

California Department of Education

Executive Office

SBE-006 (REV. 11/2017)

Specific Waiver

# California State Board of Education May 2018 AgendaItem #W-04

## Subject

Request by **Encore High School for the Arts–Riverside** under the authority of the California *Education Code* Section 47612.6(a), to waive *Education Code* Section 47612.5(c), the audit penalty for offering less instructional time in the 2015–16 school year for students in grades nine and ten (shortfall of 5,400 minutes) at the charter school.

## Waiver Number

20-1-2018

## Type of Action

Action, Consent

## Summary of the Issue(s)

Encore High School for the Arts–Riverside (EHSAR) is requesting that the California State Board of Education (SBE) waive the instructional time requirement audit penalty for EHSAR. EHSAR was short instructional minutes for the 2015–16 school year. Per *Education Code* (*EC*) Section 47612.6(a), the SBE may waive the fiscal penalties set forth in this article for a charter school that fails to maintain the prescribed minimum length of instruction, upon the condition that the school in which the minutes were lost maintain minutes of instruction equal to those lost, in addition to the minimum amount required, for twice the number of years that it failed to maintain the required minimum length of time.

## Authority for Waiver

*EC* Section 47612.6

## Recommendation

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

The California Department of Education (CDE) recommends that the SBE approve this waiver on the condition that the EHSAR maintains increased instructional minutes for grades nine and ten of at least the amount required by law plus 5,400 minutes for a period of two years beginning in 2018–19 through 2019–20. As an additional condition of the waiver approval, the charter school must report the annual instructional minutes offered for grades nine and ten in its annual audit report. If the charter school does not offer 70,200 minutes for grades nine and ten in either 2018–19 or 2019–20 the penalty will be reinstated.

## Summary of Key Issues

During an audit of instructional minutes for 2015–16 it was discovered that EHSAR failed to offer the required number of minutes for grades nine and ten.

EHSAR would like to use school years 2018–19 and 2019–20 to make up the shortfall of instructional minutes. The minimum number of required annual instructional minutes for grades nine and ten in 2018–19 and 2019–20 is 64,800; upon approval of the waiver the required minutes for grades nine and ten for 2018–19 and 2019–20 will be 70,200.

**Demographic Information:** EHSAR has a student population of 675 and is located in an urban area in Riverside County.

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

The SBE has approved similar requests with conditions. *EC* Section 47612.6 authorizes waivers to be granted for fiscal penalties due to a shortfall in instructional time. A waiver may be granted upon the condition that the school or schools in which the minutes were lost maintain minutes of instruction equal to those lost, in addition to the minimum amount required, for twice the number of years that it failed to maintain the required minimum length of time.

## Fiscal Analysis (as appropriate)

The 2015–16 penalty amount of $101,856 is calculated as follows (some differences due to rounding):

The average daily attendance of 144.43 for all students in grades nine and ten multiplied by the charter school’s funding rate of $8,466.16 (transition rate) is equal to the charter school’s Local Control Funding Formula (LCFF) apportionment of $1,222,767.

A shortfall of 5,400 instructional minutes for the affected grade levels divided by the 64,800 minute requirement is equal to 8.33 percent of minutes not offered.

The affected LCFF apportionment of $1,222,767, multiplied by the percentage of minutes not offered, is equal to the penalty amount of $101,856.

## Attachment(s)

* **Attachment 1:** Summary Table (1 page)
* **Attachment 2:** Encore High School for the Arts–Riverside Specific Waiver Request 20-1-2018 (2 pages). (Original waiver request is signed and on file in the Waiver Office.)

# Attachment 1: Summary Table

California *Education Code (EC)* Section 47612.6

| Waiver Number | District | Period of Request | Charter School’s Request | CDE Recommended Action | Bargaining Unit Representatives Consulted, Date and Position | Local Board and Public Hearing Approval | Penalty Without Waiver | Previous Waivers |
| --- | --- | --- | --- | --- | --- | --- | --- | --- |
| 20-1-2018 | Encore High School for the Arts - Riverside | **Requested:** July 1, 2015, to June 30, 2016**Recommended:** July 1, 2015, to June 30, 2016 | Charter requests waiving *EC* Section 47612.5(c) to avoid the audit penalty in exchange for offering increased instructional minutes in 2018–19 and 2019–2020, consistent with *EC* Section 47612.6. | **Approval** of waiver, consistent with *EC* Section 47612.6 with the following conditions:  (1) Charter maintains increased instructional minutes for grades nine and ten of at least the amount required by law plus 5,400 minutes, for a period of two years beginning in 2018–19 through 2019–20, and (2) Charter reports the annual instructional minutes offered in grades nine and ten in its annual audit report. | **Not Applicable** | Local Board Approval 11/13/2017 | $101,856 | None |

Created by California Department of Education
February 2018

# Attachment 2: Encore High School of the Arts– Riverside Specific Waiver Request

**California Department of Education**

**WAIVER SUBMISSION – Specific**

CD Code: 3367215

Waiver Number: 20-1-2018

Active Year: 2018

Date In: 1/24/2018 11:04:45 AM

Local Education Agency: Encore High School for the Arts - Riverside

Address: 3380 14th St.

Riverside, CA 92501

Start: 7/1/2015

End: 6/30/2017

Waiver Renewal: No

Waiver Topic: Instructional Time Requirement Audit Penalty

Ed Code Title: Charter - Minimum Instructional Time

Ed Code Section: 47612.5

Ed Code Authority: 47612.6(a)

Ed Code or *CCR* to Waive: [47612.5. (a) Notwithstanding any other provision of law and as a condition of apportionment, a charter school shall do all of the following:

(1) For each fiscal year, offer, at a minimum, the following number of minutes of instruction:

(A) To Pupils in Kindergarten, 36,000 minutes.

(B) To Pupils in grades 1 to 3, inclusive, 50,400 minutes.

(C) To pupils in grades 4 to 8, inclusive, 54,000 minutes.

(D) To pupils in grades 9 to 12, inclusive, 64,800 minutes.

(2) Maintain written contemporaneous records that document all pupils attendance and make these records available for audit and inspection.

(C) A reduction in apportionment made pursuant to subdivision (a) shall be proportional to the magnitude of the exception that causes the reduction. For purposes of paragraph (1) of subdivision (a), for each charter school that fails to offer pupils the minimum number of minutes of instruction specified in that paragraph, the superintendent should withhold from the charter school’s apportionment for average daily attendance of the affected pupils, by grade level, the sum of that apportionment multiplied by the percentage of the minimum number of minutes of instruction at each grade level that the charter school failed to offer.

(e) (1) Notwithstanding any other provision of law, and as a condition of apportionment, “classroom-based instruction” in a charter school, for the purposes of this part, occurs only when charter school pupils are engaged in educational activities required of those pupils and are under the immediate supervision and control of an employee of the charter school who possesses a valid teaching certification in accordance with subdivision (1) of section 47605.]

Outcome Rationale: The 2015-16 school year was the first year of operation for Encore High School for the Arts - Riverside. During a series of final adjustments to the first year school calendar and bell schedule, total instructional minutes were adjusted. While this adjusted calendar was confirmed to meet minimum instructional minutes for grades 7 and 8, the higher minute requirement for grades 9 and 10 was not met, and was 5,400 minutes short of the minimum instructional time of 64,800 minutes for those grades.

The shortfall was identified during the 2015-16 annual audit review, at a cost of $101,899 in lost revenue. The issue was immediately rectified and a new review process was implemented for 2016-17 and thereafter. No additional instructional time shortfalls have occurred since this 2015-16 finding. The School is committed to ensuring this issue does not repeat in future years.

The School has also developed a proposed instructional calendar and bell schedule for 2018-19 and 2019-20 that adds the missing 5,400 minutes to each of the two years (see attachments), resulting in full makeup and replenishment of all missing minutes.

As the loss of $101,899 in revenue will reduce the funds available for Encore's core instructional programs, this waiver is necessary to avoid any programmatic reductions to Encore's educational program.

Student Population: 675

City Type: Urban

Local Board Approval Date: 11/13/2017

Audit Penalty Yes or No: Yes

Categorical Program Monitoring: No

Submitted by: Ms. Denise Griffin

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