocal about the necessity of such activities when the IEP team determines they are required to assist a child to benefit from special education.

Maureen Graves, Co-Chair, and Roberta S. Savage, Co-Chair, California Association of Parent-Child Advocacy (CAPCA)
Angela Sutherland
Comment: Section 3001, current subdivision (ac): The commenters express concern with deleting the definition in the regulations of "special education." One commenter says that parents have a hard enough time searching through Web sites to find the special education laws and regulations. One commenter expresses concern that school administrators will also be confused and may believe that substantive changes are being made that are not in fact being contemplated.
Reject: The CDE understands that, according to Government Code section 11342.600, the purpose of regulations is to "implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure." Repeating definitions that already exist in Education Code is duplicative and potentially confusing if the definitions are not identical. The CDE believes that parents, advocates, and school administrators have the same access to Education Code Part 30, Chapter 1, Article 2, Definitions (sections 56020–56035) as they do to state regulations.

SECTION 3023

Maureen Graves, Co-Chair, and Roberta S. Savage, Co-Chair, California Association of Parent-Child Advocacy (CAPCA)
Comment: Section 3023(a): The commenters welcome the clarification that assessment requirements under section 3023 include "reassessments."
No response required.

SECTION 3029

Judy McKinley, Governmental Affairs Chairperson, Learning Disabilities Association of California
Comment: Section 3029(b): The commenter asks: When contracting with outside personnel to do assessments, what qualifications/credentials must that person have to be deemed qualified? The commenter agrees that school psychologists and educational psychologists are not the only qualified people, but there need to be standards as to who is qualified in this situation.
Response: Education Code section 49422(e)(1) provides a list of persons who are qualified to administer psychological tests, and that citation has been added to the references for this section.

George Buzzetti, Director of Policy, and Celes King IV, Vice Chair, Government Policy and Community Relations, Congress of Racial Equality of California (CORE-CA)
Comment: Section 3029(d): Commenter asks why eliminate this qualification pertaining to contracting for individually administered tests of psychological functioning due to the unavailability of school psychologists.
Response: Please refer to page 4 of the ISOR.

Laura Faer, Statewide Education Rights Director, Public Counsel Law Center
Comment: Sections 3029(d): The removal of the requirement that school psychologists be certified by the BBS appears to create variability in the quality of assessment for children and potential problems when students transfer form one district to another.

Reject: It is important to note that credentialed school psychologists and licensed educational psychologist are two different forms of qualification and are issued by two different agencies, the California Commission on Teacher Credentialing and the Board of Behavioral Sciences, respectively. The educational psychologist is one kind of emergency option when a credentialed school psychologist is not available and, to the extent that SELPAs and LEAs make use of them, educational psychologists are licensed by the Board of Behavioral Sciences according to Business and Professions Code 4989.10, et seq.

Jeff Frost, Legislative Advocate, California Association of School Psychologists (CASP)
Sam Neustadt, Assistant Superintendent, Solano County SELPA
Comment: Section 3029(d): The commenters oppose the deletion of this subdivision. One commenter notes that Education Code section 56320(b)(3) specifies that tests of intellectual or emotional functioning shall be administered by a credentialed school psychologist. When a credentialed school psychologist is not available, it is current law and current practice to contract with a licensed educational psychologist. The commenter is concerned that eliminating specific reference in the regulations to "educational psychologists licensed by the Board of Behavioral Science Examiners" opens the door to unqualified practitioners.

Another commenter opposes the deletion of this subdivision because it opens the door to an expansive list of assessors, far in excess of current law. The commenter is concerned that this amendment would create further exposure for additional independent educational evaluations that are no more informative about educational needs than current psycho-educational evaluations provided under current law.
Reject: The CDE is unaware of a current law that requires an LEA to contract with a licensed educational psychologist when a credentialed school psychologist is unavailable. Section 3029(b) says that "Due to the temporary unavailability of a credentialed school psychologist, a school district or county office may contract with qualified personnel to perform individually administered tests of intellectual or emotional functioning…." Education Code section 49422(e)(1) provides information on who is

qualified to administer psychological tests in addition to credentialed school psychologists. Qualified personnel are governed, within their professions, by the California Commission on Teacher Credentialing and the California Department of Consumer Affairs. The essential point in the regulations is that the person administering the tests is qualified under California law and *within the scope of practice as defined by the licensing or credentialing body*. To ensure that this last requirement is clear, the CDE is adding this statement regarding scope to the definition of "Qualified" in section 3001(v).

SECTION 3030

Tonia Safford-McClure, Psy.D., Educational Psychologist
Comment: Section 3030: The commenter recommends that the categories under which children are determined to be eligible for special education be amended by adding "developmental delay" for children ages three through nine The commenter notes that when assessing younger students, having developmental delay as an eligibility category provides greater flexibility in determining a need for special education services, especially because some young children do not appear to qualify under one of the other eligibility categories.
Reject: Title 20, United States Code, section 1401(3)(b) leaves the addition of this category to a state's discretion as a state defines "developmental delay" and as measured by appropriate diagnostic instruments and procedures. Further, a state cannot require a local educational agency (LEA) to adopt and use the term "developmental delay" for children in its jurisdiction (Title 34, Code of Federal Regulations, section 300.111(b)(2)). The purpose of this regulatory package is to update old state regulations by bringing them into alignment with current state statutes and federal statutes and regulations. According to California's "hierarchy of the law," state statute takes precedence over a regulation. Amending Title 5, California Code of Regulations, section 3030, to add a new special education eligibility category constitutes a policy change that would need to take place first in state statute before being reflected in the regulations.

Rebecca Cervenak, Staff Attorney, and Lauren Giardina, Staff Attorney, Disability Rights California (DRC)
Paula Pearlman, Executive Director, Disability Rights Legal Center
Comment: Section 3030: Commenters say that many of the changes to the eligibility criteria are premature and vague. First, the federal law has not yet been revised considering the updated diagnostic criteria in the *Diagnostic and Statistical Manual of Mental Disorders, 5th Edition*. To avoid the inevitable revisions that will occur when the federal eligibility criteria is updated, the eligibility criteria should not change at this time.

Commenters say there are also many troubling proposed changes to the eligibility criteria that will decrease the amount of students eligible for special education or cause confusion surrounding a person's eligibility which will undoubtedly lead to unnecessary and costly litigation. For example, the proposed deletion of section 3030(g) to remove the term and definition of autistic-like behaviors and substitute the proposed significantly

more limited definition of autism in the updated section 3030(b)(1) will likely only serve the purpose of clouding an already well-accepted definition of autism and potentially causing undue delay and inappropriate service denials for students who have autism spectrum disorders.
Reject: The 5 CCR regulations have not been updated since 1987. Because changes are always occurring in the special education field and related fields, there is no optimal time for updating the regulations. The intent of the current regulatory package is to bring state eligibility criteria into conformance with the federal eligibility criteria. The CDE is aware that confusion among educators arises when state and federal eligibility requirements are inconsistent with each other.

Heather DiFede, Senior Director, East County SELPA
Comment: Section 3030: The commenter recommends that the proposed deletion of some of the detailed eligibility criteria be reconsidered. The commenter expresses a concern that eliminating the existing level of detail is going to create nebulous criteria and lead to increased litigation. The commenter recommends maintaining the existing language currently found in section 3030(c), speech or language disorder; section 3030(g), autistic-like behaviors; and section 3030(j)(A) and (B).
Partially accept and partially reject: The CDE has retained in its current regulatory package the language found in section 3030(c) for speech or language disorder. The same eligibility criteria can be found in the proposed regulations under 3030(b)(11).

Again, the CDE has retained in its current regulatory package the language found in section 3030(j)(A) and (B) for specific learning disability. The same eligibility criteria can be found in the proposed regulations under 3030(b)(10)(B)(1) and (2).

The eligibility criteria for autism are updated in the proposed regulations under section 3030(b)(1) to reflect federal requirements found in Title 34, Code of Federal Regulations, section 300.8. Federal regulations also provide additional differentiating criteria. The term “autistic-like” in the current regulations is used as an adjective to modify “behavior.” In the proposed amendments, the words “autistic-like behavior” are replaced with the words “characteristics often associated with autism”; the lists of these “behaviors” or “characteristics” are essentially the same. There is no eligibility category for a student’s being “autistic like,” only for being autistic.

As for the possibility of increased litigation, aligning California’s criteria with federal requirements for determining whether a student has autism, helps to ensure that students with autism are appropriately identified and receive the appropriate services for their needs. When state and federal criteria are misaligned, the resulting confusion can also lead to litigation, which can delay a student’s receiving the services noted in his or her IEP.

George Buzzetti, Director of Policy and Celes King IV, Vice Chair, Government Policy and Community Relations, Congress of Racial Equality of California (CORE-CA)

Comment: Section 3030: current subdivision (a): Commenter asks why this important language is taken out.
Response: Please refer to page 5 of the ISOR.

George Buzzetti, Director of Policy, and Celes King IV, Vice Chair, Government Policy and Community Relations, Congress of Racial Equality of California (CORE-CA)
Rebecca Cervenak, Staff Attorney, and Lauren Giardina, Staff Attorney, Disability Rights California (DRC)
Laura Faer, Statewide Education Rights Director, Public Counsel Law Center
Maureen Graves, Co-Chair, and Roberta S. Savage, Co-Chair, California Association of Parent-Child Advocacy (CAPCA)
Judy McKinley, Governmental Affairs Chairperson, Learning Disabilities Association of California
Paula Pearlman, Executive Director, Disability Rights Legal Center
Janeen Steel, Founder/Director of Litigation and Advocacy, Learning Rights Law Center
Sylvia Youngblood, Representative, Governmental Affairs Committee, Los Angeles Learning Disabilities Association
Comment: Section 3030: proposed subdivision (a): The commenters oppose replacing the word “pupil” with “child.” One of the commenters has concerns that the change from “pupil” to “child” has dramatic differences in legal meaning. Some of the commenters say they understand that federal law uses the word “child” but the Education Code uses the word “pupil” throughout and this is more accurate, as many students in special education fall within the 18-22 year old range. One commenter says that the use of the word child is inaccurate and could create confusion regarding eligibility. “Child” is defined as someone who is under the age of majority. Using the word “child” in the regulation potentially limits its scope to those under the age of 18. This does not take into account students with disabilities ages 18-22. To eliminate the potential harm to students ages 18-22, one commenter recommends that the word “student” be used in place of either “child” or “pupil.” Moreover, one of the struggles of the disability rights movement has long been to overcome the treatment of adults with disabilities like “children.” It would be ironic and unfortunate to enshrine this demeaning perspective in California regulations just as the term “mental retardation” is rightly being removed.
Reject: Regarding the possible legal difference in the use of the words “pupil” or “child,” there is none delineated in the IDEA. The proposed amendment is unlikely to create confusion regarding eligibility given the clear definitions of age categories in Education Code section 56026, which also includes categories for persons between nineteen and twenty-one years of age and twenty-two years of age. Education Code refers variously to “individual with exceptional needs,” “pupil,” “child,” “youth,” and “person” in referring to someone receiving special education and related services. There was no concerted effort to replace the word “pupil” with the word “child” throughout the regulations; rather, the regulations reflect the multiplicity of words used in the Education Code.

Maureen Graves, Co-Chair, and Roberta S. Savage, Co-Chair, California Association of Parent-Child Advocacy (CAPCA)
Comment: Section 3030: proposed subdivision (a): The commenters strongly object to the proposal to remove from section 3030(a) the requirement that "[t]he specific processes and procedures for implementation of these [eligibility] criteria shall be developed by each Special Education Local Plan Area and be included in the local plan pursuant to Section 56220(a) of the Education Code." The commenters are concerned that the proposed approach creates a severe risk that districts will not use discrepancy criteria, and also will not undertake an RTI process, and will instead ignore, or mis- or insufficiently categorize, students with specific learning disabilities. Districts will be able to invoke opportunistically whichever LD definition is hardest to square with a particular student's profile, and take inconsistent lines from case to case. If California decides to leave it up to local districts how to define learning disability (an approach which is not required by federal law, which merely forbids requiring districts to use discrepancy criteria), the state needs to ensure that criteria are clearly stated. Without knowing what criteria are being used, families' rights to participate in IEP development and to obtain relevant, useful Independent Educational Evaluations will be nullified.
Reject: The statutory authority for this regulation was repealed through Assembly Bill 602, Chapter 854, Statutes of 1997. The criteria for determining a student's eligibility for special education under any category, including specific learning disability, are provided in section 3030 throughout.

George Buzzetti, Director of Policy, and Celes King IV, Vice Chair, Government Policy and Community Relations, Congress of Racial Equality of California (CORE-CA)
Marcia Eichelberger, Steering Committee Representative, Alliance of California Autism Organization
Laura Faer, Statewide Education Rights Director, Public Counsel Law Center
Esteban Fuentes, Treasurer; Jose Luis and Gloria Hernandez, President and Founders; Rosa Hernandez; Maria Garcia; Hilda Cuenca; Martha Mora; Grupo de Autismo Angeles
Maureen Graves, Co-Chair, and Roberta S. Savage, Co-Chair, California Association of Parent-Child Advocacy (CAPCA)
Janeen Steel, Founder/Director of Litigation and Advocacy, Learning Rights Law Center
Grace Trujillo
Comment: Section 3030(b)(1): The commenters oppose aligning the state eligibility criteria for autism with federal eligibility criteria and suggest that the CDE maintain existing "autistic-like" eligibility criteria. The proposed amendments would unsettle a widely understood and fairly settled area in California law and would generate costs for both families and school districts in terms of litigation and independent educational evaluations. One commenter notes entertaining frequent discussions with school psychologists who report that they can only assess for "autistic-like characteristics [*sic*]" not autism.

One commenter says that nothing in IDEA prevents states from formulating eligibility requirements differently, as long as they do not bar students who are eligible under federal guidelines. There is no requirement that California use the same language.

One commenter says it must be clear in the regulations that the districts are mandated to fund “medical” assessments if deemed necessary to determine autism eligibility or develop an IEP. Another commenter says that if school psychologists are required to conduct “autism” assessments for eligibility, there must be additional language in the regulations outlining the process for making this assessment to ensure that there is no delay in the evaluations.

Commenters also said that a change in eligibility may be inadvisable now since the new DSM-V criteria for diagnosing autism may lead to further changes in the federal regulations; any change to autism eligibility criteria in state regulations should be made after Congress and the U.S. Department of Education determine whether to revise the federal definition to conform with the DSM-V.
Reject: The intent of the current regulatory package is to bring state eligibility criteria into conformance with the federal eligibility criteria because the CDE is aware that confusion among educators arises when state and federal eligibility requirements are inconsistent with each other. The term “autistic-like” in the current regulations is used as an adjective to modify “behavior.” In the proposed amendments, the words “autistic-like behavior” are replaced with the words “characteristics often associated with autism”; the lists of these “behaviors” or “characteristics” are essentially the same. There is no eligibility category for a student’s being “autistic like,” only for being autistic. Psychologists who can assess only for “autistic-like behaviors” will also be able to assess for “characteristics often associated with autism.”

As for the possibility of increased litigation, aligning California’s criteria with federal requirements for determining whether a student has autism, helps to ensure that students with autism are appropriately identified and receive the appropriate services for their needs. When state and federal criteria are misaligned, the resulting confusion can also lead to litigation, which can delay a student’s receiving the services noted in his or her IEP.

As for using the regulations to mandate that districts fund medical assessments, Education Code section 56320(f) stipulates that pupils must be assessed in all areas related to the suspected disability, including, if appropriate, for health and development. Regarding outlining the process of conducting autism assessments to avoid delays, such information is beyond the scope of these regulations. Although the CDE does not have statutory authority to outline such procedures, Education Code section 56302.1(a) says that “Once a child has been referred for an initial assessment to determine whether the child is an individual with exceptional needs as defined in section 56026 and to determine the educational needs of the child, these determinations shall be made, and an individualized education program meeting shall occur, within 60 days of receiving parental consent for the assessment in accordance with subparagraph (C) of paragraph (1) of subdivision (a) of section 1414 of Title 20 of the United States Code.”

Regarding waiting to update this section of the regulations, California Code of Regulations, title 5, sections 3001-3088, have not been updated since 1987. Because changes are constantly occurring in the special education field and related fields, there is no optimal time for updating the regulations. Should the federal Office of Special Education Programs amend its criteria for determining eligibility to receive special education under the category of autism, the CDE will review its criteria.

George Buzzetti, Director of Policy, and Celes King IV, Vice Chair, Government Policy and Community Relations, Congress of Racial Equality of California (CORE-CA)
Comment: Section 3030(b)(2): Commenter believes that the definitions for deaf-blindness are already too restrictive for pupils and that the assistance to these pupils be opened, not made more restrictive.
Reject: The purpose of this regulatory action is to align old, out-of-date regulations with existing state statutes and federal statutes and regulations. Expanding eligibility requirements beyond state and federal requirements for students with deaf-blindness or any other category involves a policy discussion that is beyond the scope of this proposed rulemaking.

Maureen Graves, Co-Chair, and Roberta S. Savage, Co-Chair, California Association of Parent-Child Advocacy (CAPCA)
Janeen Steel, Founder/Director of Litigation and Advocacy, Learning Rights Law Center
Valerie Vanaman, Attorney, Newman, Aaronson, Vanaman
Comment: Section 3030(b)(2): The commenters note that the eligibility criteria in this section of regulations reference classroom placement, which seems misplaced in eligibility criteria. The commenters say that placement should not be predetermined by choosing one of these disability categories: many students with deaf-blindness may be best served precisely with accommodations in a program geared to the particular communication issues facing deaf or blind students. One commenter says that the change proposed is not permitted by either federal or state law and will lead to litigation.
Reject: The reference to placement appears in the federal regulations to which this section has been aligned. The purpose of this regulatory package is to update old state regulations by bringing them into alignment with current state statutes and federal statutes and regulations.

Jorge Quiñónez, Monterey County
Roberta S. Savage, Co-Chair, California Association of Parent-Child Advocacy (CAPCA)
Comment: Section 3030(b)(4): The commenter recommends changing the reference to “emotional disturbance”—one of the categories under which a child may qualify to receive special education—to an alternative reference such as “emotional disability” or “emotional/behavioral disability.” The commenter notes that these suggested alternatives are less stigmatizing and that several states have chosen to use alternative terms when referring to this eligibility category.

Reject: The purpose of this regulatory package is to update old state regulations by bringing them into alignment with current state statutes and federal statutes and regulations. The use of “emotional disturbance” in the proposed state regulations is consistent with the terminology used in California Education Code, which in turn is consistent with the terminology used in Title 34, Code of Federal Regulations, section 300.8. According to California’s “hierarchy of the law,” state statute takes precedence over a regulation. A change in California’s terminology from “emotional disturbance” to an alternative reference constitutes a policy change that would need to take place first in state statutes before being reflected in the regulations.

A. Kay Altizer, Director, Special Education, Berkeley Unified School District
Comment : Section 3030(b)(1) and (b)(4)(F): The commenter approves of the new definition of autism and the addition of a reference to “schizophrenia.”
No response required.

Comment: Section 3030(b)(4)(F) and 3030(b)(6): The commenter recommends that the proposed regulations be amended to include definitions or clarifications for the terms “social maladjustment behaviors,” “significantly subaverage,” and “developmental period.”
Reject: Section 3030(b)(4)(F) makes reference to “children who are socially maladjusted” but not to “social maladjustment behaviors.” The terms “significantly subaverage” and “developmental period” do appear in section 3030(b)(6). These terms are consistent with their use in Title 34, Code of Federal Regulations, section 300.8. The purpose of this regulatory package is to update old state regulations by bringing them into alignment with current state statutes and federal statutes and regulations. Amending Title 5, California Code of Regulations, section 3030(b)(4)(F) and section 3030(b)(6) to add new definitions to terms used in the eligibility criteria constitutes a policy change that is beyond the scope of this rulemaking process.

George Buzzetti, Director of Policy, and Celes King IV, Vice Chair, Government Policy and Community Relations, Congress of Racial Equality of California (CORE-CA)
Comment: Section 3030(b)(7): Commenter believes that students with multiple disabilities will do better being properly accommodated than in generic programs that do not address their individual specific needs.
No response required; the comment does not pertain to the proposed amendments.

Maureen Graves, Co-Chair, and Roberta S. Savage, Co-Chair, California Association of Parent-Child Advocacy (CAPCA)
Comment: Section 3030(b)(7): The commenters note that the eligibility criteria in this section reference classroom placement, which seems misplaced in eligibility criteria. The commenters say that placement should not be predetermined by choosing one of these disability categories: many students with multiple disabilities may be best served precisely with accommodations in a program geared to the particular mobility issues facing students with multiple disabilities.

Reject: The reference to placement appears in the federal regulations to which this section has been aligned. The purpose of this regulatory package is to update old state regulations by bringing them into alignment with current state statutes and federal statutes and regulations.

George Buzzetti, Director of Policy, and Celes King IV, Vice Chair, Government Policy and Community Relations, Congress of Racial Equality of California (CORE-CA)
Comment: Section 3030(b)(8); 3030(b)(9); 3030(b)(10): Commenter opposes changing the definition of "orthopedic impairment"; "other health impairment"; and "specific learning disability," respectively, and recommends against lowering the standards.
Reject: The purpose of this regulatory package is to update old, out-of-date state regulations by bringing them into alignment with current state statutes and federal statutes and regulations. Unfortunately, the commenter does not specify the ways in which he is concerned that the proposed amendments may lower standards for students. The CDE is unable to respond further to this comment.

A. Kay Altizer, Director, Special Education, Berkeley Unified School District
Comment: Section 3030(b)(9)(A): The commenter recommends that the proposed regulation be amended to delete the use of the term "attention deficit disorder."
Reject: The term "attention deficit disorder," as it is used in the proposed regulations, is consistent with its use in Title 34, Code of Federal Regulations, section 300.8, the federal definition of "Other health impairment." The CDE does not believe it is necessary to delete this term from the state's definition of this eligibility criteria.

Laura Faer, Statewide Education Rights Director, Public Counsel Law Center
Comment: Section 3030: Current subdivision (b)(9)(A): The commenter says that removal of "cystic fibrosis" from the list could suggest that such disease is no longer included in the list of health problems that are chronic or acute. The commenter says that we should avoid litigation and delays for children who need services over whether the removal is something more than an oversight.
Reject: The purpose of this regulatory package is to update old, out-of-date state regulations by bringing them into alignment with current state statutes and federal statutes and regulations. The federal regulation and the proposed amendment to the state regulation both use the words "such as" to preface a long list of "chronic or acute health problems" leading to a determination that a student has "other health impairment," indicating that the list is not meant to be exhaustive.

Maureen Graves, Co-Chair, and Roberta S. Savage, Co-Chair, California Association of Parent-Child Advocacy (CAPCA)
Comment: Section 3030(b)(9): The commenters object to and question the reasons for removing several serious medical conditions from the list of potential qualifying conditions for "other health impairment." The commenters propose retaining cancer, chronic kidney disease, cystic fibrosis, and "tuberculosis and other communicable infectious diseases" while otherwise adopting federal language. Removing specific

conditions may cause confusion, alarm and improper questioning of current and prospective eligibility. There is no need for California's list of examples to be exactly the same as in the federal regulation.
Reject: The purpose of this regulatory package is to update old, out-of-date state regulations by bringing them into alignment with current state statutes and federal statutes and regulations. The federal regulation and the proposed amendment to the state regulation both use the words "such as" to preface a long list of "chronic or acute health problems" leading to a determination that a student has "other health impairment," indicating that the list is not meant to be exhaustive. The illustrative list could include or exclude a variety of chronic or acute health problems: ultimately, the IEP team determines whether an individual's chronic or acute condition constitutes "other health impairment."

Fran Arner-Costello, Director, Programs and Services, Ventura County SELPA
Diane Fazzi, Chair; Gina Plate, Vice Chair; Maureen Burness, Policy Committee Chair, Advisory Committee on Special Education (ACSE)
Judy McKinley, Governmental Affairs Chairperson, Learning Disabilities Association of California
Comment; 3030(b)(10): The commenters suggest that proposed 5 CCR 3030(b)(10) include additional details for determining whether a student has a specific learning disability. One of the commenters expresses the opinion that the additional detail is necessary to reflect current research and changes in practice regarding assessment in the area of specific learning disabilities. Another commenter expresses the opinion that the state must adopt additional criteria to be compliant with federal regulations.
Reject: Consistent with federal law, the proposed regulations provide that a student "may" be determined to have a specific learning disability if he or she has a severe discrepancy between ability and achievement, 5 CCR 3030(b)(10)(B), <u>or</u> if his or her achievement is determined to be inadequate pursuant to a "response to intervention" or "pattern of strengths and weaknesses" analysis, 5 CCR 3030(b)(10)(C). The additional detail proposed by the commenters is not necessary to aligning the regulations with federal law.

Maureen Graves, Co-Chair; Roberta S. Savage, Co-Chair; and John Nolte, Attorney; California Association of Parent-Child Advocacy (CAPCA)
Comment: Section 3030(b)(10): The commenters object to the proposed amendments pertaining to specific learning disability eligibility. One commenter says that a need exists to make it clear that districts need to adopt one of the approaches outlined—they cannot simply go back and forth as to theory while rejecting students' requests for learning disability eligibility. The commenter also recommends that the regulations reflect that both ways of determining a learning disability are mandatory in districts as opposed to discretionary. The commenters say that the law needs to make clear that if districts are opting not to use discrepancy criteria, they must use a solid alternative.

The commenters are concerned that districts no longer have to accept demonstrations of discrepancy combined with processing disorder, and also under this wording would

not need to adopt the approach outlined here. Nor would districts apparently have to explain how they are defining specific learning disability.

Commenters observe that districts must allow in some manner the identification of students as having a specific learning disability, a result not achieved under the purely permissive language here, which allows a discrepancy model, an RtI model, or a "strengths and weaknesses" model, but does not create a right on the part of students to be considered for learning disabled eligibility under any theory at all.

The commenters say that as for the discrepancy definition, use of which is optional, there have been powerful technical criticisms of the discrepancy model in California's regulations, some of them linked to California's failure to update the approach in many years. The current revision is an opportunity to engage in necessary dialogue and revisions so that districts that retain a discrepancy model will use a technically sound one. Instead, current, flawed discrepancy criteria are simply being repeated.

The commenters suggest deletion of 3030(b)(10)(C)(4)(i) and (ii), which pertain to using data to determine whether a child's underachievement results from a lack of appropriate instruction in reading or math. The commenters say that subdivisions (i) and (ii) reflect an idealization of RtI in which services would be better selected, designed, executed and documented than they generally are and, indeed, better selected, designed, executed, and documented than special education services themselves typically are. The commenters say that special education eligibility should not await the development of excellent RtI models which, nearly 14 years after IDEA 2004 was developed, are nonexistent in much of California. It is sufficient to retain current language indicating that achievement deficits cannot be the result of poor instruction.
Reject: Beyond current state statutes and federal statutes and regulations, the CDE does not have statutory authority to direct districts to use or to not use certain methods for determining whether a student has a specific learning disability. Title 34, Code of Federal Regulations, section 300.307 says that states *must not require* the use of a severe discrepancy between intellectual ability and achievement for determining whether a child has a specific learning disability. That section also says that states *must permit* the use of a process based on the child's response to scientific, research-based intervention and *may permit* the use of other alternative research-based procedures

Regarding demonstrations of discrepancy combined with processing disorder, it is unclear that the commenter is making a suggestion regarding these regulations or which proposed amendment the commenter is addressing. The existing laws are permissive, and it is true that districts are not mandated to explain how they define specific learning disability beyond existing state and federal requirements.

As for the comment that "districts must allow in some manner the identification of students as having a specific learning disability," the meaning of this comment is not clear. It seems in general that the commenters are concerned about districts' having discretion in using a variety of methods to determine whether students have a specific learning disability. The further concern seems to be that because districts have a variety

of methods, they use this variety to disqualify students for special education under the category of specific learning disability. Data show otherwise. As of December 1, 2012, the largest group of students found to be eligible for special education in California qualify under the category of specific learning disability; they constitute 279,413 students out of a total 695,173 students receiving special education.

As to conducting further policy discussions about the current discrepancy criteria, the purpose of this regulatory package is to update old, out-of-date state regulations by bringing them into alignment with current state statutes and federal statutes and regulations.

Regarding deleting subdivisions 3030(b)(10)(C)(4)(i) and (ii), again, the purpose of this regulatory package is to update old, out-of-date state regulations by bringing them into alignment with current state statutes and federal statutes and regulations.

Jeff Frost, Legislative Advocate, California Association of School Psychologists (CASP)
Comment: Section 3030(b)(10)(C): The commenter notes that this section of the regulations does not mention "Response to Intervention (RtI)" as an alternative methodology for determining whether a student has a specific learning disability. The commenter would like to see RtI added as an alternative methodology.
Partially accept: The term "response to intervention," per se, does not appear in the IDEA or federal regulations pertaining to students with IEPs. Rather, federal documents refer to "methods of instruction that are based on scientifically based research." The words "scientifically based" and "research based" appear throughout federal requirements. These words connote "RtI" and also appear in this subdivision of the proposed regulations – as does a reference to a student's "pattern of strengths and weaknesses."

A. Kay Altizer, Director, Special Education, Berkeley Unified School District
Comment: Section 3030(b)(10)(C): The commenter opposes amending the regulations to include the use of "response to intervention" (RtI) as an optional method for determining whether a student has a specific learning disability until the following items are provided: state-defined parameters for RtI implementation; technical assistance for school districts; training; oversight; a list of approved or endorsed scientific research-based instruction and practices.
Reject: The reauthorization of IDEA in 2004 provided school districts with the option of using scientific, research-based intervention in determining whether a student has a specific learning disability. The proposed amendments to Title 5, California Code of Regulations, section 3030(b)(10)(c) seek to bring state regulations up to date by aligning them with federal requirements. For educators who wish to learn more about implementing RtI, informational resources are available on the CDE Web site at http://www.cde.ca.gov/ci/cr/ri/ and at http://www.cde.ca.gov/sp/se/sr/.

Comment: Section 3030(b)(10)(C): The commenter also recommends the addition of the word "primarily" to line 25 on page 13.

Reject: The CDE was unsuccessful in contacting the commenter regarding this recommendation and was unable to determine the proposed placement of the word "primarily."

Comment: Section 3030(b)(10)(C): The commenter opposes proposed language in the regulations: "The use of a procedure that takes into account the correlation between the ability and achievement measures and regression to the mean to determine the level of difference required that represents a difference score greater than 1.5 standard deviations of the difference distribution for the two tests."
Reject: The language that the commenter quotes is not contained in the proposed regulations.

Comment: Section 3030(b)(10)(C): The commenter also recommends that school districts be allowed to choose whether to use the discrepancy model, or a pattern of strengths and weaknesses, or both to determine whether a student has a specific learning disability.
Accept: The proposed regulations do, in fact, allow school districts to choose which methods they use to determine whether a student has a specific learning disability.

Sue Balt, 2012-13 Chair, California Association of SELPA Administrators
Comment: Section 3030(b)(10)(C): The commenter suggests that the regulations retain the use of the discrepancy model as well as the use of response to intervention, multi-tiered systems of support, and patterns of strengths and weaknesses as options for determining whether a student has a specific learning disability.
Accept: The proposed regulations do, in fact, allow school districts to choose which methods they use to determine whether a student has a specific learning disability.

George Buzzetti, Director of Policy, and Celes King IV, Vice Chair, Government Policy and Community Relations, Congress of Racial Equality of California (CORE-CA)
Comment: Section 3030(b)(10)(C)(2): The commenter says that 14 years later there still are no proper standards for "scientific, research-based intervention." The commenter asks how can this be and at the same time be instituted? In the commenter's opinion, response to intervention (RtI) is a failure as the stand-alone methodology; it has proven to be such over time. The commenter notes that according to the work of Don Deshler and Doug Fuchs, RtI has not been properly implemented. The commenter's organization doubts that RtI should be the only methodology for special education anyway as there are too many ways around identification at an early age as can be done by professionals now in most cases outside of RtI.
No response required; the comment does not address the proposed amendments to the regulations.

Judy McKinley, Governmental Affairs Chairperson, Learning Disabilities Association of California

Comment: Section 3030(b)(10)(C)(4)(i): The commenter asks what constitutes "qualified personnel" as referenced in this section pertaining to determining whether a child was provided appropriate instruction in regular education settings.
Response: The definition of "qualified" is provided in Title 5, California Code of Regulations, section 3001.

Laura Faer, Statewide Education Rights Director, Public Counsel Law Center
Current subdivision (b)(10)(C)(5): The description that the public agency must ensure that the pupil is observed in the learning environment is misleading and does not reflect the exception in 300.310 for a pupil who is out of school. This section should state "the pupil is observed in the pupil's learning environment *or in the case of a child of less than school age or out of school, in an environment appropriate for a child of that age*" in accordance with 34 C.F.R. section 300.310.
Accept: The CDE agrees that this important exception should be specifically stated in the proposed regulations and will amend this section accordingly.

George Buzzetti, Director of Policy, and Celes King IV, Vice Chair, Government Policy and Community Relations, Congress of Racial Equality of California (CORE-CA)
Comment: Section 3030: current subdivisions (d) through (j): Commenter asks why language has been eliminated from these subdivisions.
Response: Please refer to page 5 of the ISOR.

SECTION 3031

Rebecca Cervenak, Staff Attorney, and Lauren Giardina, Staff Attorney, Disability Rights California (DRC)
Paula Pearlman, Executive Director, Disability Rights Legal Center
Janeen Steel, Founder/Director of Litigation and Advocacy, Learning Rights Law Center
Comment: Section 3031: Commenters recommend that no amendments be made to this regulatory section. The commenters say that the proposed amendments to section 3031 contradict current state law as written in Education Code section 56441. Commenters say the proposed amendments would limit eligibility only to children who are up to three years old. The commenters recommend that the CDE maintain the current age eligibility of birth to four and nine months.

The commenters recommend that the CDE maintain 25 percent as the minimum delay in functional skills.

The commenters also express concern that the amendments to this section shift responsibility for determining whether a child has a disabling medication condition or congenital syndrome from the IEP team to the individualized family service plan (IFSP) team from regional centers. The commenters believe that the IFSP team does not have the requisite training, experience, or expertise in determining whether or not child is eligible for special education services and is not the appropriate party to make such a

determination. The commenters say that the IFSP team does not have to comply with state and federal education laws. By removing the IEP team from the eligibility process, parents and students will lose their due process protections.
Partially accept and partially reject: Education Code section 56441 pertains to individuals with exceptional needs between the ages of three and five, but this age group is different from the group to whom section 3031 applies, which is children from birth to age three who are eligible for early intervention services through California's Early Start program. Government Code section 95014 specifies that "The term 'eligible infant or toddler' for the purposes of this title means infants and toddlers from birth through two years of age, for whom a need for early intervention services, as specified in the federal Individuals with Disabilities Education Act" is documented. United States Code section 1432 also defines an at-risk infant and toddler as an "individual under three years of age who would be at risk of experiencing a substantial developmental delay if early intervention services were not provided to the individual." In fact, the proposed amendments do not contradict Education Code section 56441 nor does the CDE have legal standing to extend Early Start services to students older than age three.

As to the minimum eligibility criteria, in 2009, the Legislature passed ABX4 9, which amended Government Code section 95014. Although by law the CDE is unable to maintain 25 percent as the minimum delay in functional skills, the section 3031 does need to define a minimum delay in functional skills as the definition appears in current Government Code. The necessary amendments will be made to section 3031.

As for shifting responsibility from IEP teams to regional centers, Government Code Section 95014 subdivisions (b)(1) and (2) and subdivision (c) have for many years explicitly delineated the responsibilities between regional centers and LEAs. Without regard to location, the children who qualify for Early Start in California are provided due process protections under IDEA Part C.

Laura Faer, Statewide Education Rights Director, Public Counsel Law Center
Comment: Section 3031: The commenter opposes the amendments to this section that would restrict eligibility or reduce services for our youngest children with delays. California's Department of Education should advocate for a more expansive definition of eligibility for these critical Early Start services to prevent greater costs to the state down the road when children with developmental delays are not timely served. The changes herein that would restrict eligibility appear to be short-sighted. If California regulations are going to be modified at this time, they should allude to sections of the law already changed by the legislature, rather than setting forth eligibility criteria when those are about to change.
Reject: The CDE is aware of the confusion among educators that exists because of the misalignment between Government Code section 95014 and Title 5, California Code of Regulations, section 3031, and seeks to remedy this situation. Should state laws pertinent to California's Early Start program change once again, the CDE will be in a better position to respond in a timely manner to the need for amendments to individual regulatory sections if all of the regulations have been updated. Amendments to section

3031 will be made to mirror the legislative changes to Government Code section 95014 almost verbatim.

Maureen Graves, Co-Chair; Roberta S. Savage, Co-Chair; and John Nolte, Attorney; California Association of Parent-Child Advocacy (CAPCA)
Comment: Section 3031: The commenters say that the proposed regulation is inconsistent with, and far more restrictive than, the 2009 trailer bill language that amended Government Code section 95014. Unlike Government Code, the proposed amendments to this section treat all children under age three the same—imposing the more stringent delay criteria for all.

The commenter also says that for students without delays of those magnitudes, the proposed amendments to the regulation create an extra-statutory requirement that the IFSP team determines the student has a "high predictability [sic: The original ISOR says "probability."] of requiring intensive special education and services." Government Code section 95014, however, contains no such requirement.

It would be far preferable for 5 CCR to point to relevant provisions in the Government Code (particularly since educational stakeholders are unaccustomed to looking there for special education regulations) rather than adding to current confusion. It would be disastrous for educational regulations to misstate current law, making it even more harsh. The proposed regulation would not simply put into effect disastrous, short-sighted cuts in Early Start eligibility: it would risk extending their consequences to plainly eligible children.

The commenter also notes that there is an error in current language that needs to be corrected: children under three do not have to demonstrate a qualifying disability under section 3030—the criteria of section 3031 are alternative criteria intended to be looser, not additional requirements limiting eligibility for early intervention. At a minimum (and assuming percentages of delay are corrected), the "and" in 3031(a)(1) ("Is identified as an individual with exceptional needs pursuant to Section 3030, and") should be replaced by "or."

The commenter also says that in 3031(a)(2)(A)(2), "visual and hearing development" should be replaced by "visual or hearing development."
Partially accept and partially reject: The CDE agrees that it is necessary to amend section 3031to ensure that the CDE and the Department of Developmental Services, which share responsibilities for providing Early Start services to children ages birth to younger than three years, have the same eligibility criteria for qualifying for Early Start services and the same definition of "developmental delay."

As for creating extra-statutory requirements and demonstrating a qualifying disability, Government Code section 95014 reads in part as follows:

> The State Department of Education and local educational agencies shall be responsible for the provision of appropriate early intervention services in accordance with Part C of the federal Individuals with Disabilities

> Education Act (20 U.S.C. Sec. 1431 et seq.) for infants with solely a visual, hearing, or severe orthopedic impairment, or any combination of those impairments, who meet the criteria in Sections 56026 and 56026.5 of the Education Code…"

Education Code section 56026 reads in part as follows:

> "Individuals with exceptional needs" means those persons who satisfy all the following:
> (a) Identified by an individualized education program team as a child with a disability, as that phrase is defined in Section 1401(3)(A) of Title 20 of the United States Code. …
> (c) Come within one of the following age categories:
> (1) Younger than three years of age and identified by the local educational agency as requiring intensive special education and services, as defined by the board.

It is CDE's understanding that both Government Code and Education Code require children served by LEAs to be identified as individuals with exceptional needs who require intensive special education; CDE will retain that language in the regulations.

As for replacing "visual *and* hearing development" with "visual *or* hearing development," the language in section 3031(a)(2)(A)(2) is taken from Government Code section 95014, which says "vision *and* hearing." The CDE will retain that language.

George Buzzetti, Director of Policy, and Celes King IV, Vice Chair, Government Policy and Community Relations, Congress of Racial Equality of California (CORE-CA)
Maurine Ballard-Rosa, Professor, College of Education – Department of Teaching Credentials, Early Childhood Special Education Credential Program
Maureen Burness, Policy Committee Chair, Advisory Commission on Special Education
Jackie Clark, Program Manager, Placer County Office of Education Infant Program
Marcia Eichelberger, Steering Committee Representative, Alliance of California Autism Organization
Robin L. Hansen, MD, Professor of Pediatrics, Director, Center for Excellence in Developmental Disabilities, Director of Clinical Programs, M.I.N.D. Institute/UC Davis
Melanie P. Nicolas, State Chairperson, Infant Development Association of California
Carole Shugard
Sue Balt, 2012-13 Chair, California Association of SELPA Administrators
Comment: Section 3031(a)(2)(A) and (B): Many commenters express concern about the proposed eligibility criteria for qualifying for Early Start services and the definition of "developmental delay." Several commenters note that Early Start is one program with two agencies collaborating to serve dually eligible infants and toddlers, so the two

agencies must share the same eligibility criteria. Commenters note that the proposed language omits crucial eligibility criteria for children under 24 months of age. Many commenters recommend that section 3031(a)(2)(A) and (B) be amended to more closely align with the language in California Government Code section 95014(a).
Accept: The CDE agrees that it is necessary to amend section 3031(a)(2)(A) and (B) to ensure that the CDE and the Department of Developmental Services, which share responsibilities for providing services to children ages birth to younger than three years, have the same eligibility criteria for qualifying for Early Start services and the same definition of "developmental delay."

Heather DiFede, Senior Director, East County SELPA
Comment: Section 3031(a)(2)(A) and (B): The commenter notes that there is a movement by regional centers to return to the original eligibility criteria in IDEA Part C. The commenter recommends that the current language in section 3031(a)(2)(A) and (B) be deleted and replaced with a reference to Government Code section 95014.
Reject: At this point, the CDE prefers to make the eligibility criteria explicit in the Title 5 regulations. Should the eligibility criteria change in the future, CDE would be able to expedite an amendment of this regulatory section pursuant to Title 1, California Code of Regulations, section 100.

Maurine Ballard-Rosa, Professor, College of Education – Department of Teaching Credentials, Early Childhood Special Education Credential Program
Marcia Eichelberger, Steering Committee Representative, Alliance of California Autism Organization
Robin L. Hansen, MD, Professor of Pediatrics, Director, Center for Excellence in Developmental Disabilities, Director of Clinical Programs, M.I.N.D. Institute/UC Davis
Melanie P. Nicolas, State Chairperson, Infant Development Association of California
Comment: Section 3031(a)(2)(A): Many commenters express concern that the five developmental areas listed in the proposed amendments do not align with the state statutes and the IDEA (i.e., Government Code section 95014(a); IDEA section 632(5)(A)(i)). The commenters recommend that the five developmental areas be amended to align with the developmental areas listed in state and federal statutes.
Accept: The CDE agrees that it is necessary to amend section 3031(a)(2)(A) so that it lists the five developmental areas exactly as they appear in Government Code section 95014(a).

Comment: Section3031(b): The commenters suggest that a reference in section 3031 to Education Code section 56001(c) be amended to include subdivision (d) as well to clarify the protections of the Early Start Program.
Accept: The CDE agrees that it is necessary to amend section 3031(b) to include a reference to Education Code section 56001 (d) as well as (c) since both subdivisions reference the California Early Intervention Services Act. This amendment provides additional clarifications regarding the protections of the Act.

SECTION 3040

George Buzzetti, Director of Policy, and Celes King IV, Vice Chair, Government Policy and Community Relations, Congress of Racial Equality of California (CORE-CA)
Comment: Section 3040: The commenter opposes the deletion of this section of the regulations.
Partially accept and partially reject: The CDE agrees with the commenter that 3040(b) should be retained in the regulations.

Laura Faer, Statewide Education Rights Director, Public Counsel Law Center
Maureen Graves, Co-Chair, and Roberta S. Savage, Co-Chair, California Association of Parent-Child Advocacy (CAPCA)
Judy McKinley, Governmental Affairs Chairperson, Learning Disabilities Association of California
Comment: Section 3040(a): The commenters say that the removal of this sentence is problematic as it suggests that "implementation" of the IEP may no longer be required. While it should not occur, some might argue that the term "made available" in the state code is somehow distinct. It would be an extreme disservice to pupils in California if, as a result of this deletion, school districts believed that they did not have to provide the accommodations, modifications, and services laid out in the IEP. This sentence should be retained. One commenter opposes removing section 3040 (a), because the California Code of Regulations provides a familiar—probably the best-known—reference for this key requirement. The commenters say that removal of this subdivision risks confusion and increased noncompliance. One commenter notes that there is no harm in having this vital point duplicated.
Reject: This section of the regulations is redundant to Education Code section 56344(b), which says "Pursuant to Section 300.323(c)(2) of Title 34 of the Code of Federal Regulations, as soon as possible following development of the individualized education program…." The CDE understands that, according to *Government Code* section 11342.600, the purpose of regulations is to "implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure." Repeating requirements that already exist in Education Code is duplicative and potentially confusing if the wording of the requirements is not identical. The CDE believes that parents and their advocates have the same access to Education Code Part 30 as they do to state regulations.

Rebecca Cervenak, Staff Attorney; Lauren Giardina, Staff Attorney; Taymour Ravandi, Staff Attorney, Disability Rights California (DRC)
Marcia Eichelberger, Steering Committee Representative, Alliance of California Autism Organization
Laura Faer, Statewide Education Rights Director, Public Counsel Law Center
Maureen Graves, Co-Chair, and Roberta S. Savage, Co-Chair, California Association of Parent-Child Advocacy (CAPCA)

Esteban Fuentes, Treasurer; Jose Luis and Gloria Hernandez, President and Founders; Rosa Hernandez; Maria Garcia; Hilda Cuenca; Martha Mora; Grupo de Autismo Angeles
Judy McKinley, Governmental Affairs Chairperson, Learning Disabilities Association of California
Paula Pearlman, Executive Director, Disability Rights Legal Center
Janeen Steel, Founder/Director of Litigation and Advocacy, Learning Rights Law Center
Grace Trujillo
Comment: Section 3040(b): The commenters express concern about the deletion of this subdivision, which says that a copy of the IEP shall be provided in the primary language of the parent at the parent's request.
Accept: Although Education Code section 56341.5(j) says the LEA shall give the parent or guardian a copy of the IEP at no cost, the commenters are correct in pointing out that there is no section in state statute that says the IEP shall be provided in the *primary language* of the parent. The CDE agrees that it is necessary to retain this subdivision of the regulations.

Maureen Graves, Co-Chair, and Roberta S. Savage, Co-Chair, California Association of Parent-Child Advocacy (CAPCA)
Comment: Section 3040(c): The commenters strongly oppose deletion of the requirement that: "(c) The individualized education program shall show a direct relationship between the present levels of performance, the goals and objectives, and the specific educational services to be provided." While the requirements embodied in this rule can readily be inferred from other provisions of IDEA, they are not outright stated in this way, and are often violated. California needs to move towards clearer, more substantive IEPs, not delete a straightforward regulatory provision aimed at ensuring that IEPs are sufficient under federal and state law.
Accept: The CDE agrees that although the essence of this requirement is embodied in Education Code section 56345, the statement in section 3040(c) makes this requirement plain.

SECTION 3042

Maurine Ballard-Rosa, Professor, College of Education – Department of Teaching Credentials, Early Childhood Special Education Credential Program
Robin L. Hansen, MD, Professor of Pediatrics, Director, Center for Excellence in Developmental Disabilities, Director of Clinical Programs, M.I.N.D. Institute/UC Davis
Comment: Section 3042: The commenter recommends that California Code of Regulations, title 5, section 3042, which pertains to placement in the least restrictive environment, and which is not included in this regulatory package, be updated to conform with federal regulations. The commenter expresses concern that this section does not reflect federal regulations emphasizing the placement of students with IEPs in general education. The commenter suggests that section 3042 be amended by adding

three subdivisions that quote Title 34, Code of Federal Regulations, section 300.116, subdivisions (c), (d), and (e).

Reject: This section of code is not included in the regulatory package because it does not require updating; the information it contains is current and valid. Section 3042 references California Education Code section 56342(b), which stipulates that "In determining the program placement of an individual with exceptional needs, a local educational agency shall ensure that the placement decisions and the child's placement are made in accordance with sections 300.114 to 300.118, inclusive, of Title 34 of the Code of Federal Regulations." The update that the commenter recommends has already been made in Education Code. The CDE does not believe that repeating all federal regulations in state regulations is useful or necessary; further, there is no more reason to quote the three subdivisions noted above than any of the other federal mandates contained in sections 300.114 to 300.118.

SECTION 3043

George Buzzetti, Director of Policy, and Celes King IV, Vice Chair, Government Policy and Community Relations, Congress of Racial Equality of California (CORE-CA)
Comment: Section 3043: Commenter asks what are the legal implications of the change from "handicapped" to "disability." Commenter asks has this been change been vetted legally and if so by whom. Commenter requests a copy of the document.
Response: Please refer to page 7 of the ISOR.

Maureen Burness, Policy Committee Chair, Advisory Commission on Special Education
Comment: Section 3043(d): Commenter recommends that this subdivision be changed or deleted because it is moot. It has to do with the financing that has changed years ago. It shouldn't be included if it really isn't relevant any more.
Accept: The CDE agrees that subdivision (d) is no longer used for reimbursement purposes given the existence of subdivision (g), which pertains to qualifying for average daily attendance revenue; however, subdivision (d) does provide for a minimum number of instructional days. Title 34, Code of Federal Regulations, section 300.106 allows state education agencies to set standards for their states regarding extended school year (ESY), so section 3043(d) is amended to delete reference to reimbursement but to preserve a state standard of a minimum number of days.

Maureen Graves, Co-Chair, and Roberta S. Savage, Co-Chair, California Association of Parent-Child Advocacy (CAPCA)
Comment: Section 3043: The commenters recommend that this section be revised to reflect the federal definition, which includes more than the regression/recoupment model for consideration when developing a student's ESY services. The commenter says that California's regression-recoupment emphasis violates federal law and has contributed to the sanctioning of a major California law firm for misrepresenting the law. *Moser vs. Bret Harte Union High School District*, CIV-F-99-6273 (Eastern District 2005)

pp. 47-48 (sanctioning Lozano Smith for misrepresentation of fact and law, including, inter alia, standard for extended school year services, and noting that “Under federal law, regression – recoupment is not the standard for availability of ESY services”).

The commenter also notes that maintaining the current California definition encourages school districts to limit services to a randomly identified 20 days with roughly 50 percent of the services provided to the student during the school year. The federal bar on “unilaterally limit[ing] the type, amount, or duration of those services” directly contradicts California provisions, which purport to create a focus on regression/recoupment, which purport to set a maximum for ESY services and which have encouraged districts to treat 20 days as the presumptive length of services, and which purport to remove ESY from LRE requirements. It is problematic that in the one area in which wholesale incorporation of federal regulatory language could dramatically improve California outcomes, there is no plan to do so.
Partially accept and partially reject: Regarding reflecting federal regulations in California’s regulations, section 3043 has already been amended to say that “Extended school year services shall be provided, in accordance with 34 C.F.R. section 300.106.”

The IDEA does not set a specific criterion for ESY eligibility, other than that ESY shall be provided when the IEP team determines that it is necessary for FAPE. (34 CFR 300.106.) States have flexibility in establishing standards for making ESY determinations so long as the standards are consistent with the individually-oriented approach (i.e., that students who require ESY in order to receive FAPE receive it). (71 Federal Register 46582 (August 14, 2006).) Section 3043 includes a “regression/recoupment” standard, along with the statement that the lack of clear evidence satisfying the regression/recoupment standard may not be used to deny a student ESY if the IEP team determines the student needs ESY and includes ESY in the IEP. The state regulation is thus aligned with the federal regulation.

As for the current minimum of 20 days, Title 34, Code of Federal Regulations, section 300.106 allows state education agencies to set standards for their states regarding ESY. Section 3043(d) is amended to delete reference to a maximum number of instructional days and to preserve an existing state standard for a minimum number of days.

SECTION 3051

Many commenters expressed concerns when comparing the proposed amendments for Article 5. Implementation (Program Components), section 3051, et seq., and Article 6. Nonpublic, Nonsectarian School and Agency Services, section 3065. Both sections seek to implement law by clarifying standards and staff qualifications for providing related services, but commenters noted inconsistencies and potential inequities between the two sections.

Some of the commenters’ concerns stem from the proposed deletion of section 3051(a)(3) and the rationale given in the ISOR for the proposed deletion. Section

3051(a)(3) says “All entities and individuals providing designated instruction and services and related services shall be qualified pursuant to sections 3060–3065 of this title.” In providing a reason for the proposed deletion of section 3051(a)(3), the ISOR states: “Former subdivision (a)(3) is deleted because the reference to sections 3060–3065 specifically relates to nonpublic school and agency certification requirements. Related services, in addition to nonpublic schools and agencies, are also provided by LEAs and public agencies. The entities are not subject to nonpublic school and agency certification requirements and have personnel boards that establish their own minimum employee qualifications.”

Reasonably, many commenters understood the wording of the ISOR to mean that there is one standard for providing related services to students with IEPs in public schools and a separate standard for providing related services to students with IEPs in nonpublic schools. Further, commenters questioned the meaning of the assertion that LEAs and public agencies “have personnel boards that establish their own minimum employee qualification.” Commenters were also concerned about a phrase used throughout section 3051, et seq*. that* said individuals providing a service “shall be qualified,” as defined in section 3001(v), while section 3065 listed personnel qualifications that were specific and detailed.

After much research and discussion, CDE staff determined that although the two separate sections defining related services and staff qualifications had evolved over time, no statutory requirements exist to perpetuate a separate section pertaining exclusively to students in nonpublic schools and nonpublic agencies. The many comments that the CDE received during the 45-day public comment period illustrate a need to create and maintain one regulatory section pertaining to the standards and staff qualifications for providing related services. Amendments to this regulatory package have been made accordingly by transferring the detailed staff qualifications from 5 CCR 3065 to 5 CCR 3051, et seq., and then amending 5 CCR 3065 to specify that “(a) To be eligible for certification to provide related services to individuals with exceptional needs, nonpublic schools and nonpublic agencies shall meet the requirements of Section 3051, et seq.”

Rebecca Cervenak, Staff Attorney; and Lauren Giardina, Staff Attorney; Taymour Ravandi, Staff Attorney, Disability Rights California (DRC)
Paula Pearlman, Executive Director, Disability Rights Legal Center
Sylvia Youngblood, Representative, Governmental Affairs Committee, Los Angeles Learning Disabilities Association
Comment: Section 3051: The commenters say that amendments to section 3051 will result in significantly lower standards for public school providers. The commenters say that if the word “credentialed” is substituted for the more nebulous word “qualified,” and LEAs are given deference to determine whether a specific person is qualified, students will be at high risk of receiving services from unqualified personnel.
Accept: Please see the comments that introduce this section of the Final Statement of Reasons. Amendments to this regulatory section have been made by transferring the detailed staff qualifications from 5 CCR 3065 to 5 CCR 3051, et seq. both to specify the

standards for providing related services and the professional requirements of personnel providing related services to *all* students with IEPs. Section 3065 has been amended to state that nonpublic schools and nonpublic agencies shall meet the requirements of section 3051 et seq.

Marcia Eichelberger, Steering Committee Representative, Alliance of California Autism Organization
Comment: Section 3051: The commenter is concerned that the CDE proposes to entrench and deepen the double standard between services in public and in nonpublic schools. Both parts of this modification are disturbing. It makes no sense to strip qualification requirements from public school providers of related services. Parents want and need to trust school staff, but if districts are given complete flexibility to provide speech therapy with aides under supervision of “qualified” people, and allowed to use anyone they deem “qualified” to provide psychotherapy, they will not be able to. It is not difficult to spell out staff qualifications, as the proposed regulations do so in detail for nonpublic school and agency employees. In fact, it appears that they do so in so much detail that some programs will either no longer be able to operate or will have to drastically increase their charges to school districts and privately paying families. There need to be unitary, reasonable standards for service providers that apply regardless of whether children are in a public or certified nonpublic program.
Accept: Please see the comments that introduce this section of the Final Statement of Reasons. Amendments to this regulatory section have been made by transferring the detailed staff qualifications from 5 CCR 3065 to 5 CCR 3051, et seq. both to specify the standards for providing related services and the professional requirements of personnel providing related services to *all* students with IEPs. Section 3065 has been amended to state that nonpublic schools and nonpublic agencies shall meet the requirements of section 3051 et seq.

Laura Faer, Statewide Education Rights Director, Public Counsel Law Center
Comment: Section 3051
We strongly disagree with the amendments throughout this section, which when read in relation to the very specific qualification requirements for personnel providing related services in Non-Public School, appear to severely weaken and water down any requirements for maintaining, training, and retaining highly qualified and consistent personnel throughout the state to serve children with disabilities.

Pursuant to 34 CFR section 300.156, the State Education Agency has a clear duty to “establish and maintain qualifications” and to create statewide policy “that includes a requirement that LEAs in the State take measurable steps to recruit, hire, train, and retain highly qualified personnel to provide special education and related services under this part to children with disabilities.” The State Education Agency is also responsible for ensuring that all such individuals are highly qualified and have not had “certification or licensure requirements waived on an emergency, temporary or provisional basis.” Throughout this section, the Department of Education proposes deleting requirements that individuals providing related services, including speech, language, hearing,

occupational, and physical therapy have credentials and/or licenses and instead proposes that such individuals “be qualified.”

The ISOR claims that the purpose of such changes generally is to recognize that qualified means those “who are either licensed by the CDCA or have an appropriate credential issued by the CTC, and also meet the minimal qualifications of the employing agency.” If in fact, the intention is to actually ensure that such individuals both have a credential and/or license as required by the specific state body in the area listed and meet any additional minimal qualifications set forth by the local education agency, then this should be specifically included throughout the regulations, as it has been done in detail for Non-Public Schools/Agencies. As such, we ask that the qualification requirements for related service providers and assessors for LEAs mirror those in section 3065 for Non-Public Schools.

The current approach of deleting any specific requirements for credentialing or licensure is an abrogation of the State’s duty to establish and maintain clear standards. These changes will likely result in further diminution in the quality of services and great inconsistencies and variations in quality and accessibility of services to our children most in need and further litigation with respect to who is or is not qualified. These changes are also likely to create confusion among professionals, parents, and pupils. The existing regulations ensure a level of consistency throughout the state and avoid differential treatment and level of services based on local policy. The State has a duty under federal law to specify what is required to ensure high quality related services for children, in remaining silent in the regulation and lowering the standards for local education agencies while maintaining clear qualification standards for non-public schools/agencies it is abdicating that authority and responsibility.
Accept: Please see the comments that introduce this section of the Final Statement of Reasons. Amendments to this regulatory section have been made by transferring the detailed staff qualifications from 5 CCR 3065 to 5 CCR 3051, et seq. both to specify the standards for providing related services and the professional requirements of personnel providing related services to *all* students with IEPs. Section 3065 has been amended to state that nonpublic schools and nonpublic agencies shall meet the requirements of section 3051 et seq.

Maureen Graves, Co-Chair, and Roberta S. Savage, Co-Chair, California Association of Parent-Child Advocacy (CAPCA)
Comment: Section 3051: The commenters strongly oppose the removal of all licensing or credential requirements for public school students. This puts all California special education students at risk of receiving substandard services. These changes when paired with the credentialing and licensing requirements maintained in the Code for NPS/NPAs appears on its face to be discriminatory and a direct attack on NPS/NPAs which provide a significant service to California students. Furthermore the reference to the federal regulations in these sections is circuitous because the federal regulations loop back to reliance on states for developing qualifications.

The commenter proposes that specific qualification criteria be retained and, if necessary, clarified and updated. Indicating that providers must be “qualified” under 34 C.F.R. § 300.156(b) is circular and illogical, as federal regulations leave the determination of requirements for staff qualifications largely to states. Though the ostensible purpose of removing specific qualifications is to clarify that either credentialed or licensed individuals may provide services, so long as they meet standards of the local educational agency, it is virtually certain that districts would take this new language to grant enormous flexibility in deciding who is “qualified” to provide services. A major law firm representing districts—Lozano Smith—has already diffused that interpretation. Parents, administrators and related services providers and prospective providers need to be able to access information about what qualifications are in fact required. These are set forth in sections of the proposed regulations relating to NPAs and NPSs, and identical standards should apply for public schools.
Accept: Please see the comments that introduce this section of the Final Statement of Reasons. Amendments to this regulatory section have been made by transferring the detailed staff qualifications from 5 CCR 3065 to 5 CCR 3051, et seq. both to specify the standards for providing related services and the professional requirements of personnel providing related services to *all* students with IEPs. Section 3065 has been amended to state that nonpublic schools and nonpublic agencies shall meet the requirements of section 3051 et seq.

Esteban Fuentes, Treasurer; Jose Luis and Gloria Hernandez, President and Founders; Rosa Hernandez; Maria Garcia; Hilda Cuenca; Martha Mora; Grupo de Autismo Angeles
Grace Trujillo
Comment: Section 3051: The commenters express concern about the proposed gap between qualifications of professionals in public versus private systems. The commenters note that letting school districts decide to call anyone they want “qualified” is a scary proposition.
Accept: Please see the comments that introduce this section of the Final Statement of Reasons. Amendments to this regulatory section have been made by transferring the detailed staff qualifications from 5 CCR 3065 to 5 CCR 3051, et seq. both to specify the standards for providing related services and the professional requirements of personnel providing related services to *all* students with IEPs. Section 3065 has been amended to state that nonpublic schools and nonpublic agencies shall meet the requirements of section 3051 et seq.

Judy McKinley, Governmental Affairs Chairperson, Learning Disabilities Association of California
Comment: Section 3051(a)(3): The commenter expresses serious concerns about the use of “qualified personnel” without defining what constitutes qualified. An attempt to locate the definitions of what qualifications are for a specific professional from the California Teacher Credentialing (CTC and the California Department of Consumer Affairs (CDCA) as directed in the Title 5 Proposed Rules and Regulations was an exercise in futility. Parents need to know what qualifications are required and where to look up whether staff working with their child have them. The commenter sees no

reason not to include specific qualifications – which are now set forth for nonpublic schools – in provisions for public schools as well. Failing to set forth qualifications is dangerous. While the intent is apparently to allow either licensed or credentialed individuals to provide therapy in public schools, districts are likely to construe "qualified" as an invitation to eliminate or fail to replace such personnel and make their own, local decisions as to what constitutes "qualifications." It is mandatory that the specific qualifications for each entity and individual providing related services be included in the regulations.
Accept: Please see the comments that introduce this section of the Final Statement of Reasons. Amendments to this regulatory section have been made by transferring the detailed staff qualifications from 5 CCR 3065 to 5 CCR 3051, et seq. both to specify the standards for providing related services and the professional requirements of personnel providing related services to *all* students with IEPs. Section 3065 has been amended to state that nonpublic schools and nonpublic agencies shall meet the requirements of section 3051 et seq.

George Buzzetti, Director of Policy, and Celes King IV, Vice Chair, Government Policy and Community Relations, Congress of Racial Equality of California (CORE-CA)
Janeen Steel, Founder/Director of Litigation and Advocacy, Learning Rights Law Center
Comment: Section 3051(a)(3): Subdivision (a)(3) of Section 3051 should not be excised. The Proposed Title 5 Amendment "ISOR**"** claims that subdivision (a)(3) was deleted because **"**the reference to sections 3060 - 3065 specifically relates to nonpublic school and agency certification requirements. Related Services, in addition to nonpublic schools and agencies, are also provided by LEA and public agencies. The entities are not subject to nonpublic school and agency certification requirements and have personnel boards that establish their own minimum employee qualifications." This statement is incorrect. Section 3065 amendments related to non-public schools have very clear and specific requirements for "Related Services" which contradicts the proposed amendments to section 3051.

The requirements for "Related Services" should have a minimum requirement for both public and non-public school. These requirements should not differ; otherwise, the CDE risks creating a dual and unequal system in which students who attend non-public schools/agencies are likely to receive services of higher quality than those who remain in the public system. Under the proposed amendments to section 3065, students who attend non-public school/agencies will be ensured certification requirements for "Related Services," but students attending public schools will not. Instead, public school students will solely be entitled to a "qualified" person, which is undefined and vague by the proposed regulation. (*See* Section C.) This proposed regulation would increase demand for non-public school services and the attendant cost, most of which would be passed along to contracting school districts and families.

The "Certification" requirements should not be excised from section 3051.1-

3051.18. The state is required to ensure that each of the related services meet the "recognized certification, licensing, registration, or other comparable requirements that apply to the professional discipline…" 34 CFR 300.156(b). The Proposed Title 5 Amendment fails to meet this standard. The proposed Title 5 Amendment's systematically and intentionally removes all of the credentialing language for each of the related services. This proposed regulation is an attempt to circumvent the requirements for ensuring that students with disabilities receive the specialized services as required by federal law. The proposed regulation removes the specific "certification" requirements, leaving "qualified," again an undefined term, as the standard. If certification is removed from 3051.1-3051.18, then the qualifications are left undefined and the impacted students are left without a true standard for services rendered. Students with disabilities are entitled to know the credentials and legal requirements of the professionals who will be providing the related services. The very point of including therapeutic related services in an IEP is to provide students in need of specialized services care that is beyond the capacities of trained special education teachers. Taking away the "certification" standards, defeats the regulation's intended purpose. Additionally, the proposed amendments to section 3051 *et seq*. and 3065 create inconsistencies. For example, there is no explanation regarding why non-public schools and agencies have the personnel requirements, but public schools do not. This will create hardship and confusion in complying with the regulation. For ease of review, we have prepared a chart outlining the Proposed Title 5 Amendment's inconsistencies and all of Learning Rights concerns regarding the amendments, attached hereto at Exhibit A.
Accept: Please see the comments that introduce this section of the Final Statement of Reasons. Amendments to this regulatory section have been made by transferring the detailed staff qualifications from 5 CCR 3065 to 5 CCR 3051, et seq. both to specify the standards for providing related services and the professional requirements of personnel providing related services to *all* students with IEPs. Section 3065 has been amended to state that nonpublic schools and nonpublic agencies shall meet the requirements of section 3051 et seq.

Valerie Vanaman, Attorney, Newman, Aaronson, Vanaman
Comment: Section 3051: The rationale given for the elimination of specific qualifications a provider of related services must possess and the substitution of the words "qualified provider" is circular, difficult to follow and ultimately does not seem to have any legal basis. Since it is clear that the Department of Education does know how to define the qualifications a related services provider should possess and since it does so with precision in the regulations governing nonpublic schools, it is difficult to understand why such definition is eliminated from these sections.

The initial questions raised by, and that must be answered in adopting any of these regulations are the following:
1. Will a student attending a non-public school have a provider who is fully certificated or licensed in the service being provided while a student attending a public school program may have the service provided by anyone the local education agency decides to deem "qualified?"

2. If non-public schools are required to meet "state standards" does this mean those "state standards" do not apply for students who attend public schools?
3. How will any parent know whether or not the individual providing the service is "qualified?"
4. Is the State Department of Education prepared to permit students in one district to receive services from an individual who is "qualified" in a different manner than a student in a different district so that students in wealthier districts receive services from credentialed individuals while students in a poorer district receive services from far less "qualified" individual? Is the State Department of Education prepared to defend unequal services for students with disabilities based on the wealth of the district? The State Department of Education proposes to replace a set of unambiguous standards capable of being understood and applied on a statewide basis with the most ambiguous standards possible and to, in effect, create within each local educational agency a system of qualifications. Such a system abrogates the responsibility of the State Department of Education to ensure equality among students regardless of the financial status of the district in which they live, creates a situation in which litigation is not only necessary but inevitable and thereby ensures that years of costly litigation for both local educational agencies and the State Department of Education will take place. The suggestion in the Proposed Regulation that there is no financial or economic impact is false and unable to be supported by the State Department of Education. Among other things, but without limitation, the State of California will face a financial and economic impact when it is forced to defend a system of regulations that fails to ensure equality of students throughout the State and regardless of the wealth of the local educational agency in which they reside.
Accept: Please see the comments that introduce this section of the Final Statement of Reasons. Amendments to this regulatory section have been made by transferring the detailed staff qualifications from 5 CCR 3065 to 5 CCR 3051, et seq. both to specify the standards for providing related services and the professional requirements of personnel providing related services to *all* students with IEPs. Section 3065 has been amended to state that nonpublic schools and nonpublic agencies shall meet the requirements of section 3051 et seq.

SECTION 3051.1

Laura Faer, Statewide Education Rights Director, Public Counsel Law Center
Judy McKinley, Governmental Affairs Chairperson, Learning Disabilities Association of California
Section 3051.1(a) and (c): One commenter notes that deleting the requirement for holding “an appropriate credential with specialization in language, speech and hearing” is troubling, as it is likely to be interpreted without further clarification that a teacher or other individual who is not a speech and language therapist is qualified to address language, speech and hearing issues and will likely result in the further diminution of quality services to our children most in need. The regulation should reflect the statement of reasons and provide explicitly that: *“qualified means individuals who are either licensed by the CDCA or have an appropriate credential issued by the CTC, and also meet the minimum qualifications of the employing agency.”* This change is going to

result in considerable confusion about who is or is not qualified and the State is not providing the required guidance under 300.156. Another commenter notes that the qualifications need to be clear.
Accept: Please see the comments that introduce this section of the Final Statement of Reasons. Amendments to this regulatory section have been made by transferring the detailed staff qualifications from 5 CCR 3065 to 5 CCR 3051, et seq. both to specify the standards for providing related services and the professional requirements of personnel providing related services to *all* students with IEPs. Section 3065 has been amended to state that nonpublic schools and nonpublic agencies shall meet the requirements of section 3051 et seq.

Anne Delfosse, President, California Speech-Language-Hearing Association
William E. Barnaby, III, Legislative Counsel, California Speech-Language-Hearing Association
Comment: Section 3051.1(c): The commenters advocate that the use of the word "aide" be amended to "assistant." The commenters note that the proposed regulation references Education Code section 56363(b)(1), which states "The language and speech development and remediation services may be provided by a speech-language pathology assistant as defined in subdivision (i) of section 2530.2 of the Business and Professions Code." Business and Professions Code section 2530.2(i) provides the definition of a speech-language pathology assistant. The commenters note that a speech-language pathology aide lacks the education and training that a speech-language pathology assistant has received and that speech-language pathology assistants are licensed paraprofessionals.
Accept: The CDE agrees that it is necessary to amend section 3051.1(c) to replace the word "aide" with the word "assistant" to align with Education Code.

Maureen Graves, Co-Chair, and Roberta S. Savage, Co-Chair, California Association of Parent-Child Advocacy (CAPCA)
Comment: Section 3051.1: The commenters say that requiring simply that providers be "qualified" is insufficient. Services may be delegated to teachers, without caseload limits or assurances that teachers have either the time or expertise to provide therapies. There is no provision as to how parents would be informed, or what consent requirements would apply, if a district proposes to deliver "therapy" through an aide. Nonpublic schools and agencies are required to use SLPAs if they do not use fully credentialed or licensed speech and language therapists; and the same requirements should protect students in public schools. Existing requirements should be enhanced, not weakened. The prospect of aides not meeting SLPA qualifications providing speech and language therapy services is troubling, as the reason for granting such services is that students need specialized intervention their teacher cannot provide**.**
Accept: Please see the comments that introduce this section of the Final Statement of Reasons. Amendments to this regulatory section have been made by transferring the detailed staff qualifications from 5 CCR 3065 to 5 CCR 3051, et seq. both to specify the standards for providing related services and the professional requirements of personnel providing related services to *all* students with IEPs. Section 3065 has been amended to

state that nonpublic schools and nonpublic agencies shall meet the requirements of section 3051 et seq.

George Buzzetti, Director of Policy, and Celes King IV, Vice Chair, Government Policy and Community Relations, Congress of Racial Equality of California (CORE-CA)
Janeen Steel, Founder/Director of Litigation and Advocacy, Learning Rights Law Center
Comment: Section 3051.1: One commenter notes that the current language of the regulation should be retained. One commenter's notes about this section read as follows: "No longer required to have speech, language and hearing development and remediation provided with a credential person with a specialization in speech, language and hearing. Also, this change will result in aides working under supervision of a "qualified" person, who may not hold a certification. This is inconsistent. Under the amendment for 3065(k)(2) Language and speech development and remediation, as defined in section 3051.1, shall be provided only by personnel who possess:
(1)(A) a license in Speech-Language Pathology issued by a licensing agency within the Department of Consumer Affairs; or
(2)(B) a credential authorizing language or speech services.
(A) Services provided by a Speech-Language Pathology Assistant shall be supervised by a Speech-Language Pathologist as defined in Business and Professions Code section 2530.2(i)."
Accept: Please see the comments that introduce this section of the Final Statement of Reasons. Amendments to this regulatory section have been made by transferring the detailed staff qualifications from 5 CCR 3065 to 5 CCR 3051, et seq. both to specify the standards for providing related services and the professional requirements of personnel providing related services to *all* students with IEPs. Section 3065 has been amended to state that nonpublic schools and nonpublic agencies shall meet the requirements of section 3051 et seq.

Valerie Vanaman, Attorney, Newman, Aaronson, Vanaman
Comment: Section 3051.1: The existing regulation is specific and requires that the individual providing the related service have an appropriate credential with specialization in language, speech and hearing. The change proposed is that the individual providing the service "shall be qualified." The questions raised by this proposal are the following:

1. Qualified by whom? The explanatory information provided states that "minimum qualifications are governed by the local educational or public educational agency consistent with professional requirements established for this service by the CDCA or CTC." Does this mean that each local educational agency or public educational agency is to establish and publish statements of who is qualified to deliver speech and language services? If so, where in the proposed regulations are they required to do so? If not, how is a family to know if the individual providing the services is "qualified?" If a student has been receiving speech and language services for some time and the parent sees no progress being made and suspects that the provider is not trained or

credentialed to provide such services, how will the parent be able to learn the "qualifications" that were applied and whether or not the provider meets such qualifications? This proposed lack of direction and abrogation of responsibility on the part of the State Department of Education is not legally permitted by the existing statutory scheme. It will lead to extensive litigation in case after case when parents find it necessary to assert that the individual providing services was not "qualified" to do so.
Accept: Please see the comments that introduce this section of the Final Statement of Reasons. Amendments to this regulatory section have been made by transferring the detailed staff qualifications from 5 CCR 3065 to 5 CCR 3051, et seq. both to specify the standards for providing related services and the professional requirements of personnel providing related services to *all* students with IEPs. Section 3065 has been amended to state that nonpublic schools and nonpublic agencies shall meet the requirements of section 3051 et seq.

SECTION 3051.2

Laura Faer, Statewide Education Rights Director, Public Counsel Law Center
Judy McKinley, Governmental Affairs Chairperson, Learning Disabilities Association of California
Section 3051.2(b): One commenter notes that if in fact the rationale for this change is to ensure that individuals *"who are either licensed by the CDCA or have an appropriate credential issued by the CTC, and also meet the minimal qualifications of the employing agency"* are the only ones who may provide such services, then this language should be the language of the regulation. The rationale provided here will not be consulted by schools and districts in the field when making hiring decisions and this language needs to provide clear state guidance regarding qualifications. Another commenter notes that the qualifications need to be clear.
Accept: Please see the comments that introduce this section of the Final Statement of Reasons. Amendments to this regulatory section have been made by transferring the detailed staff qualifications from 5 CCR 3065 to 5 CCR 3051, et seq. both to specify the standards for providing related services and the professional requirements of personnel providing related services to *all* students with IEPs. Section 3065 has been amended to state that nonpublic schools and nonpublic agencies shall meet the requirements of section 3051 et seq.

Maureen Graves, Co-Chair, and Roberta S. Savage, Co-Chair, California Association of Parent-Child Advocacy (CAPCA)
Comment: Section 3051.2: The commenters are concerned that it would be extremely difficult for parents and advocates to understand what "qualified" means, and indeed difficult for school districts wanting to "do the right thing" to know what level of expertise is necessary. Audiology services are highly technical and necessary expertise should be defined.
Accept: Please see the comments that introduce this section of the Final Statement of Reasons. Amendments to this regulatory section have been made by transferring the detailed staff qualifications from 5 CCR 3065 to 5 CCR 3051, et seq. both to specify the standards for providing related services and the professional requirements of personnel

providing related services to *all* students with IEPs. Section 3065 has been amended to state that nonpublic schools and nonpublic agencies shall meet the requirements of section 3051 et seq.

George Buzzetti, Director of Policy, and Celes King IV, Vice Chair, Government Policy and Community Relations, Congress of Racial Equality of California (CORE-CA)
Janeen Steel, Founder/Director of Litigation and Advocacy, Learning Rights Law Center
Comment: Section 3051.2: One commenter notes that the current language of the regulation should be retained. Another commenter's notes about this section read as follows: **"**No longer required to have a valid credential person providing audiological services. This is inconsistent with the following in amendment 3065(c)(2) Audiological services, as defined in section 3051.2, shall be provided only by personnel who possess: (1)(A) a license in Audiology issued by a licensing agency within the Department of Consumer Affairs; or (2)(B) a credential authorizing audiology services."
Accept: Please see the comments that introduce this section of the Final Statement of Reasons. Amendments to this regulatory section have been made by transferring the detailed staff qualifications from 5 CCR 3065 to 5 CCR 3051, et seq. both to specify the standards for providing related services and the professional requirements of personnel providing related services to *all* students with IEPs. Section 3065 has been amended to state that nonpublic schools and nonpublic agencies shall meet the requirements of section 3051 et seq.

Valerie Vanaman, Attorney, Newman, Aaronson, Vanaman
Comment: Section 3051.2(b): It is particularly troubling to believe that the State Department of Education is prepared to leave to the hands of, apparently, just anyone the determination of whether or not a student has a hearing loss. The existing regulation provides that the person providing audiological services "shall hold a valid credential with a specialization .... " Now, such individual only need to be "qualified." The rationale given for the change makes no sense. That rationale states that it is necessary to "recognize that individuals who are either licensed by the COCA or have an appropriate credential issued by the CTC, and *also meet* the minimum qualifications of the employing agency" may provide the service. If the individual must have the license or credential, then that language must stay in place and the only addition would be to *add* to the regulation the requirement that the individual *also meet* the qualifications of the employing agency. The rationale does not match the actual language change proposed and there is no basis for this change under the law.
Accept: Please see the comments that introduce this section of the Final Statement of Reasons. Amendments to this regulatory section have been made by transferring the detailed staff qualifications from 5 CCR 3065 to 5 CCR 3051, et seq. both to specify the standards for providing related services and the professional requirements of personnel providing related services to *all* students with IEPs. Section 3065 has been amended to state that nonpublic schools and nonpublic agencies shall meet the requirements of section 3051 et seq.

SECTION 3051.3

Laura Faer, Statewide Education Rights Director, Public Counsel Law
Judy McKinley, Governmental Affairs Chairperson, Learning Disabilities Association of California
Janeen Steel, Founder/Director of Litigation and Advocacy, Learning Rights Law Center
Comment: Section 3051.3(b): One commenter notes that if in fact the rationale for this change is to ensure that individuals *"who are either licensed by the CDCA or have an appropriate credential issued by the CTC, and also meet the minimal qualifications of the employing agency"* are the only ones who may provide such services, then this language should be the language of the regulation. The rationale provided here will not be consulted by schools and districts in the field when making hiring decisions and this language needs to provide clear state guidance regarding qualifications. Another commenter notes that the qualifications need to be clear.

Another commenter says that the current language of the regulation should be retained, and the commenter's additional notes about this section read as follows: "Again changes the requirement to have "qualified" individual rather than a "credentialed" orientation and mobility specialist. This section is inconsistent with 3065(n)(2) Orientation and mobility instruction, as defined in section 3051.3, shall be provided only by personnel who possess a credential that authorizes services in orientation and mobility instruction."
Accept: Please see the comments that introduce this section of the Final Statement of Reasons. Amendments to this regulatory section have been made by transferring the detailed staff qualifications from 5 CCR 3065 to 5 CCR 3051, et seq. both to specify the standards for providing related services and the professional requirements of personnel providing related services to *all* students with IEPs. Section 3065 has been amended to state that nonpublic schools and nonpublic agencies shall meet the requirements of section 3051 et seq.

Maureen Graves, Co-Chair, and Roberta S. Savage, Co-Chair, California Association of Parent-Child Advocacy (CAPCA)
Comment: Section 3051.3: The commenters are concerned that orientation and mobility services are highly technical, require an understanding of diverse kinds and degrees of visual impairment, and critical for the short- and long-run safety and productivity of students with visual impairment. Moreover, removing any specification makes it impossible for districts and families to understand what level of expertise is required in order to be "qualified" to provide these vital services, heightening safety risks for students and liability risks for school districts.
Accept: Please see the comments that introduce this section of the Final Statement of Reasons. Amendments to this regulatory section have been made by transferring the detailed staff qualifications from 5 CCR 3065 to 5 CCR 3051, et seq. both to specify the standards for providing related services and the professional requirements of personnel

providing related services to *all* students with IEPs. Section 3065 has been amended to state that nonpublic schools and nonpublic agencies shall meet the requirements of section 3051 et seq.

George Buzzetti, Director of Policy, and Celes King IV, Vice Chair, Government Policy and Community Relations, Congress of Racial Equality of California (CORE-CA)
Janeen Steel, Founder/Director of Litigation and Advocacy, Learning Rights Law Center
Comment: Section 3051.3: One commenter notes that the current language of the regulation should be retained. Another commenter's notes about this section read as follows: **"**Again changes the requirement to have 'qualified' individual rather than a 'credentialed' orientation and mobility specialist. This section is inconsistent with 3065(n)(2) Orientation and mobility instruction, as defined in section 3051.3, shall be provided only by personnel who possess a credential that authorizes services in orientation and mobility instruction."
Accept: Please see the comments that introduce this section of the Final Statement of Reasons. Amendments to this regulatory section have been made by transferring the detailed staff qualifications from 5 CCR 3065 to 5 CCR 3051, et seq. both to specify the standards for providing related services and the professional requirements of personnel providing related services to *all* students with IEPs. Section 3065 has been amended to state that nonpublic schools and nonpublic agencies shall meet the requirements of section 3051 et seq.

Valerie Vanaman, Attorney, Newman, Aaronson, Vanaman
Comment: Section 3051.3(b): The commenters say that the proposed regulation eliminates any specific requirement and replaces the requirement with the ambiguous term "qualified." If a student is receiving orientation and mobility services and is injured as a result of the fact that the provider only met the minimum qualification of the employing agency but did not actually possess an orientation and mobility credential, will the State Department of Education be liable for the injuries suffered by the Student as a result of its failure to ensure that providers of this service were appropriately credentialed? As with the proposed change in item B above, if the only purpose is to add to the regulation that the individual must also meet the minimum qualifications of the employer, which is what the rationale says is the purpose, then what is the justification for removing the more specific language regarding the needed necessary credential?
Accept: Please see the comments that introduce this section of the Final Statement of Reasons. Amendments to this regulatory section have been made by transferring the detailed staff qualifications from 5 CCR 3065 to 5 CCR 3051, et seq. both to specify the standards for providing related services and the professional requirements of personnel providing related services to *all* students with IEPs. Section 3065 has been amended to state that nonpublic schools and nonpublic agencies shall meet the requirements of section 3051 et seq.

SECTION 3051.5

Laura Faer, Statewide Education Rights Director, Public Counsel Law
Comment: Section 3051.5(b): Same concern as above. The rationale provided is that this amendment recognizes that "individuals who have an appropriate credential issued by the CTC, and also meet the minimum qualifications of the employing agency" may provide this service; however, the change implies something different. If this is the intent, then the regulatory language should at minimum read: "*The individual shall have an appropriate credential to provide adapted physical education issued by the CTC, and also meet the minimum qualifications of the employing agency."*
Accept: Please see the comments that introduce this section of the Final Statement of Reasons. Amendments to this regulatory section have been made by transferring the detailed staff qualifications from section 3065 to section 3051, et seq. both to specify the standards for providing related services and the professional requirements of personnel providing related services to *all* students with IEPs. Section 3065 has been amended to state that nonpublic schools and nonpublic agencies shall meet the requirements of section 3051 et seq.

Maureen Graves, Co-Chair, and Roberta S. Savage, Co-Chair, California Association of Parent-Child Advocacy (CAPCA)
Comment: Section 3051.5: The commenters are concerned about removing access to individuals with genuine training and expertise in developing fitness, strength and leisure skill development programs for students with disabilities. As with orientation and mobility services, training is required to protect students' physical safety as well as to foster skill acquisition.
Accept: Please see the comments that introduce this section of the Final Statement of Reasons. Amendments to this regulatory section have been made by transferring the detailed staff qualifications from 5 CCR 3065 to 5 CCR 3051, et seq. both to specify the standards for providing related services and the professional requirements of personnel providing related services to *all* students with IEPs. Section 3065 has been amended to state that nonpublic schools and nonpublic agencies shall meet the requirements of section 3051 et seq.

George Buzzetti, Director of Policy, and Celes King IV, Vice Chair, Government Policy and Community Relations, Congress of Racial Equality of California (CORE-CA)
Janeen Steel, Founder/Director of Litigation and Advocacy, Learning Rights Law Center
Comment: Section 3051.5: One commenter notes that the current language of the regulation should be maintained. The commenter's notes about this section read as follows: "Changes the requirements from those providing APE from being credentialed to just being "qualified". This is inconsistent with 3065 (a)(2) Adapted physical education, as defined in section 3051.5, shall be provided only by personnel who possess a credential issued by the California Commission on Teacher Credentialing that authorizes service in adapted physical education."

Accept: Please see the comments that introduce this section of the Final Statement of Reasons. Amendments to this regulatory section have been made by transferring the detailed staff qualifications from 5 CCR 3065 to 5 CCR 3051, et seq. both to specify the standards for providing related services and the professional requirements of personnel providing related services to *all* students with IEPs. Section 3065 has been amended to state that nonpublic schools and nonpublic agencies shall meet the requirements of section 3051 et seq.

Valerie Vanaman, Attorney, Newman, Aaronson, Vanaman
Comment: Section 3051.5(b): The commenter says that the proposed amendment removes the requirement that the individual providing adaptive physical education have a "credential authorizing the teaching of adaptive physical education" in favor of language providing that the individual be "qualified." As with B, C. and D above, the rationale is that the State Department of Education is adding to the requirements by providing that the "qualified" individual must have an appropriate credential issued by the CTC and *also meet* the minimum qualifications of the employer. If this is an addition of a requirement only, what is the rationale for removing the specific language requiring the possession of a credential? There is no legally sufficient rationale presented for this change.

Moreover, on a purely practical level, this one provides yet another example of why litigation in individual cases is inevitable given the proposed changes. For example, a parent comes to our office complaining that because the student cannot meet the requirements that have been imposed by the individual providing what are supposed to be adaptive physical education services for sit ups, the student must work on that single skill throughout the physical education period and is not permitted to engage in any other physical education activity until the minimum standard is met. The parent wants to know how he or she can find out if the individual providing the service is "qualified" to provide such service and what can be done to challenge the fact that the service is not being done consistent with the student's unique and individual needs. Litigation will surely then ensue with regard to both questions.
Accept: Please see the comments that introduce this section of the Final Statement of Reasons. Amendments to this regulatory section have been made by transferring the detailed staff qualifications from 5 CCR 3065 to 5 CCR 3051, et seq. both to specify the standards for providing related services and the professional requirements of personnel providing related services to *all* students with IEPs. Section 3065 has been amended to state that nonpublic schools and nonpublic agencies shall meet the requirements of section 3051 et seq.

SECTION 3051.6

George Buzzetti, Director of Policy, and Celes King IV, Vice Chair, Government Policy and Community Relations, Congress of Racial Equality of California (CORE-CA)
Comment: Section 3051.6(b): Why eliminate the definitive language?

Response: Please see the comments that introduce this section of the Final Statement of Reasons. Amendments to this regulatory section have been made by transferring the detailed staff qualifications from 5 CCR 3065 to 5 CCR 3051, et seq. both to specify the standards for providing related services and the professional requirements of personnel providing related services to *all* students with IEPs. Section 3065 has been amended to state that nonpublic schools and nonpublic agencies shall meet the requirements of section 3051 et seq.

Laura Faer, Statewide Education Rights Director, Public Counsel Law
Comment: Section 3051.6(b): Same concern as above. If as specified in the ISOR, the intent is to recognize that *Physical and Occupational Therapists are now licensed by the CDCA, Physical Therapy and Occupational Board Boards respectively and that such individuals must also meet the minimum qualifications of the employing agency*, then the language should reflect that all such therapists must be so licensed.
Accept: Please see the comments that introduce this section of the Final Statement of Reasons. Amendments to this regulatory section have been made by transferring the detailed staff qualifications from 5 CCR 3065 to 5 CCR 3051, et seq. both to specify the standards for providing related services and the professional requirements of personnel providing related services to *all* students with IEPs. Section 3065 has been amended to state that nonpublic schools and nonpublic agencies shall meet the requirements of section 3051 et seq.

Maureen Graves, Co-Chair, and Roberta S. Savage, Co-Chair, California Association of Parent-Child Advocacy (CAPCA)
Comment: Section 3051.6: The commenters are concerned that under the proposed language, students will lose access to genuinely qualified personnel and that neither families nor district staff will have clear guidance as to qualifications for these important, safety related services. It appears that the intent is that physical and occupational therapy will be provided by individuals licensed by the California Department of Consumer Affairs. The regulation should state that so that parents and administrators know what is required and how to verify appropriate credentials. CAPCA agrees that whether a school is accredited is a matter for consideration by licensing authorities and should be removed from the special education regulatory framework.
Accept: Please see the comments that introduce this section of the Final Statement of Reasons. Amendments to this regulatory section have been made by transferring the detailed staff qualifications from 5 CCR 3065 to 5 CCR 3051, et seq. both to specify the standards for providing related services and the professional requirements of personnel providing related services to *all* students with IEPs. Section 3065 has been amended to state that nonpublic schools and nonpublic agencies shall meet the requirements of section 3051 et seq.

Janeen Steel, Founder/Director of Litigation and Advocacy, Learning Rights Law Center
Comment: Section 3051.6: The commenter says that the current language of the regulation should be maintained. The commenter's additional notes on the section read

as follows: “Removes the certification requirements and leaves only the person is qualified: ‘the services specified in the Business and Professions Code section 2570.2(k).’ Inconsistent with the proposed recommendations of 3065(p)(2) Physical therapy, as defined in section 3051.6, shall be provided only by personnel who possess a valid license in Physical Therapy issued by a licensing agency within the Department of Consumer Affairs.”
Accept: Please see the comments that introduce this section of the Final Statement of Reasons. Amendments to this regulatory section have been made by transferring the detailed staff qualifications from 5 CCR 3065 to 5 CCR 3051, et seq. both to specify the standards for providing related services and the professional requirements of personnel providing related services to *all* students with IEPs. Section 3065 has been amended to state that nonpublic schools and nonpublic agencies shall meet the requirements of section 3051 et seq.

Valerie Vanaman, Attorney, Newman, Aaronson, Vanaman
Comment: Section 3051.6(b): As with each of the above regulations, the rationale provided for this change is that it *adds* the requirement that the provider meet the minimum requirements of the employer. Since it is an addition, the change should only be the "clean up" of the agency and/or governing board certifying occupational therapists and physical therapists with the *addition* that the provider meet the employers minimum qualifications. There is no rationale or legal authority for eliminating the specific qualification language.
Accept: Please see the comments that introduce this section of the Final Statement of Reasons. Amendments to this regulatory section have been made by transferring the detailed staff qualifications from 5 CCR 3065 to 5 CCR 3051, et seq. both to specify the standards for providing related services and the professional requirements of personnel providing related services to *all* students with IEPs. Section 3065 has been amended to state that nonpublic schools and nonpublic agencies shall meet the requirements of section 3051 et seq.

SECTION 3051.7

Laura Faer, Statewide Education Rights Director, Public Counsel Law
Comment: Section 3051.7(a): Same concerns as above. Existing regulations ensure that vision services are “provided by a credentialed teacher of the visually handicapped” and the Department’s suggestion is only that such individuals “be qualified” with no explanation or guidance in the actual regulations about what that means and how districts should implement or hire staff, is problematic. If as specified in the ISOR, *the intent is that such individuals meet the professional standards required established by the CDCA and the CTC in terms of being either licensed by the former or credentialed by the latter in the area of vision services*, then that should be provided in the regulations.
Accept: Please see the comments that introduce this section of the Final Statement of Reasons. Amendments to this regulatory section have been made by transferring the

detailed staff qualifications from 5 CCR 3065 to 5 CCR 3051, et seq. both to specify the standards for providing related services and the professional requirements of personnel providing related services to *all* students with IEPs. Section 3065 has been amended to state that nonpublic schools and nonpublic agencies shall meet the requirements of section 3051 et seq.

Maureen Graves, Co-Chair, and Roberta S. Savage, Co-Chair, California Association of Parent-Child Advocacy (CAPCA)
Comment: Section 3051.7: The commenters have the same concerns as for other services. Relevant licenses and credentials should be set forth.
Accept: Please see the comments that introduce this section of the Final Statement of Reasons. Amendments to this regulatory section have been made by transferring the detailed staff qualifications from 5 CCR 3065 to 5 CCR 3051, et seq. both to specify the standards for providing related services and the professional requirements of personnel providing related services to *all* students with IEPs. Section 3065 has been amended to state that nonpublic schools and nonpublic agencies shall meet the requirements of section 3051 et seq.

Janeen Steel, Founder/Director of Litigation and Advocacy, Learning Rights Law Center
Comment: Section 3051.7: The commenter says that this section should align with 3065. The commenter's additional notes on this section read as follows:" No longer requires credentialed individual, lowered to 'qualified' one. Inconsistent with 3065 (x)(2) Vision services, as defined in section 3051.7, shall be provided only by personnel who possess:(1)(A) a license as an Optometrist, Ophthalmologist, Physician or Surgeon, issued by a licensing agency within the Department of Consumer Affairs and authorizing the licensee to provide the services rendered, or (2)(B) a valid credential authorizing vision instruction or services. (y)(x) Other related services not identified in this section shall only be provided by staff who possess a:"
Accept: Please see the comments that introduce this section of the Final Statement of Reasons. Amendments to this regulatory section have been made by transferring the detailed staff qualifications from 5 CCR 3065 to 5 CCR 3051, et seq. both to specify the standards for providing related services and the professional requirements of personnel providing related services to *all* students with IEPs. Section 3065 has been amended to state that nonpublic schools and nonpublic agencies shall meet the requirements of section 3051 et seq.

Valerie Vanaman, Attorney, Newman, Aaronson, Vanaman
Comment: Section 3051.7(a): Vision services are a unique service. They cannot be provided by just anyone who happens to have had any type of training. The existing regulation is quite specific as to the qualifications an individual must have, including the language that the services "shall be provided by a credentialed teacher of the visually handicapped." While it is appropriate to change the word "handicapped" it is not appropriate to remove the language requiring the service to be provided by a credentialed teacher of the visually impaired and replace it with the word "qualified." This is particularly the case given that, unlike some other sections, the rationale for this

change seems to be that the local educational agency can adopt any standards it wants for individuals providing this service and without regard to actual credentialing requirements. Moreover, there is no requirement in this regulation that the local educational agency formally adopt and publish these requirements. It appears as though the State Department of Education is not only abrogating its total responsibility to the visually disabled, it is doing so without even requiring local educational agencies to engage in even a minimal process for establishing the "qualifications" for these "qualified" individuals. Of prime significance is the fact that the proposed regulation will result in a system in which the level of actual services delivered will vary widely from local educational agency to local educational agency. By permitting each local educational agency to establish the "minimum" qualification for this service, a student living in a wealthy district, for example, may have an actually credentialed teacher while a student in a poorer district may well have an individual who lacks a credential for visually impaired students but who, nonetheless, has been determined "qualified" by the local educational agency. This type of inequality is not permitted by state and federal law and there is no legal basis for the adoption of this proposed change or any other proposed change that leaves it up to the local educational agency to define the term "qualified."
Accept: Please see the comments that introduce this section of the Final Statement of Reasons. Amendments to this regulatory section have been made by transferring the detailed staff qualifications from 5 CCR 3065 to 5 CCR 3051, et seq. both to specify the standards for providing related services and the professional requirements of personnel providing related services to *all* students with IEPs. Section 3065 has been amended to state that nonpublic schools and nonpublic agencies shall meet the requirements of section 3051 et seq.

SECTION 3051.75

Sue Balt, 2012-13 Chair, California Association of SELPA Administrators
Heather DiFede, Senior Director, East County SELPA
Comment: The commenters recommend that references to “vision therapy” be removed from the regulations because of a lack of scientifically based and peer-reviewed research. Further, the federal regulations regarding related services are not exhaustive and do not preclude the offering of these services if appropriate on the basis of the individual students’ needs.
Reject: The CDE has determined to retain this regulatory section on “vision therapy” to preserve state standards for students whose IEPs require this related service.

Maureen Graves, Co-Chair, and Roberta S. Savage, Co-Chair, California Association of Parent-Child Advocacy (CAPCA)
Comment: Section 3051.75: The commenters cannot tell whether any change is being proposed here. Is any?
Response: The “Note” of this section had been amended when the regulations were made available during the 45-day public comment period. Since then, the “Note” has been further amended.

SECTION 3051.10

George Buzzetti, Director of Policy, and Celes King IV, Vice Chair, Government Policy and Community Relations, Congress of Racial Equality of California (CORE-CA)
Comment: Section 3051.10(a): Why eliminate line (a) when it is specific?
Response: Subdivision (a) of section 3051.10 has been reinstated.

Laura Faer, Statewide Education Rights Director, Public Counsel Law
Comment: Section 3051.10(a): The commenter says this change not only suggests that psychological services does not include "counseling" but also eliminates the requirement that such individuals be "credentialed or licensed"; again, the state has a responsibility to establish the standards to ensure that the staff who provide such services are highly qualified. These changes do the opposite. *If the intent is to establish that such individuals shall be either licensed by CDCA or credentialed by CTC as appropriate depending on the title and must also meet the qualifications of the employing agency, then that should be made clear in the regulation.*
Accept: Please see the comments that introduce this section of the Final Statement of Reasons. Subdivision (a) of section 3051.10 has been reinstated. In addition, amendments to this regulatory section have been made by transferring the detailed staff qualifications from 5 CCR 3065 to 5 CCR 3051, et seq. both to specify the standards for providing related services and the professional requirements of personnel providing related services to *all* students with IEPs. Section 3065 has been amended to state that nonpublic schools and nonpublic agencies shall meet the requirements of section 3051 et seq**.**

Jeff Frost, Legislative Advocate, California Association of School Psychologists (CASP)
Comment: Section 3051.10(a): The commenter recommends that subdivision (a) be retained in the regulations and asserts that the subdivision's removal deletes the authority of school psychologists to perform counseling services to students with IEPs. The commenter notes that the deletion of this subdivision of the regulations is contrary to guidance that was developed in stakeholder group meetings led by the California Department of Education following the repeal of Assembly Bill (AB 3632).
Accept: Subdivision (a) of section 3051.10 has been reinstated.

Maureen Graves, Co-Chair, and Roberta S. Savage, Co-Chair, California Association of Parent-Child Advocacy (CAPCA)
Comment: Section 3051.10: The commenters believe that it is vital to make clear that districts must provide, or contract for, actual "counseling," not simply "implement" a "counseling program" which might be taken to involve supervising an information and referral service or urging families to use insurance. Moreover, it is alarming to water down and remove specificity from counseling staff qualification requirements just after the legislature has seen fit to turn over educationally related mental health services—even for students with the most complex and acute needs—to school districts. Districts

need to be pressed by the state to increase internal expertise, not given additional leeway to decide who is qualified to provide services that affect educational achievement and in some cases survival.
Accept: Please see the comments that introduce this section of the Final Statement of Reasons. Subdivision (a) of section 3051.10 has been reinstated. In addition, amendments to this regulatory section have been made by transferring the detailed staff qualifications from 5 CCR 3065 to 5 CCR 3051, et seq. both to specify the standards for providing related services and the professional requirements of personnel providing related services to *all* students with IEPs. Section 3065 has been amended to state that nonpublic schools and nonpublic agencies shall meet the requirements of section 3051 et seq.

Judy McKinley, Governmental Affairs Chairperson, Learning Disabilities Association of California
Comment: Section 3051.10(a): The commenter recommends that necessary qualifications by CDCA and/or CTC must be included in the regulations. In addition, the amendment of subdivision 3051.10(a) goes beyond deleting qualifications and appears to delete a service of counseling. The commenter expresses concern that districts may think it is somehow different to implement a “program” of counseling and may view this change as an excuse to reduce counseling services that need to be expanding given the loss of the traditional county-based system for providing mental health services to students with disabilities.
Accept: Please see the comments that introduce this section of the Final Statement of Reasons. Subdivision (a) of section 3051.10 has been reinstated. In addition, amendments to this regulatory section have been made by transferring the detailed staff qualifications from 5 CCR 3065 to 5 CCR 3051, et seq. both to specify the standards for providing related services and the professional requirements of personnel providing related services to *all* students with IEPs. Section 3065 has been amended to state that nonpublic schools and nonpublic agencies shall meet the requirements of section 3051 et seq.

Maureen Burness, Policy Committee Chair, Advisory Commission on Special Education
Paula Pearlman, Executive Director, Disability Rights Legal Center
Comment: Section 3051.10(a): Commenter opposes the elimination of counseling services in the list of psychological services to be provided.
Accept: Subdivision (a) of section 3051.10 has been reinstated.

Janeen Steel, Founder/Director of Litigation and Advocacy, Learning Rights Law Center
Comment: Section 3051.10: The commenter says that as a result of the removal of AB 3632 we are concerned with any removal of counseling as a service especially by a credentialed or licensed psychologist. These regulations should be expanded rather than reduced. The definition under section 3065 provides an appropriate description about psychological services:

3065 (p)(1) “Psychological services” means:(A) the application of psychological principles and methods including, but not limited to, procedures on interviewing, psycho-educational assessment, diagnosis of specific learning and behavioral disabilities, and amelioration of learning and behavioral problems of individuals or groups through applied psychotherapy.(B) This term does not include assessment services and the development of an IEP. (2) Psychological services required by a student’s IEP may be rendered by any of the following professionals employed by a nonpublic school or agency who possess the credential or license required by law for the performance of particular psychological services by members of that profession:(A) Educational Psychologist pursuant to Business and Professions Code section 4989.14;(B) Marriage and Family Therapist pursuant to Business and Professions Code section 4980.02;(C) Licensed Clinical Social Worker pursuant to Business and Professions Code section 4996.9; or(D) Licensed Psychologist pursuant to Business and Professions Code section 2903.(E) pupil personnel services credential that authorizes school psychology. Align personnel requirements with section 3065.

The Proposed Title 5 Amendment fails to account for the removal of AB 3632 mental health services. On March 13, 2013 Fred Balcom, Special Education Division of the CDE, published a letter “Assembly Bill 114: Documenting Coordinated Services (Bundled Services) in Individualized Education Programs (“IEP”) to Comply with the Individuals With Disabilities Education Act Requirements.” This letter describes how school districts should now provide services previously provided by AB 3632. Many of the mental health services were previously “bundled” and guidance was provided by Mr. Balcom describing how to use related services such as: counseling, behavior intervention, parent counseling, psychological services, and recreation services, to provide mental health services as part of a student’s IEP. This letter explained how a district could implement a “wrap-around” program or “day-treatment” program by combining related services. Instead of adding information to the related services referenced in this letter to guide districts on how to implement mental health, the Proposed Title 5 Amendment outright removes the professional requirements for many of these related services. The Proposed Title 5 Amendment fails to address and clarify how students with mental health services can be served by the Local Education Agency (“LEA” or “district”). This is unacceptable and will leave students needing special education services unprotected and without a standard of control over persons providing services. School Districts need guidance governed by regulations on how to combine related services to address students’ mental health needs. To remedy this undesirable result, Learning Rights proposes the CDE include additional language to the Proposed Title 5 Amendment to ensure that section 3051 et seq. is revised consistent with March 13, 2013 Mr. Balcom’s letter.
Partially accept and partially reject: Regarding the commenter’s concern about the removal of counseling from the list of psychological services, please see the comments that introduce this section of the Final Statement of Reasons. Subdivision (a) of section 3051.10 has been reinstated. In addition, amendments to this regulatory section have been made by transferring the detailed staff qualifications from 5 CCR 3065 to 5 CCR 3051, et seq. both to specify the standards for providing related services and the professional requirements of personnel providing related services to *all* students with

IEPs. Section 3065 has been amended to state that nonpublic schools and nonpublic agencies shall meet the requirements of section 3051 et seq.

As to the commenter's assertion that additional regulations should be added to Title 5 to "account for the removal of AB 3632," the CDE has no statutory authority to take this action. Since the repeal of AB 3632, the CDE has worked with a broad range of stakeholders to develop extensive guidance to assist LEAs in addressing students' mental health care needs. These many guidance documents and information about the workgroup and its meetings are available at the CDE Web site at http://www.cde.ca.gov/sp/se/ac/ab114twg.asp.

Valerie Vanaman, Attorney, Newman, Aaronson, Vanaman
Comment: Section 3051.10(a) and (c): The rationale given for the change in subdivision (a) is that it is deleted to "eliminate any reference to personnel qualifications." The rationale goes on to provide that "minimum qualifications are governed by the LEA or public educational agency consistent with professional requirements established for this service by the CDCA or the CTC." If the requirements from the CDCA or CTC continue to apply, why are they being removed? Is it the intent of the State Department of Education to also abrogate all of its responsibility in this area by permitting LEA' s to develop whatever minimum qualifications they may desire? If so, how is conformity across the State to be ensured? How will the State Department of Education ensure that students in a poorer district are provided with the same "qualified" personnel as students in more wealthy districts?

If subdivision c is being changed simply to add that the individuals must also meet the minimum qualifications of the employer, then why are the specific requirements being removed and that new requirement only added? How will the State Department of Education monitor the "minimum" requirements adopted by the local educational agencies? How will the State Department of Education ensure that the "minimum" requirements adopted by the local educational agencies include the credentialing and licensing requirements that the rationale seems to suggest must be incorporated? Where in the regulations are local educational agencies required to publish the minimum qualifications that are adopted? Is the State Department of Education making it legally acceptable for a student in one local educational agency to have counseling services from a fully credentialed individual and for a similarly situated student in another local educational agency to receive counseling services only from an individual with, for example, an associate degree who has been given some in house training? Will the State Department of Education be financially responsible it~ during the course of counseling, a student reveals information that puts the student or other students at risk but the individual providing the counseling does not meet the educational requirements for an individual who is fully licensed and credentialed and fails to report the information in the manner required by law because the individual is unaware of the reporting requirements?
Accept: Please see the comments that introduce this section of the Final Statement of Reasons. Subdivision (a) of section 3051.10 has been reinstated. In addition, amendments to this regulatory section have been made by transferring the detailed staff

qualifications from 5 CCR 3065 to 5 CCR 3051, et seq. both to specify the standards for providing related services and the professional requirements of personnel providing related services to *all* students with IEPs. Section 3065 has been amended to state that nonpublic schools and nonpublic agencies shall meet the requirements of section 3051 et seq.

SECTION 3051.11

George Buzzetti, Director of Policy, and Celes King IV, Vice Chair, Government Policy and Community Relations, Congress of Racial Equality of California (CORE-CA)
Comment: Section 3051.11: Commenter notes that all qualifications for parent trainers are eliminated and must be replaced.
Accept: A review of the original regulatory section will show that it did not contain qualifications for parent trainers; however, please see the comments that introduce this section of the Final Statement of Reasons. Amendments to this regulatory section have been made by transferring the detailed staff qualifications from 5 CCR 3065 to 5 CCR 3051, et seq. both to specify the standards for providing related services and the professional requirements of personnel providing related services to *all* students with IEPs. Section 3065 has been amended to state that nonpublic schools and nonpublic agencies shall meet the requirements of section 3051 et seq.

Laura Faer, Statewide Education Rights Director, Public Counsel Law
Comment: Section 3051.11 Same concerns and recommendations**.**
Accept: Please see the comments that introduce this section of the Final Statement of Reasons. Amendments to this regulatory section have been made by transferring the detailed staff qualifications from 5 CCR 3065 to 5 CCR 3051, et seq. both to specify the standards for providing related services and the professional requirements of personnel providing related services to *all* students with IEPs. Section 3065 has been amended to state that nonpublic schools and nonpublic agencies shall meet the requirements of section 3051 et seq.

Maureen Graves, Co-Chair, and Roberta S. Savage, Co-Chair, California Association of Parent-Child Advocacy (CAPCA)
Comment: Section 3051.11: The commenters believe qualifications should be clear and consistent between public and nonpublic programs.
Accept: Please see the comments that introduce this section of the Final Statement of Reasons. Amendments to this regulatory section have been made by transferring the detailed staff qualifications from 5 CCR 3065 to 5 CCR 3051, et seq. both to specify the standards for providing related services and the professional requirements of personnel providing related services to *all* students with IEPs. Section 3065 has been amended to state that nonpublic schools and nonpublic agencies shall meet the requirements of section 3051 et seq.

Janeen Steel, Founder/Director of Litigation and Advocacy, Learning Rights Law Center
Comment: Section 3051.11: The commenter recommends that this section be aligned with 5 CCR 3065. The commenter's notes about this section also reads as follows: "Adds requirement that counseling and training be provided by 'qualified' individual. This section is inconsistent with the proposed amendments of 3065 (o)(2) Parent counseling and training, as defined in section 3051.11, shall be provided only by personnel who possess a: (1)(A) credential that authorizes special education instruction; or (2)(B) credential that authorizes health and nursing services; or (3)(C) license as a Marriage and Family Therapist, or Marriage, and Family Intern under supervision of either a Marriage and Family Therapist, licensed Clinical Social Worker, licensed Psychologist, or a Physician who is certified in psychiatry by either the Medical Board of California, the Board of Behavioral Sciences, or the Board of Psychology, within the Department of Consumer Affairs; or (4)(D) license as a Clinical Social Worker, or Associate Clinical Social Worker under supervision of either a licensed Clinical Social Worker or a licensed Mental Health Professional by the Board of Behavioral Sciences, within the Department of Consumer Affairs; or (5)(E) license as an Educational Psychologist, issued by a licensing agency within the Department of Consumer Affairs; or (6)(F) license as a psychologist, or who are working under the supervision of a licensed psychologist, both regulated by the Board of Psychology, within the Department of Consumer Affairs; or (7)(G) pupil personnel services credential that authorizes school counseling or school psychology or school social work."
Accept: Please see the comments that introduce this section of the Final Statement of Reasons. Amendments to this regulatory section have been made by transferring the detailed staff qualifications from 5 CCR 3065 to 5 CCR 3051, et seq. both to specify the standards for providing related services and the professional requirements of personnel providing related services to *all* students with IEPs. Section 3065 has been amended to state that nonpublic schools and nonpublic agencies shall meet the requirements of section 3051 et seq.

SECTION 3051.14

Laura Faer, Statewide Education Rights Director, Public Counsel Law
Comment: Section 3051.14 Same concerns and recommendations.
Accept: Please see the comments that introduce this section of the Final Statement of Reasons. Amendments to this regulatory section have been made by transferring the detailed staff qualifications from 5 CCR 3065 to 5 CCR 3051, et seq. both to specify the standards for providing related services and the professional requirements of personnel providing related services to *all* students with IEPs. Section 3065 has been amended to state that nonpublic schools and nonpublic agencies shall meet the requirements of section 3051 et seq.

Maureen Graves, Co-Chair, and Roberta S. Savage, Co-Chair, California Association of Parent-Child Advocacy (CAPCA)
Comment: Section 3051.14: The commenters believe qualifications should be clear and consistent between public and nonpublic programs.

Accept: Please see the comments that introduce this section of the Final Statement of Reasons. Amendments to this regulatory section have been made by transferring the detailed staff qualifications from 5 CCR 3065 to 5 CCR 3051, et seq. both to specify the standards for providing related services and the professional requirements of personnel providing related services to *all* students with IEPs. Section 3065 has been amended to state that nonpublic schools and nonpublic agencies shall meet the requirements of section 3051 et seq.

Janeen Steel, Founder/Director of Litigation and Advocacy, Learning Rights Law Center
Comment: Section 3051.14: The commenter recommends that this section be aligned with 5 CCR 3065. The commenter's notes about this section also reads as follows: "While this section add qualified, it is still inconsistent with the proposed amendments for 3065 (u)(2) Specially designed vocation education and career development, as defined in section 3051.14, shall be provided only by personnel who possess a: (1)(A) adult education credential with a career development authorization; or (2)(B) credential that authorizes instruction in special education or vocational education; or (3)(C) pupil personnel services credential that authorizes school counseling."
Accept: Please see the comments that introduce this section of the Final Statement of Reasons. Amendments to this regulatory section have been made by transferring the detailed staff qualifications from 5 CCR 3065 to 5 CCR 3051, et seq. both to specify the standards for providing related services and the professional requirements of personnel providing related services to *all* students with IEPs. Section 3065 has been amended to state that nonpublic schools and nonpublic agencies shall meet the requirements of section 3051 et seq.

SECTION 3051.15

Laura Faer, Statewide Education Rights Director, Public Counsel Law
Comment: Section 3051.15 Same concerns and recommendations.
Accept: Please see the comments that introduce this section of the Final Statement of Reasons. Amendments to this regulatory section have been made by transferring the detailed staff qualifications from 5 CCR 3065 to 5 CCR 3051, et seq. both to specify the standards for providing related services and the professional requirements of personnel providing related services to *all* students with IEPs. Section 3065 has been amended to state that nonpublic schools and nonpublic agencies shall meet the requirements of section 3051 et seq.

Maureen Graves, Co-Chair, and Roberta S. Savage, Co-Chair, California Association of Parent-Child Advocacy (CAPCA)
Comment: Section 3051.15: The commenters believe qualifications should be clear and consistent between public and nonpublic programs.
Accept: Please see the comments that introduce this section of the Final Statement of Reasons. Amendments to this regulatory section have been made by transferring the detailed staff qualifications from 5 CCR 3065 to 5 CCR 3051, et seq. both to specify the

standards for providing related services and the professional requirements of personnel providing related services to *all* students with IEPs. Section 3065 has been amended to state that nonpublic schools and nonpublic agencies shall meet the requirements of section 3051 et seq.

Janeen Steel, Founder/Director of Litigation and Advocacy, Learning Rights Law Center
Comment: Section 3051.15: The commenter recommends that this section be aligned with 5 CCR 3065. The commenter's notes about this section also reads as follows: "Adds requirement that recreation services be provided by "qualified" individuals, but fails to include the requirements listed in 3065(r)(2). Recreation services, as defined in section 3051.15, shall be provided only by personnel who possess a: (1)(A) certificate, issued by the California Board of Recreation and Park Certification; or (2)(B) certificate issued by the National Council for Therapeutic Recreation; or (3)(C) the National Recreation and Park Association, authorizing services in recreation or therapeutic recreation."
Accept: Please see the comments that introduce this section of the Final Statement of Reasons. Amendments to this regulatory section have been made by transferring the detailed staff qualifications from 5 CCR 3065 to 5 CCR 3051, et seq. both to specify the standards for providing related services and the professional requirements of personnel providing related services to *all* students with IEPs. Section 3065 has been amended to state that nonpublic schools and nonpublic agencies shall meet the requirements of section 3051 et seq.

SECTION 3051.16

Laura Faer, Statewide Education Rights Director, Public Counsel Law
Comment: Section 3051.16 – Same concerns and recommendations.
Accept: Please see the comments that introduce this section of the Final Statement of Reasons. Amendments to this regulatory section have been made by transferring the detailed staff qualifications from 5 CCR 3065 to 5 CCR 3051, et seq. both to specify the standards for providing related services and the professional requirements of personnel providing related services to *all* students with IEPs. Section 3065 has been amended to state that nonpublic schools and nonpublic agencies shall meet the requirements of section 3051 et seq.

SECTION 3051.18

Janeen Steel, Founder/Director of Litigation and Advocacy, Learning Rights Law Center
Comment: Section 3051.18: The commenter recommends that the current language for this section be maintained. The commenter's notes about this section also read as follows: "Removal of DIS services."
Reject: Education Code section 56363 says that the term "designated instruction and services" (DIS) means "related services." During its informal comment periods with special education stakeholders, the CDE was asked to delete references to DIS

throughout the regulations and to use only the term “related services.” In response to the request from stakeholders, the CDE accordingly made the amendment.

SECTION 3052

A. Kay Altizer, Director, Special Education, Berkeley Unified School District
Comment: The commenter recommends that language be added to the regulations to clarify and define the standards of the functional behavioral assessment (FBA) to more closely align with the Hughes Bill/school-based functional analysis assessment (FAA).
Reject: California Code of Regulations, title 5, section 3052 is not included in this regulatory package. On July 1, 2013, Assembly Bill (AB) 86, the 2013 education omnibus budget trailer bill, mandated that the State Superintendent of Public Instruction repeal Section 3052 and subdivisions (d), (e), (f), (g), and (ab) of section 3001. AB 86 also adds Education Code Section 56521.1, which references “FBAs.” As a result of the passage of AB 86, references to “FAAs” are removed from state regulations pertaining to students who receive special education. The need to align the standards of FBAs with FAAs is moot.

Maureen Burness, Advisory Commission on Special Education
Comment: Section 3052: The commenter recommends that this section of the regulations be deleted during this regulatory action in compliance with Assembly Bill 86.
Reject: The CDE has determined that this section will be repealed in a separate action pursuant to California Code of Regulations, title 1, section 100.

Anjanette Pelletier, Senior SELPA Administrator, San Mateo County SELPA
Angela Sutherland
Comment: Section 3052: Commenter echoes the sentiments of many of the parents in the public hearing that some of the changes to the requirements for certifications or supervision requirements for behavioral support and monitoring are concerns. She also says that the label of the person trained does not necessarily equate to the quality and kind of plan they can write and the quality of the plan that they can implement. Commenter also refers to recent legislative action regarding the mandate and its questionable future.
No response required: As a result of the passage of AB 86, section 3052 will be repealed in a separate action pursuant to California Code of Regulations, title 1, section 100.

Angela Sutherland
Comment: Section 3052: The commenter expresses concerns about the qualifications for those who are designing and planning behavior intervention plans, for example, a person with a high school diploma who is working under the supervision of a person who is “qualified.” The commenter recommends stronger qualifications for behavior specialists.
Reject: As a result of the passage of AB 86, Section 3052 will be repealed in a separate action pursuant to California Code of Regulations, title 1, section 100. In addition, as a result of AB 86, this regulatory package proposes deleting the definitions in sections

3001(d), (e), (f), (g), and (ab) relating to "behavioral emergency," "behavioral intervention," "behavioral intervention case manager," "behavioral intervention plan," and "serious behavior problems." The CDE is tasked with convening a large stakeholder group to discuss the impact of changes to law and regulations, develop and disseminate technical assistance advisories, identify and recommend practices based on peer-reviewed research, and identify model programs and adjust data collection and monitoring activities.

SECTION 3054

George Buzzetti, Director of Policy, and Celes King IV, Vice Chair, Government Policy and Community Relations, Congress of Racial Equality of California (CORE-CA)
Comment: Section 3054: Why eliminate "special centers."
Response: Please refer to page 13 of the ISOR.

SECTION 3064

Maureen Burness, Policy Committee Chair, Advisory Commission on Special Education
Comment: Section 3064: The commenter asks whether this section has been reviewed by the California Commission on Teacher Credentialing to ensure that it is current.
Response: The California Commission on Teacher Credentialing was contacted throughout the process of publicly reviewing the regulations and provided no comments.

Judy McKinley, Governmental Affairs Chairperson, Learning Disabilities Association of California
Comment: Section 3064(a)(1): During situations when instructional personnel leave the employ of the nonpublic school with little or no notice, the nonpublic school may employ a person who holds a Provisional Internship Permit or a Short Term Staff Permit. The commenter asks: Would a student teacher be qualified in this situation?
Response: It is unclear how the commenter would define a "student teacher." The commenter is encouraged to refer to Education Code sections 44225(m) and 44300. Additional information about the Provisional Internship Permit and the Short Term Staff Permit are available respectively at http://www.ctc.ca.gov/credentials/leaflets/cl856.pdf and http://www.ctc.ca.gov/credentials/leaflets/cl858.pdf.

Maureen Graves, Co-Chair, and Roberta S. Savage, Co-Chair, California Association of Parent-Child Advocacy (CAPCA)
Comment: Section 3064: The commenters do not know to what extent if any, NPSs use or rely on county permits or how these work for public schools. The commenter asks would the proposed regulations create a difference between public and certified nonpublic schools. If so, what would be the distinction in practice and why is it being made?

No response required. The commenter does not make a recommendation regarding the regulations.

SECTION 3065

Maureen Burness, Policy Committee Chair, Advisory Commission on Special Education
Comment: Section 3065: The commenter asks whether this section has been reviewed by the California Commission on Teacher Credentialing to ensure that it is current regarding new authorizations**.**
Response: The California Commission on Teacher Credentialing was contacted throughout the process of reviewing the regulations and provided no comments.

Rebecca Cervenak, Staff Attorney, and Lauren Giardina, Staff Attorney, Disability Rights California (DRC)
Paula Pearlman, Executive Director, Disability Rights Legal Center
Esteban Fuentes, Treasurer; Jose Luis and Gloria Hernandez, President and Founders; Rosa Hernandez; Maria Garcia; Hilda Cuenca; Martha Mora; Grupo de Autismo Angeles
Grace Trujillo
Comment: Section 3065: Commenters note that this section requires much more strict and specific minimum qualifications for service providers who work with students in nonpublic settings, but there still appears to be a “catch all” section that allows a person who possesses a credential to provide the services as well. The commenter is unclear as to what these credentials are, what they require, and whether or not a person who possesses one is adequately trained to provide services to students. The commenters say it is also unclear why the CDE is proposing a dual standard for service providers in nonpublic settings versus public settings. Imposing a dual standard such as this creates an imbalance in the quality of the services that students receive and could result in more students requiring services in nonpublic schools instead of public, integrated settings. At the very least, the standards for minimum qualifications should be consistent in all settings and should be specifically defined to ensure high quality services.
Accept: Please see the comments that introduce section 3051 of this Final Statement of Reasons. Amendments to section 3051 have been made by transferring the detailed staff qualifications from section 3065 to section 3051, et seq. both to specify the standards for providing related services and the professional requirements of personnel providing related services to *all* students with IEPs. Section 3065 has been amended to state that nonpublic schools and nonpublic agencies shall meet the requirements of section 3051 et seq. The purpose of these proposed amendments is to ensure a consistency of requirements pertaining to related services in all settings for students with IEPs.

Marcia Eichelberger, Steering Committee Representative, Alliance of California Autism Organization

Comment: Section 3065: The commenter is concerned that CDE proposes to entrench and deepen the double standard between services in public and in nonpublic schools. Both parts of this modification are disturbing. It makes no sense to strip qualification requirements from public school providers of related services. Parents want and need to trust school staff, but if districts are given complete flexibility to provide speech therapy with aides under supervision of "qualified" people, and allowed to use anyone they deem "qualified" to provide psychotherapy, they will not be able to. It is not difficult to spell out staff qualifications, as the proposed regulations do so in detail for nonpublic school and agency employees. In fact, it appears that they do so in so much detail that some programs will either no longer be able to operate or will have to drastically increase their charges to school districts and privately paying families. There need to be unitary, reasonable standards for service providers that apply regardless of whether children are in a public or certified nonpublic program.
Accept: Please see the comments that introduce section 3051 of this Final Statement of Reasons. Amendments to section 3051 have been made by transferring the detailed staff qualifications from section 3065 to section 3051, et seq. both to specify the standards for providing related services and the professional requirements of personnel providing related services to *all* students with IEPs. Section 3065 has been amended to state that nonpublic schools and nonpublic agencies shall meet the requirements of section 3051 et seq. The purpose of these proposed amendments is to ensure a consistency of requirements pertaining to related services in all settings for students with IEPs.

Maureen Graves, Co-Chair, and Roberta S. Savage, Co-Chair, California Association of Parent-Child Advocacy (CAPCA)
Comment: Section 3065: The commenters approve of placing in regulations specific staff requirements to the extent they are required by the Education Code. Have the proposed requirements been specifically compared to the Education Code to ensure that all are statutorily required? AB 1858 attempted to strike a balance between accessibility of nonpublic school and agency services and their quality—an effort that has not been entirely successful. CAPCA opposes adding any new staffing qualification requirements to NPS and NPA certification requirements through this regulatory process.
Response: Education Code section 56070 provides "Qualifications for Designated Instruction and Services Personnel, Related Services Personnel, and Paraprofessionals." The CDE understands its regulations to be consistent with this section of Education Code.

George Buzzetti, Director of Policy, and Celes King IV, Vice Chair, Government Policy and Community Relations, Congress of Racial Equality of California (CORE-CA)
Comment: Section 3065(b)(2)(H): What is the legal difference between "impaired" and "handicapped"?
Response: Please refer to page 15 of the ISOR.

George Buzzetti, Director of Policy, and Celes King IV, Vice Chair, Government Policy and Community Relations, Congress of Racial Equality of California (CORE-CA)
Comment: Section 3065(c); 3065(f); 3065(h); 3065(j) through (o); 3065(q) through (u); 3065(w): Why are the definitions for these sections eliminated?
Response: Please refer to pages 15 through 18 of the ISOR.

Angela Sutherland
Comment: Section 3065(e): The commenter asks how can an individual who is not certified to develop an effective behavior intervention [plan] develop or modify a behavior plan?
No response required. The meaning of this question is unclear.

Sara Kashing, Staff Attorney, and Jill Epstein, Executive Director, California Association of Marriage and Family Therapists (CAMFT)
Comment: Section 3065: The commenter expresses concern that subdivisions (f)(1), (o)(3), and (s)(2) of this section are vague and unclear in violation of Government Code section 11349(c). These subdivisions should clarify that both trainees and interns may provide counseling and guidance, parent counseling and training, and social work services.

These subdivisions should also include the correct title of those who are registered with the Board of Behavioral Sciences as Marriage and Family Therapist Interns.

These subdivisions should reflect the changes in the law related to who may supervise Marriage and Family Therapist Trainees and Marriage and Family Therapist Interns. California Business and Professions Code sections 4980.44 and 4980.88 now includes Licensed Professional Clinical Counselors as supervisors of Marriage and Family Therapist Trainees and Marriage and Family Therapist Registered Interns.

CAMFT proposes that subdivision (f)(1) of section 3065 be revised to read as follows: "license as a Marriage and Family Therapist, *or Marriage and Family Therapist Trainee,* or Marriage and Family Therapist *Registered* Intern under supervision of either a Marriage and Family Therapist, licensed Clinical Social Worker, *Licensed Professional Clinical Counselor,* licensed Psychologist, or a Physician who is certified in psychiatry by either the Medical Board of California, the Board of Behavioral Sciences, or the Board of Psychology within the Department of Consumer Affairs."

CAMFT proposes that subdivision (o)(3) of section 3065 be revised to read as follows: "license as a Marriage and Family Therapist, *or Marriage and Family Therapist Trainee,* or Marriage and Family Therapist *Registered* intern under supervision of either a Marriage and Family Therapist, licensed Clinical Social Worker, *Licensed Professional Clinical Counselor,* licensed Psychologist, or a Physician who is certified in psychiatry by either the Medical Board of California, the Board of Behavioral Sciences, or the Board of Psychology within the Department of Consumer Affairs."

CAMFT proposes that subdivision (s)(2) of section 3065 be revised to read as follows: "license as a Marriage and Family Therapist, *or Marriage and Family Therapist Trainee,* or Marriage and Family Therapist *Registered* intern under supervision of either a Marriage and Family Therapist, licensed Clinical Social Worker, *Licensed Professional Clinical Counselor,* licensed Psychologist, or a Physician who is certified in psychiatry by either the Medical Board of California, the Board of Behavioral Sciences, or the Board of Psychology within the Department of Consumer Affairs."

CAMFT further proposes amending subdivisions (f), (o), and (s) to include personnel who possess a Licensed Professional Clinical Counselor license and Professional Clinical Counselor Registered Interns who are under the supervision of Licensed Professional Clinical Counselors, Licensed Marriage and Family Therapists, Licensed Clinical Social Workers, Licensed Clinical Psychologists, or a Physician who is certified in psychiatry by the American Board of Psychiatry and Neurology. The inclusion of such an amendment would not conflict with any of the statutes which these regulations support. Furthermore, the scope of practice for the Licensed Professional Clinical Counselor license is similar in scope to the Marriage and Family Therapist license.

Partially Accept and Partially Reject: The commenters say that adding the word "trainees" would make subdivisions (f)(1), (o)(3), and (s)(2) of this section less vague and unclear thus fulfilling the requirements of Government Code section 11349(c). These subdivisions already list "interns" as personnel who may provide counseling and guidance, parent counseling and training, and social work services. Section 3001(v), which defines the term "qualified," currently says in pertinent part "Nothing in this definition shall be construed as restricting the activities or services of a graduate needing direct hours leading to licensure, or of a student teacher or intern leading to a graduate degree at an accredited or approved college or university, as authorized by state laws or regulations." Business and Professions Code section 4980.03 pertaining to marriage and family therapists defines a trainee as an "unlicensed person who is currently enrolled in a master's or doctor's degree program…" and who, therefore, is not a graduate. Specifically, adding marriage and family trainees to this definition does not provide clarification; such an amendment represents a policy change that is beyond the scope of this regulatory action, which seeks to align state regulations pertaining to special education with current state statute and federal statute and regulations.

As for including the correct title of those who are registered with the Board of Behavioral Sciences as interns, the CDE agrees that this reference should be amended to read "Marriage and Family Therapist Registered Interns" consistent with Business and Professions Code section 4980.44.

Regarding updating the list of people who are qualified to supervise a Marriage and Family Therapist Registered Intern, the CDE agrees with this suggestion and will amend the pertinent subdivisions by adding a reference to "Licensed Professional Clinical Counselors."

As for adding two new qualifications, “Licensed Professional Clinical Counselor” and “Professional Clinical Counselor Registered Interns,” the CDE agrees with this suggestion and will add the qualifications in new subdivisions.

Judy McKinley, Governmental Affairs Chairperson, Learning Disabilities Association of California
Comment: Section 3065(k)(2)(A): The commenter says that the qualifications of a Speech-Language Pathology Assistant (SLPA) must be included in the regulations. The commenter asks whether federal law requires a unified standard for provision of services. The commenter asks whether school districts are required to use SLPAs, and if not, what “aide” training and supervision levels are required. The commenter also asks what kind of notice must parents receive that the school district proposes to provide speech and/or language therapy using an “aide” or SLPA?
Response: Business and Professions Code section 2530.2(i) is referenced in this regulatory section because it specifies the qualifications of a Speech-Language Pathology Assistant. Regarding the commenter’s questions, no response is required as the commenter is not making recommendations specific to the proposed amendments.

Heather DiFede, Senior Director, East County SELPA
Comment: Section 3065(j): The commenter opposes existing regulations that say home or hospital instruction “shall be provided only by personnel who possess a credential issued by the California Commission on Teacher Credentialing authorizing the holder to deliver special education instruction according to age range and disabling condition of the individual(s).” The commenter expresses concern that this existing regulation would mandate that only a special education teacher can provide services to students who, for example, might receive the majority of their instruction from general education teachers while they are on campus. The commenter recommends that flexibility be incorporated into this requirement.
Accept: The CDE agrees that this subdivision is too restrictive and will delete section 3065(j) in favor of the requirements for instruction in the home or hospital specified in section 3051.4(e), which reads as follows:

> “Instruction in the home or hospital shall be provided by a regular class teacher, the special class teacher or the resource specialist teacher, if the teacher or specialist is competent to provide such instruction and services and if the provision of such instruction and services by the teacher or specialist is feasible. If not, the appropriate ~~designated instruction and~~ related services specialist shall provide such instruction.”

Roberta S. Adler, MT-BC, Fellow, Academy of Neurologic Music Therapy, Owner/Director, Mobile Music Therapy Services of Orange County
Mary E. Alvarado, MT-BC, Rehabilitation Therapist/Music Therapist, Atascadero State Hospital
Yukiko Arimura-Hagy, credentialed, board-certified music therapist, Sacramento
Melody W. Baker, MT-BC, credentialed, board-certified music therapist (MT-BC), central California

Bessie J. Barth, MT-BC, NMT, Music Therapist-Board Certified, Neurologic Music Therapist, Director of Music To Grow On, Music Therapy Services
Barbara Behnke, retired registered nurse
Thomas Behnke, retired accountant
Celeste A. Behnke-Keith, credentialed, board-certified music therapist (MT-BC), Sacramento area
Laura DeLoye, MT-BC, Mariposa Music Therapy
Marian Kitty Dennis, MT-BC
Rose Fienman, MT-BC, California State University, Northridge, Music Therapy Wellness Clinic
Margie Fincham, RN, MSN
Eszter Forgacs, MT-BC, UCSF Infant-Parent Program
Diana J. Gailey, RMT-BC
Karen Gale, M.S., CCC, Speech Language Pathologist
Jennifer D. Geiger, Music Therapist, Board Certified, Geiger Consulting Music Therapy Services
Justine Hancock-Marsh, MT-BC, In Harmoney Music Therapy Services
Ned Hammad, MT-BC, The Music Works, Inc.
Oliver Jacobson MT-BC
Michele Kemmerling, MT-BC
Juliane Kowski credentialed, board-certified music therapist (MT-BC), Bay Area, Berkeley and San Francisco, California
Andrea Krause, OTR/L Occupational Therapist, Northern California Children's Therapy Center
Michelle Lazar, MT-BC, Autism Specialist, Music Therapist, Founder, Director, Coast Music Therapy
Tracey Levy, MT-BC
Diana Maddox, board-certified music therapist (MT-BC), Inland Empire
Tara McConnell, MT-BC, Clinical Director/Owner, McConnell Music Therapy Services
R. McKensey Mack, MT-BC, Music Therapist, Pasadena Child Development Associates, Inc.
Alexandra McNay, MT-BC
Amy O'Dell, MT-BC, Education Specialist Mild/Moderate Disabilities, Music Therapist, Music To Grow On Music Therapy Services, Secretary, BRIGHT Children International
Alice Parente, Executive Director, I Can Do That!
Cathy Rivera, MT-BC, MusicMind
Karen Sanchez, MT-BC, Director/Founder, In Harmoney Music Therapy Services
Emily Sarà Sanderson, MT-BC
Bruce M. Saperston, PhD, MT-BC, Associate Professor Emeritus, Utah State University
Andrea Scheve, MM, MT-BC, Hospice and Palliative Care Music Therapist, Seasons Hospice and Palliative Care
Marcia Schumacher, MT-BC, Special Education Teacher, Elk Grove Unified School District

Stacie Shewmake, MT-BC, Board Certified Music Therapist
Cynthia Tinsley-Sanders, Registered Music Therapist-Board Certified Teacher of the Severely Handicapped, Tulare County Office of Education
Yuriko Urushibata, MT-BC, Music Therapist-Board Certified, Neurologic Music Therapist, Fellow, Owner, Cadence Music Therapy Services
Eric G. Waldon, Ph.D., MT-BC, University of the Pacific, Conservatory of Music, Assistant Professor, Music Therapy, Music Therapist-Board Certified, Licensed Psychologist
Jody Wilfong, MT-BC
Ian F. Wilkerson, credentialed, board-certified music therapist (MT-BC)
Melinda Wilson, MT-BC, Board-Certified Music Therapist
Alon Yizhak, credentialed, board-certified music therapist (MT-BC)
Comment: Section 3065(l): Several commenters approve of adding to the regulations the personnel qualifications for providing music therapy in nonpublic schools and nonpublic agencies.
No response required.

Sue Balt, 2012-13 Chair, California Association of SELPA Administrators
Heather DiFede, Senior Director, East County SELPA
Sam Neustadt, Assistant Superintendent, Solano County SELPA
Comment: Section 3065(l): The commenters recommend that references to “music therapy” be removed from the regulations because of a lack of scientifically based and peer-reviewed research. Further, the federal regulations regarding related services are not exhaustive and do not preclude the offering of these services if appropriate on the basis of the individual student’s needs. One commenter noted that, for this reason, including “music therapy” is more prescriptive than the federal law. One commenter noted that no government code regulates the Certification Board of Music Therapists.
Reject: After much discussion, the CDE has determined that it is preferable to document in regulations a definition of music therapy and staff qualifications for providing this related service rather than to have no standards for the students whose IEPs require this related service. Ultimately, the determination as to whether a related service is necessary for a student to benefit from special education is made by the IEP team. Further as noted above, the federal list of related services is not exhaustive, so the inclusion of a reference to music therapy in state regulations is not more prescriptive than the federal law.

SECTION 3068

Maureen Graves, Co-Chair, and Roberta S. Savage, Co-Chair, California Association of Parent-Child Advocacy (CAPCA)
Comment: Section 3068: The commenters strongly oppose the removal of subdivision (e), which makes clear, in a readily accessible, relevant portion of CCR, that nonpublic schools and agencies which are facing regulatory difficulties and are engaged in appeals may be able to secure a waiver that would cure the problem. NPSs and NPAs—and the students that rely on their services—should not be forced into expensive and error-fraught legal consultations in order to locate waiver provisions in

the Education Code when an NPA or NPS cannot meet a requirement of general applicability but may be the only way to fulfill a particular student's IEP. Indeed, section 3068 without subdivision (e) would create a false impression of the rights and responsibilities of nonpublic schools and agencies. Subdivision (e) does not restate the statute; it merely points stakeholders involved in disputes as to whether nonpublic programs are meeting requirements to procedures spelled out in the Education Code for seeking waiver of those requirements. It should be retained.
Reject: The CDE does not believe that it is typically appropriate to use regulations to repeat information available in the statutes. Section 3068 of the regulations references Education Code section 56366.2, the statute pertaining to waivers, obviating the need for expensive legal consultations to obtain information about the nonpublic school waiver process.

SECTION 3083

George Buzzetti, Director of Policy, and Celes King IV, Vice Chair, Government Policy and Community Relations, Congress of Racial Equality of California (CORE-CA)
Maureen Graves, Co-Chair, and Roberta S. Savage, Co-Chair, California Association of Parent-Child Advocacy (CAPCA)
Judy McKinley, Governmental Affairs Chairperson, Learning Disabilities Association of California
Comment: Section 3083: Commenters expressed concern about the amendment referencing the "public agency that is responsible for conducting due process hearings." One commenter expresses concern that this regulatory section moves from naming a specific office to an unspecific reference.

One commenter recommends that the proposed reference to the "public agency that is responsible for conducting due process hearings" be amended to the "agency contracted with by the California Department of Education that is responsible for conducting due process hearings."

Another commenter notes that the proposed change would limit any future agency to being a public, not private agency. The commenter notes that there may be a point in time when CDE needs to again contract with a private entity to conduct special education hearings and these proposed changes could make that difficult. The commenter proposes changing the proposed revisions to remove the term "public" so that CDE has leeway to explore how best to coordinate dispute resolution services under IDEA. The commenter notes that while deleting the Special Education Hearing Office's name from California regulations is obviously overdue, the commenter requests that the term "public" be removed, so that these provisions do not assume the continuation of the Office of Administrative Hearing's contract, which is subject to periodic renewal.
Partially accept and partially reject: The CDE agrees that the word "public" should be deleted from this regulatory section to provide for flexibility in identifying a contractor. The lack of specificity in naming the actual agency providing due process hearings and

mediations ensures that the pertinent regulatory sections remain viable and provide room for departmental discretion within the law. This section will be amended to use the language found in Education Code section 56504.5: “agency” or “nonprofit organization or entity.”

SECTION 3084

George Buzzetti, Director of Policy, and Celes King IV, Vice Chair, Government Policy and Community Relations, Congress of Racial Equality of California (CORE-CA)
Maureen Graves, Co-Chair, and Roberta S. Savage, Co-Chair, California Association of Parent-Child Advocacy (CAPCA)
Judy McKinley, Governmental Affairs Chairperson, Learning Disabilities Association of California
Comment: Section 3084(b): The commenters expressed concern about the amendment referencing the “public agency that is responsible for conducting due process hearings.” One commenter expresses concern that this regulatory section moves from naming a specific office to an unspecific reference.

One commenter recommends that the proposed reference to the “public agency that is responsible for conducting due process hearings” be amended to the “agency contracted with by the California Department of Education that is responsible for conducting due process hearings.”

Another commenter notes that the proposed change would limit any future agency to being a public, not private agency. The commenter notes that there may be a point in time when CDE needs to again contract with a private entity to conduct special education hearings and these proposed changes could make that difficult. The commenter proposes changing the proposed revisions to remove the term “public” so that CDE has leeway to explore how best to coordinate dispute resolution services under IDEA. The commenter notes that while deleting the Special Education Hearing Office’s name from California regulations is obviously overdue, the commenter requests that the term “public” be removed, so that these provisions do not assume the continuation of the Office of Administrative Hearing’s contract, which is subject to periodic renewal.
Partially accept and partially reject: The CDE agrees that the word “public” should be deleted from this regulatory section to provide for flexibility in identifying a contractor. The lack of specificity in naming the actual agency providing due process hearings and mediations ensures that the pertinent regulatory sections remain viable and provide room for departmental discretion within the law. This section will be amended to use the language found in Education Code section 56504.5: “agency” or “nonprofit organization or entity.”

SECTION 3088

George Buzzetti, Director of Policy, and Celes King IV, Vice Chair, Government Policy and Community Relations, Congress of Racial Equality of California (CORE-CA)
Maureen Graves, Co-Chair, and Roberta S. Savage, Co-Chair, California Association of Parent-Child Advocacy (CAPCA)
Judy McKinley, Governmental Affairs Chairperson, Learning Disabilities Association of California
Comment: Section 3088(e): The commenters expressed concern about the amendment referencing the "public agency that is responsible for conducting due process hearings." One commenter expresses concern that this regulatory section moves from naming a specific office to an unspecific reference.

One commenter recommends that the proposed reference to the "public agency that is responsible for conducting due process hearings" be amended to the "agency contracted with by the California Department of Education that is responsible for conducting due process hearings."

Another commenter notes that the proposed change would limit any future agency to being a public, not private agency. The commenter notes that there may be a point in time when CDE needs to again contract with a private entity to conduct special education hearings and these proposed changes could make that difficult. The commenter proposes changing the proposed revisions to remove the term "public" so that CDE has leeway to explore how best to coordinate dispute resolution services under IDEA. The commenter notes that while deleting the Special Education Hearing Office's name from California regulations is obviously overdue, the commenter requests that the term "public" be removed, so that these provisions do not assume the continuation of the Office of Administrative Hearing's contract, which is subject to periodic renewal.
Partially accept and partially reject: The CDE agrees that the word "public" should be deleted from this regulatory section to provide for flexibility in identifying a contractor. The lack of specificity in naming the actual agency providing due process hearings and mediations ensures that the pertinent regulatory sections remain viable and provide room for departmental discretion within the law. This section will be amended to use the language found in Education Code section 56504.5: "agency" or "nonprofit organization or entity."

ADDITIONAL COMMENTS

George Buzzetti, Director of Policy, and Celes King IV, Vice Chair, Government Policy and Community Relations, Congress of Racial Equality of California (CORE-CA)
"Also, when you see the DOE OIG report on the lack of accountability of charter schools in California, ED-OIG/A02L0002, you have to wonder how much other non-accountability there is in California Schools such as in special education.

“A group was recently up in Fresno for Arts in Schools and Mr. Cheslog, assistant to Superintendent Torlakson, stated that there would be no accountability at the state level. That it was going to be the equivalent of “Educational Realignment.” Also, that 80 percent of the CDE budget was from the Federal Government to only monitor NCLB and RTTT. There is no money for accountability. How is this going to work we ask?
No response required: The comment does not address the proposed amendments to the regulations.

LATE COMMENTS

Nancy Fellmeth, President, Families for Early Autism Treatment
FEAT is a non-profit organization of parents, educators and other professionals dedicated to providing quality education, advocacy and support for the Autism Community in Northern California since 1993.
With regard to the proposed changes to the California Education Code, FEAT has general concerns in many areas about the changes that will significantly impact the quality of education delivered to children with autism and other qualifying disabilities. Further, we believe parents and caregivers rights and safeguards that ensure their equal participation in the IEP process will be eroded by the changes.

The proposed revisions to the California Education Code that are of particular concern to FEAT includes [*sic*], but are not limited to:

1. Removal of the definition of Free Appropriate Public Education (FAPE)
2. Removal of the definition of Related Services
3. Removal of the definition of Special Education
4. Removal of Eligibility Process from Local Plan Requirements
5. Proposal to Redefine Autism Eligibility
6. Proposal to Rewrite Early Start Eligibility
7. Removal of "as soon as possible" implementation of IEPs requirement
8. Removal of the requirement that parents be provided an IEP in their primary language
9. Deletion of the requirement that: “(c) The individualized education program shall show a direct relationship between the present levels of performance, the goals and objectives, and the specific educational services to be provided.”
10. Removal of the specific qualifications for public school providers of related services
11. Watering down of meaning of "Language, Speech and Hearing Development and Remediation"
12. Removal of qualifications for Orientation and Mobility Instruction, Adapted Physical Education and Physical and Occupational Therapy
13. Watering down and remove specificity for counseling staff qualification requirements

No response required because these comments were received after the close of the 45-day public comment period.

Sara M. Castro-Olivo, NCSP, Assistant Professor, Graduate School of Education, School Psychology Program, University of California, Riverside
Margaret Garcia, Associate Chair/School Psychology Program Coordinator, Division of Special Education and Counseling, California State University, Los Angeles Charter College of Education
Cathleen Geraghty-Jenkinson, School Psychology Lecturer/Field Coordinator, Graduate School of Education, University of California-Riverside
Kristi Hagans, NCSP, Associate Professor of School Psychology, School Psychology Program Director, California State University, Long Beach
Kristin Power, Professor, School Psychology, Director, Community Clinic for Counseling and Educational Services, California State University, Long Beach, President, Southern - School Psychology Educators of California
Alberto Restori, Professor, School Psychology Program, California State University, Northridge
Mike Vanderwood, NCSP, Associate Professor, School Psychology Program Coordinator, University of California-Riverside, Graduate School of Education
We write this letter as representatives from nationally accredited school psychology training programs in Southern California. As school psychology trainers, we are required to stay consistent with research and national trends related to assessment and intervention for students with learning disabilities. After reviewing the proposed rules, we are concerned about inconsistency between the direction these rules will take California educators and current best practice. Our specific concerns related to the revised rules for SLD eligibility determination are:

1. IDEA 2004 requires pre-eligibility determination intervention activities that are research based regardless of the eligibility model used. The proposed rules do not emphasize this component, yet current research indicates the use of research based interventions can improve student outcomes and reduce the need for special education services.

2. For intervention to be effective, a requirement for the use of progress monitoring assessments and measures of treatment integrity should be included in the rules. Again, these components should be required regardless of the eligibility model used and the use of these tools should be documented to improve student outcomes.

3. Right now, there is incredible variability in California in the way teams determine who is entitled to SLD services. This variability leads to the need for Independent Evaluations and creates significant disagreements amongst parents and educators. It is our belief the proposed rules will actually create more inconsistency and lead to increased costs for school districts and SELPAs. The proposed rules suggest three different models (PSW, Discrepancy, and RtI) with little specificity for the RtI model and contradictory eligibility rules for the discrepancy model (i.e., if a discrepancy is not found through formal testing, the

IEP team may still qualify a student under the discrepancy model based on nonstandard measures). The proposed rules lack the specificity needed to create consistency and clarity about who should be classified as SLD. The multiple criteria for qualifying for special education services under SLD will render it too likely to find students eligible, resulting in a gross over-identification of students with SLD in California and significantly increasing costs.

4. The DSM 5 was just released and provided a definition of Learning Disability that is consistent with our current research knowledge. The authors of this definition emphasized the lack of evidence supporting the use of cognitive processing measures to define SLD. They eliminated the use of these measures in the DSM. We highly encourage the Board to follow the lead of the DSM 5 and several states in using an SLD definition that is consistent with current research. The California Board of Education proposed rules are almost 20 years behind our current understanding of the best way to assess SLD. The use of cognitive processing measures does not improve outcomes for students and costs school districts a significant amount of resources that could be better dedicated to intervention activities.

5. The discrepancy model is not supported by *any* group who conducts research about SLD. Besides being a wait to fail model, this approach does not require assessment of the skills that are known to cause learning problems. There are also substantial problems applying this model to English Learners due to the impact of language on measures of cognitive ability. We highly encourage the Board to eliminate the option for using a discrepancy model for SLD eligibility.

6. Although there are some research groups that support a “processing strengths and weaknesses” model, at this stage the data do not suggest this model is any better than a simple absolute low achievement approach. Yet, the costs for this model are quite high. We argue the inclusion of this model in the rules could substantially increase the costs districts incur as part of SLD identification.

7. The most supported model of SLD identification is an approach that emphasizes examination of the exclusionary factors and absolute low achievement that is not explained by other factors (e.g., Intellectual Disability). This model is also the least expensive, yet is actually more defensible from a theoretical and research standpoint than other options. Although the proposed rules include this approach, the guidelines are not clear and is significantly more complicated than necessary.

We finish our concerns by highlighting the fact that a committee of K-12 educators and representatives from institutes of higher education worked for 2 years to develop rules that integrate our current research knowledge of SLD identification. This group reviewed state rules throughout the country and produced clear guidelines districts in California are still using today. We are disheartened to not see any aspects of this work integrated into the proposed rules.

The individuals listed on the next page endorse this letter [please see names listed above] and encourage the Board of Education to revise the proposed rules for SLD identification to address our concerns about increased costs and lack of connection to current high quality research.

No response required because these comments were received after the close of the 45-day public comment period.

On July 22, 2013, the CDE received from the Learning Rights Law Center a form letter from the following parents.

1. Gabriela Garcia	13. Claudia Calderon	25. Concepcion Cobarrubias	37. Claudia Palomo
2. Adriana Aguilar	14. Victor Garcia	26. Maribel Garcia	38. Epifania Gurrola
3. Georgina Leon	15.Teresa Garcia	27. Gledy Aceituno	39. Emma Lucero
4. Sonia Lopez	16. Francis Gomez	28.Yesenia Iniguez	
5. Norma Julio	17. Maria Soto	29. Raquel Brizuela	
6. Daniel Delgadillo	18. Elena Bustamante	30. Rakita Hodge	
7. Ereida Galda	19. Marina Gonzalez	31.Adami Lopez	
8. Rosaura Elenes	20. Debra Evans	32. Mario Rivera	
9. Leticia Antonio	21. Mamirez Ramoz	33. Hilda Cuenca	
10. Teresa Ayala	22. Cynthia Landes	34. Martha Mora	
11. Olivia Martinez	23.Claudia Hernandez	35. Mari Nalbandian	
12. Blanca Ramos	24. Mushell Baylon	36. Lissett Vazquez-Soto	

The content of the form letter is provided below:

I am a parent of a student with a disability. I am writing you because I [have] concerns about the California Department of Education ("CDE") proposed amendment to the California Code of Regulations, Title 5, Regarding the Special Education Regulations (the "Proposed Title 5 Amendment").

Specifically, I have an overall concern that several of the proposed changes will create confusion and result in a potential loss of necessary educational supports and services that my child currently benefits from.

I. THE AGENCY ERRED IN NOT HOLDING A PUBLIC DISCUSSION OF THE PROPOSED TITLE 5 AMENDMENT

I am formally requesting a "public discussion" with parents of students, special education attorneys, and advocates to discuss the impact of the Proposed Title 5 Amendment, pursuant to Cal. Govt Code Section 11346.5(a) in order to evaluate the significant costs some of the proposed changes would have for school districts, families and other public systems.

II. I DISAGREE WITH THE REMOVAL OF CREDENTIALING REQUIREMENTS FOR RELATED SERVICES UNDER 3051

I am extremely concerned about removing the requirements for certification of professionals providing related services, and replacing this term with the word qualification.

The word qualification is left undefined. I am extremely concerned that this may lead to persons who are not certified or licensed in the specific related services providing vital and necessary educational supports to my student. This is very concerning and may lead to a negative change in the quality of services my student receives at school.

My child has an IEP as a qualifying student with a disability and receives the following related services: [place for parent to list services].

I know that the professionals providing services to my student are a [*sic*] certified and my student has benefited from the services. As a parent, I am able to readily look up certification requirements, and this allows me to actively participate in the IEP process by understanding the background of the persons working with my son or daughter. The currently proposed removal of the certification requirement and the use of the undefined term “qualified,” make it more difficulty [*sic*] to participate in the process and may compromise services to my child.

[The form letter includes three additional blank lines for parents to volunteer comments.]

As this issue is critical and vital to my student’s future, I would appreciate the opportunity to express my concerns on this specific issue and other concerns with the proposed regulation changes in a public forum meeting.

If you have any questions about my concerns and comments, please do not hesitate to contact me at [space for parent to provide contact information].
No response required because these comments were received after the close of the 45-day public comment period.

AFTER THE 45-DAY COMMENT PERIOD, THE FOLLOWING CHANGES WERE MADE TO THE PROPOSED TEXT OF THE REGULATIONS AND SENT OUT FOR A 15-DAY COMMENT PERIOD.

SECTION 3001 is amended to delete subdivisions (d), (e), (f), (g), and (ab) pursuant to AB 86.

SECTION 3001(g) (formerly k) is amended to capitalize the term Pupil Personnel Services, which is the name of a kind of credential.

SECTION 3001(r) (formerly v) is amended to provide an additional clarification to the definition of “Qualified.”

SECTION 3030(b)(10)(C)(5) is amended to include an exception noted in 34 C.F.R. section 300.310(c) concerning the observation of a child when determining the existence of a specific learning disability.

SECTIONS 3031(a)(2)(A) and (B) are amended to more closely align with the language in Government Code section 95014(a), pertaining to the eligibility criteria for qualifying for Early Start services and the definition of “developmental delay” for children aged birth to younger than three years, including children under 24 months of age.

Section 3031(a)(2)(A) is also amended so that it lists the five developmental areas pertaining to developmental delay exactly as these areas appear in Government Code section 95014(a).

SECTION 3031(b) is amended to include a reference to both Education Code section 56001(c) and (d) to additionally clarify the protections of the California Early Intervention Services Act.

SECTION 3040(a) (formerly b) is maintained and amended with the following language “The LEA shall give the parent or guardian a copy of the IEP in his or her primary language at his or her request.”

SECTION 3040(b) (formerly c) is maintained to ensure that the requirement is explicit.

SECTION 3043(d) is amended to delete reference to an obsolete reimbursement formula for LEAs providing extended school year services.

SECTIONS 3051 through 3051.24 are being amended significantly by merging subdivisions pertaining to detailed staff qualifications from section 6035 into these sections. The purpose of this merger is to create one section of regulations containing both the definitions and standards of related services and the qualifications of personnel who are permitted to provide these services. Specifically, the amendments to the pertinent sections are as follows:

SECTION 3051 is amended to add references to section 3001(r) (formerly v), which defines “Qualified,” and all the relevant portions of sections 3051, et seq. These amendments are added to emphasize that all entities providing related services shall be qualified, as defined by the regulations, and shall meet the requirements of 3051, et seq. In addition, new subdivision (4) pertaining to nonpublic schools and nonpublic agencies is added and repeats the language found in section 3065(a) to clarify that the requirements of section 3051, et seq. pertain to nonpublic school and nonpublic agency settings. Similarly, subdivision (5) is added to clarify how persons providing related services to California students who are placed in out-of-state settings must be certified. A reference citation from federal regulations, 34 C.F.R. Section 300.18, is added to

substantiate that the need for highly qualified special education teachers pertains to nonpublic schools and nonpublic agencies as well as to general education settings.

SECTION 3051.1(c) is amended to incorporate from section 3065(k) the qualifications of persons who can provide language, speech and hearing development and remediation.

SECTION 3051.1(d) is added to incorporate language from proposed section 3065(k)(2)(A) that references Business and Professions Code section 2530.2(i) and former section 3051.1(c), and to clarify that the assistants referred to by the regulations are speech-language pathology assistants. Education Code section 56366.1 is added to the authority section in the note to substantiate that nonpublic schools and nonpublic agencies seeking certification from the CDE must meet the requirements of this section. Business and Professions Code section 2530 is added to the reference pertinent to qualifications of speech-language pathologists.

SECTION 3051.2(b) is amended to incorporate from section 3065(c) the qualifications of persons who can provide audiological services. Education Code section 56366.1 is added to the note to substantiate that nonpublic schools and nonpublic agencies seeking certification from the CDE must meet the requirements of this section. Education Code section 49422 is added to the references because it contains information about the credentialing of audiologists. Business and Professions Code section 2530 is added to the reference pertinent to qualifications of audiologists.

SECTION 3051.3(b) is amended to incorporate from section 3065(n) the qualifications of persons who can provide orientation and mobility instruction. Education Code section 56366.1 is added to the note to substantiate that nonpublic schools and nonpublic agencies seeking certification from the CDE must meet the requirements of this section.

SECTION 3051.4 AUTHORITY AND REFERENCE is amended as follows: Education Code section 56366.1 is added to the note to substantiate that nonpublic schools and nonpublic agencies seeking certification from the CDE must meet the requirements of this section. Citations from federal regulations–34 CFR 300.34, pertaining to related services, and 300.156(b)(1), pertaining to the qualifications of persons providing related services–are added to the references to provide additional substantiation and to provide consistency among the sections in 3051 et seq.

SECTION 3051.5(b) is amended to incorporate from section 3065(a) the qualifications of persons who can provide adapted physical education. Education Code section 56366.1 is added to the note to substantiate that nonpublic schools and nonpublic agencies seeking certification from the CDE must meet the requirements of this section. Citations from federal regulations–34 CFR 300.34, pertaining to related services, and 300.156(b)(1), pertaining to the qualifications of persons providing related services–are added to the references to provide additional substantiation and to provide consistency among the sections in 3051 et seq.

SECTION 3051.6(b) is amended to incorporate from section 3065(p) and 3065(m) the qualifications of persons who can provide physical therapy and occupational therapy, respectively. Education Code section 56366.1 is added to the note to substantiate that nonpublic schools and nonpublic agencies seeking certification from the CDE must meet the requirements of this section. Business and Professions Code sections 2570.2 and 2630 are added to the reference pertinent to qualifications of occupational therapists and physical therapists, respectively.

SECTION 3051.7(e) is amended to incorporate from section 3065(x) the qualifications of persons who can provide vision services. Education Code section 56366.1 is added to the note to substantiate that nonpublic schools and nonpublic agencies seeking certification from the CDE must meet the requirements of this section. Education Code section 49422 is added to the references because it contains information about the credentialing of optometrists. Citations from federal regulations–34 CFR 300.34, pertaining to related services, and 300.156(b)(1), pertaining to the qualifications of persons providing related services–are added to the references to provide additional substantiation and to provide consistency among the sections in 3051 et seq.

SECTION 3051.7.5 NOTE is amended as follows: Education Code section 56366.1 is added to the note to substantiate that nonpublic schools and nonpublic agencies seeking certification from the CDE must meet the requirements of this section. The reference to 20 U.S.C. Section 1414(c)(2)(B) is deleted because it now refers to evaluation procedures, and the reference to 34 C.F.R. 300.600 is deleted because it now refers to state monitoring and enforcement. Citations from federal regulations–34 CFR 300.34, pertaining to related services, and 300.156(b)(1), pertaining to the qualifications of persons providing related services–are added to the references to provide additional substantiation and to provide consistency among the sections in 3051 et seq.

SECTION 3051.8 NOTE is amended as follows: Education Code section 56366.1 is added to the note to substantiate that nonpublic schools and nonpublic agencies seeking certification from the CDE must meet the requirements of this section. Citations from federal regulations–34 CFR 300.34, pertaining to related services, and 300.156(b)(1), pertaining to the qualifications of persons providing related services–are added to the references to provide additional substantiation and to provide consistency among the sections in 3051 et seq.

SECTION 3051.9(c) is amended to incorporate from section 3065(f) the qualifications of persons who can provide counseling and guidance services. This section is also amended to include the correct title of those who are registered with the Board of Behavioral Sciences as interns; to update the list of people who are qualified to supervise a Marriage and Family Therapist Registered Intern by adding a reference to “Licensed Professional Clinical Counselors”; and to add two new qualifications, “Licensed Professional Clinical Counselor” and “Professional Clinical Counselor Registered Interns” to the list of persons qualified to provide counseling and guidance services.

Education Code section 56366.1 is added to the note to substantiate that nonpublic schools and nonpublic agencies seeking certification from the CDE must meet the requirements of this section. Education Code section 49422 is added to the references because it contains information about the credentialing of psychologists. Business and Professions Code sections 2903, 2905, 4980.02, 4980.14, and 4996.9 are added to the reference pertinent to qualifications of the practice of psychology, marriage and family therapy, educational psychology, and clinical social work. Citations from federal regulations–34 CFR 300.34, pertaining to related services, and 300.156(b)(1), pertaining to the qualifications of persons providing related services–are added to the references to provide additional substantiation and to provide consistency among the sections in 3051 et seq**.**

SECTION 3015.10 is amended to reinstate former subdivision (a), which reads "Counseling provided to an individual with exceptional needs by a credentialed or licensed psychologist or other qualified personnel." This amendment clarifies that "counseling" falls under the category of "psychological services" and can, therefore, be provided by a psychologist.

Subdivision (a)(4) is added to bring this section into closer alignment with 34 CFR 300.34(c)(10) regarding the development of positive behavioral intervention strategies.

Subdivision (a)(5) is incorporated from former 3065(q)(1)(B) to ensure proper clarification that the term "psychological services" does not include assessment services and the development of an IEP, as specified in Education Code section 56363(b)(10).

Subdivision (b) is amended to incorporate from section 3065(q)(2) the qualifications of persons who can provide psychological services and to update professional titles by adding the word "*Licensed" to* Educational Psychologist and Marriage and Family Therapist.

Education Code section 56366.1 is added to the note to substantiate that nonpublic schools and nonpublic agencies seeking certification from the CDE must meet the requirements of this section.

SECTION 3051.11(b) is amended to incorporate from section 3065(o) the qualifications of persons who can provide parent counseling and training. This section is also amended to include the correct title of those who are registered with the Board of Behavioral Sciences as interns; to update the list of people who are qualified to supervise a Marriage and Family Therapist Registered Intern by adding a reference to "Licensed Professional Clinical Counselors"; and to add two new qualifications, "Licensed Professional Clinical Counselor" and "Professional Clinical Counselor Registered Interns" to the list of persons qualified to provide counseling and guidance services.

Education Code section 56366.1 is added to the note to substantiate that nonpublic schools and nonpublic agencies seeking certification from the CDE must meet the requirements of this section. Education Code section 49422 is added to the references because it contains information about the credentialing of psychologists. Business and Professions Code sections 2903, 2905, 4980.02, 4980.14, and 4996.9 are added to the reference pertinent to qualifications of the practice of psychology, marriage and family therapy, educational psychology, and clinical social work.

SECTION 3051.12(a)(5) is amended to clarify that care is being provided to individuals "with disabilities." Education Code section 56366.1 is added to the note to substantiate that nonpublic schools and nonpublic agencies seeking certification from the CDE must meet the requirements of this section. Education Code section 49422 is added to the references because it contains information about the credentialing of nurses.

SECTION 3051.13(a) is amended to delete the requirement that persons providing social worker services "be qualified."

SECTION 3051.13(b) is amended to incorporate from section 3065(s) the qualifications of persons who can provide social worker services. Subdivision (b) is also amended to include the correct title of those who are registered with the Board of Behavioral Sciences as interns; to update the list of people who are qualified to supervise a Marriage and Family Therapist Registered Intern by adding a reference to "Licensed Professional Clinical Counselors"; and to add two new qualifications, "Licensed Professional Clinical Counselor" and "Professional Clinical Counselor Registered Interns" to the list of persons qualified to provide counseling and guidance services.

Education Code section 56366.1 is added to the note to substantiate that nonpublic schools and nonpublic agencies seeking certification from the CDE must meet the requirements of this section. Education Code section 49422 is added to the references because it contains information about the credentialing of persons providing social worker services. Business and Professions Code sections 2903, 2905, 4980.02, 4980.14, and 4996.9 are added to the reference pertinent to qualifications of the practice of psychology, marriage and family therapy, educational psychology, and clinical social work.

SECTION 3051.14(b) is amended to delete the requirement that persons providing specially designed vocational education and career development services "be qualified." Subdivision (b) is further amended to incorporate from section 3065(u) the qualifications of persons who can provide specially designed vocational education and career development services.

Education Code section 56366.1 is added to the note to substantiate that nonpublic schools and nonpublic agencies seeking certification from the CDE must meet the requirements of this section.

SECTION 3051.15(b) (formerly d) is amended to delete the requirement that persons providing recreation services shall “be qualified.” Subdivision (d) is further amended to incorporate from section 3065(r) the qualifications of persons who can provide recreation services. Education Code section 56366.1 is added to the note to substantiate that nonpublic schools and nonpublic agencies seeking certification from the CDE must meet the requirements of this section. Citations from federal regulations–34 CFR 300.34, pertaining to related services, and 300.156(b)(1), pertaining to the qualifications of persons providing related services–are added to the references to provide additional substantiation and to provide consistency among the sections in 3051 et seq.

SECTION 3051.16(d) is added to incorporate language from section 3065(v) pertaining to the qualifications of persons who can provide specialized services for low-incidence disabilities. Education Code section 56366.1 is added to the note to substantiate that nonpublic schools and nonpublic agencies seeking certification from the CDE must meet the requirements of this section.

SECTION 3051.17 NOTE is amended as follows: Education Code section 56366.1 is added to the note to substantiate that nonpublic schools and nonpublic agencies seeking certification from the CDE must meet the requirements of this section. Citations from federal regulations–34 CFR 300.34, pertaining to related services, and 300.156(b)(1), pertaining to the qualifications of persons providing related services–are added to the references to provide additional substantiation and to provide consistency among the sections in 3051 et seq.

SECTION 3051.18 NOTE is amended as follows: Education Code section 56366.1 is added to the note to substantiate that nonpublic schools and nonpublic agencies seeking certification from the CDE must meet the requirements of this section.

SECTION 3051.19 is added to incorporate from section 3065(b) language pertaining to the provision of assistive technology services.

SECTION 3051.20 is added to incorporate from section 3065(g) language pertaining to the provision of early education programs.

SECTION 3051.21 is added to incorporate from proposed section 3065(l) language pertaining to the qualifications of persons who can provide music therapy. This section is also amended to include a definition of music therapy obtained from the Certification Board for Music Therapy.

SECTION 3051.22 is added to incorporate from section 3065(w) language pertaining to the qualifications of persons who can provide transcription services.

SECTION 3051.23 is added to incorporate from section 3065(d) and (e) language pertaining to the qualifications of persons who can provide behavior interventions.

SECTION 3051.24 is added to section 3051 et seq. to incorporate from section 3065(y) language pertaining to the qualifications of persons who can provide other related services.

SECTION 3060(d)(7) is amended to delete reference to section 3052, which was repealed by AB 86 and pertained to positive behavior interventions, and to add references to Education Code sections 56520 through 56525, which where amended by AB 86 to address positive behavioral interventions in the absence of section 3052.

SECTION 3065 is being amended significantly as follows: All of the subdivisions have been moved in whole or in part to sections in 3051, et seq. The purpose of this merger of section 3065 into section 3051, et seq., is to create one section of regulations containing both the definitions and standards of related services and the qualifications of personnel who are permitted to provide these services. Specifically, the amendments to the pertinent sections are as follows:

Subdivision (a) is amended to clarify that the requirements of section 3051, et seq. must be met in nonpublic school and nonpublic agency settings. Similarly, subdivision (b) is added to clarify how persons providing related services to California students who are placed in out-of-state settings must be certified.

Former subdivision (a), pertinent to adapted physical education, is incorporated into section 3051.5(b).

Former subdivision (b), pertinent to assistive technology services, is now section 3051.19

Former subdivision (c), pertinent to audiological services, is incorporated into section 3051.2(b).

Former subdivisions (d) and (e), pertinent to behavior intervention, are now section 3051.23.

Former subdivision (f), pertinent to counseling and guidance, is incorporated into section 3051.9(c).

Former subdivision (g), pertinent to early education programs, is now section 3051.20.

Former subdivision (h), pertinent to educational interpreters, is deleted because it is redundant to section 3051.16.

Former subdivision (i), pertinent to health and nursing services, is deleted. This subdivision is redundant or duplicative of the staff qualifications enumerated in section 3051.12.

Former subdivision (j), pertinent to home and hospital instruction, is deleted because this subdivision is too restrictive. Requirements pertinent to home or hospital instruction can be found in section 3051.4.

Former subdivision (k), pertinent to language and speech development and remediation, is incorporated into section 3051.1.(c).

Former subdivision (l), pertinent to music therapy, is incorporated into section 3051.21.

Former subdivision (m), pertinent to occupational therapy, is incorporated into section 3051.6(b).

Former subdivision (n), pertinent to orientation and mobility instruction, is incorporated into section 3051.3(b).

Former subdivision (o), pertinent to parent counseling and training, is incorporated into section 3051.11(c).

Former subdivision (p), pertinent to physical therapy, is incorporated into section 3051.6(b).

Former subdivision (q)(1), pertinent to psychological services, is deleted; section 3051.10(a) provides a list, which is not exhaustive, of psychological services.

Former subdivision (q)(2) is incorporated into section 3051.10(b).

Former subdivision (r), pertinent to recreation services, is incorporated into section 3051.15(b).

Former subdivision (s), pertinent to social worker services, is incorporated into section 3051.13(b).

Former subdivision (t), pertinent to specialized driver training, is deleted because it is redundant to section 3051.8. Further, section 3051.8 cites the pertinent sections of Education Code regarding service provider qualifications.

Former subdivision (u), pertinent to specially designed vocational education and career development, is incorporated into section 3051.14(b).

Former subdivision (v), pertinent to specialized services for pupils with low-incidence disabilities, is incorporated into section 3051.16(d).

Former subdivision (w), pertinent to transcription services, is now section 3051.22.

Former subdivision (x), pertinent to vision services, is incorporated into section 3051.7(e).

Former subdivision (y), pertinent to other related services, is now section 3051.24.

SECTIONS 3083, 3084, and 3088 are amended to delete the word “public” before the word “agency” and to insert the words “or nonprofit organization or entity” to ensure that reference to the entity providing due process hearings and mediations reflects legislative language in Education Code section 56504.5.

SUMMARY AND RESPONSE TO COMMENTS RECEIVED DURING THE 15-DAY COMMENT PERIOD OF NOVEMBER 9, 2013 THROUGH NOVEMBER 25, 2013.

The amended regulations were made available for public comment for 15 days from November 9, 2013 through November 25, 2013. Thirty one written comment letters were received during that time. Pursuant to California Government Code sections 11346.9(a)(3) and (a)(5), the CDE has summarized and responded to the written comments as follows:

Darlene Anderson
Comment: The commenter says that her question regarding the proposed changes is why are we not aligned with the federal government? The commenter says that these proposed changes remove the placement of the child with behavioral problems to an outside agency. The federal government requires that states ensure that local districts do the work. California has never accepted the responsibility of oversight. These proposals just push the responsibility for oversight further down the road and enable the state to be a prison state! The commenter says that it's a joke to leave public comment open because the state is not following any of the federal oversight provisions. The federal government has given guidance and the commenter suggests that the state follow the guidance.
Response: The purpose of this regulatory package is to update old state regulations by bringing them into alignment with current state statutes and federal statutes and regulations. Without specific citations identifying the sections that are said to be misaligned with federal requirements, it is not possible to respond more fully to this comment.

SECTION 3001

Laura Faer, Staff Attorney, Public Counsel Law Center
Lauren Giardina, Staff Attorney, Disability Rights California (DRC)
Maureen Graves, Co-Chair; California Association of Parent-Child Advocacy (CAPCA)
Janeen Steel, Founder/Director of Litigation and Advocacy, Learning Rights Law Center
Angela Sutherland, Parent, Community Advisory Committee (CAC) member, and Co-Administrator of CAC Leadership Collaborative

Comment: Section 3001: The commenters suggest that section 3001 be revised to add definitions for “behavioral emergency” and “emergency intervention” and to point readers to relevant sections of the Education Code. The commenters say that there is considerable confusion as to which parts of the Hughes Bill have been repealed, and it is important that staff and families attempting to understand obligations be able to find them readily.
Reject: On July 1, 2013, Governor Brown signed AB 86, the Education Omnibus Trailer Bill, Chapter 48, Statutes of 2013. As a result of the bill’s passage, the CDE is mandated to repeal the regulations found in *5* CCR section 3052 – formerly known as the “Hughes Bill” regulations - and in *5* CCR 3001 subdivisions (d), (e), (f), (g), and (ab). AB 86 mandated the repeal of the definition for “behavioral emergency,” which was formerly found in section 3001(d); the CDE is legally precluded from reinstating that definition. AB 86 also precludes “the development by the Superintendent and adoption by the state board of any additional regulations”; therefore, the CDE is precluded from amending the regulations to add a definition of “emergency intervention.” Statute pertaining to the use of emergency interventions can be found in California Education Code section 56521.1.

Janeen Steel, Founder/Director of Litigation and Advocacy, Learning Rights Law Center
Comment: Section 3001, proposed subdivision (g): The commenter supports the amendment capitalizing the “Pupil Personnel Services” credential.
No response required.

Nancy Fellmeth, President, Families for Early Autism Treatment
Maureen Graves, Co-Chair; California Association of Parent-Child Advocacy (CAPCA)
Angela Sutherland, Parent, Community Advisory Committee (CAC) member, and Co-Administrator of CAC Leadership Collaborative
Comment: Section 3001, current subdivision (p): The commenters restate opposition to deleting the definition of a “free appropriate public education.”
No response required. Comments do not pertain to the 15-day amendments.

Janeen Steel, Founder/Director of Litigation and Advocacy, Learning Rights Law Center
Comment: Section 3001, proposed subdivision (r): The commenter supports the addition of the phrase “and the scope of practice as defined by the licensing or credentialing body” to this subdivision.
No response required.

Nancy Fellmeth, President, Families for Early Autism Treatment
Maureen Graves, Co-Chair; California Association of Parent-Child Advocacy (CAPCA)
Comment: Section 3001, current subdivision (u): The commenters restate opposition to deleting the definition of a “local educational agency.”
No response required. Comments do not pertain to the 15-day amendments.

Nancy Fellmeth, President, Families for Early Autism Treatment
Maureen Graves, Co-Chair; California Association of Parent-Child Advocacy (CAPCA)
Angela Sutherland, Parent, Community Advisory Committee (CAC) member, and Co-Administrator of CAC Leadership Collaborative
Comment: Section 3001, current subdivision (aa): The commenters restate opposition to deleting the definition of "related services."
No response required. Comments do not pertain to the 15-day amendments**.**

SECTION 3030

Maureen Graves, Co-Chair; California Association of Parent-Child Advocacy (CAPCA)
Angela Sutherland, Parent, Community Advisory Committee (CAC) member, and Co-Administrator of CAC Leadership Collaborative
Comment: Section 3030(a): The commenters restate opposition to replacing the word "pupil" with "child."
No response required. Comments do not pertain to the 15-day amendments.

Nancy Fellmeth, President, Families for Early Autism Treatment
Maureen Graves, Co-Chair; California Association of Parent-Child Advocacy (CAPCA)
Angela Sutherland, Parent, Community Advisory Committee (CAC) member, and Co-Administrator of CAC Leadership Collaborative
Comment: Section 3030(a): The commenters restate opposition to the proposal to remove from section 3030(a) the requirement that "[t]he specific processes and procedures for implementation of these [eligibility] criteria shall be developed by each Special Education Local Plan Area and be included in the local plan pursuant to Section 56220(a) of the Education Code."
No response required. Comments do not pertain to the 15-day amendments.

Maureen Graves, Co-Chair, California Association of Parent-Child Advocacy (CAPCA)
Comment: Section 3030(b)(2): The commenter restates opposition to the proposed definition of "deaf-blindness."
No response required. Comments do not pertain to the 15-day amendments.

Maureen Graves, Co-Chair, California Association of Parent-Child Advocacy (CAPCA)
Comment: Section 3030(b)(7): The commenter restates opposition to the proposed definition of "multiple disabilities."
No response required. Comments do not pertain to the 15-day amendments.

Maureen Graves, Co-Chair, California Association of Parent-Child Advocacy (CAPCA)
Angela Sutherland, Parent, Community Advisory Committee (CAC) member, and Co-Administrator of CAC Leadership Collaborative
Comment: Section 3030(b)(9)(A): The commenters restate opposition to the sample list of health problems that may qualify a student for special education under the category of Other Health Impaired.
No response required. Comments do not pertain to the 15-day amendments.

Stephen E. Brock, NCSP, LEP, Professor and School Psychology Program Coordinator, California State University, Sacramento
Comment: Section 3030(b)(10): The commenter notes that the current regulations do not explicitly include the need for high-quality pre-referral interventions, although the regulations do include the language from the IDEA addressing this need. The commenter hopes that future regulations will more explicitly identify the needed pre-referral steps. The commenter also encourages the State Board of Education to promote a model that relies on the identification of a pattern of strengths and weaknesses in the identification of SLD. The commenter says that using an approach that relies primarily on low achievement and does not include assessment of cognitive processes concerns him for multiple reasons, including the following: (1) the potential for over-representation of minority children in special education due to the fact that they are over-represented in the low-achieving portion of our students; (2) the potential for de-facto tracking as all low-achieving students would be served in special education, not general education; (3) the lack of consistency in implementation of RTI across the state leading to even greater variation in eligibility; (4) the loss of information regarding the whole child that a compete psycho-educational assessment can provide; (5) the concern that focusing on only absolute low achievement will not provide the rights and protections of special education to students who may be both intellectually gifted and learning disabled. The commenter also notes that there is an increasing amount of information on the links between cognitive processes and different areas of achievement.
No response required. Comments do not pertain to the 15-day amendments.

Maureen Burness, Policy Committee Chair, Advisory Commission on Special Education
Comment: Section 3030(b)(10): The commenter says that her comments concern the 3030 (b)(10) section on specific learning disabilities. The commenter notes that she was a member of the multi-agency work group, including CDE that worked on revising this section to update regulations following the reauthorization of IDEA in 2004. The proposed regulations still contain language which is highly recommended for deletion, the section (3) which suggests that if standardized tests cannot be used to determine an SLD using the severe discrepancy model, there is yet another way for an IEP term to document such a discrepancy. That language must be deleted with the addition of the other options allowed from 2004, which are now included. The commenter notes that she also advocated that the language to add RTI as the option be first, before the

severe discrepancy language. The commenter asks the CDE to reconsider these recommendations.
No response required. Comments do not pertain to the 15-day amendments.

Maureen Graves, Co-Chair; California Association of Parent-Child Advocacy (CAPCA)
Comment: Section 3030(b)(10): The commenter restates objections to the proposed amendments pertaining to specific learning disability eligibility.
No response required. Comments do not pertain to the 15-day amendments.

Laura Faer, Staff Attorney, Public Counsel Law Center
Lauren Giardina, Staff Attorney, Disability Rights California (DRC)
Maureen Graves, Co-Chair; California Association of Parent-Child Advocacy (CAPCA)
Janeen Steel, Founder/Director of Litigation and Advocacy, Learning Rights Law Center
Comment: Section 3030(b)(10)(c)(5): Commenters recommend that this subdivision be amended to require observations of non-school-age students "in an environment appropriate for the child of that age," "in an age-appropriate natural environment," or in "their natural environment." Some commenters say that because the appropriateness of the environment may differ depending on each child, a professional may obtain a more accurate picture of the child if that child is observed in their typical environment. One commenter says that without such a phrase, students might be observed only in assessment facilities designed for infants and toddlers or in highly restrictive adult day care settings.
Reject: The proposed language in this subdivision quotes the federal requirements as provided in 34 C.F.R. section 300.310(c).

Nancy Fellmeth, President, Families for Early Autism Treatment
Comment: Section 3030(b)(10)(c)(5): Commenter says "Location(s) for observations – Should require observations of non-school-age students in an age-appropriate environment."
No response required: Quoting federal regulations, the proposed regulatory section specifies "In the case of a child of less than school age or out of school, a qualified professional must observe the child in an environment appropriate for a child of that age."

Sara M. Castro-Olivo, NCSP, Assistant Professor, Graduate School of Education, School Psychology Program, University of California, Riverside
Margaret Garcia, Associate Chair/School Psychology Program Coordinator, Division of Special Education and Counseling, California State University, Los Angeles Charter College of Education
Cathleen Geraghty-Jenkinson, School Psychology Lecturer/Field Coordinator, Graduate School of Education, University of California-Riverside
Kristi Hagans, NCSP, Associate Professor of School Psychology, School Psychology Program Director, California State University, Long Beach

Shane R. Jimerson, Professor and Chair, Department of Counseling, Clinical, and School Psychology, University of California, Santa Barbara
Kristin Power, Professor, School Psychology, Director, Community Clinic for Counseling and Educational Services, California State University, Long Beach, President, Southern - School Psychology Educators of California
Carol Robinson-Zañartu, Professor Emerita, Department of Counseling and School Psychology, San Diego State University
Alberto Restori, Professor, School Psychology Program, California State University, Northridge
Jill D. Sharkey, NCSP, Lecturer, School Psychology Program Coordinator Department of Counseling, Clinical, and School Psychology, Gervirtz Graduate School of Education, University of California, Santa Barbara
Mike Vanderwood, NCSP, Associate Professor, School Psychology Program Coordinator, University of California-Riverside, Graduate School of Education
Comment: Section 3030(b)(10): The commenters faxed a re-dated copy of the letter they originally e-mailed on July 9, 2013, in response to the amendments promulgated during the 45-day comment period ending on July 8, 2013.
No response required. Comments do not pertain to the 15-day amendments.

SECTION 3031

Janeen Steel, Founder/Director of Litigation and Advocacy, Learning Rights Law Center
Comment: Section 3031(a)(2)(A) and (b): The commenter supports the amendments proposed for this section.
No response required.

SECTION 3040

Nancy Fellmeth, President, Families for Early Autism Treatment
Maureen Graves, Co-Chair; California Association of Parent-Child Advocacy (CAPCA)
Angela Sutherland, Parent, Community Advisory Committee (CAC) member, and Co-Administrator of CAC Leadership Collaborative
Comment: Section 3040, current subdivision (a): The commenters restate opposition to the removal of this subdivision.
No response required. Comments do not pertain to the 15-day amendments.

Laura Faer, Staff Attorney, Public Counsel Law Center
Lauren Giardina, Staff Attorney, Disability Rights California (DRC)
Maureen Graves, Co-Chair; California Association of Parent-Child Advocacy (CAPCA)
Janeen Steel, Founder/Director of Litigation and Advocacy, Learning Rights Law Center
Angela Sutherland, Parent, Community Advisory Committee (CAC) member, and Co-Administrator of CAC Leadership Collaborative

Comment: Section 3040, proposed subdivision (a): The commenters recommend that proposed section 3040(a) be amended to indicate that IEPs must be provided to parents at no cost. The commenters say that without this language, districts may start charging parents for English and/or translated IEPs. The commenters also say that while the "give" language appears to imply provision without cost, this point needs to be clarified.

One commenter says that the new regulation will likely be understood by school districts as meaning that they need not provide any IEP copies to parents absent a specific request by parents for the document. Provision of IEPs at the conclusion of each meeting should remain routine. Making this now routine delivery process sporadic would promote confusion, mutual distrust, conflict, and litigation.

Other commenters say that because school districts frequently charge parents for their records, if a parent requests translation of a document, in the absence of a provision explicitly prohibiting it, districts may begin charging parents for translation costs. Such costs would not only impose a financial burden on many families and prevent them from receiving an IEP in their primary language, but may also mean that non-English speaking families will be denied a free appropriate public education solely due to language barriers, while English-speaking families will continue to receive their services at no cost.
Reject: Education Code section 56341.5(j) says **"**The local educational agency shall give the parent or guardian a copy of the individualized education program, at no cost to the parent or guardian." The federal regulations also stipulate in 34 C.F.R. section 300.322(f) "The public agency must give the parent a copy of the child's IEP at no cost to the parent." Repeating requirements that already exist in Education Code and the Code of Federal Regulations is duplicative and potentially confusing if the wording of the requirements is not identical. The CDE believes that parents and LEAs have the same access to these state statutes and federal regulations as they do to state regulations. Further, as some of the commenters note, a district's charging parents or guardians for the translation of an IEP would be a violation of 34 C.F.R. section 300.101 and Education Code section 56040, which stipulate that children with disabilities must receive a free appropriate public education.

Nancy Fellmeth, President, Families for Early Autism Treatment
Comment: Section 3040, proposed subdivision (a): The commenter says "Removal of the requirement that parents be provided an IEP in their primary language – Parental participation in the IEP process should be encouraged. Providing a legible, free document in their own language in a timely manner promotes this basic right."
Response: Proposed section 3040(a) says "The LEA shall give the parent or guardian a copy of the IEP in his or her primary language at his or her request."

SECTION 3043

Maureen Graves, Co-Chair, and Roberta S. Savage, Co-Chair, California Association of Parent-Child Advocacy (CAPCA)

Comment: Section 3043: The commenter restates a recommendation that California's regulations pertinent to extended school year be replaced with the federal language.
No response required. Comments do not pertain to the 15-day amendments.

SECTION 3051

Laura Faer, Staff Attorney, Public Counsel Law Center
Lauren Giardina, Staff Attorney, Disability Rights California (DRC)
Comment: Section 3051 et seq.: The commenters support the amendments to the requirements for "Related Services" saying "We believe that the proposed changes to Section 3051 will have a positive impact on students."

Janeen Steel, Founder/Director of Litigation and Advocacy, Learning Rights Law Center
Comment: Section 3051 et seq: The commenter supports the changes to the requirements for "Related Services," which—under the revised draft regulations—are now the same for both public and non-public schools. The commenter says that by making these changes the CDE has removed the risk of creating a dual and unequal system in which students who attend non-public schools/agencies are likely to receive services of higher quality than those who remain in the public system. Under the revised proposed amendments to sections 3051 and 3065, students who attend public and non-public school/agencies will be ensured certification requirements for "Related Services."
No response required.

Maureen Graves, Co-Chair, and Roberta S. Savage, Co-Chair, California Association of Parent-Child Advocacy (CAPCA)
Comment: Section 3051(a)(5)(B): The commenter recommends deleting this section, which requires that all out-of-state providers work for a CDE-certified school or agency. The commenter says that the small number of students with complex and intensive needs warranting out-of-state placements may not have access to California nonpublic schools or nonpublic agency providers for all services; it should be sufficient that providers be qualified.
Reject: Education Code section 56365(h) requires nonpublic, nonsectarian schools or agencies that operate a program outside California to meet the certification requirements of Education Code section 56366.1 This regulatory package combines section 3065, formerly the section pertinent to providing related services to students in nonpublic schools and agencies, with section 3051, "Standards for Related Services and Staff Qualifications." Section 3051(a)(5) makes explicit the CDE's standards for providers of services to California's students in out-of-state placements.

SECTION 3051.9

Laura Faer, Staff Attorney, Public Counsel Law Center
Lauren Giardina, Staff Attorney, Disability Rights California (DRC)
Comment: Section 3051.9: The commenters say that this section refers to a person who is a "Licensed Mental Health Professional by the Board of Behavioral Sciences,

within the Department of Consumer Affairs." The term "licensed mental health professional" is vague and may refer to a psychologist, therapist, or other mental health providers. The commenters recommend that the Department clarify the meaning of "licensed mental health professional."
Reject: Section 3051.9(c)(2) is consistent with the specifications found in Business and Professions Code section 4996.23(a) for associate clinical social workers.

SECTION 3051.11

Laura Faer, Staff Attorney, Public Counsel Law Center
Lauren Giardina, Staff Attorney, Disability Rights California (DRC)
Comment: Section 3051.11: The commenters say that this section refers to a person who is a "Licensed Mental Health Professional by the Board of Behavioral Sciences, within the Department of Consumer Affairs." The term "licensed mental health professional" is vague and may refer to a psychologist, therapist, or other mental health providers. The commenters recommend that the Department clarify the meaning of "licensed mental health professional."
Reject: Section 3051.11(b)(4) is consistent with the specifications found in Business and Professions Code section 4996.23(a) for associate clinical social workers.

SECTION 3051.13

Laura Faer, Staff Attorney, Public Counsel Law Center
Lauren Giardina, Staff Attorney, Disability Rights California (DRC)
Comment: Section 3051.13: The commenters say that this section refers to a person who is a "Licensed Mental Health Professional by the Board of Behavioral Sciences, within the Department of Consumer Affairs." The term "licensed mental health professional" is vague and may refer to a psychologist, therapist, or other mental health providers. The commenters recommend that the Department clarify the meaning of "licensed mental health professional."
Reject: Section 3051.13(b)(1) is consistent with the specifications found in Business and Professions Code section 4996.23(a) for associate clinical social workers.

SECTION 3051.14

Laura Faer, Staff Attorney, Public Counsel Law Center
Lauren Giardina, Staff Attorney, Disability Rights California (DRC)
Comment: Section 3051.14: The commenters say that this section allows vocational services to be provided by a person with a credential authorizing instruction in special education. The commenters say that to ensure that the vocational services provided are meaningful and provided by a person who has requisite training in career development, the CDE should include the phrase "with a career development authorization" to this requirement.
Reject: Making this amendment to section 3051.14(b)(2) represents a policy change that is beyond the scope of this regulatory action, which seeks to align state regulations

pertaining to special education with current state statute and federal statute and regulations.

SECTION 3051.21

Roberta S. Adler, Music Therapist-Board Certified, Fellow, Academy of Neurologic Music Therapy
Dorcas Allison
Mary E. Alvarado, Music Therapist-Board Certified
Melody W. Baker, Music Therapist-Board Certified
Diana Barnes, Parent
Bessie J. Barth, Music Therapist-Board Certified, Neurologic Music Therapist
Barbara Behnke, Registered Nurse, retired
Thomas Behnke, Accountant, retired
Jason Carmichael, Parent
Valerie Carmichael, Parent
Laura DeLoye, Music Therapist-Board Certified
Marietta Everitt
Ann Galantine
Jennifer D. Geiger, Music Therapist-Board Certified
Cay Haney, MD, retired
Melissa Herrmann, Executive Director, Courage HouseJanice Holmes, Registered Nurse, retired
Kathleen Humphries, Music Therapist-Board Certified
Celeste A. Keith, Music Therapist-Board Certified
Dixie Kemper, Teacher
Helen Lintz
Rachel McCauley, Music Therapist-Board Certified
Tara McConnell, Music Therapist-Board Certified
Laura Jensen Norberg, Music Therapist-Board Certified, Neurologic Music Therapist, Fellow
Alice Jean Rebizzo, Registered Nurse, retired
Tim Ringgold, MusicTherapist-Board Certified
Cathy Rivera, Music Therapist-Board Certified
Mary Roberts
Olga Samsonova-Jellison, Music Therapist-Board Certified
Karen Sanchez, Music Therapist-Board Certified
Mary Schroeder
Laura Seaman
Nicole Spencer Parent
Elizabeth Spring, Senior Attorney, Office of Plan Licensing, California Department of Managed Health Care
Cynthia Wallace
Jody Wilfong, Music Therapist-Board Certified
Joan Wilson

Comment: Section 3051.21: The commenters support the inclusion of music therapy in the regulations pertaining to “Standards for Related Services and Staff Qualifications.”
No response required.

Trina L. Frazier, 2013-14 Chair, California Association of SELPA Administrators
Comment: Section 3051.21: The commenter restates the SELPA administrators’ opposition to the inclusion of “music therapy” in the regulations.
No response required. Comments do not pertain to the 15-day amendments

Trina L. Frazier, 2013-14 Chair, California Association of SELPA Administrators
Comment: Section 3051.21: The commenter says that the SELPA administrators oppose including in the regulations the language from the Certification Board for Music Therapists defining music therapy.
Reject: Throughout section 3051, et seq., related services are first defined and then followed by staff qualifications. The definition of music therapy was developed by the same board that certifies professionals providing this related service. The inclusion of the definition is consistent with the intent of the other sections in this series.

SECTION 3051.23

Laura Faer, Staff Attorney, Public Counsel Law Center
Lauren Giardina, Staff Attorney, Disability Rights California (DRC)
Comment: Section 3051.23(a)(2): The commenters say that this section allows behavioral interventions to be designed by a person who holds a “credential authorizing the holder to deliver special education instruction.” The commenters say there is no guarantee that a person who holds a special education credential has the requisite knowledge, training, or experience to develop appropriate behavioral interventions. The commenters recommend adding the requirement that the credential holder also have a credential “authorizing school counseling or school psychology.”
Reject: Making this amendment to section 3051.23(a)(2) represents a policy change that is beyond the scope of this regulatory action, which seeks to align state regulations pertaining to special education with current state statute and federal statute and regulations.

Laura Faer, Staff Attorney, Public Counsel Law Center
Lauren Giardina, Staff Attorney, Disability Rights California (DRC)
Comment: Section 3051.23(b)(2): The commenters say that this section allows a person to implement behavioral strategies if that individual is supervised by a professional with requisite experience and possesses a high school diploma or its equivalent and receives the supervision consistent with the IEP. The commenters recommend that because behavioral interventions are very specialized, a fourth requirement should be added to this section that the individual “has received training in behavioral intervention from a licensed professional authorized to deliver behavioral intervention services.”
Reject: Making this amendment to section 3051.23(b)(2) represents a policy change that is beyond the scope of this regulatory action, which seeks to align state regulations

pertaining to special education with current state statute and federal statute and regulations.

SECTION 3051.75

Trina L. Frazier, 2013-14 Chair, California Association of SELPA Administrators
Comment: Section 3051.75: The commenter restates the SELPA administrators' opposition to the inclusion of "vision therapy" in the regulations.
No response required. Comments do not pertain to the 15-day amendments.

SECTION 3065

Laura Faer, Staff Attorney, Public Counsel Law Center
Lauren Giardina, Staff Attorney, Disability Rights California (DRC)
Janeen Steel, Founder/Director of Litigation and Advocacy, Learning Rights Law Center
Comment: Section 3065 et. seq: The commenters support the proposed amendments made to this section. One commenter also supports the addition of proposed subdivision 3065(b).
No response required.

SECTION 3068

Maureen Graves, Co-Chair, California Association of Parent-Child Advocacy (CAPCA)
Comment: Section 3068, current subdivision (e): The commenter restates opposition to the deletion of subdivision (e).
No response required. Comments do not pertain to the 15-day amendments.

SECTION 3083

Janeen Steel, Founder/Director of Litigation and Advocacy, Learning Rights Law Center
Comment: Sections 3083, 3083(a), 3083(c): The commenter supports the amendments deleting the word "public" and adding the words "nonprofit organization or entity."
No response required.

SECTION 3084

Janeen Steel, Founder/Director of Litigation and Advocacy, Learning Rights Law Center
Comment: Section 3084(b): The commenter supports the amendments deleting the word "public" and adding the words "nonprofit organization or entity."
No response required.

SECTION 3088

Janeen Steel, Founder/Director of Litigation and Advocacy, Learning Rights Law Center
Comment: Section 3088(e): The commenter supports the amendments deleting the word “public” and adding the words “nonprofit organization or entity.”
No response required.

ALTERNATIVES DETERMINATION
The SBE has determined that no alternative would be more effective in carrying out the purpose for which the regulation is proposed or would be as effective and less burdensome to affected private persons than the proposed regulation or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provisions of law.

LOCAL MANDATE DETERMINATION

The proposed regulations do not impose any mandate on local agencies or school districts.

This is the official scanned version of Item 28 Attachment 3 from the California State Board of Education (SBE) Meeting Agenda for March 2014 posted at http://www.cde.ca.gov/be/ag/ag/yr14/agenda201403.asp.

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STATE OF CALIFORNIA — DEPARTMENT OF FINANCE

ECONOMIC AND FISCAL IMPACT STATEMENT

(REGULATIONS AND ORDERS)

STD. 399 (REV. 12/2008)

See SAM Section 6601 - 6616 for Instructions and Code Citations

DEPARTMENT NAME	CONTACT PERSON	TELEPHONE NUMBER
Education	Carolyn Nealon	916-327-0374
DESCRIPTIVE TITLE FROM NOTICE REGISTER OR FORM 400		NOTICE FILE NUMBER
Special Education (Version dated 8/28/13)		Z

ECONOMIC IMPACT STATEMENT

A. ESTIMATED PRIVATE SECTOR COST IMPACTS (Include calculations and assumptions in the rulemaking record.)

1. Check the appropriate box(es) below to indicate whether this regulation:

- ☐ a. Impacts businesses and/or employees
- ☐ b. Impacts small businesses
- ☐ c. Impacts jobs or occupations
- ☐ d. Impacts California competitiveness
- ☐ e. Imposes reporting requirements
- ☐ f. Imposes prescriptive instead of performance
- ☐ g. Impacts individuals
- ☑ h. None of the above (Explain below. Complete the Fiscal Impact Statement as appropriate.)

h. (cont.) The regulations would not impose any additional cost to the private sector.

(If any box in Items 1 a through g is checked, complete this Economic Impact Statement.)

2. Enter the total number of businesses impacted: _____ Describe the types of businesses (Include nonprofits.): _____

Enter the number or percentage of total businesses impacted that are small businesses: _____

3. Enter the number of businesses that will be created: _____ eliminated: _____

Explain: _____

4. Indicate the geographic extent of impacts: ☐ Statewide ☐ Local or regional (List areas.): _____

5. Enter the number of jobs created: _____ or eliminated: _____ Describe the types of jobs or occupations impacted: _____

6. Will the regulation affect the ability of California businesses to compete with other states by making it more costly to produce goods or services here?

☐ Yes ☐ No If yes, explain briefly: _____

B. ESTIMATED COSTS (Include calculations and assumptions in the rulemaking record.)

1. What are the total statewide dollar costs that businesses and individuals may incur to comply with this regulation over its lifetime? $ _____

a. Initial costs for a small business: $ _____ Annual ongoing costs: $ _____ Years: _____

b. Initial costs for a typical business: $ _____ Annual ongoing costs: $ _____ Years: _____

c. Initial costs for an individual: $ _____ Annual ongoing costs: $ _____ Years: _____

d. Describe other economic costs that may occur: _____

ECONOMIC AND FISCAL IMPACT STATEMENT cont. (STD. 399, Rev. 12/2008)

2. If multiple industries are impacted, enter the share of total costs for each industry: _____

3. If the regulation imposes reporting requirements, enter the annual costs a typical business may incur to comply with these requirements. (Include the dollar costs to do programming, record keeping, reporting, and other paperwork, whether or not the paperwork must be submitted.): $ _____

4. Will this regulation directly impact housing costs? ☐ Yes ☐ No If yes, enter the annual dollar cost per housing unit: _____ and the number of units: _____

5. Are there comparable Federal regulations? ☐ Yes ☐ No Explain the need for State regulation given the existence or absence of Federal regulations: _____

Enter any additional costs to businesses and/or individuals that may be due to State - Federal differences: $ _____

C. ESTIMATED BENEFITS (Estimation of the dollar value of benefits is not specifically required by rulemaking law, but encouraged.)

1. Briefly summarize the benefits that may result from this regulation and who will benefit: _____

2. Are the benefits the result of : ☐ specific statutory requirements, or ☐ goals developed by the agency based on broad statutory authority?

Explain: _____

3. What are the total statewide benefits from this regulation over its lifetime? $ _____

D. ALTERNATIVES TO THE REGULATION (Include calculations and assumptions in the rulemaking record. Estimation of the dollar value of benefits is not specifically required by rulemaking law, but encouraged.)

1. List alternatives considered and describe them below. If no alternatives were considered, explain why not: _____

2. Summarize the total statewide costs and benefits from this regulation and each alternative considered:

Regulation:	Benefit: $_____	Cost: $_____
Alternative 1:	Benefit: $_____	Cost: $_____
Alternative 2:	Benefit: $_____	Cost: $_____

3. Briefly discuss any quantification issues that are relevant to a comparison of estimated costs and benefits for this regulation or alternatives: _____

4. Rulemaking law requires agencies to consider performance standards as an alternative, if a regulation mandates the use of specific technologies or equipment, or prescribes specific actions or procedures. Were performance standards considered to lower compliance costs? ☐ Yes ☐ No

Explain: _____

E. MAJOR REGULATIONS (Include calculations and assumptions in the rulemaking record.) Cal/EPA boards, offices, and departments are subject to the following additional requirements per Health and Safety Code section 57005.

ECONOMIC AND FISCAL IMPACT STATEMENT cont. (STD. 399, Rev. 12/2008)

1. Will the estimated costs of this regulation to California business enterprises exceed $10 million ? ☐ Yes ☐ No (If No, skip the rest of this section.)

2. Briefly describe each equally as an effective alternative, or combination of alternatives, for which a cost-effectiveness analysis was performed:

   Alternative 1: _____

   Alternative 2: _____

3. For the regulation, and each alternative just described, enter the estimated total cost and overall cost-effectiveness ratio:

Regulation:	$ _____	Cost-effectiveness ratio: $ _____
Alternative 1:	$ _____	Cost-effectiveness ratio: $ _____
Alternative 2:	$ _____	Cost-effectiveness ratio: $ _____

FISCAL IMPACT STATEMENT

A. FISCAL EFFECT ON LOCAL GOVERNMENT (Indicate appropriate boxes1 through 6 and attach calculations and assumptions of fiscal impact for the current year and two subsequent Fiscal Years.)

☐ 1. Additional expenditures of approximately $ _____ in the current State Fiscal Year which are reimbursable by the State pursuant to Section 6 of Article XIII B of the California Constitution and Sections 17500 et seq. of the Government Code. Funding for this reimbursement:

☐ a. is provided in _____, Budget Act of _____ or Chapter _____, Statutes of _____

☐ b. will be requested in the _____ (FISCAL YEAR) Governor's Budget for appropriation in Budget Act of _____

☐ 2. Additional expenditures of approximately $ _____ in the current State Fiscal Year which are not reimbursable by the State pursuant to Section 6 of Article XIII B of the California Constitution and Sections 17500 et seq. of the Government Code because this regulation:

☐ a. implements the Federal mandate contained in _____

☐ b. implements the court mandate set forth by the _____

court in the case of _____ vs. _____

☐ c. implements a mandate of the people of this State expressed in their approval of Proposition No. _____ at the _____ (DATE) election;

☐ d. is issued only in response to a specific request from the _____

_____, which is/are the only local entity(s) affected;

☐ e. will be fully financed from the _____ (FEES, REVENUE, ETC.) authorized by Section

_____ of the _____ Code;

☐ f. provides for savings to each affected unit of local government which will, at a minimum, offset any additional costs to each such unit;

☐ g. creates, eliminates, or changes the penalty for a new crime or infraction contained in _____

☐ 3. Savings of approximately $ _____ annually.

☑ 4. No additional costs or savings because this regulation makes only technical, non-substantive or clarifying changes to current law regulations.

ECONOMIC AND FISCAL IMPACT STATEMENT cont. (STD. 399, Rev. 12/2008)

☐ 5. No fiscal impact exists because this regulation does not affect any local entity or program.

☐ 6. Other.

B. FISCAL EFFECT ON STATE GOVERNMENT (Indicate appropriate boxes 1 through 4 and attach calculations and assumptions of fiscal impact for the current year and two subsequent Fiscal Years.)

☐ 1. Additional expenditures of approximately $ _____ in the current State Fiscal Year. It is anticipated that State agencies will:

☐ a. be able to absorb these additional costs within their existing budgets and resources.

☐ b. request an increase in the currently authorized budget level for the _____ fiscal year.

☐ 2. Savings of approximately $ _____ in the current State Fiscal Year.

☐ 3. No fiscal impact exists because this regulation does not affect any State agency or program.

☑ 4. Other. No fiscal impact because this regulation makes only technical, non-substantive or clarifying changes to conform with current law.

C. FISCAL EFFECT ON FEDERAL FUNDING OF STATE PROGRAMS (Indicate appropriate boxes1 through 4 and attach calculations and assumptions of fiscal impact for the current year and two subsequent Fiscal Years.)

☐ 1. Additional expenditures of approximately $ _____ in the current State Fiscal Year.

☐ 2. Savings of of approximately $ _____ in the current State Fiscal Year.

☐ 3. No fiscal impact exists because this regulation does not affect any federally funded State agency or program.

☑ 4. Other. No fiscal impact because this regulation makes only technical, non-substantive or clarifying changes to conform with current law.

FISCAL OFFICER SIGNATURE		DATE 10/28/13
AGENCY SECRETARY [1] APPROVAL/CONCURRENCE		DATE 10/30/13
DEPARTMENT OF FINANCE [2] APPROVAL/CONCURRENCE	PROGRAM BUDGET MANAGER	DATE

1. *The signature attests that the agency has completed the STD.399 according to the instructions in SAM sections 6601-6616, and understands the impacts of the proposed rulemaking. State boards, offices, or department not under an Agency Secretary must have the form signed by the highest ranking official in the organization.*

2. *Finance approval and signature is required when SAM sections 6601-6616 require completion of Fiscal Impact Statement in the STD.399.*

Economic and Fiscal Impact Analysis
Proposed Amendment of Title 5, CCR, Regulations
Special Education (8/28/13)

The Fiscal Policy Office has reviewed for economic and fiscal impact the proposed amended (version 8/28/13) regulations amending Articles: 1; 3; 3.1; 4; 5; 6 and 7 of Subchapter 1, of Chapter 3, of Division 1, of Title 5, of the California Code of Regulations, relating to special education and related services to children with disabilities.

What would the proposed regulations do?
The intent of these proposed regulations is to ensure conformity with the federal IDEA (20 United States Code [U.S.C.] sections 1400 et seq.), its implementing regulations (Section 300.1 et seq. of Title 34 of the Code of Federal Regulations [C.F.R.]), Part 30 of the Education Code and its implementing regulations (section 3001 et seq. of Title 5 of the California Code of Regulations).

These proposed regulations update and clarify rules governing the special education program in California. Many sections of these regulations have not been updated since the State Board of Education (SBE) adopted substantive changes on December 11, 1987, which became operative on April 20, 1988. During this time, there have been numerous statutory changes which have made some of these regulations inoperable, without merit, contrary to current statutes, or in conflict with other germane bodies of law. In addition, the references for many of the current regulations are outdated due to numerous State code changes as well as code changes to Federal statutes and regulations. By amending the regulations, the California Department of Education (CDE) proposes to provide clear direction and reduce confusion for people who are involved in providing special education and related services.

Overarching themes in the proposed changes would accomplish the following:

- Repeal subdivisions that no longer have the force of law due to statutory changes.
- Delete redundant references to criteria defined in statute or elsewhere in the regulations;
- Align the eligibility criteria for infants and toddlers with exceptional needs to current law;
- Update service provider requirements to account for all qualified providers;
- Update language to promote consistency in the regulations: (i.e. replace "local educational agency" with "LEA;" replace "individualized education program" with "IEP;" etc.)

Do the proposed regulations impose a local cost mandate?
No. The proposed amendments to the regulations would not create a new program or higher level of service in an existing program.

Do the proposed regulations impose costs upon the state?
No. The proposed amendments to the regulations do not impose any costs upon the state.

Do the proposed regulations impact the private sector?
No. The proposed amendments to the regulations do not impact the private sector.

This analysis reflects the attached Economic and Fiscal Impact Statement.

Carolyn Nealon, Consultant
Government Affairs Division

28 October 2013
Date

Carol Bingham

Carol Bingham, Senior Fiscal Policy Advisor
Government Affairs Division

10/28/13
Date

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AAV of Item 28 Attachment 3

Accessible Alternative Version (AAV) of Item 28 Attachment 3 for the March 2014 SBE Meeting Agenda.

This page is the Accessible Alternative Version (AAV) of Item 28 Attachment 3 from the California State Board of Education (SBE) Meeting Agenda for March 2014. The scanned Item 28 Attachment 3 (PDF) version is considered to be the official version of the document.

Economic and Fiscal Impact Statement

(REGULATIONS AND ORDERS). *User entries from the STD. 399 (REV. 12/2008) Form.*

Department Name: Education

Contact Person: Carolyn Nealon

Telephone Number: 916-327-0374

Descriptive Title From Notice Register Or From 400: Special Education (Version dated August 28, 2013)

Notice File Number: Z

Economic Impact Statement

Section A. ESTIMATED PRIVATE SECTOR COST IMPACTS (Include calculations and assumptions in the rulemaking record.)

Section A.1. Check the appropriate box(es) below to indicate whether this regulation:

- Selected option is H: None of the above (Explain below. Complete the Fiscal Impact Statement as appropriate)
- Option H explanation: The regulations would not impose any additional cost to the private sector.

Fiscal Impact Statement

Section A. FISCAL EFFECT ON LOCAL GOVERNMENT (Indicate appropriate boxes1 through 6 and attach calculations and assumptions of fiscal impact for the current year and two subsequent Fiscal Years.)

- Selected option is 4: No additional costs or savings because this regulation makes only technical, non-substantive or clarifying changes to current law regulations.

Section B. FISCAL EFFECT ON STATE GOVERNMENT (Indicate appropriate boxes 1 through 4 and attach calculations and assumptions of fiscal impact for the current year and two subsequent Fiscal Years.)

- Selected option is 4: Other. *No fiscal impact because this regulation makes only technical, non-substantive or clarifying changes to conform with current law.*

Section C. FISCAL EFFECT ON FEDERAL FUNDING OF STATE PROGRAMS (Indicate appropriate boxes1 through 4 and attach calculations and assumptions of fiscal impact for the current year and two subsequent Fiscal Years.)

- Selected option is 4: Other. *No fiscal impact because this regulation makes only technical, non-substantive or clarifying changes to conform with current law.*

Fiscal Officer Signature: Signed by Carolyn Nealon dated October 28, 2013

Agency Secretary1 Approval / Concurrence: Signed by Jeannie Oropeza dated October 30, 2013

Department of Finance2 Approval / Concurrence Signature: No signature.

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1. *The signature attests that the agency has completed the STD.399 according to the instructions in the State Administrative Manual (SAM) sections 6601-6616, and understands the impacts of the proposed rulemaking. State boards, offices, or department not under an Agency Secretary must have the form signed by the highest ranking official in the organization.*
2. *Finance approval and signature is required when SAM sections 6601-6616 require completion of Fiscal Impact Statement in the STD. 399.*

Economic and Fiscal Impact Analysis
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What would the proposed regulations do?

The intent of these proposed regulations is to ensure conformity with the federal IDEA (20 *United States Code [U.S.C.]* sections 1400 et seq.), its implementing regulations (Section 300.1 et seq. of Title 34 of the *Code of Federal Regulations [C.F.R.]*), Part 30 of the Education Code and its implementing regulations (section 3001 et seq. of Title 5 of the *California Code of Regulations*).

These proposed regulations update and clarify rules governing the special education program in California. Many sections of these regulations have not been updated since the State Board of Education (SBE) adopted substantive changes on December 11, 1987, which became operative on April 20, 1988. During this time, there have been numerous statutory changes which have made some of these regulations inoperable, without merit, contrary to current statutes, or in conflict with other germane bodies of law. In addition, the references for many of the current regulations are outdated due to numerous State code changes as well as code changes to Federal statutes and regulations. By amending the regulations, the California Department of Education (CDE) proposes to provide clear direction and reduce confusion for people who are involved in providing special education and related services.

Overarching themes in the proposed changes would accomplish the following:

- Repeal subdivisions that no longer have the force of law due to statutory changes.
- Delete redundant references to criteria defined in statute or elsewhere in the regulations;
- Align the eligibility criteria for infants and toddlers with exceptional needs to current law;
- Update service provider requirements to account for all qualified providers;
- Update language to promote consistency in the regulations: (i.e. replace “local educational agency” with “LEA;” replace “individualized education program” with “IEP;” etc.)

Do the proposed regulations impose a local cost mandate?

No. The proposed amendments to the regulations would not create a new program or higher level of service in an existing program.

Do the proposed regulations impose costs upon the state?

No. The proposed amendments to the regulations do not impose any costs upon the state.

Do the proposed regulations impact the private sector?

No. The proposed amendments to the regulations do not impact the private sector.

This analysis reflects the attached Economic and Fiscal Impact Statement.

Signed by Carolyn Nealon, Consultant, Government Affairs Division, dated October 28, 2013

Signed by Carol Bingham, Senior Fiscal Policy Advisor, Government Affairs Division, dated October 28, 2013

California State Board of Education

Meeting Agenda Items for March 12-13, 2014

ITEM 29

CALIFORNIA STATE BOARD OF EDUCATION

MARCH 2014 AGENDA

SUBJECT	
Civic Center Act: Adopt Proposed Amendments to *California Code of Regulations,* Title 5, sections 14037-14042.	☒ Action ☒ Information ☐ Public Hearing

SUMMARY OF THE ISSUE(S)

Chapter 764, Statutes of 2012, Senate Bill (SB) 1404 expands, until January 1, 2020, the definition of direct costs that a school district governing board may charge for the use of school facilities or grounds pursuant to *Education Code* (*EC*) Section 38134 (the Civic Center Act).

These regulations are proposed, as required by *EC* Section 38134(h), to be used by a school district in determining the proportionate share and the specific allowable costs that a school district may include as direct costs for the use of its school facilities or grounds.

The regulations establish a consistent method by which school districts will calculate fees for the use of school facilities or grounds by any outside entities. The calculated fees will represent the maximum amount a school district is authorized to charge, which does not preclude a school district from electing to charge less, or to assess no fee at all.

RECOMMENDATION

The California Department of Education (CDE) recommends the State Board of Education (SBE) take the following actions:

- Approve the Final Statement of Reasons;
- Adopt the proposed regulations;
- Direct the CDE to submit the rulemaking file to the Office of Administrative Law (OAL) for approval; and

- Authorize the CDE to take any necessary ministerial action to respond to any direction or concern expressed by the OAL during its review of the rulemaking file.

BRIEF HISTORY OF KEY ISSUES

Under existing law known as the Civic Center Act (*EC* Section 38130 et seq.), every public school facility is considered a civic center where citizens, school-community councils, and clubs, as well as, senior, recreation, education, political, artistic, and other organizations may meet. The school district may grant the use of school facilities and grounds upon certain terms and conditions deemed proper by the governing board and subject to specified limitations, requirements, and restrictions set forth within the law.

With recent amendments to the Civic Center Act (Chapter 764, Statutes of 2012, SB 1404), the California Legislature expanded, until January 1, 2020, the definition of direct costs that a school district governing board may charge pursuant to this section to include a share of the operating and maintenance costs and a share of the maintenance, repair, restoration, and refurbishment costs of the school facilities or grounds, proportional to an entity's use of the school facilities or grounds.

The Legislature has taken this step to encourage school districts to maximize opportunities to make public school facilities and grounds available and accessible to their communities as civic centers. Recognizing that the costs to maintain facilities or grounds exceed just the operational costs associated with an entity's use of school facilities and grounds, the goal of the amendments to the Civic Center Act is to authorize school districts to recoup all of the direct costs associated with an entity's use of school facilities or grounds.

EC Section 38134(h) requires that the State Superintendent of Public Instruction develop, and the State Board adopt, by December 31, 2013, regulations to be used by a school district in determining the proportionate share and the specific allowable costs that a school district may include as direct costs for the use of its school facilities or grounds.

SUMMARY OF PREVIOUS STATE BOARD OF EDUCATION DISCUSSION AND ACTION

On September 4, 2013, the SBE approved the commencement of the rulemaking process.

The 45-day public comment period ran from September 21, 2013, through November 4, 2013. A public hearing was held on November 4, 2013, in accordance with the Administrative Procedure Act.

On January 15, 2014, the SBE approved a 15-day public comment period on amendments to the proposed regulations, which ran from January 18, 2014 through February 3, 2014, in accordance with the Administrative Procedure Act.

FISCAL ANALYSIS (AS APPROPRIATE)

A Fiscal Impact Statement is provided as Attachment 3.

ATTACHMENT(S)

Attachment 1: Proposed Regulations (4 pages)

Attachment 2: Final Statement of Reasons (5 pages)

Attachment 3: Economic and Fiscal Impact Statement (STD 399) (4 pages)

- The State Board of Education has illustrated changes to the original text in the following manner: text originally proposed to be added is underlined; text proposed to be deleted is displayed in ~~strikeout~~.
- The 15-day text proposed to be added is in "**bold underline**", deleted text is displayed in "~~**bold strikeout**~~".

TITLE 5. EDUCATION

Division 1. California Department of Education

Chapter 13. School Facilities and Equipment

Subchapter 1.5. Civic Center Act

Article 1. Proportionate Direct Costs for Use of School Facilities and Grounds.

§ 14037. ~~Integrate Facilities~~ Definitions.

(a) "Applicant" means the direct cost fee payer requesting use of school facilities or grounds under the Civic Center Act (Education Code section 38130, et seq).

(b) "Direct costs" are the estimated costs identified by a school district as follows:

(1) "Capital direct costs" includes the estimated costs for maintenance, repair, restoration, and refurbishment, for use of the school facilities or grounds under the Civic Center Act.

(A) For purposes of estimating capital direct costs, "school facilities" shall be limited to nonclassroom space, but may apply to specialty teaching spaces including but not limited to, dance studios, music practice or performance spaces and theaters.

(B) Capital direct costs do not apply to classroom-based programs that operate after school hours, including, but not limited to, after school programs, tutoring programs, or child care programs.

1. A program is defined as classroom-based for purposes of this subdivision if participants spend at least 50 percent of operational hours in a classroom.

(C) Capital direct costs do not apply to organizations retained by the school or school district to provide instruction or instructional activities to pupils during school hours.

(2) "Operational direct costs" includes the estimated costs of supplies, utilities, janitorial services, services of school district employees, **and/or contracted workers** and salaries **and benefits** paid to school district employees directly associated with the administration of the Civic Center Act to operate and maintain school facilities or

grounds.

(c) The term “school grounds” shall include, but not be limited to, playing fields, athletic fields, track and field venues, tennis courts, and outdoor basketball courts.

NOTE: Authority cited: Sections 33031 and 38134, Education Code. Reference: Sections 38131 and 38134, Education Code.

§ 14038. Determining Proportionate Share.

School districts electing to charge applicants for all direct costs, or either capital direct costs or operational direct costs shall do the following:

(a) Calculate the proportionate share, as a percent, that each school facility or grounds is available for use by applicants as follows:

(1) Estimate the total annual hours a facility or grounds is expected to be used ~~**or operated**~~ by applicants.

(2) Estimate the total annual hours a facility or grounds is expected to be used by anyone, including applicants and **the** school district~~**s**~~.

(3) Divide the number of hours in subdivision (a)(1) by the number of hours in subdivision (a)(2).

(b) In the alternative, school districts may elect to determine proportionate share by categorizing like facilities or grounds (e.g., all high school football fields, all gymnasiums) and performing the same calculation as outlined in subdivisions (a)(1) through (a)(3).

NOTE: Authority cited: Sections 33031 and 38134, Education Code. Reference: Sections 38131 and 38134, Education Code.

§ 14039. Determining Specific Allowable Capital Direct Costs.

Specific to each school facility and grounds (or like facilities and grounds as described in section 14038(b)), the school district shall quantify annual capital direct costs as follows:

(a) Determine the useful life in years from the initial date of occupancy or use.

(b) Estimate the expected cost to repair, restore, or refurbish the facility or grounds at the end of its useful life. Substitute the estimated cost to replace a facility or grounds when maintenance, repair, restoration or refurbishment would not be practicable or cost

effective.

(c) Divide the cost in subdivision (b) over the number of years in subdivision (a) to reflect the annual cost.

NOTE: Authority cited: Sections 33031 and 38134, Education Code. Reference: Sections 38131 and 38134, Education Code.

§14040. ~~Scope of Article~~ Determining Specific Allowable Operational Direct Costs.

Specific to each school facility and grounds (or like facilities and grounds as described in section 14038(b)), the school district shall quantify annual operational direct costs by estimating the following costs:

(a) The annual cost of salaries and benefits for all school district employee labor or contracted services required to operate, clean, and maintain the facility or grounds, which may include janitorial services, setup and teardown time, and security.

(b) The annual cost of supplies required to operate and maintain the facility or grounds, including all school district equipment used by applicants.

(c) The annual cost of utilities required to operate the facility or grounds, including any school district or applicant-provided equipment.

(d) The prorated annual salaries and benefits paid to school district employees directly associated with the administration of direct cost user fees for time spent administering such fees authorized under this Article.

NOTE: Authority cited: Sections 33031 and 38134, Education Code. Reference: Sections 38131 and 38134, Education Code.

§14041. ~~Plans~~ Establishing a Fee Schedule.

(a) When electing to **~~assess~~ charge** fees pursuant to the Civic Center Act, a school district governing board shall adopt a fee schedule that includes the hourly fee for each specific facility and grounds (or like facilities and grounds as described in section 14038(b)), calculated as follows:

(1) If charging for capital direct costs only, multiply the capital direct costs quantified in section 14039(c) by the proportionate share as determined in section 14038(a)(3). Divide the product by the total number of hours of applicant use as set forth in section 14038(a)(1) to arrive at the hourly rate.

(2) If charging for operational costs only, add the operational costs identified in sections 14040(a) through (c) and multiply the sum by the proportionate share as determined in section 14038(a)(3). Divide the product by the total number of hours of applicant use as set forth in section 14038(a)(1) to arrive at an hourly rate. Add to this amount the hourly rate to administer direct cost user fees calculated by dividing the cost identified in section 14040(d) by the total number of hours of applicant use set forth in section 14038(a)(1).

(3) If charging for all direct costs, add the hourly rates calculated in subdivisions (a)(1) and (a)(2).

(b) A school district governing board may elect to discount direct cost fees charged pursuant to the Civic Center Act based on the type or category of applicant, **~~such as~~ including, but not limited to,** those with tax-exempt status. All such discounts shall be contained in the adopted fee schedule.

NOTE: Authority cited: Sections 33031 and 38134, Education Code. Reference: Sections 38131 and 38134, Education Code.

§ 14042. ~~Justification Procedure~~ Expending Capital Fees.

Funds collected by a school district as capital direct costs shall be deposited into a special fund that shall only be used for capital maintenance, repair, restoration, and refurbishment.

NOTE: Authority cited: Sections 33031 and 38134, Education Code. Reference: Sections 38131 and 38134, Education Code.

11-21-13 [California Department of Education]

FINAL STATEMENT OF REASONS
Civic Center Act

UPDATE OF INITIAL STATEMENT OF REASONS

The original proposed text was made available for public comment for at least 45 days from September 21, 2013 through November 4, 2013. Four individuals provided comments during the 45-day comment period.

A public hearing was held at 1:30 p.m. on November 4, 2013, at the California Department of Education. Three individuals attended the public hearing.

SUMMARY AND RESPONSE TO COMMENTS RECEIVED DURING THE INITIAL NOTICE PERIOD OFSEPTEMBER 21, 2013 THROUGH NOVEMBER 4, 2013.

Richard W. Raushenbush, President, Piedmont Unified School District Board of Education
Comment: PUSD suggests that the proposed regulations section 14037(b)(2) be amended as follows: "includes the estimated costs of supplies, utilities, janitorial services, contracted services…to operate and maintain school facilities or grounds."
Accept: The State Board of Education (SBE) recognizes that school districts may use contracted services rather than school district employees to perform required maintenance on school facilities and grounds. The proposed regulations are amended accordingly.
Comment: PUSD suggests that the provided example, "high school football fields," might be misconstrued to mean that "like" facilities must be for the exact same sport at the exact same school level. PUSD suggests that section 14038(b) be amended to refer to "(e.g., all play fields, all gymnasiums)."
Reject: The given description of "like facilities or grounds" provides sufficient flexibility for a school district to decide which facilities and grounds are grouped together.

Kelly R. Barnes, Counsel, Orange County Department of Education
Comment: Related to section 14037(b)(1)(B): SBE might consider that many after school programs use both classroom and nonclassroom space, which could be helpful to include here.
Accept in part: The proposed regulations are amended to define classroom-based programs as those in which participants spend at least 50 percent of operational hours in a classroom. Afterschool programs that meet this requirement are exempt from capital direct costs even if they use nonclassroom space.
Comment: Related to section 14037(b)(2): "Operate" needs to be clarified. For example, does this language include the staff processing the applications?
Reject: A district could not administer the Civic Center Act without processing applications for facilities use; therefore, those costs are included in operational direct costs.
Comment: Related to section 14038(a)(1): "Expected" is unclear and may appear to require figuring out how often in the past a particular facility or grounds were used, which would be infeasible. Since many districts, by policy or AR, set hours for

applicants, perhaps “available for use by applicants” would be clearer and more operationally sound.
Reject: A good faith estimate of the hours of expected applicant use results in an accurate determination of applicant “proportionate share.” Hours a facility or grounds is available but unused should not be part of the applicant proportionate share.
Comment: Facilities or grounds are used, not operated by, applicants. The word “operated” should be deleted from section 14038(a)(1) to avoid any ownership or control issues.
Accept: Applicant use is adequately captured with the suggested language. The proposed regulations are amended accordingly.
Comment: Clarify “operate” in section 14040(a).
Reject: “Operate” in section 14040(a) means the human power required to make a facility or grounds usable by applicants, and by the school district, following applicant use. Staff processing of applications is included in section 14040(d).
Comment: Section 14040(d) fees should be referenced in earlier sections.
Reject: Costs related to the administration of the Civic Center Act are included in section 14037(b)(2).
Comment: The word “assess” should not be used in section 14041(a), but rather “charge.” Using “charge” is consistent with the authorizing statute and does not connote a tax as “assess” may.
Accept: No form of taxation is implied; therefore, the proposed regulations are amended accordingly.

Eric Bakke, Legislative Advocate, Los Angeles Unified School District
Comment: LAUSD expresses a position of Support for the proposed regulations.
NO RESPONSE REQUIRED

Catherine Barankin, Director of Public Policy, CA State Alliance of YMCAs
Comment: The commenter believes that the inclusion of proposed section 14037(b)(1)(A) exceeds the State Board’s authority given by SB 1404 to describe the extent of “nonclassroom space.”
Reject: The purpose of this proposed section is to reflect that teaching may occur in specialty spaces that are not traditional classrooms (e.g., dance taught in a large studio, music taught on a stage, or drama taught in a theater). These spaces may be used by applicants pursuant to the Civic Center Act. The SBE believes the intent of SB 1404 was to exclude <u>traditional</u> classroom space from capital direct costs. Existing Education Code does not define nonclassroom space for purposes of this section; therefore, it is the SBE’s interpretation via the proposed regulations that certain specialty teaching spaces should be treated as nonclassroom facilities (akin to a multipurpose room) for purposes of this section.
Comment: The commenter recommends that the proposed regulations include language specifying the types of youth groups that should be allowed to use school facilities and mention that schools do not have to charge these groups for use of school facilities and grounds.
Reject: The proposed regulations clearly state that school districts may choose whether to charge direct costs to applicants (see sections 14038, 14041(a)) as well as whether to discount actual costs to a category of applicants (see section 14041(b)). It is not necessary to specify examples of youth groups that may be applicants for the use of

facilities and grounds; these groups are specified in Education Code section 38134(a)(1).
Comment: Related to section 14038(a)(1): The commenter states that expected hours of use should be based on actual rather than estimated usage.
Reject: Pursuant to this section, the school district shall provide a good faith estimate of the expected hours of use for a particular school facility or grounds. An estimate may be required for new facilities (on- or off-site), changes in program, and/or other conditions. The estimate is subject to public disclosure and review at a public meeting of the school district governing board pursuant to section 14041(a).
Comment: The commenter states that the calculations performed in sections 14039(a) and (b) should use existing deferred maintenance figures or be subject to independent verification and/or appeal by the applicant.
Reject: The fee schedule and calculations adopted by a school district governing board are subject to public review and comment at the local level.
Comment: Related to section 14040: The commenter states that the costs identified in subparagraphs (a) through (d) should be actual costs rather than estimates.
Reject: The SBE expects that some estimation would be required on the part of the school district to determine how whole purchases and/or salaries are distributed across individual sites and facilities. This estimation, as part of the fee schedule considered by the school district governing board, would be subject to public review and comment at the local level.

PUBLIC HEARING – NOVEMBER 4, 2013 – Three Commenters

Cheryl A. McElhany, Ed.D., President, Extended Day Child Care, Inc.
Comment: The commenter suggests adding the example, “school districts may not charge such programs [child care] a monthly or annual fee for playground use” to section 14037(b)(1)(B). The commenter believes such additional wording would reinforce the exemption of child care programs and avoid any sort of misinterpretation by school districts and their legal counsel.
Accept in part: It is the SBE’s understanding that the legislative intent of Senate Bill 1404, reflected by Education Code section 38134(g)(1)(B)(ii)(I), is to exempt all classroom-based programs from capital direct costs. The exemption would extend to classroom-based programs with incidental or periodic use of nonclassroom facilities or grounds. The proposed regulations are amended accordingly.
Comment: The commenter asks that the SBE consider making the provisions of the regulations very clear to the professional organizations such as CASBO and CSBA which are heavily relied upon by school district administrators and School Boards.
Reject: While the California Department of Education (CDE), on behalf of the SBE, expects to provide outreach and technical assistance relating to the proposed regulations, these efforts are outside the scope of the regulations themselves.

Eric Bakke, Legislative Advocate, Los Angeles Unified School District
Comment: No new comments received. Mr. Bakke reiterated LAUSD’s support for the proposed regulations.
NO RESPONSE REQUIRED

Mike Patton, Maintenance Connect Pro

Comment: Relating to section 14037(b)(1)(A): The commenter states it is unclear whether this section applies to classrooms and/or affects the potential use of classroom space by applicants.
Reject: The referenced section states clearly that capital direct costs do not apply to classroom space. Neither SB 1404 nor the proposed regulations change existing law relating to the use of classrooms by applicants pursuant to the Civic Center Act.
Comment: The commenter requests a worksheet that school districts may use to document the development of their fee schedules.
Reject: While the CDE, on behalf of the SBE, may develop a template worksheet or calculator for use by school districts, these efforts are outside the scope of the regulations themselves.

After the 45-day comment period, the following changes were made to the proposed text of the regulations and sent out for a 15-Day comment period:

SECTION 14037(b)(1)(B)(1.) is added to clarify that classroom-based programs are those in which participants spend at least 50 percent of operational hours in a classroom. Afterschool programs that meet this requirement are exempt from capital direct costs even if they use nonclassroom space.

SECTION 14037(b)(2) is amended to include “contracted workers” as an eligible operational cost because school districts may use contracted services rather than school district employees to perform required maintenance on school facilities and grounds. Additionally, it is amended to include “benefits” to clarify that the cost of school district employee salaries includes benefits, and for consistency with section 14040.

SECTION 14038(a)(1) is amended to delete “or operated” to clarify applicant use.

SECTION 14041(a) is amended to delete “assess” and replace it with “charge” to clarify that the fees charged to applicants are not a tax.

SUMMARY AND RESPONSE TO COMMENTS RECEIVED DURING THE 15-DAY COMMENT PERIOD FROM JANUARY 18, 2014, THROUGH FEBRUARY 3, 2014, INCLUSIVE.

The revised text of the proposed regulations was made available for public comment for at least 15 days from January 18, 2014 through February 3, 2014. One individual provided comments during the 15-day comment period.

Mike Patton, Maintenance Connect Pro
Comment: Section 14037(b)(1)(B) exempts classroom-based programs from capital direct costs. The commenter requests that the regulations be amended to exclude religious instruction that might take place in classroom space from the exemption (i.e., groups conducting religious instruction in classroom space would be charged both operational and capital direct costs).
Reject: As described in Section 14037(b)(1)(A), taken from Education Code Section 38134(g)(1)(B)(i), capital direct costs are to be applied only to school facilities

constituting “nonclassroom space.” The use of classroom space would therefore be subject to operational direct costs only.

ALTERNATIVES DETERMINATION

The State Board of Education has determined that no alternative would be more effective in carrying out the purpose for which the regulation is proposed or would be as effective and less burdensome to affected private persons than the proposed regulation or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provisions of law.

No alternatives have been brought to the California Department of Education’s attention.

LOCAL MANDATE DETERMINATION

The proposed regulations do not impose any mandate on local agencies or school districts.

1-30-14 [California Department of Education]

This is the official scanned version of Item 29 Attachment 3 from the California State Board of Education (SBE) Meeting Agenda for March 2014 posted at http://www.cde.ca.gov/be/ag/ag/yr14/agenda201403.asp.

An accessible version of the contents of this document is located at http://www.cde.ca.gov/be/ag/ag/yr14/mar14item29a3aav.asp

The scanned document starts following this initial page.

STATE OF CALIFORNIA — DEPARTMENT OF FINANCE

ECONOMIC AND FISCAL IMPACT STATEMENT

(REGULATIONS AND ORDERS)

STD. 399 (REV. 12/2008)

See SAM Section 6601 - 6616 for Instructions and Code Citations

DEPARTMENT NAME	CONTACT PERSON	TELEPHONE NUMBER
Education	Amy Tang-Paterno	322-6630
DESCRIPTIVE TITLE FROM NOTICE REGISTER OR FORM 400		NOTICE FILE NUMBER
Civic Center Act (version dated 11/21/13)		Z

ECONOMIC IMPACT STATEMENT

A. ESTIMATED PRIVATE SECTOR COST IMPACTS (Include calculations and assumptions in the rulemaking record.)

1. Check the appropriate box(es) below to indicate whether this regulation:

- ☐ a. Impacts businesses and/or employees
- ☐ b. Impacts small businesses
- ☐ c. Impacts jobs or occupations
- ☐ d. Impacts California competitiveness
- ☐ e. Imposes reporting requirements
- ☐ f. Imposes prescriptive instead of performance
- ☐ g. Impacts individuals
- ☑ h. None of the above (Explain below. Complete the Fiscal Impact Statement as appropriate.)

h. (cont.) The regulations would not impose any additional costs to the private sector.

(If any box in Items 1 a through g is checked, complete this Economic Impact Statement.)

2. Enter the total number of businesses impacted: _____ Describe the types of businesses (Include nonprofits.): _____

Enter the number or percentage of total businesses impacted that are small businesses: _____

3. Enter the number of businesses that will be created: _____ eliminated: _____

Explain: _____

4. Indicate the geographic extent of impacts: ☐ Statewide ☐ Local or regional (List areas.): _____

5. Enter the number of jobs created: _____ or eliminated: _____ Describe the types of jobs or occupations impacted: _____

6. Will the regulation affect the ability of California businesses to compete with other states by making it more costly to produce goods or services here?

☐ Yes ☐ No If yes, explain briefly: _____

B. ESTIMATED COSTS (Include calculations and assumptions in the rulemaking record.)

1. What are the total statewide dollar costs that businesses and individuals may incur to comply with this regulation over its lifetime? $ _____

a. Initial costs for a small business: $ _____ Annual ongoing costs: $ _____ Years: _____

b. Initial costs for a typical business: $ _____ Annual ongoing costs: $ _____ Years: _____

c. Initial costs for an individual: $ _____ Annual ongoing costs: $ _____ Years: _____

d. Describe other economic costs that may occur: _____

ECONOMIC AND FISCAL IMPACT STATEMENT cont. (STD. 399, Rev. 12/2008)

2. If multiple industries are impacted, enter the share of total costs for each industry: _____

3. If the regulation imposes reporting requirements, enter the annual costs a typical business may incur to comply with these requirements. (Include the dollar costs to do programming, record keeping, reporting, and other paperwork, whether or not the paperwork must be submitted.): $ _____

4. Will this regulation directly impact housing costs? ☐ Yes ☐ No If yes, enter the annual dollar cost per housing unit: _____ and the number of units: _____

5. Are there comparable Federal regulations? ☐ Yes ☐ No Explain the need for State regulation given the existence or absence of Federal regulations: _____

Enter any additional costs to businesses and/or individuals that may be due to State - Federal differences: $ _____

C. ESTIMATED BENEFITS (Estimation of the dollar value of benefits is not specifically required by rulemaking law, but encouraged.)

1. Briefly summarize the benefits that may result from this regulation and who will benefit: _____

2. Are the benefits the result of : ☐ specific statutory requirements, or ☐ goals developed by the agency based on broad statutory authority?

Explain: _____

3. What are the total statewide benefits from this regulation over its lifetime? $ _____

D. ALTERNATIVES TO THE REGULATION (Include calculations and assumptions in the rulemaking record. Estimation of the dollar value of benefits is not specifically required by rulemaking law, but encouraged.)

1. List alternatives considered and describe them below. If no alternatives were considered, explain why not: _____

2. Summarize the total statewide costs and benefits from this regulation and each alternative considered:

Regulation:	Benefit: $_____	Cost: $_____
Alternative 1:	Benefit: $_____	Cost: $_____
Alternative 2:	Benefit: $_____	Cost: $_____

3. Briefly discuss any quantification issues that are relevant to a comparison of estimated costs and benefits for this regulation or alternatives: _____

4. Rulemaking law requires agencies to consider performance standards as an alternative, if a regulation mandates the use of specific technologies or equipment, or prescribes specific actions or procedures. Were performance standards considered to lower compliance costs? ☐ Yes ☐ No

Explain: _____

E. MAJOR REGULATIONS (Include calculations and assumptions in the rulemaking record.) Cal/EPA boards, offices, and departments are subject to the following additional requirements per Health and Safety Code section 57005.

ECONOMIC AND FISCAL IMPACT STATEMENT cont. (STD. 399, Rev. 12/2008)

1. Will the estimated costs of this regulation to California business enterprises exceed $10 million ? ☐ Yes ☐ No (If No, skip the rest of this section.)

2. Briefly describe each equally as an effective alternative, or combination of alternatives, for which a cost-effectiveness analysis was performed:

   Alternative 1: _____

   Alternative 2: _____

3. For the regulation, and each alternative just described, enter the estimated total cost and overall cost-effectiveness ratio:

Regulation:	$ _____	Cost-effectiveness ratio: $ _____
Alternative 1:	$ _____	Cost-effectiveness ratio: $ _____
Alternative 2:	$ _____	Cost-effectiveness ratio: $ _____

FISCAL IMPACT STATEMENT

A. FISCAL EFFECT ON LOCAL GOVERNMENT (Indicate appropriate boxes1 through 6 and attach calculations and assumptions of fiscal impact for the current year and two subsequent Fiscal Years.)

☐ 1. Additional expenditures of approximately $ _____ in the current State Fiscal Year which are reimbursable by the State pursuant to Section 6 of Article XIII B of the California Constitution and Sections 17500 et seq. of the Government Code. Funding for this reimbursement:

   ☐ a. is provided in _____, Budget Act of _____ or Chapter _____, Statutes of _____

   ☐ b. will be requested in the _____ (FISCAL YEAR) Governor's Budget for appropriation in Budget Act of _____

☐ 2. Additional expenditures of approximately $ _____ in the current State Fiscal Year which are not reimbursable by the State pursuant to Section 6 of Article XIII B of the California Constitution and Sections 17500 et seq. of the Government Code because this regulation:

   ☐ a. implements the Federal mandate contained in _____

   ☐ b. implements the court mandate set forth by the _____

   court in the case of _____ vs. _____

   ☐ c. implements a mandate of the people of this State expressed in their approval of Proposition No. _____ at the _____ (DATE) election;

   ☐ d. is issued only in response to a specific request from the _____

   _____, which is/are the only local entity(s) affected;

   ☐ e. will be fully financed from the _____ (FEES, REVENUE, ETC.) authorized by Section

   _____ of the _____ Code;

   ☐ f. provides for savings to each affected unit of local government which will, at a minimum, offset any additional costs to each such unit;

   ☐ g. creates, eliminates, or changes the penalty for a new crime or infraction contained in _____

☐ 3. Savings of approximately $ _____ annually.

☐ 4. No additional costs or savings because this regulation makes only technical, non-substantive or clarifying changes to current law regulations.

ECONOMIC AND FISCAL IMPACT STATEMENT cont. (STD. 399, Rev. 12/2008)

☑ 5. No fiscal impact exists because this regulation does not affect any local entity or program.

☐ 6. Other.

B. FISCAL EFFECT ON STATE GOVERNMENT (Indicate appropriate boxes 1 through 4 and attach calculations and assumptions of fiscal impact for the current year and two subsequent Fiscal Years.)

☐ 1. Additional expenditures of approximately $ _____ in the current State Fiscal Year. It is anticipated that State agencies will:

☐ a. be able to absorb these additional costs within their existing budgets and resources.

☐ b. request an increase in the currently authorized budget level for the _____ fiscal year.

☐ 2. Savings of approximately $ _____ in the current State Fiscal Year.

☑ 3. No fiscal impact exists because this regulation does not affect any State agency or program.

☐ 4. Other.

C. FISCAL EFFECT ON FEDERAL FUNDING OF STATE PROGRAMS (Indicate appropriate boxes1 through 4 and attach calculations and assumptions of fiscal impact for the current year and two subsequent Fiscal Years.)

☐ 1. Additional expenditures of approximately $ _____ in the current State Fiscal Year.

☐ 2. Savings of of approximately $ _____ in the current State Fiscal Year.

☑ 3. No fiscal impact exists because this regulation does not affect any federally funded State agency or program.

☐ 4. Other.

FISCAL OFFICER SIGNATURE		DATE 12/4/2013
AGENCY SECRETARY [1] APPROVAL/CONCURRENCE	Jeannie Ongoya	DATE 12/5/13
DEPARTMENT OF FINANCE [2] APPROVAL/CONCURRENCE	PROGRAM BUDGET MANAGER	DATE

1. *The signature attests that the agency has completed the STD.399 according to the instructions in SAM sections 6601-6616, and understands the impacts of the proposed rulemaking. State boards, offices, or department not under an Agency Secretary must have the form signed by the highest ranking official in the organization.*

2. *Finance approval and signature is required when SAM sections 6601-6616 require completion of Fiscal Impact Statement in the STD.399.*

AAV of Item 29 Attachment 3

Accessible Alternative Version (AAV) of Item 29 Attachment 3 for the March 2014 SBE Meeting Agenda.

This page is the Accessible Alternative Version (AAV) of Item 29 Attachment 3 from the California State Board of Education (SBE) Meeting Agenda for March 2014. The scanned Item 29 Attachment 3 (PDF) version is considered to be the official version of the document.

Economic and Fiscal Impact Statement

(REGULATIONS AND ORDERS). *User entries from the STD. 399 (REV. 12/2008) Form.*

Department Name: Education

Contact Person: Amy Tang-Paterno

Telephone Number: 916-322-6630

Descriptive Title From Notice Register Or From 400: Civic Center Act (version dated November 21, 2013)

Notice File Number: Z

Economic Impact Statement

Section A. ESTIMATED PRIVATE SECTOR COST IMPACTS (Include calculations and assumptions in the rulemaking record.)

Section A.1. Check the appropriate box(es) below to indicate whether this regulation:

- Selected option is H: None of the above (Explain below. Complete the Fiscal Impact Statement as appropriate)
- Option H explanation: The regulations would not impose any additional cost to the private sector.

Fiscal Impact Statement

Section A. FISCAL EFFECT ON LOCAL GOVERNMENT (Indicate appropriate boxes1 through 6 and attach calculations and assumptions of fiscal impact for the current year and two subsequent Fiscal Years.)

- Selected option is 5: No fiscal impact exists because this regulation does not affect any local entity or program.

Section B. FISCAL EFFECT ON STATE GOVERNMENT (Indicate appropriate boxes 1 through 4 and attach calculations and assumptions of fiscal impact for the current year and two subsequent Fiscal Years.)

- Selected option is 3: No fiscal impact exists because this regulation does not affect any State agency or program.

Section C. FISCAL EFFECT ON FEDERAL FUNDING OF STATE PROGRAMS (Indicate appropriate boxes1 through 4 and attach calculations and assumptions of fiscal impact for the current year and two subsequent Fiscal Years.)

- Selected option is 3: No fiscal impact exists because this regulation does not affect any federally funded State agency or program.

Fiscal Officer Signature: Signed by Amy Tang-Paterno dated December 4, 2013

Agency Secretary[1] Approval / Concurrence: Signed by Jeannie Oropeza dated December 5, 2013

Department of Finance[2] Approval / Concurrence Signature: No signature.

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1. *The signature attests that the agency has completed the STD.399 according to the instructions in the State Administrative Manual (SAM) sections 6601-6616, and understands the impacts of the proposed rulemaking. State boards, offices, or department not under an Agency Secretary must have the form signed by the highest ranking official in the organization.*
2. *Finance approval and signature is required when SAM sections 6601-6616 require completion of Fiscal Impact Statement in the STD. 399.*

California State Board of Education

Meeting Agenda Items for March 12-13, 2014

ITEM 30

CALIFORNIA STATE BOARD OF EDUCATION

MARCH 2014 AGENDA

SUBJECT	
Local Control Funding Formula, Kindergarten and Grades One through Three Grade Span Adjustment: Approve Commencement of the Rulemaking Process for Amendments to the *California Code of Regulations*, Title 5, Sections 15498, 15498.1, 15498.2, and 15498.3.	☒ Action ☒ Information ☐ Public Hearing

SUMMARY OF THE ISSUE(S)

The California Department of Education (CDE) is responsible for calculating Local Control Funding Formula (LCFF) entitlements and apportioning funds to local educational agencies (LEAs). Pursuant to *Education Code (EC)* Section 42238.02, as a condition of receiving a grade span adjustment for kindergarten through grade three (K–3 GSA), school districts must make progress towards or maintain a K–3 class size average of 24 or less at each school site, unless the district agrees to a collectively bargained alternative. If the annual independent audit of a school district shows that a school district did not comply with this condition, the CDE will retroactively reduce the school district's funding.

The adoption of regulations, under the authority of *EC* Section 33031, is necessary to define terms in *EC* Section 42238.02, to provide clarity, and to establish a uniform, auditable methodology for calculating the K–3 class size averages and measuring progress.

In addition to approving the emergency regulations (See March Agenda Item 2), the CDE recommends that the State Board of Education (SBE) commence the regular rulemaking process. This process is required to adopt permanent regulations and provides a period of 45 days for written comments, followed by a public hearing to receive verbal and written testimony (See Attachment 1).

RECOMMENDATION

The CDE recommends the SBE take the following actions:

- Approve the Notice of Proposed Rulemaking (Notice);
- Approve the Initial Statement of Reasons (ISOR);
- Approve the proposed regulations;

- Direct the CDE to commence the rulemaking process; and

- Authorize the CDE, in consultation with SBE staff, to take any necessary action, consistent with the SBE's direction, to respond to any direction or concern expressed by the Office of Administrative Law during its review of the Notice, ISOR, and proposed regulations.

BRIEF HISTORY OF KEY ISSUES

In June 2013, Governor Brown signed Assembly Bill 97 (Chapter 47, Statutes of 2013) to enact the LCFF, which eliminated and replaced the decades old revenue limit formula and dozens of categorical programs. LEAs are funded through LCFF commencing with the 2013–14 school year. However, the Department of Finance (DOF) estimates that full funding levels will not be reached until 2020–21. In the intervening years, LCFF funding levels will be phased in, whereby the CDE will raise an LEA's funding level in order to decrease the gap between the funding the LEA would have received under the legacy funding formula and the LEA's "LCFF target."

The LCFF target represents what an LEA would receive if LCFF were fully funded. Its main components are a base grant, a supplemental grant, and a concentration grant. Additionally, the LCFF target for school districts and charter schools includes the K–3 GSA that increases the base grant for K–3 by 10.4 percent. Pursuant to *EC* Section 42238.02, as a condition of receiving this adjustment, school districts must meet one of the following conditions:

- If a school site's average class enrollment in K–3 was more than 24 pupils in the prior year, make progress toward maintaining, at that school site, an average class enrollment in K–3 of not more than 24 pupils.

- If a school site's average class enrollment in K–3 was 24 pupils or less in the prior year, 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.

The conditions for the K–3 GSA are subject to the annual audit process and will be recommended for inclusion in the audit guide followed by independent auditors, commencing with audits of the 2014–15 school year. If a school district is found out of compliance with the conditions of apportionment, the CDE will retroactively reduce the school district's funding. These conditions may not be waived by the State Superintendent of Public Instruction (SSPI) or the SBE.

Other Funding Laws Related to K–3 Class Sizes

In addition to the class size requirements that school districts must meet in order to receive the K–3 GSA, *EC* sections 41376 and 41378 provide for class size penalties if individual classes or district averages exceed certain levels. These class size penalties have been in existence since the late 1960s, before revenue limits. Title 5 of the

California Code of Regulations defines the terms and sets the methodology for calculating the averages. The following table summarizes the two K–3 requirements.

	K–3 Grade-Span Adjustment (At full-implementation of LCFF)	**K–3 Class Size Penalties**
Applicability	Applies to all district schools unless the district has collectively bargained an alternative.	Applies to all district schools except very small districts or schools.
Requirement	Maintain at each school site an average K–3 class size of 24 or less.	Individual class requirement: Average for class not to exceed • 33 in kindergarten • 32 in grades 1 through 3 Districtwide requirements: Average of all individual classes not to exceed • 31 in kindergarten • 30 in grades 1 through 3
Penalty	Loss of grade span adjustment, which will also reduce supplemental and concentration grant funding.	Generally, the penalty is equal to the loss of all funding for ADA above 31 in kindergarten classes or above 30 in first through third grade classes.
Waiver	May not be waived by SBE or SSPI.	May be waived.

The *EC* also includes requirements related to the K–3 Class Size Reduction Program. However, this program was eliminated with LCFF and the statutes no longer apply.

Purpose of Regulations for the K–3 GSA

Regulations are necessary to define terms and to establish a uniform, auditable methodology for calculating the K–3 class size averages and for measuring progress. Specifically, the proposed regulations establish the timing and frequency of class size counts, specify the classes or students that are included in the counts, establish how combination classes are counted, and set rules for rounding.

The DOF estimates that LCFF funding will not be fully phased-in until the 2020–21 fiscal year. Until that time, school sites with K–3 class size averages above 24 may close the gap between their prior year class size average and 24 in proportion to the percentage of gap funding that they receive. For purposes of this calculation, the proposed regulations establish rules for new school sites that do not have a prior year class size average and establish that districts may use the gap funding percentage estimated by

the DOF in its May Revision, since the actual percentage will not be known until the school year is complete.

To minimize administrative burden on LEAs, the proposed regulations model as closely as possible the methodology for K–3 class size penalties. Attachment 4 is a crosswalk between the desired outcomes and the proposed regulations, which are in Attachment 3. Attachment 5 is provided to illustrate how a sample district might calculate its K–3 average class enrollment at one of its school sites following the proposed regulations and how the district would demonstrate progress towards an average class enrollment in K–3 of not more than 24 pupils.

SUMMARY OF PREVIOUS STATE BOARD OF EDUCATION DISCUSSION AND ACTION

The SBE has not discussed or taken action on the K–3 GSA.

FISCAL ANALYSIS (AS APPROPRIATE)

A Fiscal Impact Statement will be provided as an Item Addendum.

ATTACHMENT(S)

Attachment 1: Notice of Proposed Rulemaking (5 pages)

Attachment 2: Initial Statement of Reasons (3 pages)

Attachment 3: Text of Proposed Regulations (4 pages)

Attachment 4: Crosswalk Summary of Objectives and the Proposed Regulations in Attachment 3 (2 pages)

Attachment 5: Example of the Class Size Average Calculation and Progress Calculation for a Sample School Site (1 page)

Attachment 6: Economic and Fiscal Impact Statement (STD. 399) will be provided as an Item Addendum (4 pages)

CALIFORNIA DEPARTMENT OF EDUCATION
TOM TORLAKSON, State Superintendent of Public Instruction
916-319-0800

CALIFORNIA STATE BOARD OF EDUCATION
MICHAEL W. KIRST, President
916-319-0827

1430 N Street Sacramento, CA 95814-5901

NOTICE OF PROPOSED RULEMAKING

AMENDMENT TO CALIFORNIA CODE OF REGULATIONS, TITLE 5,
REGARDING LOCAL CONTROL FUNDING FORMULA
KINDERGARTEN AND GRADES ONE THROUGH THREE GRADE
SPAN ADJUSTMENT

[Notice published March 28, 2014]

NOTICE IS HEREBY GIVEN that the State Board of Education (SBE) proposes to adopt the regulations described below after considering all comments, objections, or recommendations regarding the proposed action.

PUBLIC HEARING

California Department of Education (CDE) staff, on behalf of the SBE, will hold a public hearing at 2:00 p.m. on May 13, 2014, at 1430 N Street, Room 1101, Sacramento, California. The room is wheelchair accessible. At the hearing, any person may present statements or arguments, orally or in writing, relevant to the proposed action described in the Informative Digest. The SBE requests, but does not require, that persons who make oral comments at the public hearing also submit a written summary of their statements. No oral statements will be accepted subsequent to this public hearing.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to:

Debra Thacker, Regulations Coordinator
Administrative Support and Regulations Adoption Unit
California Department of Education
1430 N Street, Room 5319
Sacramento, CA 95814

Comments may also be submitted by facsimile (FAX) at 916-319-0155 or by e-mail to *regcomments@cde.ca.gov*.

Comments must be received by the Regulations Coordinator prior to 5:00 p.m. on May 13, 2014. All written comments received by CDE staff during the public comment period are subject to disclosure under the Public Records Act.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

Following the public hearing and considering all timely and relevant comments received, the SBE may adopt the proposed regulations substantially as described in this Notice or may modify the proposed regulations if the modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified regulation will be available for 15 days prior to its adoption from the Regulations Coordinator and will be mailed to those persons who submit written comments related to this regulation, or who provide oral testimony at the public hearing, or who have requested notification of any changes to the proposed regulations.

AUTHORITY AND REFERENCE

Authority: Section 33031, Education Code.

Reference: Sections 37201 and 42238.02, Education Code.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

In June 2013, Governor Brown signed Assembly Bill 97 (Chapter 47, Statutes of 2013) to enact the Local Control Funding Formula (LCFF), which eliminated and replaced the decades old revenue limit formula and dozens of categorical programs. Local educational agencies (LEAs) are funded through LCFF commencing with the 2013–14 school year. However, the Department of Finance estimates that full funding levels will not be reached until 2020–21.

The CDE is responsible for calculating LCFF entitlements and apportioning funds to LEAs. Pursuant to Education Code section 42238.02, as a condition of receiving a grade span adjustment for kindergarten through grade three grade (K–3 GSA), school districts must make progress towards or maintain a K–3 class size average of 24 or less at each school site, unless the district agrees to a collectively bargained alternative. If the annual independent audit of a school district shows that a school district did not comply with these conditions, the CDE will retroactively reduce the school district's funding.

The proposed regulations are necessary to define terms in Education Code section 42238.02, to provide clarity, and to establish a uniform, auditable methodology for calculating the averages and measuring progress. This would enable the CDE to implement the law and would support local implementation of LCFF.

The CDE reviewed all state regulations relating to the LCFF requirements for the K–3 GSA and found that none exist that are inconsistent or incompatible with these regulations.

DISCLOSURES REGARDING THE PROPOSED ACTION/ FISCAL IMPACT

The SBE has made the following initial determinations:

There are no other matters as are prescribed by statute applicable to the specific state agency or to any specific regulations or class of regulations.

The proposed regulations do not require a report to be made.

Mandate on local agencies and school districts: None

Cost or savings to any state agency: None

Costs to any local agencies or school districts for which reimbursement would be required pursuant to Part 7 (commencing with section 17500) of division 4 of the Government Code: None

Other non-discretionary costs or savings imposed on LEAs: None

Costs or savings in federal funding to the state: None

Significant, statewide adverse economic impact directly affecting business including the ability of California businesses to compete with businesses in other states: None

Cost impacts on a representative private person or businesses: The SBE is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Effect on housing costs: None

Effect on small businesses: The proposed regulations would not have an effect on any small business the proposed amendments only affect LEAs and would have no impact on the private sector.

RESULTS OF THE ECONOMIC IMPACT ANALYSIS

The benefit of enacting the proposed regulations will be to provide direction and definitions that school districts can follow for purposes of complying with conditions of LCFF.

Adoption of these regulations will not: (1) create or eliminate jobs within California, (2) create new businesses or eliminate existing businesses within California, or (3) affect the expansion of businesses currently doing business within California.

CONSIDERATION OF ALTERNATIVES

The SBE must determine that no reasonable alternative it considered or that has otherwise been identified and brought to the attention of the SBE, would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

The SBE invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations at the scheduled hearing or during the written comment period.

CONTACT PERSONS

Inquiries concerning the content of this regulation should be directed to:

Sara Swan
School Fiscal Services Division
California Department of Education
1430 N Street, Room 3800
Sacramento, CA 95814
Telephone: 916-322-3024
E-mail: SSwan@cde.ca.gov

Inquiries concerning the regulatory process may be directed to the Regulations Coordinator or Hillary Wirick, Regulations Analyst, at 916-319-0860.

INITIAL STATEMENT OF REASONS AND INFORMATION

The SBE has prepared an Initial Statement of Reasons for the proposed regulations and has available all the information upon which the proposal is based.

TEXT OF PROPOSED REGULATION AND CORRESPONDING DOCUMENTS

Copies of the exact language of the proposed regulations, the Initial Statement of Reasons, and all of the information upon which the proposal is based, may be obtained upon request from the Regulations Coordinator. These documents may also be viewed and downloaded from the CDE's Web site at *http://www.cde.ca.gov/re/lr/rr/* .

AVAILABILITY AND LOCATION OF THE FINAL STATEMENT OF REASONS AND RULEMAKING FILE

All the information upon which the proposed regulations are based is contained in the rulemaking file which is available for public inspection by contacting the Regulations Coordinator.

You may obtain a copy of the Final Statement of Reasons, once it has been finalized, by making a written request to the Regulations Coordinator.

REASONABLE ACCOMMODATION FOR ANY INDIVIDUAL WITH A DISABILITY

Pursuant to the *Rehabilitation Act of 1973,* the *Americans with Disabilities Act of 1990,* and the *Unruh Civil Rights Act,* any individual with a disability who requires reasonable accommodation to attend or participate in a public hearing on proposed regulations, may request assistance by contacting Sara Swan, School Fiscal Services Division, California Department of Education, 1430 N Street, Room 3800, Sacramento, CA, 95814; telephone, 916-322-3024. It is recommended that assistance be requested at least two weeks prior to the hearing.

INITIAL STATEMENT OF REASONS

LOCAL CONTROL FUNDING FORMULA, KINDERGARTEN AND GRADES ONE THROUGH THREE GRADE SPAN ADJUSTMENT

INTRODUCTION

Assembly Bill 97 (Chapter 47, Statutes of 2013) enacted the Local Control Funding Formula (LCFF), which eliminated and replaced the decades old revenue limit formula and dozens of categorical programs. The California Department of Education (CDE) is responsible for calculating LCFF entitlements and apportioning funds to Local Educational Agencies (LEAs). LEAs are funded through LCFF commencing with the 2013–14 school year. However, the Department of Finance (DOF) estimates that full funding levels will not be reached until 2020–21.

Pursuant to Education Code section 42238.02, as a condition of receiving a grade span adjustment for kindergarten through grade three grade (K–3 GSA), a component of LCFF, school districts must make progress towards or maintain a K–3 class size average of 24 or less at each school site, unless the district agrees to a collectively bargained alternative. If the annual independent audit of a school district shows that a school district did not comply with these conditions, CDE will retroactively reduce the school district's funding.

PROBLEM AGENCY INTENDS TO ADDRESS

Since enactment of the LCFF, the CDE has received numerous questions related to the K–3 GSA conditions, such as the classes or students that are to be included in the class size counts, when the ratio should be counted, and the baseline for new schools for purposes of demonstrating progress towards maintaining an average class size of 24 or less. Regulations are necessary to provide the specificity that is not included in statute, which will enable the CDE and school districts to implement the provisions of the LCFF.

BENEFITS ANTICIPATED FROM REGULATORY ACTION

The benefit of enacting the proposed regulations will be to provide direction and specificity that school districts can follow for purposes of complying with conditions of LCFF related to K–3 class sizes.

SPECIFIC PURPOSE OF EACH SECTION – GOV. CODE SECTION 11346.2(b)(1)

The specific purpose of each adoption or amendment, and the rationale for the determination that each adoption or amendment is reasonably necessary to carry out the purpose of which it is proposed, together with a description of the public problem, administrative requirement, or other condition or circumstance that each adoption or amendment is intended to address, is as follows:

Proposed section 15498 is added to describe that the purpose of the regulations is to support administration of LCFF.

Proposed section 15498.1 is added to define terms in statute and other terms used in the regulations.

Proposed section 15498.2 is added to establish rules for the treatment of classes that combine pupils in kindergarten through grade three with pupils in any other grade level. This is necessary to ensure that the calculation of the average class size, for classes that include kindergarten through grade three pupils, is reflective of all pupils in the class.

Proposed section 15498.3 is added to provide a prior year class size average for new school sites, to provide clarity for districts that reorganize, and to allow school districts to use a Department of Finance generated estimate of the LCFF phase-in funding percentage, instead of an actual percentage that will not be known until the end of the school year. This is necessary to facilitate implementation of the calculation related to demonstrating progress towards attaining a class size of 24 or less.

ECONOMIC IMPACT ANALYSIS PER GOV. CODE SECTION 11346.3(b)

Purpose:
The proposed regulatory action is necessary for local implementation of Education Code section 42238.02 and for the effective administration of and for the determinations thereby required of the State Superintendent of Public Instruction (SSPI) in computing apportionments and allowances from the State School Fund.

Creation or Elimination of Jobs Within the State of California:

The regulations are designed to provide clarity regarding and to support the administration of statutory requirements related to K–3 class sizes. Adoption of the regulations will not create or eliminate jobs within the State of California.

Creation of New or Elimination of Existing Businesses Within the State of California:

The regulations are designed to provide clarity regarding and to support the administration of statutory requirements related to K–3 class sizes. Adoption of the regulations will not create new or eliminate existing businesses within the State of California.

Expansion of Businesses or Elimination of Businesses Currently Doing Business Within the State of California:

The regulations are designed to provide clarity regarding and to support the administration of statutory requirements related to K–3 class sizes. Adoption of the

regulations will not expand or eliminate businesses currently doing business within the State of California.

Benefits of the Regulations to the Health and Welfare of California Residents, Worker Safety, and the State's Environment:

The anticipated benefit to the regulations is effective state and local implementation of the LCFF provisions that are designed to promote K–3 class sizes of 24 pupils or less.

OTHER REQUIRED SHOWINGS

Studies, Reports or Documents Relied Upon – Gov. Code. Section 11346.2(b)(3):

The SBE did not rely upon any technical, theoretical, or empirical studies, reports, or documents in proposing the adoption, amendment, or repeal of these regulations.

Reasonable Alternatives Considered Or Agency's Reasons For Rejecting Those Alternatives – Gov. Code Section 11346.2(b)(5)(A):

No other alternatives were presented to or considered by the SBE.

Reasonable Alternatives That Would Lessen The Impact On Small Businesses – Gov. Code Section 11346.2(b)(5)(B):

The proposed regulations only apply to school districts and would have no impact on the private sector, including small businesses.

Evidence Relied Upon To Support the Initial Determination That the Regulations Will Not Have A Significant Adverse Economic Impact on Business – Gov. Code Section 11346.2(b)(5)(A):

The proposed regulations only apply to school districts and would have no impact on the private sector.

Analysis Of Whether The Regulations Are An Efficient And Effective Means Of Implementing The Law In The Least Burdensome Manner – Gov. Code Section 11346.3(e)

The regulations have been determined to be the most efficient and effective means of implementing the law in the least burdensome manner.

2-27-14 [California Department of Education]

- The State Board of Education has illustrated changes to the original text in the following manner: text originally proposed to be added is underlined.

Title 5. EDUCATION

Division 1. California Department of Education

Chapter 14.6. Local Control Funding Formula Kindergarten and Grades One Through Three Grade Span Adjustment

Article 1. Apportionments and Allowances

§ 15498. Purpose.

The Superintendent of Public Instruction (SSPI) deems this chapter necessary for the effective administration of the kindergarten and grades one through three grade span adjustment as specified in Education Code section 42238.02(d)(3), and for the determinations thereby required of the SSPI in computing apportionments and allowances from the State School Fund.

NOTE: Authority cited: Section 33031, Education Code. Reference: Section 42238.02, Education Code.

§ 15498.1. Definitions.

For the purposes of administering the provisions of this chapter and the provisions of Education Code section 42238.02(d)(3), the following definitions apply:

(a) “Class” means a group of pupils scheduled to report regularly at a particular time to a particular teacher during the regular school day as defined by the school district governing board, excluding special day classes. Classes in the evening and summer schools are not classes for purposes of this section.

(b) Where the type of teaching in kindergarten and grades 1, 2, and 3 is other than in self-contained classes, the “class” is the basic homeroom where all of the following applies for a pupil:

(1) Attendance is recorded and investigation of absences is instigated.

(2) The pupil has his or her desk, locker, or drawer.

(3) The teacher handles the administrative routines such as keeping cumulative records, collecting basic data about the pupil, distributing items to go home, collecting meal money, and distributing and collecting report cards.

(4) The teacher is the usual contact with the pupil's parents.

(5) Some planned instruction is given.

(c) "Kindergarten" includes transitional kindergarten as defined by Education Code section 48000.

(d) "Active enrollment count" for purposes of subdivision (e) means the count of pupils enrolled in the class on the first day of the school year on which the class was in session, plus all later enrollees, minus all withdrawals since that first day. A pupil who is enrolled in independent study pursuant to Article 5.5 of Chapter 5 of Part 28 of the Education Code for the full regular school day shall not be included. An active enrollment count shall be made on the last teaching day of each school month that ends prior to April 15 of the school year.

(e) The "average number of pupils enrolled per class" for kindergarten and grades 1, 2, and 3 is the number obtained by dividing the sum of the active enrollment counts made under subdivision (d) for each of the classes in those grades, by the total number of those active enrollment counts.

(f) "Average class enrollment" means the sum of the average number of pupils enrolled per class determined pursuant to subdivision (e) for all kindergarten and grades 1, 2, and 3 classes at a school site, divided by the number of classes, then rounded to the nearest half or whole integer.

(g) "Maximum average class enrollment" for purposes of section 15498.3 means the amount determined by subtracting the current year average class enrollment adjustment pursuant to Education Code section 42238.02(d)(3)(B)(v) from the prior year average class enrollment pursuant to Education Code section 42238.02(d)(3)(B)(i), then rounded to the nearest half or whole integer. Commencing with the 2014-15 school year, the prior year average class enrollment for purposes of Education Code section 42238.02(d)(3)(B)(i) is the maximum average class enrollment in the prior year.

NOTE: Authority cited: Section 33031, Education Code. Reference: Sections 37201 and 42238.02, Education Code.

§ 15498.2. Combined Grades.

For the purposes of this chapter, any class combining pupils in any grade other than kindergarten or grades 1, 2, or 3 with pupils in kindergarten or grades 1, 2, or 3, shall be considered a class of kindergarten and grades 1, 2, and 3. All of the pupils in said classes shall be included in an active enrollment count.

NOTE: Authority cited: Section 33031, Education Code. Reference: Section 42238.02, Education Code.

§ 15498.3. Class Size Requirements Until Full Implementation of the Local Control Funding Formula.

For purposes of determining if a school district meets the conditions for receiving the kindergarten and grades one through three grade span adjustment, pursuant to Education Code section 42238.02(d)(3)(B), the following shall apply:

(a) Every school district that elects to receive the kindergarten and grades one through three grade span adjustment shall calculate the maximum average class enrollment for each school site.

(b) A district's average class enrollment at each school site shall not exceed the maximum average class enrollment for each school site, unless the school district has agreed to a collectively bargained alternative annual average class enrollment for each school site pursuant to Education Code section 42238.02(d)(3)(B) for the applicable year.

(c) The prior year average class enrollment for a school site that did not exist in the prior year shall be the median prior year average class enrollment in kindergarten and grades 1, 2, and 3 of the other school sites in the district.

(d) In the case of a school district that reorganizes subsequent to fiscal year 2012-13, the provisions of Education Code section 42238.02(d)(3)(C) shall not apply unless all school sites in the reorganized school districts were at or below an average class enrollment of 24 in kindergarten and grades 1, 2, and 3.

(e) A school district may determine the percentage of need met as specified in Education Code section 42238.02(d)(3)(B)(iii) utilizing the estimated percentage of statewide funded need for the applicable year as calculated by the Department of

Finance (DOF) based on its estimate of statewide need and the amount that it proposes to appropriate to the SSPI for allocation pursuant to Education Code section 42238.03(b) and stated in DOF's May Revision to the Governor's Budget.

(f) This section is in effect until full implementation of the local control funding formula as referenced in Education Code section 42238.02(d)(3)(D).

NOTE: Authority cited: Section 33031, Education Code. Reference: Section 42238.02, Education Code.

2-28-14 [California Department of Education]

CROSSWALK SUMMARY OF OBJECTIVES AND THE PROPOSED REGULATIONS

	Objective	Solution (Section References are to Regulations in Attachment 3)
Definitions		
1.	Define class. The definition should do the following: • Accommodate learning in something other than a self-contained classroom • Accommodate for combination classes with grades other than K–3 • Be consistent with other definitions related to class size	• Section 15498.1 (b)- Definition establishes “homeroom” as the class for this purpose • Section 15498.2- Treats all of the pupils combined with K–3 and the class as K-3 • Section 15498.1 (a)- Models class size penalty (CSP) definition
	Define average class enrollment.	Section 15498.1 (f)- Average class enrollment is the sum of the average number of pupils per class, for all K–3 classes at a school site, divided by the number of classes.
	Define prior year average class enrollment used for purposes of demonstrating progress towards an average class enrollment of not more than 24 pupils.	Section 15498.3 (b)- Clarifies that the prior year average class enrollment is the maximum average class enrollment for the school site in the prior year.
Methodology		
2.	Ensure that the class size average is maintained over the preponderance of the year.	Section 15498.1 (d)- Enrollment count is done monthly over the course of the year (typically six months, but depends on the school calendar), instead of a one-time count.
3.	Establish timing and frequency of counts.	Section 15498.1 (d)- The last day of each school month ending before April 15, which is the same as the second period average daily attendance calculation.
4.	Specify the students and teachers that are included or not included in the calculation of the average, such as itinerant teachers, and students on independent study.	Section 15498.1 (d)- Excluded independent study from the enrollment count consistent with the former K–3 class size reduction program. Defining teacher is not necessary under this method due to definition of class.
5.	Provide rules for rounding.	Section 15498.1 (f)- Round the final calculation to the nearest half or whole

		integer.
6.	Allow school districts to use an estimate of “need” that is funded pursuant to *EC* 42238.02(d)(3)(B)(iii) since the actual amount will not be known until the applicable year is over.	Section 15498.3 (e)- Allows districts to use Department of Finance’s May Revision estimate of the percentage of statewide funded need.
7.	Establish rules for new school sites, which is necessary for the transition period.	Section 15498.3 (c)- Proposed the median annual average of all the school sites that did exist in the prior year.
8.	Establish rules for school sites in reorganized districts.	Section 15498.3 (d)- School sites will typically stay the same in a reorganization, unless there is a new one in which Section 15498.3 (c) applies. However, clarity is provided in case there occurs a reorganization where one or more but not all of the affected districts are exempt from the phase-in requirements.

EXAMPLE OF CLASS SIZE AVERAGE CALCULATION AND PROGRESS CALCULATION FOR A SAMPLE SCHOOL SITE

Sample Unified School District- Sample Elementary School

"Active Enrollment Count"

Class	Grade	Month 1	Month 2	Month 3	Month 4	Month 5	Month 6	Total	Number of Counts (Divisor)	"Average Number of Pupils Enrolled Per Class"
One	Kindergarten	26	25	25	26	27	26	155	6	25.83
Two	Kindergarten	27	27	26	26	26	26	158	6	26.33
Three	First	28	28	29	29	28	27	169	6	28.17
Four	First	28	26	26	26	27	27	160	6	26.67
Five	Second	28	28	29	30	30	29	174	6	29
Six	Second	29	29	29	29	30	30	176	6	29.33
Seven	Third	27	26	26	29	29	29	166	6	27.67
Eight	Third	28	28	28	28	28	28	168	6	28

Total (sum of the average number of pupils enrolled per class)	221
Number of classes (divisor)	8
"Average Class Enrollment"	27.625
"Average Class Enrollment" Rounded to Nearest Half or Whole Integer	**27.5**

Required Average Class Enrollment for Purposes of Demonstrating Progress

Prior Year Average Class Enrollment at School	33
Minus Target Class Enrollment	24
Equals	9
Gap Percentage (May Use Department of Finance Estimate)	11.78%
Minimum Required Reduction over Prior Year Average	1.06
Prior Year Average Class Enrollment at School	33
Minus Minimum Required Reduction over Prior Year Average	-1.06
Maximum Average Class Enrollment (Rounded to Nearest Half or Whole Integer)	32.0

2-26-14 [California Department of Education]