

California Department of Education

Executive Office

SBE-005 (REV. 1/2018)

General Waiver

# California State Board of Education September 2021 Agenda Item #W-11

## Subject

Requests by **four local educational agencies** to waive *California Code of Regulations,* Title 5, Section 3043(d), which requires a minimum of 20 school days for an extended school year (summer school) for students with disabilities.

## Waiver Number

* Amador County Unified School District 9-5-2021
* Kings County Office of Education 10-5-2021
* Mariposa County Office of Education 5-5-2021
* Sweetwater Union High School District 8-5-2021

## Type of Action

Action, Consent

## Summary of the Issue(s)

Four local educational agencies (LEAs) request to provide instruction in fewer than the 20 school days required by law for extended school year (ESY). Please note that all of these waivers are retroactive as the ESY programs have already taken place. Each LEA’s alternate ESY schedule includes the minimum number of hours required for ESY, but in fewer days.

ESY is the term for the education of students with disabilities “between the close of one academic year and the beginning of the next,” similar to a summer school. The ESY must be provided for each student with a disability whose individualized education program (IEP) requires it. LEAs may request a waiver to provide an ESY program for fewer days than the traditional mode.

## Authority for Waiver

*Education Code (EC)* Section 33050

## Recommendation

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

The California Department of Education (CDE) recommends the State Board of Education (SBE) approve the requests from 4 LEAs to provide ESY services for fewer than 20 days with the following conditions, which have already been met: 1) school day hours are consistent with those provided to the general education enrollment at the same grade level unless an IEP specifies otherwise; and, 2) special education and related services offered during the ESY period must be comparable in standards, scope, and quality to the special education program offered during the regular academic year as required by *California Code of Regulations* (*CCR*), Title 5, Section 3043.

## Summary of Key Issues

### Amador County Unified School District (ACUSD) 9-5-2021

The ACUSD is requesting a waiver to modify the required Special Education extended school year from 20 days to 15 days. ACUSD ESY will utilize a 15-day schedule of 5 hours and 20 minutes per day, totaling 80 hours of in-person instruction. Operating under this model provides for the equivalent number of instructional minutes for students, while maximizing attendance and staffing options.

The ACUSD stated operating under this model provides the equivalent number of instructional minutes for students, while maximizing attendance and staffing options. ACUSD operates a modified year-round schedule.

Demographic Information: The ACUSD has a student population of 3,972 and is located in a rural area in Amador county.

### Kings County Office of Education (KCOE) 10-5-2021

The KCOE requested to provide ESY services utilizing a 15-day schedule of 5 hours and 30 minutes per day totaling 82 hours and 30 minutes of program time. The ESY schedule provided more program time than a 20-day ESY schedule.

The KCOE states that a 15-day ESY would allow for an increase in total instructional time and provides the opportunity for more meaningful activities during the longer day. In years past, they have seen great success with this modified ESY.

Demographic Information: The KCOE has a student population of 420 and is located in a rural area in Kings county.

### Mariposa County Office of Education (MCOE) 5-5-2021

The MCOE requested to provide ESY services utilizing a 13-day schedule of 6 hours and 15 minutes per day, totaling 81 hours and 15 minutes of program time. The ESY schedule provided more program time than a 20-day ESY schedule.

The MCOE stated the proposed program helps to align better with a typical school day and result in substantial savings in transportation, janitorial and food service costs.

Demographic Information: The MCOE has a student population of 40 and is located in a rural area in Mariposa county.

### Sweetwater Union High School District (SUHSD) 8-5-2021

The SUHSD requested to provide ESY services utilizing a 15-day schedule of 5 hours and 30 minutes per day totaling 82 hours and 30 minutes of program time. The ESY schedule provided more program time than a 20-day ESY schedule.

The SUHSD stated the proposed program will allow the district to provide the same 15-day ESY as the general summer session.

Demographic Information: The SUHSD has a student population of 39,904 and is located in an urban area in San Diego county.

**Because these are general waivers, if the SBE decides to deny the waivers, it must cite one of the seven reasons in** ***EC* Section 33051(a), available on the California Legislation Information web page at** <http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=33051.&lawCode=EDC>.

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

In the past, the SBE approved waivers to allow school districts to provide the required minimum amount of instruction in fewer days during the ESY for students with disabilities.

ESY is the term for the education of students with disabilities “between the close of one academic year and the beginning of the next,” similar to a summer school. The ESY must be provided for each student with a disability whose IEP requires it. LEAs may request a waiver to provide an ESY program for fewer days than the traditional mode.

## Fiscal Analysis (as appropriate)

There is no statewide fiscal impact of waiver approval. However, in order for an LEA to qualify for average daily attendance (ADA) revenues for extended year pupils, LEAs must comply with the ADA requirements in *CCR*, Title 5, Section 3043(f).

## Attachment(s)

* **Attachment 1:** Summary Table (3 pages)
* **Attachment 2:** Amador County Unified School District General Waiver Request 9-5-2021 (3 pages). (Original waiver request is signed and on file in the Waiver Office.)
* **Attachment 3:** Kings County Office of Education General Waiver Request 10-5-2021 (2 pages). (Original waiver request is signed and on file in the Waiver Office.)
* **Attachment 4:**  Mariposa County Office of Education General Waiver Request 5-5-2021 (2 pages). (Original waiver request is signed and on file in the Waiver Office.)
* **Attachment 5:** Sweetwater Union High School District General Waiver Request 8-5-2021 (2 pages). (Original waiver request is signed and on file in the Waiver Office.)

# Attachment 1: Summary Table

*California Code of Regulations,* Title 5, Section 3043(d)

| Waiver Number | Local Educational Agency (LEA) | Period of Request | LEA’s Request | CDE Recommended | Bargaining Unit Representatives Consulted, Date and Position | Local Board and Public Hearing Approval | Penalty Without Waiver |
| --- | --- | --- | --- | --- | --- | --- | --- |
| 9-5-2021 | Amador County Unified School District | **Requested:**  June 7, 2021, to July 25, 2021  **Recommended:**  June 7, 2021, to July 25, 2021 | To provide a 15-day extended school year (ESY) program instead of a 20-day ESY program | Approval with conditions to allow the local educational agency (LEA) to provide a  15-day ESY program instead of a 20-day ESY program | Amador County Teachers Association,  Scott Hunkins, President, 5/6/2021,  Support  California School Employees Association,  Theresa Cramer, President, 5/6/2021,  Support | Local Board 4/28/2021  Public Hearing 6/7/2021 | The LEA may not provide a 15-day ESY program |
| 10-5-2021 | Kings County Office of Education | **Requested:**  June 10, 2021, to June 30, 2021  **Recommended:**  June 10, 2021, to June 30, 2021 | To provide a 15-day ESY program instead of a 20-day ESY program | Approval with conditions to allow the LEA to provide a  15-day ESY program instead of a 20-day ESY program | California School Employees Association, Amber Pereira, President, 2/1/2021,  Support | 2/10/2021 | The LEA may not provide a 15-day ESY program |
| 5-5-2021 | Mariposa County Office of Education | **Requested:**  June 14, 2021, to July 2, 2021  **Recommended:**  June 14, 2021, to July 2, 2021 | To provide a 13-day ESY program instead of a 20-day ESY program | Approval with conditions to allow the LEA to provide a  13-day ESY program instead of a 20-day ESY program | California School Employees Association Mariposa Chapter 609, John Stewart, President, 4/1/2021, Support  Mariposa County Teachers Association, Iris Wellcome, President, 4/2/2021, Support | 4/15/2021 | The LEA may not provide a 13-day ESY program |
| 8-5-2021 | Sweetwater Union High School District | **Requested:**  June 7, 2020, to June 25, 2020  **Revised:**  June 7, 2021, to June 25, 2021  **Recommended:**  June 7, 2021, to June 25, 2021 | To provide a 15-day ESY program instead of a 20-day ESY program | Approval with conditions to allow the LEA to provide a  15-day ESY program instead of a 20-day ESY program | Joint Special Education Committee, Kimberly Edmonds, Special Education Representative, 1/20/2021, Support | 4/26/2021 | The LEA may not provide a 15-day  ESY program |

Created by the California Department of Education, July 2021

# Attachment 2: Amador County Unified School District General Waiver Request 9-5-2021

**California Department of Education**

**WAIVER SUBMISSION - General**

CD Code: 0373981

Waiver Number: 9-5-2021

Active Year: 2021

Date In: 5/25/2021 8:30:50 AM

Local Education Agency: Amador County Unified

Address: 217 Rex Ave.

Jackson, CA 95642

Start: 6/7/2021

End: 6/25/2021

Waiver Renewal: N

Previous Waiver Number:

Previous SBE Approval Date:

Waiver Topic: Special Education Program

Ed Code Title: Extended School Year (Summer School)

Ed Code Section: *CCR*, Title 5, Section 3043(d)

Ed Code Authority: 33050

*Education Code* or *CCR* to Waive: *Education Code* or *CCR* to Waive: *CCR* Title 5, section 3040 (d), requires minimum of 20 school days of attendance for an extended school year (Summer School) for special education students.

Outcome Rationale: Amador Unified School District (ACUSD) is requesting a waiver to modify the required Special Education extended school year from 20 days to 15 days. ACUSD ESY will utilize a 15-day schedule of 5 hours per day, totaling 75 hours of in-person instruction with 5 hours of additional asynchronous instruction for Kindergarten thru 12th grade. Operating under this model provides for the equivalent number of instructional minutes for students , while maximizing attendance and staffing options.

ACUSD operates a modified year-round schedule. It is difficult to have families attend a 20-day ESY program and als difficult to staff a 20-day ESY program, as it impedes families and staff’s ability to take summer vacations with their families.

In addition, ACUSD serves a large geographical region that requires long bus rides for students. The proposed ESY schedule with longer school days will better accommodate the additional Designated Instructional Services many of our students are eligible for. ACUSD asserts that modifying the ESY schedule to 3 weeks with extended daily time will maximize student learning, and lessen the typical drops of attendance during the final week of the program.

An unintended positive consequence is that fewer ESY days will result in substantial savings in transportation, utilities, food services, janitorial, administration and clerical costs.

This schedule will also help ACUSD to hire highly qualified special education teachers currently employed while allowing teaching and paraeducator staff additional time to pursue professional development, higher education goals, and time to re-energize and prepare for the next school year.

Student Population: 3972

City Type: Rural

Public Hearing Date: 6/7/2021

Public Hearing Advertised: Amador County Unified School District Website at <https://amadorcoe.org/>.

Local Board Approval Date: 4/28/2021

Community Council Reviewed By: Community Advisory Comittee for Special Education

Community Council Reviewed Date: 5/6/2021

Community Council Objection: N

Community Council Objection Explanation:

Audit Penalty Yes or No: N

Categorical Program Monitoring: N

Submitted by: Ms. Rachael Shaw-Escalona

Position: Program Specialist

E-mail: [rshaw-escalona@acusd.org](file:///\\CDE.Cal\DATA\EXECDATA\CENTRAL\SBE\2021\09%20-%20September%202021\Waiver%20Items\OFAB\SED\rshaw-escalona@acusd.org)

Telephone: 209-283-0054

Fax:

Bargaining Unit Date: 05/06/2021

Name: Amador County Teachers Association (ACTA)

Representative: Scott Hunkins

Title: ACTA President

Phone: 209-608-0495

Position: Support

Comments:

Bargaining Unit Date: 05/06/2021

Name: CSEA #239

Representative: Theresa Cramer

Title: President California School Employees Association-

Phone: 209-304-5006

Position: Support

Comments:

# Attachment 3: Kings County Office of Education General Waiver Request 10-5-2021

**California Department of Education**

**WAIVER SUBMISSION - General**

CD Code: 1610165

Waiver Number: 10-5-2021

Active Year: 2021

Date In: 5/27/2021 11:04:08 AM

Local Education Agency: Kings County Office of Education

Address: 1144 West Lacey Blvd.

Hanford, CA 93230

Start: 6/10/2021

End: 6/30/2021

Waiver Renewal: Y

Previous Waiver Number: 15-2-2020

Previous SBE Approval Date: 5/12/2020

Waiver Topic: Other Waivers

Ed Code Title: Other Waivers

Ed Code Section: *CCR*, Title 5, Section 3043(d)

Ed Code Authority: 33050

*Education Code* or *CCR* to Waive: Request to waive *California Code of Regulations*, Title 5, Section 3043(d), which requires a minimum of 20 school days of attendance for an extended school year (summer school) for students with special needs.

Outcome Rationale: Kings is a County that serves students in suburban and rural areas. Our program through Kings County Office of Education provides special education services to the students within the county with Moderate to Severe Disabilities at our school, Shelly Baird. Historically we have had difficult time staffing an ESY of 20 days; however, when we have been provided with a waiver to allow our ESY to run for 15 days, we have had greater success. When Kings County Office of Education provided a 20 day ESY, it would run from 8:00-12:00 for a total of 80 hours of instruction. Our plan would be to run a 15 day ESY for 5.5 hours a day for a total of 82.5 hours. This allows for an increase in total instructional time and provides the opportunity for more meaningful activities during the longer day. In years past, we have seen great success with this modified ESY.

Student Population: 420

City Type: Rural

Public Hearing Date: 2/10/2021

Public Hearing Advertised: In the newspaper, on the Kings County Website, and at the Shelly Baird School Campus.

Local Board Approval Date: 2/10/2021

Community Council Reviewed By: Kings County Advisory Counsel

Community Council Reviewed Date: 1/21/2021

Community Council Objection: N

Community Council Objection Explanation:

Audit Penalty Yes or No: N

Categorical Program Monitoring: N

Submitted by: Ms. Rebecca Jensen

Position: Assistant Superintendent

E-mail: [rebecca.jensen@kingscoe.org](file:///\\CDE.Cal\DATA\EXECDATA\CENTRAL\SBE\2021\09%20-%20September%202021\Waiver%20Items\OFAB\SED\rebecca.jensen@kingscoe.org)

Telephone: 559-589-7097

Fax: 559-589-9611

Bargaining Unit Date: 02/01/2021

Name: California School Employees Association

Representative: Amber Pereira

Title: CSEA President

Phone: 559-584-5546

Position: Support

Comments:

Bargaining Unit Date: 02/01/2021

Name: Kings Teachers Association

Representative: Diane Gilmartin

Title: KTA Vice President

Phone: 559-589-2543

Position: Support

Comments:

# Attachment 4: Mariposa County Office of Education General Waiver Request 5-5-2021

**California Department of Education**

**WAIVER SUBMISSION - General**

CD Code: 2210223

Waiver Number: 5-5-2021

Active Year: 2021

Date In: 5/12/2021 11:49:51 AM

Local Education Agency: Mariposa County Office of Education

Address: 5082 Old Highway North

Mariposa, CA 95338

Start: 6/14/2021

End: 7/2/2021

Waiver Renewal: N

Previous Waiver Number:

Previous SBE Approval Date:

Waiver Topic: Special Education Program

Ed Code Title: Extended School Year (Summer School)

Ed Code Section: *CCR*, Title 5, Section 3043 (d)

Ed Code Authority: 33050

*Education Code* or *CCR* to Waive: *CCR*, Title 5, Section 3043 (d) Extended school year services shall be provided for each individual with exceptional needs who has unique needs and requires special education and related services in excess of the regular academic year. Such individuals shall have handicaps which are likely to continue indefinitely or for a prolonged period, and interruption of the pupil's educational programming may cause regression, when coupled with limited recoupment capacity, rendering it impossible or unlikely that the pupil will attain the level of self-sufficiency and independence that would otherwise be expected in view of his or her handicapping condition. The lack of clear evidence of such factors may not be used to deny an individual an extended school year program if the individualized education program team determines the need for such a program and includes extended school year in the individualized education program pursuant to subsection (f).

Outcome Rationale: The Mariposa County Office of Education, Special Services Department is requesting a waiver to allow the county run Extended School Year (ESY) program to run for 13days., including any holidays, instead of 20 days. The program will run for 6.25 hours for the period of June 14 -17, 21 - 24 and 28 - July 1 and 5 hours on July 2, 2021. The longer ESY school day will align better with a typical school day and result in substantial savings in transportation, janitorial and food service costs.

Student Population: 40

City Type: Rural

Public Hearing Date: 4/15/2021

Public Hearing Advertised: Notice was posted at each school site, the district office and the district website.

Local Board Approval Date: 4/15/2021

Community Council Reviewed By: School Site Council

Community Council Reviewed Date: 3/2/2021

Community Council Objection: N

Community Council Objection Explanation:

Audit Penalty Yes or No: N

Categorical Program Monitoring: N

Submitted by: Mr. Joshua Kim

Position: Director Special Services

E-mail: [cridenhour@mcusd.org](file:///\\CDE.Cal\DATA\EXECDATA\CENTRAL\SBE\2021\09%20-%20September%202021\Waiver%20Items\OFAB\SED\cridenhour@mcusd.org)

Telephone: 209-742-0231

Fax: 209-742-0237

Bargaining Unit Date: 04/01/2021

Name: CSEA Mariposa Chapter 609

Representative: John Stewart

Title: President

Phone: 209-628-2839

Position: Support

Comments:

Bargaining Unit Date: 04/02/2021

Name: Mariposa County Teachers Association

Representative: Iris Wellcome

Title: President

Phone: 209-742-0340 x5336

Position: Support

Comments:

# Attachment 5: Sweetwater Union High School District General Waiver Request 8-5-2021

**California Department of Education**

**WAIVER SUBMISSION - General**

CD Code: 3768411

Waiver Number: 8-5-2021

Active Year: 2021

Date In: 5/20/2021 10:07:59 AM

Local Education Agency: Sweetwater Union High

Address: 1130 Fifth Ave.

Chula Vista, CA 91911

Start: 6/7/2020

End: 6/25/2020

Waiver Renewal: N

Previous Waiver Number:

Previous SBE Approval Date:

Waiver Topic: Special Education Program

Ed Code Title: Extended School Year (Summer School)

Ed Code Section: *CCR*, Title 5, Section 3043 (d)

Ed Code Authority: 33050

*Education Code* or *CCR* to Waive: d) An extended year program shall be provided for a minimum of 20 instructional days, including holidays

Outcome Rationale: SUHSD has decided to offer a 15-day, 5.5 hour per day, summer session in 2020. Therefore, the district wishes to

apply for a General Waiver Request to the California Department of Education to modify the mandated 20-day ESY

for students enrolled in special education. The waiver will allow the district to provide the same 15-day ESY as the

general summer session. The total number of instructional minutes will actually increase from 80 to 82.5.

Student Population: 38750

City Type: Urban

Public Hearing Date: 4/26/2021

Public Hearing Advertised: Board Meeting announcement and Agenda posted on district website

Local Board Approval Date: 4/26/2021

Community Council Reviewed By: School Board

Community Council Reviewed Date: 4/26/2021

Community Council Objection: N

Community Council Objection Explanation:

Audit Penalty Yes or No: N

Categorical Program Monitoring: N

Submitted by: Ms. Michelle Sturm Gonzalez

Position: Director of Special Services

E-mail: [michelle.sturm-gonzalez@sweetwaterschools.org](file:///\\CDE.Cal\DATA\EXECDATA\CENTRAL\SBE\2021\09%20-%20September%202021\Waiver%20Items\OFAB\SED\michelle.sturm-gonzalez@sweetwaterschools.org)

Telephone: 619-796-7549

Fax:

Bargaining Unit Date: 01/20/2021

Name: Joint Special Education Committee

Representative: Kimberly Edmonds

Title: SEA Special eduation Representative

Phone: 619-796-7310

Position: Support

Comments: