

California Department of Education

Executive Office

SBE-005 (REV. 1/2018)

General Waiver

# California State Board of Education May 2018 Agenda Item #W-02

## Subject

Request by **San Diego Unified School District** to waive portions of California *Education Code* Section 47652, relating to the grade level expansion requirement for continuing charter schools and the capping of average daily attendance in the special advance apportionment.

## Waiver Number

6-2-2018

## Type of Action

Action

## Summary of the Issue(s)

*Education Code (EC)* Section 47652(b) states that a charter school in its second or later year of operation must be adding at least one new grade level to be eligible to receive a special advance principal apportionment on the average daily attendance (ADA) generated by the new grade(s), and also caps the ADA at that of the charter’s highest grade served in the prior year. For the ADA not funded in the special advance apportionment, the charter will have to wait until the First Principal Apportionment (P-1) period in February 2019 to begin receiving monies. San Diego Unified School District (SDUSD) is requesting the portions of *EC* pertaining to the grade level expansion requirement for continuing schools and the capping of ADA in the special advance be waived for San Diego Cooperative Charter, charter #0396.

## Authority for Waiver

*Education Code (EC)* Section 33050

## Recommendation

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

The California Department of Education (CDE) recommends that the State Board of Education (SBE) deny the waiver for SDUSD for the following reason:

California *EC* Section33051(a)(6): The request would substantially increase state costs.

Waiving both the grade level expansion requirement for continuing charter schools and the capping of ADA would essentially circumvent the scope and intent of current law and allow the school to receive state funds earlier than they may otherwise have been entitled, thus resulting in a potentially significant state cost due to a loss in foregone interest in the pooled money investment account. In addition, to the extent that state funding is provided based on an assumption of attendance as a result of the consolidation of two schools into one, the state could inadvertently significantly overpay the charter school if the attendance does not materialize. Consequently, the CDE recommends denial of this request.

## Summary of Key Issues

SDUSD requests a waiver of the following on behalf of San Diego Cooperative Charter:

California *Education Code* Section 47652. (a) Notwithstanding Section 41330, a charter school ~~in its first year of operation~~ shall be eligible to receive funding for the advance apportionment based on an estimate of average daily attendance for the current fiscal year, as approved by the local educational agency that granted its charter and the county office of education in which the charter-granting agency is located. For charter schools approved by the state board, estimated average daily attendance shall be submitted directly to, and approved by, the department. Not later than five business days following the end of the first 20 schooldays, a charter school receiving funding pursuant to this section shall report to the department its actual average daily attendance for that first month, and the Superintendent shall adjust immediately, but not later than 45 days, the amount of its advance apportionment accordingly. (b) In addition to funding received pursuant to Section 41330, a charter school in its second or later year of operation also shall be eligible to receive an advance apportionment pursuant to the process and conditions described in subdivision (a) in any year ~~in which the charter school is adding at least one grade level. The average daily attendance funded for a new grade level shall not exceed the portion of the certified average daily attendance at the second principal apportionment for the prior year that was attributable to pupils in the highest grade served by the charter school~~.

*[Note: The following language contains strikethrough from the preceding California Education Code Section 47652(a)*

* *in its first year of operation*
* *in which the charter school is adding at least one grade level. The average daily attendance funded for a new grade level shall not exceed the portion of the certified average daily attendance at the second principal apportionment for the prior year that was attributable to pupils in the highest grade served by the charter school.]*

San Diego Cooperative Charter, which serves grades K-8 in fiscal year (FY) 2017-18, plans to merge with San Diego Cooperative Charter 2, which also serves grades K-8 for FY 2017-18, in FY 2018-19. Using current year data, San Diego Cooperative Charter’s ADA is approximately 450 and San Diego Cooperative Charter 2’s ADA is approximately 300. Under the circumstances, San Diego Cooperative Charter School is not eligible for a special advance apportionment due to the school not adding a new grade level. This waiver would allow the school’s 2018-19 advance funding to be based on approximately 750 ADA versus 450 ADA at the start of the fiscal year, rather than waiting until 2018-19 P-1 to begin receiving funding on a higher level of ADA.

The mechanism to provide advance funding to all school districts, county offices of education, and continuing charter schools is provided for in *EC* 41330. For the first seven months of the FY, advance funding is based on prior year attendance until current year data is reported and funding is adjusted. *EC* 41330 is specifically excluded from the State Board of Education’s general waiver authority along with other *EC* sections related to the appropriation of funds. Further, there is no mechanism in law that provides additional advance funding for a school district or county office of education for increases in attendance prior to the First Principal Apportionment certified in February pursuant to *EC* 41332. In limited circumstances, continuing charter schools may receive additional advance funding when adding a new grade pursuant to *EC* 47652.

Additionally, this waiver assumes that all students attending San Diego Cooperative Charter 2 will attend San Diego Cooperative Charter and would provide funding based on this assumption instead of waiting until 2018-19 actual attendance is reported to CDE. If a large number of the students do not attend, the state could end up over paying the charter school.

While this is not the first time a charter school may or will realize a significant increase in enrollment for grades already served due to the absorption of a significant part of another school’s pupils, this is the first instance of a waiver request to allow special advance funding for those increases. Approval of this waiver would fundamentally conflict with the intent of the law and legislative history (Senate Bill [SB] 604, Chapter 139, Statutes of 2005) and thus denial of the waiver is recommended. The initial versions of SB 604 would have provided advance funding for general attendance growth regardless of grade level and those proposals were not successful. Like any other growing LEA, San Diego Cooperative Charter School has an option to borrow funds on an interim basis until state funding is received.

**Demographic Information:** San Diego Cooperative Charter has a student population of 457 and is located within the city of San Diego in San Diego 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** <http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=EDC&sectionNum=33051>.

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

During its September 2010 and November 2016 meetings, the SBE approved requests by SDUSD for Gompers Preparatory Academy and by Los Angeles Unified School District for City High School, respectively, to waive the *EC* Section 47652(b) ADA cap only. In both instances, the CDE recommended approval as both continuing schools were adding new grade levels and only looking for special advance apportionment funds for those new grade levels, in accordance with the intent of the law.

## Fiscal Analysis (as appropriate)

Approval of this waiver allows the school to receive a significant increase in state funds for all of their ADA, as compared to what they reported in the prior year, at a time which they otherwise would not be entitled. Approval of this waiver would likely lead to similar requests from other charter schools in the future, further compounding the increase in state costs.

## Attachment(s)

* **Attachment 1:** Summary Table (1 page)
* **Attachment 2:** San Diego Unified School District General Waiver Request 6-2-2018 (3 pages). (Original waiver request is signed and on file in the Waiver Office.)

# Attachment 1: Summary Table

California *Education Code (EC)* Section 47652

| Waiver Number | District | Period of Request | Bargaining Unit Representatives Consulted, Date and Position | Local Board and Public Hearing Approval | Public hearing advertised |
| --- | --- | --- | --- | --- | --- |
| 6-2-2018 | San Diego Unified School District | **Requested:**  July 1, 2018 to June 30, 2019 | San Diego Education Association,  Lindsay Burningham  2/6/2018  President  **Support** | Local Board Approval 2/6/2018  Community Council 2/6/2018  **No Objections** | San Diego Union Tribune newspaper |

Created by California Department of Education  
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# Attachment 2: San Diego Unified School District General Waiver Request 6-2-2018

**California Department of Education**

**WAIVER SUBMISSION - General**

CD Code: 3768338

Waiver Number: 6-2-2018

Active Year: 2018

Date In: 2/7/2018 12:58:55 PM

Local Education Agency: San Diego Unified

Address: 4100 Normal St.

San Diego, CA 92103

Start: 7/1/2018

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

Ed Code Authority: 33050

*Education Code* or *CCR* to Waive: Ed Code to be Waived: (a) Notwithstanding Section 41330, a charter school [in its first year of operation] shall be eligible to receive funding for the advance apportionment based on an estimate of average daily attendance for the current fiscal year, as approved by the local educational agency that granted its charter and the county office of education in which the charter-granting agency is located. For charter schools approved by the state board, estimated average daily attendance shall be submitted directly to, and approved by, the department. Not later than five business days following the end of the first 20 schooldays, a charter school receiving funding pursuant to this section shall report to the department its actual average daily attendance for that first month, and the Superintendent shall adjust immediately, but not later than 45 days, the amount of its advance apportionment accordingly. (b) In addition to funding received pursuant to Section 41330, a charter school in its second or later year of operation also shall be eligible to receive an advance apportionment pursuant to the process and conditions described in subdivision (a) in any year [in which the charter school is adding at least one grade level. The average daily attendance funded for a new grade level shall not exceed the portion of the certified average daily attendance at the second principal apportionment for the prior year that was attributable to pupils in the highest grade served by the charter school.]

Outcome Rationale: There are currently two K-8 charter schools operated by San Diego Cooperative Charter School under two separate charters; San Diego Cooperative Charter School (Charter No. 0396) and San Diego Cooperative Charter School 2 (Charter No. 1510). There are 466 students enrolled at San Diego Cooperative Charter School, and 306 students enrolled at San Diego Cooperative Charter School 2. Effective June 30, 2018, the charter for San Diego Cooperative Charter School 2 will expire and will not be renewed. Effective July 1, 2018, San Diego Cooperative Charter School will operate the two schools under a single charter (Charter No. 0396), resulting in a significant increase (approximately 66%) in student enrollment and staffing levels for San Diego Cooperative Charter School. Based on this significant expansion of an existing charter school in 2018-19, San Diego Cooperative Charter School seeks to waive portions of *Education Code* section 47652(a) related to first year charter schools, and section 47652(b) related to grade level expansion and ADA funding limitations for the special advance apportionment. With the waiver of these limitations, the calculation and payment that would be provided with the special 20-day apportionment will enable the school to adequately operate and supply the school with staffing and human resources support, curricular resources that will impact student learning, and counseling and intervention services necessary to support student achievement. The students have historically attended these two charter schools, so there is no risk to the State of overpaying special apportionment funds based on overestimated enrollment. This event is unusual and would not reoccur, so the school is requesting a waiver for the 2018-19 school year only.

Student Population: 775

City Type: Urban

Public Hearing Date: 2/6/2018

Public Hearing Advertised: San Diego Union Tribune newspaper

Local Board Approval Date: 2/6/2018

Community Council Reviewed By: San Diego Unified School District Board of Directors

Community Council Reviewed Date: 2/6/2018

Community Council Objection: No

Community Council Objection Explanation: N/a

Audit Penalty Yes or No: No

Categorical Program Monitoring: No

Submitted by: Ms. Deidre Walsh

Position: Manager, Office of Charter Schools

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Bargaining unit name: San Diego Education Association

Representative first name: Lindsay

Representative last name: Burningham

Representative title: President

Position of bargaining unit: Support