

California Department of Education

Executive Office

SBE-003 (REV. 11/2017)

exec-gad-mar19item01

# California State Board of Education March 2019 Agenda Item #21

## Subject

Paradise Unified School District Request for a Waiver of Assessment Requirements Pursuant to the Every Student Succeeds Act.

## Type of Action

Action, Information

## Summary of the Issue(s)

Local educational agency (LEA) requests for waivers of federal statutory and regulatory requirements must be reviewed and approved by the State educational agency, the California State Board of Education (SBE), pursuant to Section 8401 of the Elementary and Secondary Education Act of 1965 (ESEA), 20 U.S.C. 7861, as amended by the Every Student Succeeds Act of 2015 (ESSA), Pub. L. No. 114-95.

On February 19, 2019, the Paradise Unified School District (PUSD) submitted a request for a waiver of assessment requirements due to destructive wildfires that destroyed much of the town of Paradise in November 2018 (Attachment 1).

Additional documentation of the hardship and displacement suffered by the community as well as additional analysis of the PUSD waiver request will be posted as an addendum.

## Recommendation

The CDE recommends the approval of the submission of the waiver request to the U.S. Department of Education (ED) on behalf of PUSD, with additional background, information, or analysis by CDE staff as necessary to support the district’s waiver request.

It is further recommended that the State Board of Education (SBE) delegate authority to the SBE President to approve submission to the ED of requests by local educational agencies (LEAs) to waive provisions of ESSA if the SBE President determines there is not sufficient time to bring the request to the SBE at a regularly scheduled meeting with sufficient staff analysis to support a reasoned recommendation.

## Brief History of Key Issues

Federal and state law requires all LEAs to annually administer the California Assessment of Student Performance and Progress (CAASPP) to all students. However, a request may be made to the ED under the waiver authority provided in the federal law cited above, for the impacted school year.

This waiver request includes the following sections of federal law:

* Section 1111(b)(1)(B) which requires that challenging academic content and achievement standards apply to all public schools and public school students in the State, and include the same knowledge, skills, and levels of achievement expected of all public school students.
* Section 1111(b)(2)(B) which requires that high-quality academic assessments in mathematics, language arts, and science be used to measure the achievement of all public elementary and secondary school students in the state and administered to all public elementary and secondary school students in the state.

To request a waiver of the assessment provisions of the ESSA, an LEA must submit a justification for the waiver, all steps taken to meet the assessment requirement, and the reasons why the requirement could not be met despite the LEA’s attempts. The request must address how waiving the statutory requirements will advance student academic achievement and maintain or improve transparency in reporting to parents and the public on student achievement. Additionally, notice of the assessment waiver request must be made to the public. The waiver request must include the notice and that a reasonable opportunity was provided to the public to comment and provide input on the request. These documents were submitted by PUSD and are currently under review by CDE staff and will be posted as an addendum.

The testing window for academic assessments in mathematics, language arts, and science begins when sixty-six percent of the instructional year has been completed and continues through the LEAs last day of the selected window, the last day of instruction, or July 15, 2019, whichever comes first. LEAs select their own testing window each year, which may be a minimum of 25 instructional days and must fall within the available testing window.

Historically, ED granted these types of waiver requests when an event occurred at the opening of an assessment window and significantly impacted the LEA from the point of the event through the assessment window.

Prior to the November 2018 wildfires, PUSD operated nine campuses, with an enrollment of 3,409 students, and over 400 employees. As of February 2019, the district enrollment has reduced to 1,759 students. There are no operating school campuses in Paradise at this time. Students are attending schools outside of the city boundaries in the towns of Oroville, Chico, and Durham. Their campuses are now located in non-traditional school settings such as mall storefronts, a former OSH warehouse, an office building at the Chico Airport, the Boys and Girls Club Center, and a borrowed school from a neighboring school district. Students are being transported to these temporary school locations from residences that are 45 miles in one-direction. Additionally, 100 percent of the remaining students are now considered homeless and qualify for extra support under the federal McKinney Vento program.

Due to the devastating nature of the wildfires, this request seeks to waive all provisions of ESSA related to assessment for PUSD for the 2018–19 school year. Should this waiver be approved by ED, the waiver would also effectively waive application of accountability requirements because the n-size would be 0 and therefore the schools and district would not receive a performance rating for the academic indicators.

This item contains a copy of the waiver request from PUSD (Attachment 1) and the ESSA waiver requirements under Section 8401 (Attachment 2).

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

The SBE has not previously taken action on this type of assessment waivers under the Every Student Succeeds Act.

## Fiscal Analysis (as appropriate)

California’s total kindergarten through grade twelve funding from the 2018–19 California Budget Act is $96 billion:

State $56.3 billion

Local $31.0 billion

Federal $8.7 billion

ESSA funds are a portion of the total federal funding amount. The ESSA was implemented in 2017–18. The ESSA became effective for non-competitive formula grants in the 2017–18 school year, and for competitive grants as instructed by the ED, but largely in the 2017–18 school year as well.

## Attachment(s)

* **Attachment 1**: Paradise Unified School District Waiver Request (4 pages)
* **Attachment 2:** ESSA Waiver Requirements Under Section 8401 (7 pages)

# Attachment 1: Paradise Unified School District Waiver Request



**Paradise Unified School District Waiver Request**

Temporary District Office

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Chico, CA 95928

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Website: [www.pusdk12.org](http://www.pusdk12.org/)

**Michelle John**

Superintendent

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Human Resources and Educational Services

February 18, 2019

Mr. John Boivin, Administrator, ELA and Mathematics Office

1430 N. Street

Sacramento, CA 95928

[jboivin@cde.ca.gov](mailto:jboivin@cde.ca.gov)

Dear Mr. Boivin,

I am writing this letter to request a waiver of the assessment provisions of the ESSA. As I am sure you are aware, on the morning of November 8, 2018 the town of Paradise was destroyed in the worst wildfire in California’s history. This fire, now known as the Camp Fire, destroyed 93% of our town’s homes and businesses. Four of our nine school campuses were destroyed, another four damaged, and only one was untouched by flames.

1. **Justification for this waiver:** As you can see by the attached documents, this fire displaced 100% of our students, resulting in PUSD students being placed at sites outside our jurisdiction in the towns of Chico, Durham, and Oroville. Our 6th - 12th grade students are receiving instruction in non-school settings. More important than the lack of bandwidth is the emotional scars this fire has taken on our district. Our population has dropped to less than 50% of what is was on November 7th, 260 of our 400 staff members lost their homes and another 60 have been displaced. Our students, staff and district are suffering a tremendous loss that does not appear to be lessening at this time.
2. **Steps Taken to Meet the Assessment Requirement**: We have met with various state and federal agencies in attempt to utilize our standing schools. They have no power, potable water, phone service, or internet and are surrounded by toxic burn waste. We have recently had power and services restored to the schools in Magalia (upper Ridge). The internet is still not secure. Both AT&T and Comcast are having to replace and rebuild all wiring that was destroyed in the fire. Several of our temporary facilities, Old OSH Building, Boys and Girls Club building, and the office building by the Chico Airport are not designed to administer state testing.

We have also addressed the topic of student assessments with mental health experts in the field. All of them have recommended not putting additional stress on students with this requirement.

1. **Notice of Assessment Waiver Made to the Public:** The intent to file a CAASPP waiver was discussed and feedback was provided at two publicly noticed School Board meetings, as well as at Superintendent Parent/Community and Employee Advisor meetings, School Site Council meetings, PTSO meetings, and numerous informal meeting with parents. I have also discussed the state assessments, which our district takes very seriously, with trauma specialists. I even discussed this topic with Governor Newsom. All have recommended, including Governor Newsom, not testing students this year. There was not one parent or staff member who expressed interest in CAASPP participation this year. The responses I received included:
   1. “Where do I get a request to not test my student?”
   2. “Are you kidding me?”
   3. “I will pull my children from your district if you try and test them.”
   4. “The state is actually thinking that our students will test?”
   5. “There is no way we will get valid scores.”
   6. “This will throw me over the edge.”
   7. “I am not even having my child complete his AP tests.”
   8. “Our students literally ran for their lives, now the state wants them to test?”
   9. “I am not worried about testing. I am worried about where I am going to live, how I am going to feed my children, and if my child will recover from this disaster.”
   10. “I just want to see my child smile again and be happy. Testing under normal circumstances stresses my kids out. My children will not be participating.”

As you can see, there was no support from any group this year to test our traumatized students.

1. **Maintaining Student Achievement and Parent/Community Transparency**: Our district was able to return to makeshift schools and classrooms in the beginning of January. Staff have been as diligent as possible getting back into a routine of academics. This is proving difficult for students and staff as trauma and loss are with us all each day. Some days are better than others. We are maintaining up-to-date formative assessments by utilizing:
   1. Curriculum-embedded assessments and benchmark tests
   2. i-Ready assessments
   3. STAR reading and math assessments as a part of our Renaissance Place subscription
   4. Reading assessments such as Dibbles, San Diego Quick, etc.
   5. New ELA assessments and leveled reading

All data is reported out quarterly to parents or more frequently as requested.

Paradise Unified will be participating in both the PFT and ELPAC assessments this spring as we feel that we can successfully administer these assessments on a smaller scale.

We understand the consequences of not participating in the CAASPP assessments, including a Dashboard color of Orange. And although we do not agree with this outcome, nor does Governor Newsom and many other educational leaders, we will accept this in lieu of putting further stress on our students, families and educators.

What our district and community would not be able to accept is a loss of federal funding, including Title 1 and Free and Reduced Lunch. Our students and families on the Ridge have the highest ACE’s (Adverse Childhood Experiences) in the state. Prior to the fire we were a district of 68% unduplicated and had just qualified to participate in the CEP lunch program. Losing either one of these funding streams would be unrecoverable for our students and families. As you can see by our current Dashboard and AP scores (out scored, state, nation and globally), our students have been achieving and succeeding. We are proud of our scores and our students overcoming many obstacles to learning. We will come back from this devastation. We need financial resources, mental health specialists, and some time and understanding to once again get back on track. We know that this is a marathon and not a sprint. We are looking at 5-10 years to recover. A one year waiver from CAASPP testing is all we are requesting.

Please let the students, families and staff of Paradise know you are empathetic to what we are going through. Please waive the CAASPP assessments for spring 2019 and enable PUSD to qualify and keep our federal funding, specifically Title 1 and Free and Reduced Lunch Program.

Sincerely,

Signature of Michelle John the Superintendent of Paradise Unified School District 


Michelle John

Superintendent

CC: Mary Sakuma, Superintendent, Butte County Office of Education

Cindy Kazanis, Director, Analysis, Measurement and Accountability Reporting Division

Michelle Center, Director, Assessment Development and Administration Division

Michael Greer, School Board President, Paradise Unified School Board

**Attachment 2: Every Student Succeeds Act Waiver Requirements**

This attachment is a summary of the Every Student Succeeds Act (ESSA) waiver requirements under section 8401.

**PART D—WAIVERS**

**SEC. 8401. 20 U.S.C. 7861** **WAIVERS OF STATUTORY AND REGULATORY REQUIREMENTS.**

**(a) IN GENERAL.**

**(1) REQUEST FOR WAIVER BY STATE OR INDIAN TRIBE.**—A State educational agency or Indian tribe that receives funds under a program authorized under this Act may submit a request to the Secretary to waive any statutory or regulatory requirement of this Act.

**(2) LOCAL EDUCATIONAL AGENCY AND SCHOOL REQUESTS SUBMITTED THROUGH THE STATE.**

**(A) REQUEST FOR WAIVER BY LOCAL EDUCATIONAL AGENCY.**—A local educational agency that receives funds under a program authorized under this Act and desires a waiver of any statutory or regulatory requirement of this Act shall submit a request containing the information described in subsection (b)(1) to the appropriate State educational agency. The State educational agency may then submit the request to the Secretary if the State educational agency determines the waiver appropriate.

**(B) REQUEST FOR WAIVER BY SCHOOL.**—An elementary school or secondary school that desires a waiver of any statutory or regulatory requirement of this Act shall submit a request containing the information described in subsection (b)(1) to the local educational agency serving the school. The local educational agency may then submit the request to the State educational agency in accordance with subparagraph (A) if the local educational agency determines the waiver appropriate.

**(3) RECEIPT OF WAIVER.**—Except as provided in subsection (b)(4) or (c), the Secretary may waive any statutory or regulatory requirement of this Act for which a waiver request is submitted to the Secretary pursuant to this subsection.

**(b) REQUEST FOR WAIVER.**

**(1) IN GENERAL.**—A State educational agency, acting on its own behalf or on behalf of a local educational agency in accordance with subsection (a)(2), or Indian tribe that desires a waiver shall submit a waiver request to the Secretary, which shall include a plan that

(A) identifies the Federal programs affected by the requested waiver;

(B) describes which Federal statutory or regulatory requirements are to be waived;

(C) describes how the waiving of such requirements will advance student academic achievement;

(D) describes the methods the State educational agency, local educational agency, school, or Indian tribe will use to monitor and regularly evaluate the effectiveness of the implementation of the plan;

(E) includes only information directly related to the waiver request; and

(F) describes how schools will continue to provide assistance to the same populations served by programs for which waivers are requested and, if the waiver relates to provisions of subsections (b) or (h) of section 1111, describes how the State educational agency, local educational agency, school, or Indian tribe will maintain or improve transparency in reporting to parents and the public on student achievement and school performance, including the achievement of the subgroups of students identified in section 1111(b)(2)(B)(xi).

**(2) ADDITIONAL INFORMATION.**

Such requests

(A) may provide for waivers of requirements applicable to State educational agencies, local educational agencies, Indian tribes, and schools; and

(B) shall be developed and submitted

(i)(I) by local educational agencies (on behalf of those agencies and schools) to State educational agencies; and

(II) by State educational agencies (on behalf of those agencies or on behalf of, and based on the requests of, local educational agencies in the State) to the Secretary; or

(ii) by Indian tribes (on behalf of schools operated by the tribes) to the Secretary.

**(3) GENERAL REQUIREMENTS.**

**(A) STATE EDUCATIONAL AGENCIES.**—In the case of a waiver request submitted by a State educational agency acting on its own behalf, or on behalf of local educational agencies in the State under subsection (a)(2), the State educational agency shall

(i) provide the public and any interested local educational agency in the State with notice and a reasonable opportunity to comment and provide input on the request, to the extent that the request impacts the local educational agency;

(ii) submit the comments and input to the Secretary, with a description of how the State addressed the comments and input; and

(iii) provide notice and a reasonable time to comment to the public and local educational agencies in the manner in which the applying agency customarily provides similar notice and opportunity to comment to the public.

**(B) LOCAL EDUCATIONAL AGENCIES.**—In the case of a waiver request submitted by a local educational agency that receives funds under this Act

(i) the request shall be reviewed and approved by the State educational agency in accordance with subsection (a)(2) before being submitted to the Secretary and be accompanied by the comments, if any, of the State educational agency and the public; and

(ii) notice and a reasonable opportunity to comment regarding the waiver request shall be provided to the State educational agency and the public by the agency requesting the waiver in the manner in which that agency customarily provides similar notice and opportunity to comment to the public.

**(4) WAIVER DETERMINATION, DEMONSTRATION, AND REVISION.**

**(A) IN GENERAL.**—The Secretary shall issue a written determination regarding the initial approval or disapproval of a waiver request not more than 120 days after the date on which such request is submitted. Initial disapproval of such request shall be based on the determination of the Secretary that

(i) the waiver request does not meet the requirements of this section;

(ii) the waiver is not permitted under subsection (c);

(iii) the description required under paragraph (1)(C) in the plan provides insufficient information to demonstrate that the waiving of such requirements will advance student academic achievement consistent with the purposes of this Act; or

(iv) the waiver request does not provide for adequate evaluation to ensure review and continuous improvement of the plan.

**(B) WAIVER DETERMINATION AND REVISION.**—Upon the initial determination of disapproval under subparagraph (A), the Secretary shall

(i) immediately

(I) notify the State educational agency, local educational agency (through the State educational agency), school (through the local educational agency), or Indian tribe, as applicable, of such determination; and

(II) provide detailed reasons for such determination in writing to the applicable entity under subclause (I) to the public, such as posting in a clear and easily accessible format to the Department’s website;

(ii) offer the State educational agency, local educational agency (through the State educational agency), school (through the local educational agency), or Indian tribe an opportunity to revise and resubmit the waiver request by a date that is not more than 60 days after the date of such determination; and

(iii) if the Secretary determines that the resubmission under clause (ii) does not meet the requirements of this section, at the request of the State educational agency, local educational agency, school, or Indian tribe, conduct a hearing not more than 30 days after the date of such resubmission.

**(C) WAIVER DISAPPROVAL.**—The Secretary may ultimately disapprove a waiver request if

(i) the State educational agency, local educational agency, school, or Indian tribe has been notified and offered an opportunity to revise and resubmit the waiver request, as described under clauses (i) and (ii) of subparagraph (B); and

(ii) the State educational agency, local educational agency (through the State educational agency), school (through the local educational agency), or Indian tribe—

(I) does not revise and resubmit the waiver request; or

(II) revises and resubmits the waiver request, and the Secretary determines that such waiver request does not meet the requirements of this section after a hearing conducted under subparagraph (B)(iii), if such a hearing is requested.

**(D) EXTERNAL CONDITIONS.**—The Secretary shall not disapprove a waiver request under this section based on conditions outside the scope of the waiver request.

**(c) RESTRICTIONS.**—The Secretary shall not waive under this section any statutory or regulatory requirements relating to

(1) the allocation or distribution of funds to States, local educational agencies, Indian tribes, or other recipients of funds under this Act;

(2) maintenance of effort;

(3) comparability of services;

(4) use of Federal funds to supplement, not supplant, non-Federal funds;

(5) equitable participation of private school students and teachers;

(6) parental participation and involvement;

(7) applicable civil rights requirements;

(8) the requirement for a charter school under part C of title IV;

(9) the prohibitions

(A) in subpart 2 of part F;

(B) regarding use of funds for religious worship or instruction in section 8505; and

(C) regarding activities in section 8526; or

(10) the selection of a school attendance area or school under subsections (a) and (b) of section 1113, except that the Secretary may grant a waiver to allow a school attendance area or school to participate in activities under part A of title I if the percentage of children from low-income families in the school attendance area or who attend the school is not more than 10 percentage points below the lowest percentage of those children for any school attendance area or school of the local educational agency that meets the requirements of subsections (a) and (b) of section 1113.

**(d) DURATION AND EXTENSION OF WAIVER; LIMITATIONS.**

**(1) IN GENERAL.**—Except as provided in paragraph (2), a waiver approved by the Secretary under this section may be for a period not to exceed 4 years.

**(2) EXTENSION.**—The Secretary may extend the period described in paragraph (1) if the State demonstrates that

(A) the waiver has been effective in enabling the State or affected recipient to carry out the activities for which the waiver was requested and the waiver has contributed to improved student achievement; and

(B) the extension is in the public interest.

**(3) SPECIFIC LIMITATIONS.**—The Secretary shall not require a State educational agency, local educational agency, school, or Indian tribe, as a condition of approval of a waiver request, to

(A) include in, or delete from, such request, specific academic standards, such as the Common Core State Standards developed under the Common Core State Standards Initiative or any other standards common to a significant number of States;

(B) use specific academic assessment instruments or items, including assessments aligned to the standards described in subparagraph (A); or

(C) include in, or delete from, such waiver request any specific elements of

(i) State academic standards;

(ii) academic assessments;

(iii) State accountability systems; or

(iv) teacher and school leader evaluation systems.

**(e) REPORTS.**—A State educational agency, local educational agency, school, or Indian tribe receiving a waiver under this section shall describe, as part of, and pursuant to, the required annual reporting under section 1111(h)

(1) the progress of schools covered under the provisions of such waiver toward improving student academic achievement; and

(2) how the use of the waiver has contributed to such progress.

**(f) TERMINATION OF WAIVERS.**—The Secretary shall terminate a waiver under this section if, after notice and an opportunity for a hearing, the Secretary

(A) 13 presents a rationale and supporting information that clearly demonstrates that the waiver is not contributing to the progress of schools described in subsection (e)(1); or

(B) determines that the waiver is no longer necessary to achieve its original purposes.

**(g) PUBLICATION.**—A notice of the Secretary’s decision to grant each waiver under subsection (a) shall be published in the Federal Register and the Secretary shall provide for the dissemination of the notice to State educational agencies, interested parties, including educators, parents, students, advocacy and civil rights organizations, and the public.