

California Department of Education

Executive Office

SBE-006 (REV. 1/2018)

Specific Waiver

# California State Board of Education July 2018 Agenda Item #W-08

## Subject

Requests by two districtsunder 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 2016–17 school year.

## Waiver Numbers

* Borrego Springs Unified School District 30-3-2018
* Petaluma City Elementary/Joint Union High School District 41-3-2018

## Type of Action

Action, Consent

## Summary of the Issue(s)

The local educational agencies (LEAs) above are requesting that the California State Board of Education (SBE) waive the instructional time requirement audit penalty. The LEAs were short instructional minutes for the 2016–17 school year. Per California *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

## Recommendation

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

The California Department of Education (CDE) recommends that the SBE approve these waivers with the following conditions:

* The LEAs maintain increased instructional minutes of at least the amount required by law plus the number of minutes the LEAs failed to offer for a period of two years beginning in 2018–19 through 2019–20.
* The LEAs report the annual instructional minutes offered in their annual audit reports.

If these conditions are not met, the penalty will be reinstated.

## Summary of Key Issues

During an audit of instructional minutes for 2016–17 it was discovered that the LEAs listed in Attachment 1 failed to offer the required number of instructional minutes.

The LEAs would like to use school years 2018–19 and 2019–20 to make up the shortfall of instructional minutes at affected school sites.

The minimum number of required annual instructional minutes in 2018–19 and 2019–20 for kindergarten is 36,000, grades one through three is 50,400, grades four through eight is 54,000, and grades nine through twelve is 64,800.

**Demographic Information:**

Borrego Springs Unified School District has a student population of 398 and is located in a rural area in San Diego County.

Petaluma City Elementary/Joint Union High School District has a student population of 7,728 and is located in a suburban area in Sonoma County.

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

The SBE has approved similar requests with conditions. *EC* Section 46206 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 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.

## Fiscal Analysis

The Borrego Springs Unified School District 2016–17 penalty amount of $11,840 is calculated as follows (some differences due to rounding):

* The average daily attendance of 7.16 for all students in transitional kindergarten multiplied by the funding rate of $9,449.49 (transition rate) is equal to the Local Control Funding Formula (LCFF) apportionment of $67,658.
* A shortfall of 6,300 instructional minutes for the affected grade level divided by the 36,000 minute requirement is equal to 17.50 percent of minutes not offered.
* The affected LCFF apportionment of $67,658 multiplied by the percentage of inutes not offered is equal to the penalty amount of $11,840.

The Petaluma City Elementary/Joint Union High School District 2016–17 penalty amount of $132,441 is calculated as follows (some differences due to rounding):

* The average daily attendance of 3,157.10 for all students in grades nine through twelve multiplied by the funding rate of $8,561.29 (transition rate) is equal to the LCFF apportionment of $27,028,849.
* A shortfall of 315 instructional minutes for the affected grade levels divided by the 64,800 minute requirement is equal to 0.49 percent of minutes not offered.
* The affected LCFF apportionment of $27,028,849 multiplied by the percentage of minutes not offered is equal to the penalty amount of $132,441.

## Attachment(s)

* **Attachment 1:** Summary Table (2 pages)
* **Attachment 2:** Borrego Springs Unified School District Specific Waiver Request 30-3-2018 (2 pages). (Original waiver request is signed and on file in the Waiver Office.)
* **Attachment 3:** Petaluma City Elementary/Joint Union High School District Specific Waiver Request 41-3-2018 (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** |
| --- | --- | --- | --- | --- | --- | --- | --- | --- |
| 30-3-2018 | Borrego Springs Unified School District | **Requested:**  July 1, 2016, to June 30, 2017  **Recommended:**  July 1, 2016, to June 30, 2017 | District requests waiving *EC* Section 46201 to avoid the audit penalty in exchange for offering increased instructional minutes in 2018–19 and 2019–20, consistent with *EC* Section 46206. | **Approval** of waiver, consistent with *EC* Section 46206 with the following conditions:  (1) District maintains increased instructional minutes for Transitional Kindergarten (TK) of at least the amount required by law plus 6,300 minutes, for a period of two years beginning in 2018–19 through 2019–20, and (2) District reports the annual instructional minutes offered in TK in its annual audit report. | Borrego Springs Education Association  Polly Macuga, President  March 14, 2018  **Support** | Local Board Approval  March 14, 2018 | $11,840 | None |

| **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** |
| --- | --- | --- | --- | --- | --- | --- | --- | --- |
| 41-3-2018 | Petaluma City Elementary/ Joint Union High School District | **Requested:**  July 1, 2016, to June 30, 2017  **Recommended:**  July 1, 2016, to June 30, 2017 | District requests waiving *EC* Section 46201 to avoid the audit penalty in exchange for offering increased instructional minutes in 2018–19 and 2019–20, consistent with *EC* Section 46206. | **Approval** of waiver, consistent with *EC* Section 46206 with the following conditions:  (1) District maintains increased instructional minutes for grades nine through twelve of at least the amount required by law plus 315 minutes, for a period of two years beginning in 2018–19 through 2019–20, and (2) District reports the annual instructional minutes offered in grades nine through twelve in its annual audit report. | Petaluma Federation of Teachers  Sandra Larson, President  April 9, 2018  **Neutral** | Local Board Approval  March 13, 2018 | $132,441 | None |

Created by California Department of Education

May 2018

# Attachment 2: Borrego Springs Unified School District Specific Waiver Request 30-3-2018

**California Department of Education**

**WAIVER SUBMISSION – Specific**

CD Code: 3767983

Waiver Number: 30-3-2018

Active Year: 2018

Date In: 3/22/2018 2:56:30 PM

Local Education Agency: Borrego Springs Unified School District

Address: 2281 Diegueno Rd.

Borrego Springs, CA 92004

Start: 7/1/2016

End: 6/30/2017

Waiver Renewal: No

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: 46206.

(a) The State Board of Education may waive the fiscal penalties set forth in this article for a school district or county office of education that fails to maintain the prescribed minimum length of time for the instructional school year, minimum number of instructional days for the school year, or both.

(b) For fiscal penalties incurred as a result of a shortfall on instructional time in the 2000–01 fiscal year or thereafter, a waiver may only be granted pursuant to subdivision (a) upon the condition that the school or schools in which the minutes, days, or both, were lost, maintain minutes and days of instruction equal to those lost and in addition to the amount otherwise prescribed in this article for twice the number of years that it failed to maintain the prescribed minimum length of time for the instructional school year, minimum number of instructional days for the school year following the year, or both, commencing not later than the school year following the year in which the waiver was granted and continuing for each succeeding school year until the condition is satisfied. Compliance with the condition shall be specifically verified in the report of the annual audit of the school district or county office of education for each year in which the additional time is to be maintained. If an audit report for a year in which the additional time is to be maintained does not verify that the time was provided, that finding shall be addressed as set forth in Section 41344.

(c) It is the intent of the Legislature that school districts and county offices of education make every effort to make up any instructional days and minutes lost during the school year in which the loss occurred, rather than seeking a waiver pursuant to the provisions of this section.

(d) The State Board of Education may grant a waiver pursuant to subdivision (a) without the condition provided in subdivision (b) to any school district that maintained a single session kindergarten class in the 1982–83 school year for more than the maximum number of 240 minutes permitted by state law and that, due to the school district’s growth and facilities limitations, is required to operate two sessions of kindergarten per day in the same classroom.

(Amended by Stats. 2002, Ch. 942, Sec. 1. Effective January 1, 2003.)

Outcome Rationale: Borrego Elementary School did not offer the required minimum annual instructional minutes for transitional kindergarten for the year 2016-2017 (36,000). Students will be directly benefited recouping the time lost, were lost, and for the following 2 fiscal years (2018-19 & 2019-20). The district anticipates a learning improvement. Having the waiver the district will not be fiscal impacted and at the same time the district will make-up the instructional time that was not provided, according to the established on *Education Code* 46206 (b).

Student Population: 398

City Type: Rural

Local Board Approval Date: 3/14/2018

Audit Penalty Yes or No: Yes

Categorical Program Monitoring: No

Submitted by: Ms. Laura Castro

Position: Director of Business Services

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Telephone: 760-767-5357 x505

Bargaining Unit Date: 03/14/2018

Name: BSEA

Representative: Polly Macuga

Title: President

Position: Support

# Attachment 3: Petaluma City Elementary/Joint Union High School District Waiver Request 41-3-2018

**California Department of Education**

**WAIVER SUBMISSION – Specific**

CD Code: 4940246

Waiver Number: 41-3-2018

Active Year: 2018

Date In: 3/28/2018 2:48:36 PM

Local Education Agency: Petaluma City Elementary/Joint Union High

Address: 200 Douglas St.

Petaluma, CA 94952

Start: 7/1/2016

End: 6/30/2017

Waiver Renewal: No

Waiver Topic: Instructional Time Requirement Audit Penalty

Ed Code Title: Below 1982-83 Base Minimum Minutes

Ed Code Section: 46201(b)

Ed Code Authority: 46202(a)

Ed Code or *CCR* to Waive: (a) For each school district that received an apportionment pursuant to subdivision (a) of this section, as it read on January 1, 2013, and that reduces the amount of instructional time offered below the minimum amounts specified in subdivision [(b), the Superintendent shall withhold from the school district's local control funding formula grant apportionment pursuant to Section 42238.02 , as implemented by Section 42238.03 , for the average daily attendance of each affected grade level, the sum of that apportionment multiplied by the percentage of the minimum offered minutes at that grade level that the school district failed to offer.

(b) Commencing with the 2013-14 fiscal year:

(1) Thirty-six thousand minutes in kindergarten.

(2) Fifty thousand four hundred minutes in grades 1 to 3, inclusive.

(3) Fifty-four thousand minutes in grades 4 to 8, inclusive.

(4) Sixty-four thousand eight hundred minutes in grades 9 to 12, inclusive.

Outcome Rationale: On the first day of school for the 2016-2017 school year, the passing time between classes at Petaluma High School was only 5 minutes, while the remaining 179 school days all passing times between classes was 10 minutes. An audit found that "For purposes of computing instructional time, the California Department of Education has for many years advised school districts that actual passing time between separate class sessions in the same departmentalized program, not to exceed 1o minutes, may be claimed as instructional time. Further, when a school provides passing times of variable lengths, the District must use the shortest passing time when computing instructional time unless it can show that normal path was not available due to a physical obstruction."

Thus, because the passing time was only 5 minutes on the first day of school, a total of 5 minutes for every passing time was used to compute instructional time--instead of the usual 10 minutes. The result was that Petaluma High School fell 315 minutes below the required 64,800 minimum, as required by Ed Code.

The shorter passing time of 5 minutes on the first day of school was a mistake and should have been consistent with the passing time of 10 minutes--like every other school day. The waiver will allow us to correct this error and not lose ADA in the amount of $131,390.

Student Population: 1338

City Type: Suburban

Local Board Approval Date: 3/13/2018

Audit Penalty Yes or No: Yes

Categorical Program Monitoring: No

Submitted by: Mr. Cliff De Graw

Position: Assistant Superintendent, Ed Services

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