

California Department of Education

Executive Office

SBE-005 (REV. 1/2018)

General Waiver

# California State Board of Education July 2021 Agenda Item #W-01

## Subject

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

## Waiver Numbers

* Monterey County Office of Education 7-4-2021
* Tracy Joint Unified School District 2-4-2021

## Type of Action

Action, Consent

## Summary of the Issue

Two 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 in order to allow the charter schools to request a nonclassroom-based funding determination after the regulatory deadline.

The charter schools listed in Attachment 1 failed to submit a determination of funding request by the regulatory deadline, thereby making the requests retroactive. If the waivers are approved by the SBE, the SBE may then act on the schools’ retroactive funding determination requests.

## Authority for Waiver

California *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 two LEAs to waive portions of 5 *CCR* Section 11963.6(c) relating to the submission deadline in order to allow the charter schools listed in Attachment 1 to submit a retroactive determination of funding request for the specified fiscal years.

Approval of these waiver requests will allow the SBE to consider the retroactive determination of funding requests from these schools at a separate meeting. A retroactive request without an approved waiver may not be considered by the SBE, and a charter school’s nonclassroom-based average daily attendance (ADA) may not be funded for the affected fiscal years.

## 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 Advisory Commission on Charter Schools, 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. The funding determination request must be submitted by February 1 of the fiscal year prior to the year the funding determination will be effective.

The charter schools listed in Attachment 1 are requesting to submit determination of funding requests after the submission deadline, thereby making the requests retroactive.

### Open Door Charter (charter #2091)

The Monterey County Office of Education, on behalf of Open Door Charter, has requested for a portion of 5 *CCR* Section 11963.6(c) relating to the submission deadline to be waived. The Monterey County Office of Education cites the reason the charter school missed the submission deadline as being the school was unaware that it was required to submit the nonclassroom-based funding request.

### Tracy Independent Study Charter (charter #2090)

The Tracy Joint Unified School District, on behalf of Tracy Independent Study Charter, has requested for a portion of 5 *CCR* Section 11963.6(c) relating to the submission deadline to be waived. The Tracy Joint Unified School District cites the reason the charter school missed the submission deadline as being the school was unaware that it was required to submit the nonclassroom-based funding request.

### Demographic Information

The Monterey County Office of Education is requesting a waiver for Open Door Charter, which serves a student population of 40 and is located in an urban city in Monterey County.

The Tracy Joint Unified School District is requesting a waiver for Tracy Independent Study Charter, which serves a student population of 229 and is located in a suburban city in San Joaquin County.

**Because this is a general waiver, if the SBE decides to deny the waiver, it must cite one of the seven reasons in *EC* Section 33051(a), which is 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 these waiver requests will allow the SBE to consider the charter schools’ determination of funding requests at a separate meeting. Approval of the determination of funding requests by the SBE will allow the charter schools’ nonclassroom-based ADA to be funded at the specified percentages and for the specified fiscal years.

## Attachments

* **Attachment 1:** Nonclassroom-Based Funding Determination Deadline Waiver (1 Page)
* **Attachment 2:** Monterey County Office of Education General Waiver Request 7-4-2021 (2 Pages). (Original waiver request is signed and on file in the Waiver Office.)
* **Attachment 3:** Tracy Joint Unified School District General Waiver Request 2-4-2021 (2 Pages). (Original waiver request is signed and on file in the Waiver Office.)

# Attachment 1: Nonclassroom-Based Funding Determination Deadline Waiver

California *Education Code* sections 47612.5 and 47634.2

| Waiver Number | Local Educational Agency (Charter Authorizer) | Charter School and Charter Number | First Year of Operation | Period of Request | Public Hearing and Local Board Approval Date | Public Hearing Advertisement | School Site Council/Advisory Committee Position |
| --- | --- | --- | --- | --- | --- | --- | --- |
| 7-4-2021 | Monterey County Office of Education | Open Door Charter  2091 | 2020–21 | **Requested:** July 1, 2021 to June 30, 2022  **Recommended:** July 1, 2021 to June 30, 2022 | **Hearing:** 4/14/2021  **Approval:** 4/14/2021 | Monterey County Office of Education and Alternative Education Buildings and School’s Web Page | School Site Council  **No objections** |
| 2-4-2021 | Tracy Joint Unified School District | Tracy Independent Study Charter  2090 | 2020–21 | **Requested:** July 1, 2021 to June 30, 2022  **Recommended:** July 1, 2021 to June 30, 2022 | **Hearing:** 3/23/2021  **Approval:** 3/23/2021 | District Web Site and Board Meeting Agenda | Tracy Joint Unified School District Board and Tracy Independent Study Charter School Advisory Committee  **No objections** |

Created by California Department of Education  
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# Attachment 2: Monterey County Office of Education General Waiver Request 7-4-2021

**California Department of Education**

**WAIVER SUBMISSION - General**

CD Code: 2710272

Waiver Number: 7-4-2021

Active Year: 2021

Date In: 4/16/2021 11:47:42 AM

Local Education Agency: Monterey County Office of Education

Address: 901 Blanco Cir.

Salinas, CA 93912

Start: 7/1/2021

End: 6/30/2022

Waiver Renewal: N

Previous Waiver Number:

Previous SBE Approval Date:

Waiver Topic: Charter School Program

Ed Code Title: Nonclassroom-Based Funding

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

Ed Code Authority: 33050

*Education Code* or *CCR* to Waive: (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: Monterey County Office of Education is requesting, on behalf of Open Door Charter School, that the California State Board of Education waive a portion of the *CCR*, Title 5 Section 11963.6, in order to allow the charter school to request a nonclassroom-based funding determination for the respective time period, 7/1/2021-6/30/2022. We were not aware that we missed the deadline for filing until after the deadline date.

Student Population: 40

City Type: Urban

Public Hearing Date: 4/14/2021

Public Hearing Advertised: Physically posted at the Monterey County Office of Education and Alternative Education buildings and posted on the Open Door Charter webpage.

Local Board Approval Date: 4/14/2021

Community Council Reviewed By: School Site Council

Community Council Reviewed Date: 3/25/2021

Community Council Objection: N

Community Council Objection Explanation:

Audit Penalty Yes or No: N

Categorical Program Monitoring: N

Submitted by: Mr. Chris Devers

Position: Senior Director

E-mail: [cdevers@montereycoe.org](mailto:cdevers@montereycoe.org)

Telephone: 831-784-4224

Fax: 831-758-9410

Bargaining Unit Date: 03/19/2021

Name: Monterey County Office of Education Teachers Assoc

Representative: Melanie Crall

Title: President

Phone: 831-755-0300

Position: Support

Comments:

# Attachment 3: Tracy Joint Unified School District General Waiver Request 2-4-2021

**California Department of Education**

**WAIVER SUBMISSION - General**

CD Code: 3975499

Waiver Number: 2-4-2021

Active Year: 2021

Date In: 4/2/2021 3:54:23 PM

Local Education Agency: Tracy Joint Unified

Address: 1875 West Lowell Ave.

Tracy, CA 95376

Start: 7/1/2021

End: 6/30/2022

Waiver Renewal: N

Previous Waiver Number:

Previous SBE Approval Date:

Waiver Topic: Charter School Program

Ed Code Title: Nonclassroom-Based Funding

Ed Code Section: 5 *CCR* Nonclassroom-Based Funding 11963.6 (c)

Ed Code Authority: 33050

*Education Code* or *CCR* to Waive: Tracy Unified School District (TUSD) on behalf of Tracy Independent Study Charter School (TISCS) requests to waive portions of the *California Code of Regulations*, Title 5, Section 11963.6 (c), relating to the submission and action on determination of funding requests regarding non-classroom based instruction.

Outcome Rationale: This waiver request is necessary as this is TISCS first year of operation and they were unaware that a non-classroom based (NCB) funding determination form was expected to be completed and turned in by February 1, 2021.

Student Population: 229

City Type: Suburban

Public Hearing Date: 3/23/2021

Public Hearing Advertised: The hearing was advertised on the TUSD district website and board meeting agenda 72 hours in advance.

Local Board Approval Date: 3/23/2021

Community Council Reviewed By: Tracy Unified School Board and TISCS Advisory Committee

Community Council Reviewed Date: 3/22/2021

Community Council Objection: N

Community Council Objection Explanation:

Audit Penalty Yes or No: N

Categorical Program Monitoring: N

Submitted by: Ms. Tania Salinas

Position: Director of State and Federal Programs

E-mail: [tsalinas@tusd.net](mailto:tsalinas@tusd.net)

Telephone: 209-830-3210 x1051

Fax:

Bargaining Unit Date: 04/01/2021

Name: California School Employees Association

Representative: Carl Walters

Title: Labor Relations Representative

Phone: 209-598-5273

Position: Neutral

Comments:

Bargaining Unit Date: 03/24/2021

Name: Tracy Educators Association

Representative: Jacqui Nott

Title: President, Tracy Educators Association

Phone: 209-814-2676

Position: Support

Comments: