

California Department of Education

Executive Office

SBE-006 (REV. 1/2018)

Specific Waiver

# California State Board of Education July 2019 Agenda Item #W-01

## Subject

Request by **Mountain View Elementary School District** under the authority of California *Education Code* (*EC*) Section 41382, to waive portions of the *EC* Section 41376(a), (c), and (d) relating to class size penalties for grades one through three. Allowable class size average is 30 to one with no class larger than 32 for grades one to three. The district wishes to increase its individual class size average to 33 with the overall average class size of 30 to one.

## Waiver Number

* 6-4-2019

## Type of Action

Action, Consent

## Summary of the Issue(s)

The Mountain View Elementary School District 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 2018–19.

## Authority for Waiver

*EC* Section 41382

## Recommendation

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

The California Department of Education (CDE) recommends the California State Board of Education (SBE) approve the request by the district to waive the class size penalties for grades one through three 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.

The CDE also recommends that the SBE find that the class size penalty provisions of *EC* sections 41376 and 41378 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) funding 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 target funding for the

K–3 grade span by 10.4 percent. The LCFF target represents what a school district would receive if the state had the resources to fully fund LCFF. In order to receive this adjustment, school districts must meet one of the following conditions at each school site:

* 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. *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 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.

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. The district states that without an approved waiver, the core reading and math programs will be compromised by the three multilevel classes that would need to be created to avoid the penalty. Allowable class size average for grades one through three is 30 to one with no individual class larger than 32.

In 2018–19, the district had one first grade class that exceeded the maximum individual class size of 32 students by one student. The district’s average class size in grades one through three was 28.5. The district has experienced declining enrollment over the last three fiscal years; however, they expect enrollment to begin increasing due to a new housing development.

Because the excess enrollment occurred so late in the academic year, the district felt it would be more detrimental to alter the class than to have one excess student. The district will incur an estimated penalty of $32,575 for 2018–19 for exceeding the allowable class size. If the waiver is granted, it would eliminate the penalty. In the   
2019–20 fiscal year, the district expects to realign staff assignments to ensure a return to the statutory maximum class sizes.

## 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 <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/estimated penalty amounts should the waiver request be denied.

## Attachment(s)

* **Attachment 1:** Summary Table (1 page)
* **Attachment 2:** Mountain View Elementary School District Waiver 6-4-2019 (3 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** | **Penalty Without Waiver** | **Previous Waivers** |
| --- | --- | --- | --- | --- | --- | --- | --- |
| 6-4-2019 | Mountain View Elementary School District | **Requested:**  July 1, 2018, to June 30, 2019  **Recommended:** July 1, 2018, to June 30, 2019 | Overall average 30; no class larger than 33 | Overall average 30; no class larger than 33 | Local Board Approval  April 8, 2019 | $32,575 | N/A |

Created by California Department of Education   
May 2019

# Attachment 2: Mountain View Elementary School District Waiver 6-4-2019

**California Department of Education**

**WAIVER SUBMISSION – Specific**

CD Code: 3667785

Waiver Number: 6-4-2019

Active Year: 2019

Date In: 4/11/2019 12:20:04 PM

Local Education Agency: Mountain View Elementary School District

Address: 2585 S. Archibald Ave

Ontario, CA 91761

Start: 7/1/2018

End: 6/30/2019

Waiver Renewal: No

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: *EC* 41376 (a)(c) and (d) The Superintendent of Public Instruction, in computing apportionment 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.]

Outcome Rationale: The District has three year average of declining ADA. A housing development project has been underway for over year that when completed is expected to increase the size of the district significantly requiring additional school facilities for the community. However, as evidenced by the District’s continue decline in ADA, student growth from the new development area has been below expectations. January and February started to see an increase of students from the new housing development. The increase in students resulted in one 1st grade class size exceeding the allowable maximum by less than one student. Due to the timing, the ability to provide an additional teacher at the site was not practical and it was felt that the disruption to the majority of the class that would result in changing teachers so far into the academic and on the cusp of state testing created a greater detrimental effect on the students than an increased class size.

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 $32575 could be incurred by the district without this waiver.

Student Population: 2525

City Type: Suburban

Local Board Approval Date: 4/8/2019

Audit Penalty Yes or No: N o

Categorical Program Monitoring: No

Submitted by: Mr. Steven Rollins

Position: Chief Business Official

E-mail: [steven\_rollins@mtnview.k12.ca.us](mailto:steven_rollins@mtnview.k12.ca.us)

Telephone: 909-947-2205

Fax: 909-947-2291