

California Department of Education

Executive Office

SBE-005 (REV. 1/2018)

General Waiver

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

## Subject

Request by **Eureka Union School District** to waive portions of California *Education Code* Section 41376(b) and (e), relating to class size penalties for grades four through eight. The statutory maximum class size for grades four through eight is 30.8 to one. The District is requesting a maximum class size of 35 to one.

## Waiver Number

29-2-2019

## Type of Action

Action, Consent

## Summary of the Issue(s)

Request by the Eureka Union School District (District) 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 for the 2019–20 and 2020–21 fiscal years. The statutory class size maximum is the greater of the 1964 statewide average of 29.9 to one or the district’s 1964 average. The District’s class size maximum is 30.8 to one.

## Authority for Waiver

*EC* Section 33050

## Recommendation

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

The California Department of Education (CDE) recommends that the California State Board of Education (SBE) approve the waiver request by Eureka Union School District that the class size penalty for grades four through eight be waived provided that the class size average is not greater than the recommended maximum average shown on Attachment 1. Should the District exceed this limit, the class size penalty would be calculated as required by statute. 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.

## 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 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 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 size 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. *EC* Section 33051 allows the SBE to approve an exemption to this penalty under the general waiver authority.

In September 2014, the SBE adopted Policy #14-02, which outlines required information districts should provide with their waiver requests for fiscal years commencing with 2014–15.

**District’s Request**

The District is requesting that the SBE waive portions of *EC* Section 41376(b) and (e), for fiscal years 2019–20 and 2020–21, which provide a penalty when the District exceeds the class sizes noted above and on Attachment 1. Without this waiver, the District estimates the potential annual penalty would be $889,000. The District provided the information required by the SBE’s Policy #14-02. According to the District, due to their financial condition and need to correct a structural deficit, the District has a need to increase class sizes in grades four through six to maintain fiscal solvency.

The District has been experiencing declining enrollment and has a low population of unduplicated students. Limited funding has not kept pace with increased expenditures, such as STRS/PERS pension contribution increases, salary step/column increases, modest negotiated salary increases, increased special education services costs, and program improvements determined through the Local Control Accountability Plan (LCAP) stakeholder process.

Although lower class sizes are a priority of the District, with past budget reductions in areas such as administrative support, the District has recently been forced to identify reductions in areas that impact the classrooms. The District is anticipating negotiating with the certificated bargaining unit for flexibility in transitional kindergarten (TK) through three class size limits in excess of the 24:1 ratio. Until that agreement is reached, there is a need to focus class size increases in grades four through six in order to receive the substantial kindergarten through grade three grade span adjustment under the LCFF. This waiver would allow the District time to negotiate flexibility in the TK through three class sizes.

The LCAP being developed for 2019–20 is increasing focus and limited resources on the academic goals of the District with more targeted consideration of the unduplicated students (socio-economically disadvantaged, English Learner, and Foster Youth). Although class sizes will increase, all sites have identified Single Plans for Student Achievement that target improvement in English Language Arts, Math, and Science. To assist at-risk students, the District utilized LCFF supplemental funds to provide a variety of intervention programs.

The District anticipates returning to statutory class size maximums in 2021–22. The CDE recommends that the class size penalties for grades four through eight be waived for fiscal years 2019–20 and 2020–21, provided the class size average is not greater than the recommended maximum average shown on Attachment 1. Should the District exceed this limit, the class size penalty would be calculated as required by statute.

**Demographic Information:** The District has a student population of 3,355 and is located in a suburban area in Placer 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** <https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=EDC&sectionNum=33051>.

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

Before the September 2009 board meeting, no class size penalty waivers had been submitted since 1999. Due to the state budget crisis and resulting significant reductions in funding, the SBE began receiving a large number of waiver requests beginning in 2009. As a result, the SBE has 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 for fiscal years commencing with 2014–15. A copy of the policy is available at <https://www.cde.ca.gov/re/lr/wr/waiverpolicies.asp>, under Class Size Penalties for Grades Four through Eight. Although funding increases for the LCFF have significantly reduced the number of class size penalty waivers submitted in recent years, the SBE has approved all waivers submitted since fiscal year 2014–15.

## Fiscal Analysis (as appropriate)

See Attachment 1 for the estimated penalty amount should the waiver request be denied.

## Attachment(s)

* **Attachment 1:** Summary Table (1 page)
* **Attachment 2:** Eureka Union School District General Waiver 29-2-2019 (7 pages). (Original waiver request is signed and on file in the Waiver Office.)

# Attachment 1: Summary Table

California *Education Code (EC)* Section 41376(b) and (e).

| Waiver Number | District and County/District Code | Period of Request | Statutory Class Size Maximum | District’s Request | CDE Recommended (New Maximum) | Bargaining Unit, Representative Consulted, Date, and Position | Local Board Approval Date | Potential Annual Penalty Without Waiver |
| --- | --- | --- | --- | --- | --- | --- | --- | --- |
| 29-2-2019 | Eureka Union School District  31-66829 | **Requested:**  July 1, 2019  to  June 30, 2021  **Recommended:** July 1, 2019  to  June 28, 2021 | 30.8 | 35.0 | 35.0 | Eureka Union Teachers Association,  Kelly Lewis EUTA President  2/4/19  Support | 2/14/19 | $889,000 Each Year |

Created by California Department of Education  
March 2019

# Attachment 2: Eureka Union School District General Waiver 29-2-2019

CD Code: 3166829

Waiver Number: 29-2-2019

Active Year: 2019

Date In: 2/28/2019 10:57:26 AM

Local Education Agency: Eureka Union School District

Address: 5455 Eureka Rd.

Granite Bay, CA 95746

Start: 7/1/2019

End: 6/30/2021

Waiver Renewal: No

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

*Education Code* or *CCR* to Waive: Authority for the waiver is 33050

Ed Code to waive: 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.]

Items (b) and (e) from the preceding section have strike-outs indicated with [ ] which indicate the exact language being waived and is still valid.

Outcome Rationale: EUSD has consistently been a top-performing elementary school district in the surrounding region, and takes pride in providing high quality education, intervention, enrichment, and safe learning environment for its students. However, EUSD has been in declining and unstable enrollment for several years and has a very low Unduplicated student count, which limits LCFF funding as well as eligibility for various grants that are targeted to serve districts with higher Unduplicated counts. Limited funding has not kept pace with increased expenses, such as STRS/PERS pension contribution increases, salary step/column increases, modest negotiated salary increases, increased costs of providing Special Ed services, and program improvements determined through the LCAP stakeholder process. The imbalance between revenue and expenses has resulted in ongoing deficit spending, requiring continual identification of budget reductions and other means to correct the deficit. It is a priority of EUSD to direct reductions away from the classroom, but after several years of the reduction process focusing on operational efficiencies, support and administrative services, and enrichment, raising class sizes will likely be unavoidable in the upcoming years. The district anticipates negotiating with the certificated bargaining unit to allow TK-3 class size limits in excess of the LCFF/GSA ratio of 24:1. Until that agreement is reached, the District may need to focus class size changes in Grades 4-8 in order to avoid the substantial GSA penalty. Current average class sizes in Grades 4-6 is 30.03 and Grades 4-8 is 26.36. Based on potential increases ranging from 32 to 35, the estimated penalty could be between $445,000 and $889,000, if the waiver is not approved. Unfortunately, if the waiver is not approved and there is not an option to raise class sizes, there would be a potential for substantial negative impact to multiple programs that have been successful in intervention and enrichment, particularly in the areas of social/emotional wellbeing, Math, ELA and Science.

Student Population: 3355

City Type: Suburban

Public Hearing Date: 2/14/2019

Public Hearing Advertised: Public posting, school posting, and district website posting

Local Board Approval Date: 2/14/2019

Community Council Reviewed By: School Administration and Cabinet (numerous conversations - most recent date indicated below)

Community Council Reviewed Date: 1/15/2019

Community Council Objection: No

Community Council Objection Explanation:

Audit Penalty Yes or No: No

Categorical Program Monitoring: No

Submitted by: Ms. Melody Glaspey

Position: Chief Business Officer

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Bargaining Unit Date: 02/04/2019

Name: Eureka Union Teachers Assoc (EUTA)

Representative: Kelly Lewis

Title: EUTA President

Position: Support

**Eureka Union School District**

**Waiver Request for Class Size Penalty**

**Grades 4-8**

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 in reading and mathematics. (Required see EC 41382) The district without this waiver could incur a potential penalty of $889,000 each year.

**1. Discussion of the extraordinary or atypical circumstances that prevent the school district from meeting the class size thresholds. If the reasons are financial, the district should explain why LCFF funds could not be used to reduce class sizes.**

The Eureka Union School District has been focused on maintaining its fiscal solvency and correcting a structural deficit. The District’s goal is to balance the budget as soon as possible, eliminating a history of deficit spending and using one-time money to support on-going expenditures – but in a thoughtful manner that does not adversely affect the academic program. The District is faced with this challenge due to declining enrollment, low population of Unduplicated students (14%) generating LCFF Supplemental funding, and minimal federal funding. Since the District and Board have historically had lower class sizes as high priority, past budget reductions have centered around administrative, support, and operational services while maintaining class sizes below the statutory maximum, as well as maintaining enrichment and intervention services. Despite these priorities, the District has been recently forced to identify reductions in all LCAP goal areas – Core Instruction (materials, textbooks), Intervention and Spec Ed, Enrichment (sports), Support Services (administration, maintenance, technology and transportation) and Facilities/Learning Envirornment. In 17-18, approximately $885,000 in reductions were identified, and in 16-17, $695,000 in reductions were identified. (See attached reductions lists (available upon request). The District may soon be faced with exceeding class sizes in grades 4-6 to meet its obligations and to maintain fiscal solvency.

**2. Demonstration that the increased class size is consistent with the school district’s goals and actions in the Local Control and Accountability Plan (LCAP).**

The LCFF funds have been applied to retain current educational programs in the District as outlined in the LCAP. Class size reduction has consistently been one of the main priorities for the District and our staff and community continue to work together to target increased student achievement and through reduced class size and MTSS (Multi-Tiered System of Support). Our District recognizes the need to support the “whole child” through intervention, enrichment, and programs that promote social-emotional wellbeing and safe learning environments. All of these priorities are reflected in the District’s five LCAP goals, determined through stakeholder input. The LCAP being currently developed for 2019-20 is increasing focus and limited resources on the academic goals of the District, with a more targeted consideration of the Unduplicated students (socio-economically disadvantaged, English Learner, and Foster Youth) and their needs. The Superintendent and Cabinet are conducting stakeholder input meetings at each school site, involving staff, parents, community, and students. The LCAP goals strive to provide needed support inside and outside of the classroom to ensure student success and increased learning in areas identified through the CAASPP testing and California Dashboard. The District continues to allocate LCFF/Supplemental funding in academic, social-emotional and targeted sub group assistance in the form of Instructional Aides/Para Educators, Intervention Teachers (Math, English Language Arts, English Learner support), supplemental curriculum materials, before and after school hourly/tutoring programs, summer Math/Science camp programs, counseling support, etc. There is also an increased effort and requirement for schools to reflect priorities of the LCAP within their individual School Plans for Student Achievement.

**3. Explanation of how the district is addressing the educational needs of pupils to mitigate potential consequences of increased class sizes.**

Eureka Union School District continues to promote increased student achievement, even in times of financial difficulties. Certificated and classified staffs continue to receive high quality professional development and to collaborate on best practices for student learning, with a focus on MTSS methods. Even though there are higher class size averages in grades 4-6 than the District’s 1964 average of 30.8, all sites have collaborated with their School Site Councils and staff to write Single Plans for Student Achievement that center on targeting improvement in English Language Arts, Math, and NGSS Science. Decisions have been guided by review of John Hattie’s meta study ranking of academic influences and their comparative effectiveness, finding that class size ranks substantially lower than other factors leading to student success.

The District recognizes the need to support Special Ed as well as General Ed students with behavioral support and continues to use LCFF funds to train staff, develop processes for referrals, support the Student Study Team Process at school sites, and promote collaboration between Special Ed and General Ed staff that will also will assist with increased learning opportunities for children.

To assist students at-risk, the District utilized LCFF/Supplemental monies to provide a variety of intervention programs. Some of these programs include tutoring before/after school, summer intervention and enrichment, availability of Counselors, and Parent as Educator engagement programs to support social-emotional wellness.

**4. Remediation plan that describes how and when the district will return to the statutory levels.**

Eureka Union School District’s statutory Gr 4-8 class size average is 30.8, and is requesting an increase to 35. In 2019-20, Grades 4-6 are projected to be at an average of 31.34, with overall Grades 4-8 projected at only 27.37, partially due to block scheduling in Jr. High. However, with the ongoing need to correct the structural deficit, it is possible these ratios may need to increase to avoid dismantling of the valuable intervention programs. Currently, the Grades TK-3 class sizes remain just under 24:1 as the District will be negotiating flexibility in these grades. The District is anticipating returning to statutory levels after the deficit is resolved, projected to be in 2020-21, and is requesting the waiver to be effective for 2019-20 and 2020-21. The District will continue to review and control costs outside of the classrooms by monitoring expenses of materials/supplies, contracted services and efficiencies within support/administrative functions.

**5. Statement by the district that the class size provisions prevents the development of more effective educational programs to improve instruction in reading and mathematics.**

Despite financial difficulties and declining enrollment, the students of Eureka Union School District continue to make academic progress mastering grade level standards in English Language Arts and Mathematics as demonstrated by District CAASPP and California Dashboad results. With continued analysis of multiple measures of data, and collaboration between parents, teachers, classified staff and administration, all schools within the district have worked to increase scores from baselines already indicating high levels of success. Much of this success is attributable to targeted intervention. John Hattie’s meta study ranking of academic influences and their comparative effectiveness, determined that class size ranks substantially lower than other factors leading to student success.

**6. An estimate of the financial impact if the class size penalty was assessed by the CDE.**

It is estimated that if class sizes increased to 35, the potential penalty without waiver could be as high as $885,000 – more than EUSD currently receives for LCFF/Supplemental intervention.

**7. The requested new overall class size averages.**

The District is requesting a class size of 35:1 in Grades 4-8.

**8. The position of the exclusive representative of employees, if any, as provided in Chapter 10.7 of Division 4 of Title 1 of the Government Code. If the representative is opposed, include a written summary of any objections to the request.**

The representatives of employees supported the District on this wavier. There was no dissent from the leadership or the membership of the union.