

California Department of Education

Executive Office

SBE-006 (REV. 1/2018)

Specific Waiver

# California State Board of Education November 2018 Agenda Item #W-03

## Subject

Requests by two local educational agenciesunder the authority of the California *Education Code (EC)* sections 46206(a) and 47612.6(a), to waive *EC* sections 46201(a) and 47612.5, the audit penalty for offering insufficient instructional minutes during the 2016–17 school year.

## Waiver Numbers

* Escuela Popular Accelerated Family Learning Center 4-8-2018
* Klamath-Trinity Joint Unified School District 8-5-2018

## 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 *EC* sections 46206(a) and 47612.6(2), the SBE may waive the fiscal penalties set forth in this article for a school district, county office of education, or charter school 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* sections 46206 and 47612.6

## Recommendation

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

The California Department of Education (CDE) recommends the SBE approve these waivers on the conditions that 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 and 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 the 2016-17 annual audit, it was discovered that Escuela Popular Accelerated Family Learning Center had multiple teachers that did not possess a valid certification document for a portion of the school year. As a result of the certification lapse, the charter school was disallowed the associated instructional time for the affected pupils taught in grades three, four, and five by the teacher. The third grade students were short 1,800 minutes, the fourth grade students were short 4,640 minutes, and the fifth grade students were short 13,000 minutes. Escuela Popular Accelerated Family Learning Center is only requesting a waiver for the third and fourth grade shortages.

Escuela Popular Accelerated Family Learning Center would like to use school years 2018–19 and 2019–20 to make up the shortfall of instructional minutes. The minimum number of required annual instructional minutes for grades three and four are 50,400 and 54,000; upon approval of the waiver the required minutes will be 52,200 for grade three and 58,640 for grade four. Escuela Popular Accelerated Family Learning Center submitted documentation showing that additional minutes will be offered during the 2018–19 and 2019–20 school years to comply with the terms of the waiver.

During the 2016-17 annual audit, it was discovered that Klamath-Trinity Joint Unified School District modified the daily bell schedule for Hoopa High School without confirming that the modified schedule was in compliance with instructional time requirements. As a result, Hoopa High failed to offer 1,545 of the required 64,800 instructional minutes.

Klamath-Trinity Joint Unified School District would like to use school years 2018–19 and 2019–20 to make up the shortfall of instructional minutes at Hoopa High School. The minimum number of required annual instructional minutes for grades nine through twelve is 64,800; upon approval of the waiver the required minutes for grades nine through twelve will be 66,345. Klamath-Trinity Joint Unified School District submitted documentation showing that additional minutes will be offered at Hoopa High School during the 2018–19 and 2019–20 school years to comply with the terms of the waiver.

**Demographic Information:**

Escuela Popular Accelerated Family Learning Center has a student population of 60 and is located in an urban area in Santa Clara County.

Klamath-Trinity Joint Unified School District has a student population of 999 and is located in a rural area in Humboldt County.

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

The SBE has approved similar requests with conditions. *EC* sections 46206 and 47612.6 authorize 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 Escuela Popular Accelerated Family Learning Center 2016–17 penalty amounts of $13,617 for grade three and $19,984 for grade four are calculated as follows (some differences due to rounding):

Grade three penalty:

* The average daily attendance of 38.23 for all students in grade three multiplied by the funding rate of $9,976.92 (transition rate) is equal to the LCFF apportionment of $381,418.
* A shortfall of 1,800 instructional minutes for grade three divided by the 50,400 minute requirement is equal to 3.57 percent of minutes not offered.
* The affected LCFF apportionment of $381,418 multiplied by the percentage of minutes not offered is equal to the penalty amount of $13,617 for grade three.

Grade four penalty:

* The average daily attendance of 24.50 for all students in grade four multiplied by the funding rate of $9,495.82 (transition rate) is equal to the LCFF apportionment of $232,648.
* A shortfall of 4,640 instructional minutes for grade four divided by the 54,000 minute requirement is equal to 8.59 percent of minutes not offered.
* The affected LCFF apportionment of $232,648 multiplied by the percentage of minutes not offered is equal to the penalty amount of $19,984 for grade four.

The Klamath-Trinity Joint Unified School District 2016–17 penalty amount of $59,307 is calculated as follows (some differences due to rounding):

* The average daily attendance of 245.38 for all students in grades nine through twelve multiplied by the district’s funding rate of $10,155.30 (transition rate) is equal to the district’s Local Control Funding Formula (LCFF) apportionment of $2,491,908.
* A shortfall of 1,545 instructional minutes for the affected grade levels divided by the 64,800 minute requirement is equal to 2.38 percent of minutes not offered.
* The affected LCFF apportionment of $2,491,908 multiplied by the percentage of minutes not offered is equal to the penalty amount of $59,307.

## Attachment(s)

* **Attachment 1:** Summary Table (2 pages)
* **Attachment 2:** Escuela Popular Accelerated Family Learning Center Specific Waiver Request 4-8-2018 (2 pages). (Original waiver request is signed and on file in the Waiver Office.)
* **Attachment 3:** Klamath-Trinity Joint Unified School District Specific Waiver Request 8-5-2018 (2 pages). (Original waiver request is signed and on file in the Waiver Office.)

# Attachment 1: Summary Table

California *Education Code (EC)* sections 46201(a) and 47612.5(a)

| **Waiver Number** | **District** | **Period of Request** | **Charter’s Request** | **CDE Recommended Action** | **Bargaining Unit Representatives Consulted, Date, and Position** | **Local Board and Public Hearing Approval** | **Penalty Without Waiver** | **Previous Waivers** |
| --- | --- | --- | --- | --- | --- | --- | --- | --- |
| 4-8-2018 | Escuela Popular Accelerated Family Learning Center | **Requested:**  August 13, 2018, to June 4, 2020  **Recommended:**  July 1, 2016, to June 30, 2017 | Charter requests waiving *EC* Section 47612.5 to avoid the audit penalty in exchange for offering increased instructional minutes in 2018–19 and 2019–20, consistent with *EC* Section 47612.6. | **Approval** of waiver, consistent with *EC* Section 47612.6 with the following conditions:  (1) Charter maintains increased instructional minutes for grades three and four of at least the amount required by law plus 1,800 minutes for grade three and 4,640 minutes for grade four, for a period of two years beginning in 2018–19 through 2019–20, and (2) Charter reports the annual instructional minutes offered in grades three and four in its annual audit report. | **Not applicable** | Local Board Approval  February 27, 2018 | $33,601 | None |

| **Waiver Number** | **Charter** | **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** |
| --- | --- | --- | --- | --- | --- | --- | --- | --- |
| 8-5-2018 | Klamath-Trinity Joint Unified School District | **Requested:**  June 1, 2018, to June 30, 2020  **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 1,545 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. | Maggie Peters, Co-President  Klamath Trinity Teachers Association  July 2, 2018  **Support** | Local Board Approval  March 13, 2018 | $59,307 | None |

Created by California Department of Education

September 2018

# Attachment 2: Escuela Popular Accelerated Family Learning Center Specific Waiver Request 4-8-2018

**California Department of Education**

**WAIVER SUBMISSION – Specific**

CD Code: 4369427

Waiver Number: 4-8-2018

Active Year: 2018

Date In: 8/15/2018 4:28:15 PM

Local Education Agency: Escuela Popular Accelerated Family Learning

Address: 830 North Capitol Ave.

San Jose, CA 95133

Start: 8/13/2018

End: 6/4/2020

Waiver Renewal: No

Waiver Topic: Instructional Time Requirement Audit Penalty

Ed Code Title: Charter - Minimum Instructional Time

Ed Code Section: *EC* Section 47612.5

Ed Code Authority: *EC* Section 47612.6

Ed Code or *CCR* to Waive: *EC* Section 47612.5

Outcome Rationale: As part of its 2016-2017 audit of Escuela Popular external auditors Squar Milner, Inc. (the “Auditors”) made a finding that a teacher of 3rd, 4th and 5th grade students did not possess a valid certification document for a portion or all of the 2016-2017 school year, and on the basis of this finding calculated deficit minutes and associated penalties related to this missing credential. A copy of this finding is attached. On June 15, 2018, the State Controller’s Office (“SCO”) certified the 2016-2017 annual audit of Escuela Popular, and specifically noted that Finding D may be considered apportionment significant. After receiving the letter from the CDE regarding the 2016-17 Audit Finding Resoution, Escuela Popular provided the CDE the Certification of Corrective Action stating it would request a waiver to correct the loss of instructional minutes for grades 3rd & 4th and submit a request for a summary review for 5th grade.

Student Population: 60

City Type: Urban

Local Board Approval Date: 2/27/2018

Audit Penalty Yes or No: Yes

Categorical Program Monitoring: No

Submitted by: Ms. Patricia Reguerin

Position: Executive Director

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Telephone: 408-426-6593

# Attachment 3: Klamath-Trinity Joint Unified School District Specific Waiver Request 8-5-2018

**California Department of Education**

**WAIVER SUBMISSION – Specific**

CD Code: 1262901

Waiver Number: 8-5-2018

Active Year: 2018

Date In: 5/10/2018 3:31:28 PM

Local Education Agency: Klamath-Trinity Joint Unified School District

Address: 11800 Highway 96

Hoopa, CA 95546

Start: 7/1/2018

End: 6/30/2020

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: 46206(a)

Ed Code or *CCR* to Waive: 46201 (b)

Outcome Rationale: Our high school changed schedules without seeking the Districts assistance to ensure the minutes were in alignment. The District is under going a crisis situation with all seven of our schools containing mold. With 30% of the District's facilities

Student Population: 999

City Type: Rural

Local Board Approval Date: 3/13/2018

Audit Penalty Yes or No: N o

Categorical Program Monitoring: No

Submitted by: Ms. Carmelita Hostler

Position: Assistant Superintendent

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