

California Department of Education

Executive Office

SBE-005 (REV. 1/2021)

General Waiver

# California State Board of Education September 2023 Agenda Item #W-04

## Subject

Request by **Hesperia Unified 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

1-5-2023

## 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 1, 2023, to June 29, 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, the 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 *California Code of Regulations* (*CCR*),Title 5, Section 3043.

## Summary of Key Issues

### Hesperia Unified School District

The Hesperia Unified School District (HUSD) requested a reduced ESY program schedule that allowed the district to operate their program for a total of 16 days in June 2023, from June 1, 2023 to June 29, 2023. The HUSD stated that when the district held a 20-day ESY program in the past that extended across the Independence Day holiday (July 4th) and attendance declined due to family vacations and the Independence Day holiday. Per the HUSD, both staff and families prefer the 16-day program. HUSD stated that the district had more consistent attendance from teachers in the program, which provided a richer and more consistent ESY program for students.

The CDE verified that HUSD’s program operated for 5 hours per day, four days per week (Monday through Thursday), totaling 80 hours. This is equivalent to the amount of hours if HUSD provided the ESY program for 20 days. CDE verified that the 5 hours per day of the ESY program aligned with HUSD’s general education summer school program hours.

**Demographic Information:** The HUSD has a student population of 23,342 and is located in a rural area in San Bernardino 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 *CCR*, Title 5, Section 3043(f).

## Attachment(s)

* **Attachment 1:** Summary Table (1 page)
* **Attachment 2:** Hesperia Unified School District General Waiver Request 1-5-2023 (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 |
| --- | --- | --- | --- | --- | --- | --- | --- |
| 1-5-2023 | Hesperia Unified School District | **Requested:**  June 1, 2023, to June 29, 2023  **Recommended:**  June 1, 2023, to June 29, 2023 | To provide a 16-day extended school year (ESY) program instead of a 20-day ESY program | Retroactive approval with no conditions as the CDE has verified that the local educational agency (LEA) has provided a 16-day ESY program instead of a 20-day ESY program. | Roman Aguilar, 1st Vice President;  California School Employees Association;  September 20, 2022;  Support.  **Paula Kondratko,** Vice President; Hesperia Teacher’s Association;  September 20, 2022  Support. | May 1, 2023 | The LEA may not provide a 16-day ESY program |

Created by the California Department of Education

# Attachment 2: Waiver 1-5-2023 Hesperia Unified School District

**California Department of Education**

**WAIVER SUBMISSION - General**

CD Code: 3675044  
Waiver Number: 1-5-2023  
Active Year: 2023  
Date In: 5/3/2023 1:36:20 PM

Local Education Agency: Hesperia Unified  
Address: 15576 Main St.  
Hesperia, CA 92344

Start: 6/1/2023   
End: 6/29/2023

Waiver Renewal: Yes  
Previous Waiver Number: 7-2-2018-W-10  
Previous SBE Approval Date: 5/9/2018

Waiver Topic: Special Education Program  
Ed Code Title: Extended School Year (Summer School)   
Ed Code Section: CCR 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: The California Code of Regulations §3043 requires that 20-days of Extended School Year (ESY) be provided to special education students who have severe regression and recoupment issues over the summer break. Districts in California are required to provide 80-hours of instruction over the 20-day ESY Program.

The Special Services department requests that the CDE approve a waiver to reduce the district’s extended school year (ESY) program from 20 days to 16 days for the 2022-2023 school year. The hours of the program will be extended to ensure that students still get 80 hours of instruction over the course of the 16 days of ESY.

Hesperia Unified School District (HUSD) does not conduct business on Fridays during the summer months. As a result, we are unable to hold ESY classes on Fridays. This limits our ability to provide ESY during the month of June and conclude prior to July and the Independence Day holiday. In many instances, the district is still able to complete the ESY obligation during the month of June. However, this year’s school calendar will not allow us to complete ESY without entering into the month of July and requiring students and staff to return for one day of class on Monday, July 3, 2023.

In the past, when ESY has extended in the month of July, we have seen a decrease in student enrollment. In addition, extending ESY into July presents challenges with hiring staff for ESY. Typically, staff prefers to have a longer summer and not have their Independence Day holiday impacted by working in ESY. As a result, we have more substitutes who are not familiar with student needs working in ESY. Creating an ESY calendar that is contained within the month of June allows us to hire and retain the appropriate staff, complete ESY in the month of June, and continue to provide 80 hours of instruction to our students.

This waiver is necessary to ensure that HUSD can provide a high-quality ESY program with the quality and quantity of staff necessary to deliver instruction and provide a safe environment for all of our students who participate in our ESY program.

Student Population: 23342  
City Type: Rural

Public Hearing Date: 5/1/2023  
Public Hearing Advertised: District Website/Board Agenda

Local Board Approval Date: 5/1/2023

Community Council Reviewed By: District Advisory Committee (DAC)  
Community Council Reviewed Date: 4/12/2023  
Community Council Objection: No

Audit Penalty Yes or No: No  
Categorical Program Monitoring: No

Submitted by: Mr. Eric Land  
Position: Director of Special Services  
E-mail: [eric.land@hesperiausd.org](mailto:eric.land@hesperiausd.org)   
Telephone: 760-244-4411 x7209

Bargaining Unit Date: 09/20/2022  
Name: California School Employees Association  
Representative: Roman Aguilar  
Title: 1st Vice President  
Phone: 760-244-4411  
Position: Support

Bargaining Unit Date: 09/20/2022  
Name: Hesperia Teachers Association  
Representative: Paula Kondratko  
Title: Hesperia Teacher's Association Vice President  
Phone: 760-244-4411  
Position: Support