

California Department of Education

Executive Office

SBE-005 (REV. 1/2021)

General Waiver

# California State Board of EducationJuly 2023 AgendaItem #W-07

## Subject

Request by **Bakersfield City School District** 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

5-3-2023

## Type of Action

Action, Consent

## Summary of the Issue(s)

The local educational agency (LEA) requested to provide instruction in fewer than the 20 school days required by law for extended school year (ESY). The LEA had an alternate schedule that allowed 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: Yes
* Approval with conditions: No
* Denial: No

The California Department of Education (CDE) recommends the State Board of Education (SBE) approve the request from the LEA to provide ESY services for fewer than 20 days, from June 12, 2023, to June 30, 2023. The CDE recommends no conditions at this time since this waiver is retroactive and the LEA met all the conditions that the CDE would have recommended as a condition of approval of the waiver, as described below. Specifically, CDE has verified that school day hours were consistent with those provided to the general education enrollment at the same grade level unless an IEP specifies otherwise, and that special education and related services offered during the ESY period were 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

**Bakersfield City School District (BCSD)**

The BCSD requested a reduced Extended School Year Program schedule that allowed the district to operate their program for a total of 15 days in June 2023, from June 12, 2023 to June 30, 2023. The BCSD stated that they are the largest Pre-k through 8th grade elementary district and is a Single District SELPA, with nearly 1,200 students who are eligible for ESY services. BCSD stated that in recent years, even pre-pandemic, district families and students found it challenging to maintain attendance for a full 20-day ESY program. The BCSD stated that the attendance boundaries for the district is expansive and students typically have long bus routes to attend class. The BCSD stated that historically, student attendance has dropped in their ESY program. The BCSD stated that the shortened ESY schedule allowed the district to maximize student learning and supported student attendance. In addition, the BCSD stated that the schedule was conducive to the staffing of highly qualified special education teachers and support staff, since the session ended with adequate time for staff, students, and their families to have the opportunity to re-charge for the upcoming school year.

CDE verified that BCSD’s ESY program operated for for 5 hours and 40 minutes per day, 5 days per week (Monday through Friday) totaling 85 hours. This is more hours than if BCSD provided the ESY program for 20 days. CDE verified that the 5 hours and 40 minutes per day of the ESY program aligned with BCSD’s general education summer school program hours.

**Demographic Information**: The Bakersfield City School District has a student population of 30,000 and is located in an urban area in Kern 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 (1 pages)
* **Attachment 2:** Bakersfield City School District General Waiver Request 5-3-2023 (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 | 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 |
| --- | --- | --- | --- | --- | --- | --- | --- |
| 5-3-2023 | Bakersfield City School District | **Requested:**June 12, 2023, to June 30, 2023**Recommended:**June 12, 2023, to June 30, 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 | Dinah May/ President California School Employees Association 2/17/2023SupportSteve Comstock/PresidentBakersfield Elementary Teachers Association12/22/2022Support | 2/28/2023 | The LEA may not provide a 15-day ESY program |

Created by the California Department of Education

May 2023

# Attachment 2: Waiver 5-3-2023 Bakersfield City School District

**California Department of Education**

**WAIVER SUBMISSION - General**

CD Code: 1563321

Waiver Number: 5-3-2023

Active Year: 2023

Date In: 3/3/2023 2:46:52 PM

Local Education Agency: Bakersfield City

Address: 1300 Baker St.

Bakersfield, CA 93305

Start: 6/12/2023

End: 6/30/2023

Waiver Renewal: No

Waiver Topic: Special Education Program

Ed Code Title: Extended School Year (Summer School)

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

Ed Code Authority: 33050

Education Code or CCR to Waive: Education Code or California Code of Regulations section to be waived. If the request is to waive a portion of a section, type the text of thepertinent sentence of the law.5 CCR, Section 3043(d). (a) Extended year special education and related services shall be provided by aschool district, SELPA, or county office offering programs during the regular academic year. [(d) An extended year program shall beprovided for a minimum of 20 instructional days, including holidays.]

Outcome Rationale: The Bakersfield City School District (BCSD) is requesting a waiver form the California Department of Education to modify the required special education extended school year from 20 days to 15 days. BCSD will utilize a 15-day schedule, exclusive of any approved holidays, for 5 hours 40 minutes per day totaling 85 hours of instructional minutes for students while maximizing both student attendance and staffing options. The proposed 15 days will also allow special education students attending ESY to be in alignment with the District’s General Education Summer Learning Program.

BCSD is the largest Prek-8 elementary district and is a Single District SELPA. We have nearly 1200 students who are eligible for ESY services. In recent years, even pre-pandemic, our families and students found it challenging to maintain attendance for the full 20 days. The geographic area for our attendance boundaries is expansive and students have long bus routes to attend class. As the summer progresses, more and more students drop from the program minimizing the effectiveness of ESY for these students. This proposed ESY schedule will allow BCSD to maximize student learning and lessen the typical drops in attendance. In addition, this schedule will promote staffing with highly qualified special education teachers and support staff given the session will end with adequate time for staff, students, and their families to get a much-needed opportunity to re-charge for the upcoming school year.

Student Population: 1200

City Type: Urban

Public Hearing Date: 2/28/2023

Public Hearing Advertised: District Website

Local Board Approval Date: 2/28/2023

Community Council Reviewed By: Community Advisory Committee

Community Council Reviewed Date: 2/6/2023

Community Council Objection: No

Audit Penalty Yes or No: No

Categorical Program Monitoring: No

Submitted by: Ms. Nikki Stiles

Position: Director of Special Education

E-mail: stilesn@bcsd.com

Telephone: 661-631-5863

Bargaining Unit Date: 12/22/2022

Name: Bakersfield Elementary Teachers Association

Representative: Steve Comstock

Title: President – BETA

Phone: 661-327-4567

Position: Support

Bargaining Unit Date: 02/17/2023

Name: California School Employees Association

Representative: Dinah May

Title: President – CSEA

Phone: 661-862-0298

Position: Support