

California Department of Education

Executive Office

SBE-005 (REV. 1/2018)

General Waiver

# California State Board of Education May 2018 Agenda Item #W-01

## Subject

Request by four local educational agencies to waive portions of *California Code of Regulations*, Title 5, Section 11963.6(c), relating to the submission and action on determination of funding requests regarding nonclassroom-based instruction.

## Waiver Numbers

* Acton-Agua Dulce Unified School District 22-2-2018
* Acton-Agua Dulce Unified School District 23-2-2018
* Enterprise Elementary School District 14-2-2018
* Evergreen Union School District 12-1-2018
* New Jerusalem Elementary School District 13-1-2018
* New Jerusalem Elementary School District 14-1-2018

## Type of Action

Action, Consent

## Summary of the Issue(s)

Local educational agencies (LEAs) are requesting, on behalf of the six charter schools identified in Attachment 1, that the California State Board of Education (SBE) waive portions of *California Code of Regulations*, Title 5 (5 *CCR*) Section 11963.6(c), in order to allow the charter school to request a nonclassroom-based funding determination for their respective funding period.

Each charter school identified in Attachment 1 submitted a determination of funding request after the required deadline, thereby making the request retroactive. If the waivers are approved by the SBE, the charter schools may then submit the retroactive funding determination requests for consideration by the Advisory Commission on Charter Schools (ACCS) and the SBE.

## Authority for Waiver

*Education Code (EC)* Section 33050

## Recommendation

Approval: Yes

Approval with conditions: No

Denial: No

The California Department of Education (CDE) recommends that the SBE approve the requests by the LEAs to waive specific portions of 5 *CCR* Section 11963.6(a) and 5 *CCR* Section 11963.6(c) in order to allow the specified charter schools to submit determination of funding requests for the specified fiscal year. Approval of these waiver requests will also allow the SBE to consider the requests, which are retroactive. Without the waiver, the SBE may not consider the determination of funding requests and the charter schools’ nonclassroom-based average daily attendance (ADA) may not be funded for the affected fiscal year.

## Summary of Key Issues

*EC* sections 47612.5 and 47634.2 established the eligibility requirements for apportionment funding for charter schools that offer nonclassroom-based instruction. The statutes specify that a charter school may receive apportionment funding for nonclassroom-based instruction only if a determination of funding is made by the SBE. The CDE reviews a charter school’s determination of funding request and presents it for consideration to the ACCS, pursuant to relevant 5 *CCR*.

Pursuant to 5 *CCR* Section 11963.6(a), an approved determination of funding for a new charter school in its first year of operation shall be submitted by December 1 and shall be for two fiscal years.

Pursuant to 5 *CCR* Section 11963.6(c), any determination of funding request approved by the SBE for an existing nonclassroom-based charter school must be prospective (not for the current year) and in increments of a minimum of two years and a maximum of five years in length. In addition, the funding determination request must be submitted by February 1 of the fiscal year prior to the year the funding determination will be effective.

**Demographic Information:**

Acton-Agua Dulce Unified School District is requesting waivers for iLead Hybrid (Charter #1699) and iLead Online (Charter #1902), which serve student populations of 3,048 and 27, respectively, and are both located in suburban areas in Los Angeles County.

Enterprise Elementary School District is requesting a waiver for Redding Collegiate Academy (Charter #1864), which serves a student population of 111 and is located in a small area in Shasta County.

Evergreen Union School District is requesting a waiver for Evergreen Institute of Excellence (Charter #1754), which serves a student population of 113 and is located in a rural area in Tehama County.

New Jerusalem Elementary School District is requesting waivers for Delta Keys Charter School No. 2 (Charter #1878) and Delta Charter Online No. 2 (Charter #1879), which serve student populations of 75 and 145, respectively, and are both located in rural areas in San Joaquin County.

**Because this is a general waiver, if the State Board of Education decides to deny the waiver, it must cite one of the seven reasons in *EC* 33051(a), available at** <https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=EDC&sectionNum=33051.>

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

The SBE has approved similar waiver requests regarding retroactive funding determination requests for charter schools that offer nonclassroom-based instruction.

## Fiscal Analysis (as appropriate)

Approval of this waiver request will allow the SBE to consider the charter school’s determination of funding request. Subsequent approval of the determination of funding request by the SBE will allow the charter school’s nonclassroom-based ADA to be funded at the funding determination rate approved by the SBE for the specified fiscal year.

## Attachment(s)

* **Attachment 1:** Nonclassroom-Based Funding Determination Deadline Waivers (2 Pages) (Original waiver request is signed and on file in the Waiver Office.)
* **Attachment 2:** Acton-Agua Dulce Unified School District General Waiver Request 22-2-2018 (2 Pages). (Original waiver request is signed and on file in the Waiver Office.)
* **Attachment 3:** Acton-Agua Dulce Unified School District General Waiver Request 23-2-2018 (2 Pages). (Original waiver request is signed and on file in the Waiver Office.)
* **Attachment 4:** Enterprise Elementary School District General Waiver Request 14-2-2018 (2 Pages). (Original waiver request is signed and on file in the Waiver Office.)
* **Attachment 5:** Evergreen Union School District General Waiver Request 12‑1‑2018 (2 Pages). (Original waiver request is signed and on file in the Waiver Office.)
* **Attachment 6:** New Jerusalem Elementary School District General Waiver Request 13-1-2018 (2 Pages). (Original waiver request is signed and on file in the Waiver Office.)
* **Attachment 7:** New Jerusalem Elementary School District General Waiver Request 14-1-2018 (2 Pages). (Original waiver request is signed and on file in the Waiver Office.)

# Attachment 1: Nonclassroom-Based (NCB) Funding Determination Deadline Waivers

| Waiver Number | Local Educational Agency (Charter Authorizer) | Charter School and Charter Number | First Year of Operation | Period of Request | Public Hearing and Local Board Approval Date | Public Hearing Advertisement | School Site Council/Advisory Committee Position |
| --- | --- | --- | --- | --- | --- | --- | --- |
| 22-2-2018 | Acton-Agua Dulce Unified School District | iLead Online  1902 | 2017–18 | **Requested:** July 1, 2017 to June 30, 2019 **Recommended:** July 1, 2017 to June 29, 2019 | 2/22/2018 | Publicized in conjunction with the Board of Trustees Meeting | School District Board of Trustees and iLead Online Board of Directors  **No objections** |
| 23-2-2018 | Acton-Agua Dulce Unified School District | iLead Hybrid  1699 | 2015–16 | **Requested:** July 1, 2017 to June 30, 2019 **Recommended:** July 1, 2017 to June 29, 2019 | 2/22/2018 | Publicized in conjunction with the Board of Trustees Meeting | School District Board of Trustees and iLead Online Board of Directors  **No objections** |
| 14-2-2018 | Enterprise Elementary School District | Redding Collegiate Academy  1864 | 2017–18 | **Requested:**  July 1, 2017 to June 30, 2018 **Recommended:** July 1, 2017 to June 29, 2018 | 2/7/2018 | Advertised on Web site, district office and community board | School District Board of Trustees  **No objections** |
| 12-1-2018 | Evergreen Union School District | Evergreen Institute of Excellence  1754 | 2015–16 | **Requested:** February 1, 2017 to February 1, 2019 **Recommended:** July 1, 2017 to June 29, 2018 | 1/9/2018 | Advertised on Web site and physical school sites within the district | School District Board of Trustees  **No objections** |
| 13-1-2018 | New Jerusalem Elementary School District | Delta Keys Charter School #2  1878 | 2017–18 | **Requested:** July 1, 2017 to June 30, 2018 **Recommended:** July 1, 2017 to June 29, 2018 | 1/11/2018 | Advertised at district office, school site offices, fire department and River Club | School District Board of Trustees  **No objections** |
| 14-1-2018 | New Jerusalem Elementary School District | Delta Keys Charter School Online #2  1878 | 2017–18 | **Requested:**  July 1, 2017 to June 30, 2018 **Recommended:** July 1, 2017 to June 29, 2018 | 1/11/2018 | Advertised at district office, school site offices, fire department and River Club | School District Board of Trustees  **No objections** |

Created by the California Department of Education

March 2018

# Attachment 2: Waiver 22-2-2018 Acton-Agua Dulce Unified School District General

**California Department of Education**

**WAIVER SUBMISSION - General**

CD Code: 1975309

Waiver Number: 22-2-2018

Active Year: 2018

Date In: 2/23/2018 11:01:59 AM

Local Education Agency: Acton-Agua Dulce Unified School District

Address: 32248 North Crown Valley Rd.

Acton, CA 93510

Start: 7/1/2017

End: 6/30/2019

Waiver Renewal: No

Waiver Topic: Charter School Program

Ed Code Title: Nonclassroom-Based Funding

Ed Code Section: 5 *CCR* Section 11963.6(a)

Ed Code Authority: 33050

*Education Code* or *CCR* to Waive: (a) An approved determination of funding for a new charter school in its first year of operation shall be submitted [by December 1] and shall be for two fiscal years.

Outcome Rationale: Filing deadline missed for initial nonclassroom based funding determination request, therefore no funding will be received unless a waiver is granted. iLEAD Online has now submitted its determination of funding request after the required deadline. Acton-Agua Dulce Unified School is filing a waiver on behalf of iLead Online.

Student Population: 27

City Type: Suburban

Public Hearing Date: 2/8/2018

Public Hearing Advertised: Publicized in conjunction with the Board of Trustees Meeting

Local Board Approval Date: 2/22/2018

Community Council Reviewed By: Acton-Agua Dulce Board of Trustees, iLEAD Online Board of Directors and charter school stakeholders

Community Council Reviewed Date: 2/22/2018

Community Council Objection: No

Community Council Objection Explanation: N/a

Audit Penalty Yes or No: No

Categorical Program Monitoring: No

Submitted by: Ms. Amanda Fischer

Position: Assistant Superintendent

E-mail: [afischer@aadusd.k12.ca.us](mailto:afischer@aadusd.k12.ca.us)

Telephone: 661-904-2481

Bargaining Unit Date: 01/31/2018

Name: Acton Agua Dulce CSEA

Representative: Guido Jaramillo

Title: President

Position: Neutral

Bargaining Unit Date: 01/31/2018

Name: Acton Agua Dulce Teachers Association

Representative: Melissa Trusel

Title: President

Position: Neutral

# Attachment 3: Waiver 23-2-2018 Acton-Agua Dulce Unified School District General

**California Department of Education**

**WAIVER SUBMISSION - General**

CD Code: 1975309

Waiver Number: 23-2-2018

Active Year: 2018

Date In: 2/23/2018 11:19:19 AM

Local Education Agency: Acton-Agua Dulce Unified School District

Address: 32248 North Crown Valley Rd.

Santa Clarita, CA 91350

Start: 7/1/2017

End: 6/30/2019

Waiver Renewal: No

Waiver Topic: Charter School Program

Ed Code Title: Nonclassroom-Based Funding

Ed Code Section: 5 *CCR* Section 11963.6(c)

Ed Code Authority: 33050

*Education Code* or *CCR* to Waive: (c) Any determination of funding request approved by the State Board of Education for an existing nonclassroom-based charter school from the 2006-07 fiscal year forward shall be prospective (not for the current year), in increments of a minimum of two years and a maximum of five years in length. Beginning with the 2007-08 fiscal year, nonclassroom-based charter schools that had a funding determination in the prior year must submit a funding determination request [by February 1 of the fiscal year prior to the year the funding determination will be effective], when a new request is required under these regulations.

Outcome Rationale: iLEAD Hybrid learned from the California Department of Education in January 2018 that the school inadvertently missed the non-classroom based funding determination deadline on February 1, 2017. iLEAD Hybrid has now submitted its determination of funding request. Acton-Agua Dulce Unified School District is seeking a waiver on behalf iLead Hybrid.

Student Population: 3048

City Type: Suburban

Public Hearing Date: 2/8/2018

Public Hearing Advertised: Publicized in conjunction with the Board of Trustees Meeting

Local Board Approval Date: 2/22/2018

Community Council Reviewed By: Acton-Agua Dulce Board of Trustees, iLEAD Hybrid Board of Directors and charter school stakeholders

Community Council Reviewed Date: 2/7/2018

Community Council Objection: No

Community Council Objection Explanation: N/a

Audit Penalty Yes or No: No

Categorical Program Monitoring: No

Submitted by: Ms. Amanda Fischer

Position: Assistant Superintendent

E-mail: [afischer@aadusd.k12.ca.us](mailto:afischer@aadusd.k12.ca.us)

Telephone: 661-904-2481

Bargaining Unit Date: 01/31/2018

Name: Acton Agua Dulce CSEA

Representative: Guido Jaramillo

Title: President

Position: Neutral

Bargaining Unit Date: 01/31/2018

Name: Acton Agua Dulce Teachers Association

Representative: Melissa Trusel

Title: President

Position: Neutral

# Attachment 4: Waiver 14-2-2018 Enterprise Elementary School District General

**California Department of Education**

**WAIVER SUBMISSION - General**

CD Code: 4569971

Waiver Number: 14-2-2018

Active Year: 2018

Date In: 2/21/2018 10:43:37 AM

Local Education Agency: Enterprise Elementary

Address: 1155 Mistletoe Ln.

Redding, CA 96002

Start: 7/1/2017

End: 6/30/2018

Waiver Renewal: No

Waiver Topic: Charter School Program

Ed Code Title: Nonclassroom-Based Funding

Ed Code Section: 47612.5(d)(1) and 47634.2(a)(1)

Ed Code Authority: 33050-33053

*Education Code* or *CCR* to Waive: *CCR* Section 11963.6 a) An approved determination of funding for a new charter school in its first year of operation shall be submitted by December 1.

Outcome Rationale: Staff at the newly created Redding Collegiate Academy (RCA) charter school was not aware of the December 1, 2017 filing deadline for the 2017-18 school year Non-classroom Based Funding Determination Form. The financial calendars have been updated to ensure the next form will be submitted by the deadline. RCA has requested the District file a waiver on its behalf. Waiver is needed for funding to be received and school to continue.

Student Population: 111

City Type: Small

Public Hearing Date: 2/7/2018

Public Hearing Advertised: Website, District Office, Community Board

Local Board Approval Date: 2/7/2018

Community Council Reviewed By: Enterprise Elementary Board of Education

Community Council Reviewed Date: 2/7/2018

Community Council Objection: No

Community Council Objection Explanation: N/a

Audit Penalty Yes or No: No

Categorical Program Monitoring: No

Submitted by: Ms. Deborah Williams

Position: Assistant Director of Business Services

E-mail: [dwilliams@eesd.net](mailto:dwilliams@eesd.net)

Telephone: 530-224-4100

Bargaining Unit Date: 02/07/2018  
Name: Enterprise Elementary Teacher Association (EETA)  
Representative: Aimee Howland  
Title: EETA President  
Position: Neutral

# Attachment 5: Waiver 12-1-2018 Evergreen Union School District General

**California Department of Education**

**WAIVER SUBMISSION – General**

CD Code: 5271522

Waiver Number: 12-1-2018

Active Year: 2018

Date In: 1/12/2018 2:16:54 PM

Local Education Agency: Evergreen Union School District

Address: 19500 Learning Way

Cottonwood, Ca 96022

Start: 2/1/2017

End: 2/1/2019

Waiver Renewal: No

Waiver Topic: Charter School Program

Ed Code Title: Nonclassroom-Based Funding

Ed Code Section: 5 *CCR* Section 11963-6

Ed Code Authority: 33050

*Education Code* or *CCR* to Waive: Ed Code or *CCR* to Waive: 5 *CCR* 11963.6(c), any determination of funding request approved by the State Board of Education for an existing nonclassroom-based charter school from the 2006-07 fiscal year forward shall be prospective (not for the current year), in increments of a minimum of two years and a maximum of five years in length. [Beginning with the 2007-08 fiscal year, nonclassroom-based charter schools that had a funding determination in the prior year must submit a funding determination request by February 1 of the fiscal year prior to the year the funding determination will be effective.]

Outcome Rationale: The district did not file the Nonclassroom-Based FDF by the deadline of 2/1/2017 using the 2015-2016 audited financial information. As this was our first year submitting required reports, we were under the understanding that our funding determination report submitted in October fulfilled the renewal funding determination form. The loss of funding would result in a serious negative fiscal impact to our students who we serve. We are requesting this waiver as directed by the California Department of Education to be able to submit for the Nonclassroom-Based Funding Determination for Evergreen Institute of Excellence.

Student Population: 113

City Type: Rural

Public Hearing Date: 1/9/2018

Public Hearing Advertised: On our website as well as each physical school site within the district.

Local Board Approval Date: 1/9/2018

Community Council Reviewed By: The Evergreen Union School District Board of Trustees

Community Council Reviewed Date: 1/9/2018

Community Council Objection: No

Community Council Objection Explanation: N/a

Audit Penalty Yes or No: No

Categorical Program Monitoring: No

Submitted by: Ms. Sonia Freitas

Position: Business Manager

E-mail: [sfreitas@evergreenusd.org](mailto:sfreitas@evergreenusd.org)

Telephone: 530-347-3411 x7504

Fax: 530-347-4639

# Attachment 6: Waiver 13‑1‑2018 New Jerusalem Elementary School District General

**California Department of Education**

**WAIVER SUBMISSION - General**

CD Code: 3968627

Waiver Number: 13-1-2018

Active Year: 2018

Date In: 1/16/2018 11:46:16 AM

Local Education Agency: New Jerusalem Elementary School District

Address: 31400 South Koster Rd.

Tracy, CA 95304

Start: 7/1/2017

End: 6/30/2018

Waiver Renewal: No

Waiver Topic: Charter School Program

Ed Code Title: Nonclassroom-Based Funding

Ed Code Section: California *Education Code* ED section 47612.5 and 47634.2

Ed Code Authority: 5 *CCR* Section 11963.4

*Education Code* or *CCR* to Waive: (d) (1) Notwithstanding any other provision of law and except as provided in paragraph (1) of subdivision (e), a charter school that has an approved charter may receive funding for nonclassroom-based instruction only if a determination for funding is made pursuant to Section 47634.2 by the State Board of Education. The determination for funding shall be subject to any conditions or limitations the State Board of Education may prescribe. The State Board of Education shall adopt regulations on or before February 1, 2002, that define and establish general rules governing nonclassroom-based instruction that apply to all charter schools and to the process for determining funding of nonclassroom-based instruction by charter schools offering nonclassroom-based instruction other than the nonclassroom-based instruction allowed by paragraph (1) of subdivision (e). Nonclassroom-based instruction includes, but is not limited to, independent study, home study, work study, and distance and computer-based education. In prescribing any conditions or limitations relating to the qualifications of instructional personnel, the State Board of Education shall be guided by subdivision (l) of Section 47605.

Outcome Rationale: Official Notice from CDE regarding Funding Determination was issued on December 13th after the deadline for submission.

Student Population: 75

City Type: Rural

Public Hearing Date: 1/11/2018

Public Hearing Advertised: District Office, School Site Offices, Fire Department and River Club

Local Board Approval Date: 1/11/2018

Community Council Reviewed By: New Jerusalem Elementary School District Board of Trustees

Community Council Reviewed Date: 1/8/2018

Community Council Objection: No

Community Council Objection Explanation: N/a

Audit Penalty Yes or No: No

Categorical Program Monitoring: No

Submitted by: Ms. Lisa McHugh

Position: Assistant Superintendent of Business Services

E-mail: [lmchugh@njes.org](mailto:lmchugh@njes.org)

Telephone: 209-740-4699 x1102

Fax: 209-740-4699

Bargaining Unit Date: 12/19/2017

Name: New Jerusalem Educators' Association

Representative: Nalelli Rosette

Title: Bargaining Unit President

Position: Support

# Attachment 7: Waiver 14-1-2018 New Jerusalem Elementary School District General

**California Department of Education**

**WAIVER SUBMISSION - General**

CD Code: 3968627

Waiver Number: 14-1-2018

Active Year: 2018

Date In: 1/16/2018 2:14:26 PM

Local Education Agency: New Jerusalem Elementary

Address: 31400 South Koster Rd.

Tracy, CA 95304

Start: 7/1/2017

End: 6/30/2018

Waiver Renewal: No

Waiver Topic: Charter School Program

Ed Code Title: Nonclassroom-Based Funding

Ed Code Section: California *Education Code* ED section 47612.5 and 47634.2

Ed Code Authority: 5 *CCR* SEction 11963.4

*Education Code* or *CCR* to Waive: (d) (1) Notwithstanding any other provision of law and except as provided in paragraph (1) of subdivision (e), a charter school that has an approved charter may receive funding for nonclassroom-based instruction only if a determination for funding is made pursuant to Section 47634.2 by the State Board of Education. The determination for funding shall be subject to any conditions or limitations the State Board of Education may prescribe. The State Board of Education shall adopt regulations on or before February 1, 2002, that define and establish general rules governing nonclassroom-based instruction that apply to all charter schools and to the process for determining funding of nonclassroom-based instruction by charter schools offering nonclassroom-based instruction other than the nonclassroom-based instruction allowed by paragraph (1) of subdivision (e). Nonclassroom-based instruction includes, but is not limited to, independent study, home study, work study, and distance and computer-based education. In prescribing any conditions or limitations relating to the qualifications of instructional personnel, the State Board of Education shall be guided by subdivision (l) of Section 47605.

Outcome Rationale: Official Notice from CDE regarding Funding Determination was issued on December 13th after the deadline for submission. Delta Charter Online #2 Charter #1879 is seeking a waiver for the 2017-18 Funding Determination.

Student Population: 145

City Type: Rural

Public Hearing Date: 1/11/2018

Public Hearing Advertised: District Office, School Site Offices, Fire Department, River Club

Local Board Approval Date: 1/11/2018

Community Council Reviewed By: New Jerusalem Elementary School District Board of Trustees

Community Council Reviewed Date: 1/8/2018

Community Council Objection: No

Community Council Objection Explanation: N/a

Audit Penalty Yes or No: No

Categorical Program Monitoring: No

Submitted by: Ms. Lisa McHugh

Position: Assistant Superintendent of Business Services

E-mail: [lmchugh@njes.org](mailto:lmchugh@njes.org)

Telephone: 209-740-4699 x1102

Fax: 209-740-4699

Bargaining Unit Date: 12/19/2017

Name: New Jerusalem Educators' Association

Representative: Nalelli Rosette

Title: President of Bargaining Unit

Position: Support