

California Department of Education

Executive Office

SBE-006 (REV. 1/2018)

Specific Waiver

# California State Board of Education September 2020 Agenda Item #W-01

## Subject

Requests by the **Maple 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 district class size average is 30 to one with no individual class larger than 32 students for grades one to three. The district is requesting to increase its individual class size for grades one to three to 33 students.

## Waiver Numbers

* 8-6-2020

## 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 2019–20.

## 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 Maple ESD district 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* 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) 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. 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. Allowable class size average for grades one through three is 30 to one with no individual class larger than 32.

Maple ESD is a single school district with one teacher per grade level. In fiscal year 2019–20, the district’s third grade class exceeded the maximum individual class size of 32 students by one student. The district had three third grade students unexpectedly move into the district’s boundaries at the beginning of the school year after classes had already been established. Rather than shift existing students to a new class, the district included the three students in the existing class. This class had an instructional aide for a minimum of two hours per day and also pull-out reading and math intervention by certificated and trained classified staff. The district’s average class size for grades one through three for fiscal year 2019-20 was 31. The district is planning to return classes to the statutory level at the beginning of the 2020-21 school year.

The district will incur a penalty of $23,106 for fiscal year 2019–20 if this waiver is not granted.

## 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 requests be denied.

## Attachment(s)

* **Attachment 1:** Summary Table (1 page)
* **Attachment 2:** Maple Elementary School District Waiver Request 8-6-2020 (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** |
| --- | --- | --- | --- | --- | --- | --- | --- | --- |
| 8-6-2020 | Maple Elementary School District | **Requested:** August 1, 2019, to August 1, 2020  **Recommended:** July 1, 2019, to June 30, 2020 | Overall average 33; no class larger than 33 | Overall average 31; no class larger than 33 | Local Board Approval  June 11, 2020 | Maple Teachers Association,  Rocky Salcido, Union President,  Support  June 5, 2020 | $23,106 | None |

Created by California Department of Education   
June 2020

# Attachment 2: Maple Elementary School District Waiver Request 8-6-2020

**California Department of Education**

**WAIVER SUBMISSION – Specific**

CD Code: 1563610

Waiver Number: 8-6-2020

Active Year: 2020

Date In: 6/13/2020 8:45:52 PM

Local Education Agency: Maple Elementary

Address: 29161 Fresno Ave.

Shafter, CA 93263

Start: 8/1/2019

End: 8/1/2020

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: 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]

Grades four through eight—in the current fiscal year, average number of students per teacher not to exceed the greater of 29.9 (the statewide average number of students per teacher in 1964) or the district’s average number of students per teacher in 1964.

Outcome Rationale: Maple School District is a single-school district in a rural setting in Central California. We typically limit our class sizes in order to meet these guidelines. However this year brought some unique circumstances. We are a District of Choice which means that many of our students come from outside of our boundaries. After we had already filled our classes and were ready to start the year we had families move into the District with third graders and then also had a grandmother living in the boundaries to gain temporary custody of her grandchildren. This situation created a large third grade class. 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 $23100 could be incurred by the district without this waiver.

Student Population: 292

City Type: Rural

Local Board Approval Date: 6/11/2020

Audit Penalty Yes or No: No

Categorical Program Monitoring: No

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: 06/03/2020

Name: Maple Teachers Association

Representative: Rocky Salcido

Title: Union President/8th grade teacher

Phone: 661-746-4439

Position: Support

Comments: