

California Department of Education

Executive Office

SBE-006 (REV. 1/2018)

Specific Waiver

# California State Board of Education January 2022 Agenda Item #W-03

## Subject

Request by **National Elementary School District (NESD),** a district under the authority of the California *Education Code* Section 46206(a), to waive *Education Code* Section 46201(a), the audit penalty for offering insufficient instructional minutes during the 2019–20 school year.

## Waiver Number

1-8-2021

## Type of Action

Action, Consent

## Summary of the Issue(s)

The school district (district) above is requesting that the California State Board of Education (SBE) waive the instructional time requirement audit penalty. The district was short instructional minutes for the 2019–20 school year. Per *Education Code* (*EC*) Section 46206(a), the SBE may waive the fiscal penalties set forth in this article for a school district that fails to maintain the prescribed minimum length of instruction, upon the condition that the school or schools in which the minutes were lost maintain minutes of instruction equal to those lost, in addition to the minimum amount required, for twice the number of years that it failed to maintain the required minimum length of time.

## Authority for Waiver

*EC* Section 46206(a)

## Recommendation

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

The California Department of Education (CDE) recommends that the SBE approve the request by the district to waive the instructional time penalties for offering less than the required instructional minutes for the requested period shown in Attachment 1, as long as the conditions outlined in Attachment 1 are met by the district.

If these conditions are not met, the penalties will be reinstated and CDE will take action to recover the penalty amount from the district.

## Summary of Key Issues

During an audit of instructional time for 2019–20, it was discovered that National Elementary School District (NESD) failed to offer the required 54,000 annual minutes for grade five by 665 minutes at John Otis Elementary School. A miscalculation of instructional time at the beginning of the school year resulted in an instructional minute shortage.

NESD would like to use school years 2021–22 and 2022–23 to make up the shortfall of the instructional minutes. NESD has submitted documentation showing the affected school site will offer additional minutes for grade five during the 2021–22 and 2022–23 school years to comply with the terms of the waiver.

**Demographic Information:**

According to DataQuest, National Elementary School District currently has a student population of 5,152 and is located in an urban area in San Diego County.

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

The SBE has approved similar requests with conditions. *EC* Section 46206(a) authorizes waivers to be granted for fiscal penalties due to a shortfall in instructional time. A waiver may be granted upon the condition that the school, or schools, in which the minutes or days were lost, maintain minutes or days of instruction equal to those lost, in addition to the minimum amount required for twice the number of years that it failed to maintain the required minimum length of time.

## Fiscal Analysis (as appropriate)

The NESD 2019–20 instructional minute penalty amount of $84,594 is calculated as follows (some differences due to rounding):

* The average daily attendance (ADA) of 653.35 for students in grade five multiplied by the funding rate of $10,526.62 (value per ADA rate) is equal to the district’s Local Control Funding Formula (LCFF) apportionment of $6,877,567.
* A shortfall of 665 instructional minutes for the affected grade levels divided by the 54,000-minute requirement is equal to 1.23 percent of minutes not offered.
* The affected LCFF apportionment of $6,877,567 multiplied by the percentage of minutes not offered is equal to the instructional minute penalty amount of $84,594.

## Attachment(s)

* **Attachment 1:** Summary Table (1 page)
* **Attachment 2:** NESD Specific Waiver Request 1-8-2021 (2 pages). (Original waiver request is signed and on file in the Waiver Office.)

# Attachment 1: Summary Table

California *Education Code (EC)* Section 46201(a)

| **Waiver Number** | **District** | **Period of Request** | **District’s Request** | **CDE Recommended Action** | **Bargaining Unit Representatives Consulted, Date, and Position** | **Local Board and Public Hearing Approval** | **Penalty Without Waiver** | **Previous Waivers** |
| --- | --- | --- | --- | --- | --- | --- | --- | --- |
| 1-8-2021 | National Elementary School District | **Requested:**  July 1, 2019, to June 30, 2020  **Recommended:**  July 1, 2019, to June 30, 2020 | District requests waiving *EC* Section 46201(a) to avoid the audit penalty in exchange for offering increased instructional days and minutes in 2021–22 and 2022–23, consistent with *EC* Section 46206(a). | Approval of waiver, consistent with EC Section 46206(a) with the following conditions:  (1) District maintains increased instructional minutes for grade five at John Otis Elementary of at least the amount required by law plus 665 minutes, for a period of two years beginning in 2021–22 through 2022–23, and (2) District reports the increased annual instructional minutes offered in its annual audit report. | National City Elementary Teachers Association  July 29, 2021  **Support** | Local Board Approval  June 23, 2021 | $84,594 | None |

Created by California Department of Education

September 2021

# Attachment 2: National Elementary School District Specific Waiver Request 1-8-2021

**California Department of Education**

**WAIVER SUBMISSION – Specific**

CD Code: 3768221

Waiver Number: 1-8-2021

Active Year: 2021

Date In: 8/6/2021 4:29:50 PM

Local Education Agency: National Elementary

Address: 1500 N Ave.

National City, CA 93561

Start: 7/1/2021

End: 6/30/2023

Waiver Renewal: N

Previous Waiver Number:

Previous SBE Approval Date:

Waiver Topic: Instructional Time Requirement Audit Penalty

Ed Code Title: Below 1982-83 Base Minimum Minutes

Ed Code Section: 46201

Ed Code Authority: 46206

Ed Code or *CCR* to Waive: (3) Fifty-four thousand minutes in grades 4 to 8, inclusive.

Outcome Rationale: The National School District (NSD) is requesting that the California State Board of Education (SBE) waive the instructional time requirement audit penalty. The NSD was short 665 minutes for the 2019–20 school year. Per *EC* Section 46206(a), the SBE may waive the fiscal penalties for a school district, county office of education, or charter school that fails to maintain the prescribed minimum length of instruction, upon the condition that the school or schools in which the minutes were lost maintain minutes of instruction equal to those lost, in addition to the minimum amount required, for twice the number of years that it failed to maintain the required minimum length of time.

Student Population: 4700

City Type: Urban

Local Board Approval Date: 6/23/2021

Audit Penalty Yes or No: Y

Categorical Program Monitoring: N

Submitted by: Mr. ARIK AVANESYANS

Position: Assistant Superintendent of Business

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Fax:

Bargaining Unit Date: 07/29/2021

Name: national city elementary teachers association

Representative: irma sanchez

Title: President

Phone: 619-336-8200

Position: Support

Comments: