

California Department of Education

Executive Office

SBE-006 (REV. 1/2018)

Specific Waiver

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

## Subject

Request by the **Maple Elementary School District** under the authority of California *Education Code* (*EC*) Section 41382, for a renewal to waive portions of the *EC* Section 41376(a), (c), and (d) relating to class size penalties for grades one through three. Allowable district class size average is 30 with no individual class larger than 32 students for grades one to three. The district wishes to increase its overall district average class size to 31 for grades one to three.

## Waiver Numbers

* 4-6-2021

## Type of Action

Action, Consent

## Summary of the Issue(s)

The Maple Elementary School District (ESD) is requesting a waiver of portions of *EC* Section 41376(a), (c), and (d) relating to class size penalties for grades one through three for fiscal year 2020–21. Maple ESD is a single school district with one teacher per grade level. The district enrollment for 2020-21 was 288 students. In fiscal year 2019-20, the district’s third grade class exceeded the maximum individual class size of 32 students by one student and the district received a waiver of the class size penalty. The district planned to return to the statutory maximum class size level in 2020-21 but challenges as a result of COVID-19 led the district exceeding the class size maximum.

The district began the year in all distance learning. By October, 2020, most students began transitioning to in-person instruction. Parents were allowed to specify whether or not their students would be returning to in-person learning. Due to pandemic related challenges, it was difficult to identify when students disenrolled and maintaining an accurate monthly count of active enrollment was problematic. Additionally, because there is only one classroom/teacher per grade level, adding an additional classroom and teacher to maintain enrollment numbers per class is not feasible. As a result, the district was unexpectedly over the maximum allowable class size average of 30 students by 0.7.

Although the district exceeded the allowable average by a fraction of one student, the district states that they made all necessary provisions to ensure the highest level of service to each student enrolled in their program by providing instructional aides in each classroom, a Special Education teacher, and pull-out intervention in Reading and Math. The district is planning to return classes to the statutory level at the beginning of the 2021–22 school year.

The district will incur a penalty of $7,702 for fiscal year 2020–21 if this waiver is not granted. The district states that without an approved waiver, the district would not have been able to provide the highest level of instruction to high need students in reading and math.

## Authority for Waiver

*EC* Section 41382

## Recommendation

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

The California Department of Education (CDE) recommends the California State Board of Education (SBE) approve the request by the Maple ESD to waive the class size penalty for grades one through three for the recommended period shown on Attachment 1.

The CDE also recommends that the SBE find that the class size penalty provisions of *EC* section 41376 will, if not waived, prevent the district from developing more effective educational programs to improve instruction in reading and mathematics for students in the classes specified in the district’s application.

## Summary of Key Issues

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

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

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

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

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

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

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

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

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

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

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

## Fiscal Analysis (as appropriate)

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

## Attachment(s)

* **Attachment 1:** Summary Table (1 page)
* **Attachment 2:** Maple ESD Specific Waiver Request 4-6-2021 (2 pages) (Original waiver request is signed and on file in the Waiver Office.)

# Attachment 1: Summary Table

California *Education Code (EC)* Section 41376(a), (c), and (d)

| **Waiver Number** | **District** | **Period of Request** | **District’s Request** | **CDE Recommendation** | **Local Board and Public Hearing Approval** | **Bargaining Unit Position** | **Penalty Without Waiver** | **Previous Waivers** |
| --- | --- | --- | --- | --- | --- | --- | --- | --- |
| 4-6-2021 | Maple Elementary School District | **Requested:** August 1, 2020, to July 30, 2021  **Recommended:** July 2, 2020, to June 30, 2021 | Overall average 31; no class larger than 32 | Overall average 31; no class larger than 32 | Local Board Approval:  June 10, 2021 | Maple Teachers Association,  Rocky Salcido, Union President,  June 9, 2021  **Support** | $7,702 | 8-6-2020 |

Created by California Department of Education   
July 2021

**Attachment 2: Maple Elementary School District Specific Waiver Request 4-6-2021**

**California Department of Education**

**WAIVER SUBMISSION – Specific**

CD Code: 1563610

Waiver Number: 4-6-2021

Active Year: 2021

Date In: 6/11/2021 3:54:31 PM

Local Education Agency: Maple Elementary

Address: 29161 Fresno Ave.

Shafter, CA 93263

Start: 8/1/2020

End: 7/30/2021

Waiver Renewal: Y

Previous Waiver Number: 8-6-2020

Previous SBE Approval Date: 9/16/2020

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: California *Education Code* (*EC*) sections 41376 and 41378 prescribe the maximum class sizes and penalties for districts with any classes that exceed the limits established in 1964.

Kindergarten—average class size not to exceed 31 students; no class larger than 33 students

[Grades one through three—average class size not to exceed 30 students; no class larger than 32 students]

Outcome Rationale: Maple School District is a single-school district in a rural setting in Central California. We work hard to meet all guidelines and with distance learning and enrollment there were inconsistent numbers all year as to who was attending in person and virtually.When we did the data at the end of the year we ended up being over by a portion of a student .66. Being a very small, single-school District with only one classroom per grade level we are not able to move students about during the year to ensure that we meet all of the requirements. In larger districts classes can be balanced and students can be transferred, this is not possible here. We have classroom aides in each of our classrooms so although this situation is not ideal it did not create a situation that didn’t allow us to effectively serve each of our students

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 $7700 could be incurred by the district without this waiver.

Student Population: 292

City Type: Rural

Local Board Approval Date: 6/10/2021

Audit Penalty Yes or No: N

Categorical Program Monitoring: N

Submitted by: Dr. Julie Boesch

Position: Superintendent

E-mail: [jboesch@mapleschool.org](mailto:jboesch@mapleschool.org)

Telephone: 661-746-4439

Fax: 661-746-4765

Bargaining Unit Date: 06/09/2021

Name: Maple Teachers Association

Representative: Rocky Salcido

Title: 8th Grade Teacher and Union President

Phone: 661-746-4439

Position: Support

Comments: