

California Department of Education

Executive Office

SBE-005 (REV. 1/2018)

General Waiver

# California State Board of Education September 2018 Agenda Item #W-01

## Subject

Request by four local educational agencies to waive portions of *California Code of Regulations*, Title 5, Section 11963.6(c), relating to the submission and action on determination of funding requests regarding nonclassroom-based instruction.

## Waiver Number

* Adelanto Elementary School District 3-5-2018
* Butte County Office of Education 11-5-2018
* Imperial County Office of Education 1-7-2018
* Vacaville Unified School District 4-5-2018

## Type of Action

Action, Consent

## Summary of the Issue(s)

Local educational agencies (LEAs) are requesting, on behalf of the charter schools identified in Attachment 1, that the California State Board of Education (SBE) waive portions of *California Code of Regulations*, Title 5 (5 *CCR*) Section 11963.6(c), in order to allow the charter school to request a nonclassroom-based funding determination for their respective funding period.

The charter schools listed on Attachment 1 submitted a determination of funding request after the required deadline, thereby making the request retroactive. If the waivers are approved by the SBE, the charter schools may then submit the retroactive funding determination requests for consideration by the Advisory Commission on Charter Schools (ACCS) and the SBE.

## Authority for Waiver

*Education Code (EC)* Section 33050

## Recommendation

* Approval: Yes
* Approval with Conditions: No
* Denial: No

The California Department of Education (CDE) recommends that the SBE approve the requests by the LEAs to waive specific portions of 5 *CCR* Section 11963.6(a) and 5 *CCR* Section 11963.6(c) in order to allow the specified charter schools to submit determination of funding requests for the specified fiscal year. Approval of these waiver requests will also allow the SBE to consider the requests, which are retroactive. Without the waiver, the SBE may not consider the determination of funding request and the charter school’s nonclassroom-based average daily attendance (ADA) may not be funded for the affected fiscal year.

## Summary of Key Issues

*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 SBE. The CDE reviews a charter school’s determination of funding request and presents it for consideration to the ACCS, pursuant to relevant 5 *CCR*.

Pursuant to 5 *CCR* Section 11963.6(c), any determination of funding request approved by the SBE for an existing nonclassroom-based charter school must be prospective (not for the current year) and in increments of a minimum of two years and a maximum of five years in length. In addition, the funding determination request must be submitted by February 1 of the fiscal year prior to the year the funding determination will be effective.

**Demographic Information:** The charter schools listed on Attachment 1 are requesting to submit a determination of funding request after the filing deadline, thereby making the request retroactive.

Adelanto Elementary School District is requesting a waiver for Taylion High Desert Academy / Adelanto (Charter #1520), which serves a student population of 415 and is located in an urban area in San Bernardino County.

Butte County Office of Education is requesting a waiver for Come Back Butte (Charter #1811), which serves a student population of 65 and is located in a rural area in Butte County.

Imperial County Office of Education is requesting a waiver for Imperial Pathways Charter School (Charter #1815), which serves a student population of 122 and is located in a rural area in Imperial County.

Vacaville Unified School District is requesting a waiver for Ernest Kimme Charter Academy (Charter #1839), which serves a student population of 208 and is located in Vacaville, CA, in Solano County.

**Because this is a general waiver, if the State Board of Education 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 similar waiver requests regarding retroactive funding determination requests for charter schools that offer nonclassroom-based instruction.

## Fiscal Analysis

Approval of this waiver request will allow the SBE to consider the charter school’s determination of funding request. Subsequent approval of the determination of funding request by the SBE will allow the charter school’s nonclassroom-based ADA to be funded at the funding determination rate approved by the SBE for the specified fiscal year.

## Attachment(s)

* **Attachment 1:** Nonclassroom-Based Funding Determination Deadline Waivers (2 Pages)
* **Attachment 2:** Adelanto Elementary School District General Waiver Request 3-5-2018 (2 Pages) (Original waiver request is signed and on file in the Waiver Office.)
* **Attachment 3:** Butte County Office of Education General Waiver Request 11-5-2018 (2 Pages) (Original waiver request is signed and on file in the Waiver Office.)
* **Attachment 4:** Imperial County Office of Education General Waiver Request 1-7-2018 (2 Pages) (Original waiver request is signed and on file in the Waiver Office.)
* **Attachment 5:** Vacaville Unified School District General Waiver Request 4-5-2018 (2 Pages) (Original waiver request is signed and on file in the Waiver Office.)

# Attachment 1: Nonclassroom-Based Funding Determination Deadline Waivers

| Waiver Number | Local Educational Agency (Charter Authorizer) | Charter School and Charter Number | First Year of Operation | NCB Funding Determination Period of Request | Public Hearing and Local Board Approval Date | Public Hearing Advertisement | School Site Council/Advisory Committee Position |
| --- | --- | --- | --- | --- | --- | --- | --- |
| 3-5-2018 | Adelanto Elementary School District | Taylion High Desert Academy / Adelanto  1520 | 2013–14 | **Requested:**  July 1, 2017 to June 30, 2022  **Recommended:** July 1, 2017 to June 30, 2019 | 3/13/2018 | Board Agenda | Adelanto Elementary School District School Board  No objections |
| 11-5-2018 | Butte County Office of Education | Come Back Butte  1811 | 2016–17 | **Requested:**  July 1, 2017 to June 29, 2019  **Recommended:** July 1, 2017 to June 30, 2019 | 5/14/2018 | Hearing notice posted at multiple locations throughout Butte County | The Come Back Butte Charter Advisory Committee  No objections |
| 1-7-2018 | Imperial County Office of Education | Imperial Pathways Charter School  1811 | 2016–17 | **Requested:**  July 1, 2017 to June 29, 2019  **Recommended:** July 1, 2017 to June 30, 2019 | 5/14/2018 | Posting and online | School Site Council  No objections |
| 4-5-2018 | Vacaville Unified School District | Ernest Kimme Charter Academy  1839 | 2016–17 | **Requested:**  July 1, 2018 to June 30, 2019  **Recommended:** July 1, 2017 to June 30, 2019 | 5/3/2018 | Agenda posted at district office and district website | School District Board of Trustees  No objections |

Created by California Department of Education  
July 2018

# Attachment 2: Adelanto Elementary School District General Waiver Request 3-5-2018

**California Department of Education**

**WAIVER SUBMISSION - General**

CD Code: 3667587

Waiver Number: 3-5-2018

Active Year: 2018

Date In: 5/4/2018 10:37:57 AM

Local Education Agency: Adelanto Elementary School

Address: 11824 Air Expressway

Adelanto, CA 92301

Start: 7/1/2017

End: 6/30/2022

Waiver Renewal: No

Waiver Topic: Charter School Program

Ed Code Title: Nonclassroom-Based Funding

Ed Code Section: *CCR*, Title 5, Section 11963.6(c)

Ed Code Authority: 33050

*Education Code* or *CCR* to Waive: Code 47634.2 and 5 *CCR* 11963.6 (c): Any determination of funding request approved by the State Board of Education for an existing nonclassroom-based charter school from the 2006-07 fiscal year forward shall be prospective (not for the current year), in increments of a minimum of two years and a maximum of five years in length. Beginning with the 2007-08 fiscal year, nonclassroom-based charter schools that had a funding determination in the prior year must submit a funding determination request by February 1 of the fiscal year prior to the year the funding determination will be effective, when a new request is required under these regulations.

Outcome Rationale: Taylion High Desert Academy/Adelanto (THDAA) experienced recruiting challenges of highly qualified, certificated personnel and a high turnover in certificated personnel. THDAA fired the back office provider due to serious service deficiencies which affected fiscal management, planning & transparency. THDAA replaced the back office provider mid-year with an experienced firm who assisted the school with proper fiscal management & strategic planning. Lastly, FD due date for THDAA was posted as 02.01.18 at CDE website, in error. THDAA met the FD requirements for 16-17 thinking that was the date because of the CDE website posting (THDAA has documentation of the website posting and email from Bill Fong stating the error in the posting).

Student Population: 415

City Type: Urban

Public Hearing Date: 3/13/2018

Public Hearing Advertised: Board Agenda

Local Board Approval Date: 3/13/2018

Community Council Reviewed By: School Board at Adelanto Elementary School District

Community Council Reviewed Date: 3/13/2018

Community Council Objection: No

Community Council Objection Explanation:

Audit Penalty Yes or No: No

Categorical Program Monitoring: No

Submitted by: Dr. Fal Asrani

Position: Chief Academic Officer

E-mail: [fal\_asrani@aesd.net](mailto:fal_asrani@aesd.net)

Telephone: 760-246-8691 x10240

# Attachment 3: Butte County Office of Education General Waiver Request 11-5-2018

**California Department of Education**

**WAIVER SUBMISSION - General**

CD Code: 0410041

Waiver Number: 11-5-2018

Active Year: 2018

Date In: 5/16/2018 8:14:35 AM

Local Education Agency: Butte County Office of Education

Address: 1859 Bird St.

Oroville, CA 95965

Start: 7/1/2017

End: 6/29/2019

Waiver Renewal: No

Waiver Topic: Charter School Program

Ed Code Title: Nonclassroom-Based Funding

Ed Code Section: 47612.5 and 47634.2

Ed Code Authority: 33050

*Education Code* or *CCR* to Waive: 5 *CCR* Section 11963.6(c)

Outcome Rationale: We filed our December 2017 non classroom based funding form with unaudited actuals and did not understand we needed to also resubmit in February with audited actuals; we are requesting to submit our February report with audited actuals.

Student Population: 65

City Type: Rural

Public Hearing Date: 5/14/2018

Public Hearing Advertised: Hearing notice posted at multiple locations throughout Butte County

Local Board Approval Date: 5/14/2018

Community Council Reviewed By: The Come Back Butte Charter advisory committee (School site council).

Community Council Reviewed Date: 5/8/2018

Community Council Objection: No

Community Council Objection Explanation:

Audit Penalty Yes or No: No

Categorical Program Monitoring: No

Submitted by: Ms. Michelle Zevely

Position: Assistant Superintendent

E-mail: [mzevely@bcoe.org](mailto:mzevely@bcoe.org)

Telephone: 530-532-5757

Bargaining Unit Date: 05/08/2018

Name: Butte County Teachers Association

Representative: Rachel Frank

Title: President

Position: Neutral

Bargaining Unit Date: 05/08/2018

Name: CSEA #736

Representative: Cynde Landers

Title: President

Position: Neutral

# Attachment 4: Imperial County Office of Education General Waiver Request 1-7-2018

**California Department of Education**

**WAIVER SUBMISSION - General**

CD Code: 1310132

Waiver Number: 1-7-2018

Active Year: 2018

Date In: 7/2/2018 8:46:05 AM

Local Education Agency: Imperial County Office of Education

Address: 1398 Sperber Rd.

El Centro, CA 92243

Start: 7/1/2018

End: 6/29/2021

Waiver Renewal: No

Waiver Topic: Charter School Program

Ed Code Title: Nonclassroom-Based Funding

Ed Code Section: 47634.2 and *5 CCR* 11963 (c)

Ed Code Authority: 33050

*Education Code* or *CCR* to Waive: Request to waive portions of 5 *CCR* Section 11963.6(c), relating to the submission and action on determination of the funding requests regarding non-classroom based instruction for Imperial Pathways Charter School (#1815).

Outcome Rationale: Imperial Pathways CS opened in 2016 and has received 100% funding determinations for each of its first two years of operation. During the 2017-18, a funding determination update was required as a follow-up to the initial 100% two-year funding determination. However, a second funding determination was also required during the 2017-18 year for prospective funding for 2018-19 on. The school incorrectly concluded that the update application submitted in Fall 2017 was also the prospective application for 2018-19 on, and failed to submit the prospective application in Spring 2018 as required. We have maintained full compliance with all instructional expenditure requirements in each year of operation, including the 2016-17 audited fiscal year used as the basis for the current 2017-18 funding determination and the most recent 2017-18 year, and anticipate receiving 100% fnding once our waiver application can be accepted for review and approval by the SBE.

Student Population: 122

City Type: Rural

Public Hearing Date: 5/14/2018

Public Hearing Advertised: Posting and Online

Local Board Approval Date: 5/14/2018

Community Council Reviewed By: School Site Council

Community Council Reviewed Date: 6/29/2018

Community Council Objection: No

Community Council Objection Explanation:

Audit Penalty Yes or No: No

Categorical Program Monitoring: No

Submitted by: Ms. Amanda Brooke

Position: Deputy Superintendent

E-mail: [amanda.brooke@icoe.org](mailto:amanda.brooke@icoe.org)

Telephone: 760-312-6581

Bargaining Unit Date: 05/07/2018

Name: Imperial County Office of Ed.Teachers Association

Representative: Barbara McAndrews

Title: President

Position: Support

# Attachment 5: Vacaville Unified School District General Waiver Request 4-5-2018

**California Department of Education**

**WAIVER SUBMISSION - General**

CD Code: 4870573

Waiver Number: 4-5-2018

Active Year: 2018

Date In: 5/7/2018 2:20:02 PM

Local Education Agency: Vacaville Unified School District

Address: 401 Nut Tree Rd.

Vacaville, CA 95687

Start: 7/1/2018

End: 6/30/2019

Waiver Renewal: No

Waiver Topic: Charter School Program

Ed Code Title: Nonclassroom-Based Funding

Ed Code Section: 47612.5(3)(d)(1)

Ed Code Authority: Title 2, Elementary and Secondary Education

*Education Code* or *CCR* to Waive: Notwithstanding any other provision of law and except as provided in paragraph (1) of subdivision (e), a charter school that has an approved charter may receive funding for nonclassroom-based instruction only if a determination for funding is made pursuant to Section 47634.2 by the State Board of Education. The determination for funding shall be subject to any conditions or limitations the State Board of Education may prescribe.

Outcome Rationale: The district did not file the Nonclassroom-Based FDF that was due on or before 2/1/2018 using the 2016-17 audited financial information. When we filed the Nonclassroom-Based FDF in November we thought we were filling this requirement. We submitted data based on Unaudited Actuals and did not realize we had to re-submit with Audited Actuals until we recevied an email in April that we had missed the deadline for submittal. We called CDE immediately and discovered that the contact information had not been updated with our prior submission so the initial emails regarding the due date and missed filing were not received by Ernest Kimme Charter Academy for Independent Learning principal, Lois Chancellor.

Student Population: 208

City Type: Small

Public Hearing Date: 5/3/2018

Public Hearing Advertised: Agenda posted at district office and on district's website

Local Board Approval Date: 5/3/2018

Community Council Reviewed By: Board of Trustees

Community Council Reviewed Date: 5/3/2018

Community Council Objection: No

Community Council Objection Explanation:

Audit Penalty Yes or No: No

Categorical Program Monitoring: No

Submitted by: Ms. Vicky Rasmussen

Position: Administrative Secretary

E-mail: [vickyr@vacavilleusd.org](mailto:vickyr@vacavilleusd.org)

Telephone: 707-453-6121 x3121

Bargaining Unit Date: 04/25/2018

Name: Vacaville Teachers Association

Representative: Tracy Begley

Title: President

Position: Support