

California Department of Education

Executive Office

SBE-005 (REV. 1/2021)

General Waiver

# California State Board of Education January 2023 Agenda Item #W-02

## Subject

Request by **two 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

* Butte County Office of Education (BCOE) 6-10-2022
* Madera County Superintendent of Schools (MCSS) 4-10-2022

## Type of Action

Action, Consent

## Summary of the Issue(s)

Two local educational agencies (LEAs) request to provide instruction in fewer than the 20 school days required by law for extended school year (ESY). Each LEA proposes an alternate schedule that will allow them to provide the minimum number of hours required, 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 recommends the State Board of Education (SBE) approve the request from two LEAs to provide ESY services for fewer than 20 days with the condition that school day hours are consistent with those provided to the general education enrollment at the same grade level unless an IEP specifies otherwise. Also, 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 *CCR,* Title 5, Section 3043.

## Summary of Key Issues

### Butte County Office of Education (BCOE)

The BCOE is submitting a waiver for a reduced ESY schedule. The proposed schedule consists of 15 days with 5.5 instructional hours per day for a total of 82.5 instructional hours. Per the BCOE, operating under this model provides the equivalent number of instructional minutes for students, while maximizing attendance and staffing options.

The BCOE indicates that the longer school day will align better with the regular school year providing more consistency for the students served. Additionally, the operation of ESY for 15 days instead of 20 will better match the district calendars of host sites where BCOE classes are located, allowing students more opportunities to be with their typically developing peers. On a fiscal side, fewer ESY days will result in substantial savings in transportation, utilities, janitorial, food service, administration, and clerical costs to districts. Lastly, because BCOE operates ESY programs in multiple districts with different school calendars, the BCOE will operate two different 15-day windows.

Demographic Information: The BCOE has a student population of 103 and is located in a rural area in Butte County.

### Madera County Superintendent of Schools (MCSS)

The MCSS is submitting a waiver for a reduced ESY schedule. The proposed schedule consists of 15 days with 6.5 instructional hours per day for a total of 97.5 instructional hours. The MCSS indicates that fewer ESY days will also result in substantial saving in transportation, utilities, janitorial, food services and other operational costs.

Per the MCSS, a shorter ESY schedule will also increase instructional staff’s interest in participating in the ESY program. A change in routine is often difficult for students with moderate and/or severe disabilities, the longer ESY school day is better aligned with the regular school year providing more consistency in instruction for the students served. Lastly, because MCSS operates ESY programs in multiple districts with different school calendars, the MCSS will operate two different 15-day windows.

Demographic Information: The MCSS has a student population of 392 and is located in a small area in Madera 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.

## 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 *California Code of Regulations (CCR)*, Title 5, Section 3043(f).

## Attachment(s)

* **Attachment 1:** Summary Table (2 pages)
* **Attachment 2:** Butte County Office of Education General Waiver Request 6-10-2022 (4 pages). (Original waiver request is signed and on file in the Waiver Office.)
* **Attachment 3:** Madera County Superintendent of Schools General Waiver Request 4-10-2022 (3 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 | District | Period of Request | District’s Request | CDE Recommendation | Bargaining Unit Representatives Consulted, Date and Position | Local Board and Public Hearing Approval | Penalty Without Waiver |
| --- | --- | --- | --- | --- | --- | --- | --- |
| 6-10-2022 | Butte County Office of Education | **Requested:**  June 6, 2023, to July 7, 2023  **Recommended:**  June 6, 2023, to July 7, 2023 | 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 | Butte County Teachers Association, Chapter 436 Veronica Rosales President 09/07/2022 Support  Butte County Teachers Association, Chapter 736 Jason Huston President  09/07/2022  Support | 10/10/2022 | The LEA may not provide a 15-day ESY program |
| 4-10-2022 | Madera County Superintendent of Schools | **Requested:**  June 5, 2023, to June 30, 2023  **Recommended:**  June 5, 2023, to June 30, 2023 | 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, Chapter 7  Kellie Stiles President 09/29/2022 Support  MCSS Teachers Association  Lisa Moreno President  06/09/2022 Support | 10/11/2022 | The LEA may not provide a 15-day ESY program |

Created by the California Department of Education

October 2022

# Attachment 2: Waiver 6-10-2022 Butte County Office of Education

**California Department of Education**

**WAIVER SUBMISSION - General**

CD Code: 0410041

Waiver Number: 6-10-2022

Active Year: 2022

Date In: 10/19/2022 1:44:28 PM

Local Education Agency: Butte County Office of Education

Address: 1859 Bird St.

Oroville, CA 95965

Start: 6/5/2023

End: 7/7/2023

Waiver Renewal: Y

Previous Waiver Number: 9-10-2021

Previous SBE Approval Date: 3/17/2022

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: 3043 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).

(a) Extended year special education and related services shall be provided by a school district, special education local plan area, or county office offering programs during the regular academic year.

(b) Individuals with exceptional needs who may require an extended school year are those who: (1) Are placed in special classes or centers; or (2) Are individuals with exceptional needs whose individualized education programs specify an extended year program as determined by the individualized education program team.

(c) The term “extended year” as used in this section means the period of time between the close of one academic year and the beginning of the succeeding academic year. The term “academic year” as used in this section means that portion of the school year during which the regular day school is maintained, which period must include not less than the number of days required to entitle the district, special education services region, or county office to apportionments of state funds.

(d) An extended year program shall be provided for a minimum of 20 instructional days, including holidays

The strike-out on the preceding 3043(d) indicates the exact language being waived but is still valid.

Outcome Rationale: Butte County Office of Education (BCOE) has applied for a waiver to Ed Code 5 *CCR* 3043 which discusses Extended School Year (ESY) services. The waiver request addresses the length of day and number of days an ESY program is offered. CDE has granted the waiver to BCOE since the 2011-12 school year. We are seeking to renew this request for a General Waiver from the California Department of Education. If granted, the waiver would be in effect for one school year. Rationale: BCOE proposes to provide ESY services to identified students with special needs utilizing a fifteen (15) day, five and one half (5.5) hours/day instructional model, rather than the traditional model of twenty (20) days, four (4) hours/day of instructional time. Students will receive the same or greater number of instructional minutes. The longer school day will align better with the regular school year providing more consistency for the students served. Additionally, the operation of ESY for 15 days instead of 20 will better match the district calendars of host sites where BCOE classes are located, allowing students more opportunities to be with their typically developing peers. On a fiscal side, fewer ESY days will result in substantial savings in transportation, utilities, janitorial, food service, administration, and clerical costs to districts. Lastly, because BCOE operates ESY programs in multiple districts with different school calendars, we will operate under 2 different 15-day windows. One will run 6/5/23-6/23/23 and the other will run 6/16/23-7/7/23.

Student Population: 103

City Type: Rural

Public Hearing Date: 10/10/2022

Public Hearing Advertised: Notice posted at each school site and at 3 other non-school locations.

Local Board Approval Date: 10/10/2022

Community Council Reviewed By: School Site Council

Community Council Reviewed Date: 9/6/2022

Community Council Objection: N

Community Council Objection Explanation:

Audit Penalty Yes or No: N

Categorical Program Monitoring: N

Submitted by: Ms. Maryanne Taylor

Position: Senior Director, Student Educational Services

E-mail: [mtaylor@bcoe.org](file:///C:/Users/jamick/AppData/Local/Microsoft/Windows/INetCache/Content.Outlook/JCHX1FGZ/mtaylor@bcoe.org)

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Bargaining Unit Date: 09/07/2022

Name: 436

Representative: Veronica Rosales

Title: President

Phone: 530-228-4847

Position: Support

Comments:

Bargaining Unit Date: 09/07/2022

Name: 736

Representative: Jason Huston

Title: President

Phone: 530-532-5770

Comments:

Bargaining Unit Date: 09/07/2022

Name: Butte County Teachers Association

Representative: Nicole Eads

Title: President

Phone: 530-879-2343

Position: Support

Comments:

# Attachment 3: Waiver 4-10-2022 Madera County Superintendent of Schools

**California Department of Education**

**WAIVER SUBMISSION - General**

CD Code: 2010207

Waiver Number: 4-10-2022

Active Year: 2022

Date In: 10/13/2022 9:30:20 AM

Local Education Agency: Madera County Superintendent of Schools

Address: 1105 South Madera Ave.

Madera, CA 93637

Start: 6/5/2023

End: 6/30/2023

Waiver Renewal: Y

Previous Waiver Number: 13-12-2021-W-06

Previous SBE Approval Date: 7/13/2022

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: 3043 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).

(a) Extended year special education and related services shall be provided by a school district, special education local plan area, or county office offering programs during the regular academic year.

(b) Individuals with exceptional needs who may require an extended school year are those who: (1) Are placed in special classes or centers; or (2) Are individuals with exceptional needs whose individualized education programs specify an extended year program as determined by the individualized education program team.

(c) The term “extended year” as used in this section means the period of time between the close of one academic year and the beginning of the succeeding academic year. The term “academic year” as used in this section means that portion of the school year during which the regular day school is maintained, which period must include not less than the number of days required to entitle the district, special education services region, or county office to apportionments of state funds.

(d) An extended year program shall be provided for a minimum of 20 instructional days, including holidays

Outcome Rationale: The Madera County Superintendent of Schools proposes to provide ESY services to identified students with special needs utilizing a fifteen (15) day, six and one half (6.5) hours of instruction per day, including recess and lunch, for a total of 97.5 hours of instruction. Because a change in routine is often difficult for students with moderate/severe disabilities, the longer school day for ESY will better align with the regular school year providing more consistency in instruction for the students served.

Fewer ESY days will also result in substantial saving in transportation, utilities, janitorial, food services and other operational costs. A shorter ESY schedule will also increase instructional staff’s interest in participating in the ESY program.

In the Madera area, the ESY program for MCSOS would run from June 12, 2023, through June 30, 2023. In Eastern Madera County, ESY would be conducted June 12, 2023, through June 30, 2023. In the Chowchilla area, ESY would be conducted June 5, 2023, through June 23, 2023.

Student Population: 392

City Type: Small

Public Hearing Date: 10/11/2022

Public Hearing Advertised: Notices of public hearing posted at school sites and Madera County Superintendent of Schools administration building.

Local Board Approval Date: 10/11/2022

Community Council Reviewed By: Waiver reviewed with Gould Educational Center School Site Council with no objections

Community Council Reviewed Date: 8/31/2022

Community Council Objection: N

Community Council Objection Explanation:

Audit Penalty Yes or No: N

Categorical Program Monitoring: N

Submitted by: Ms. Jessica Drake

Position: Executive Director, Student Programs & Services

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Bargaining Unit Date: 09/29/2022

Name: California School Employees Association, Chapter 7

Representative: Kellie Stiles

Title: President

Phone: 559-664-8110

Position: Support

Comments:

Bargaining Unit Date: 06/09/2022

Name: Madera County Superintendent of Schools Teachers A

Representative: Lisa Moreno

Title: President

Phone: 559-662-4829

Position: Support

Comments: