

California Department of Education

Executive Office

SBE-006 (REV. 1/2018)

Specific Waiver

# California State Board of Education November 2019 Agenda Item #W-03

## Subject

Requests by **two districts** under the authority of the California *Education Code* Section 46206(a), to waive *Education Code* sections 46200 and 46201(a), the audit penalty for offering insufficient instructional days and minutes during the 2016–17 and 2017–18 school years.

## Waiver Numbers

* Oakland Unified School District 6-7-2019
* San Francisco Unified School District 4-7-2019

## Type of Action

Action, Consent

## Summary of the Issue(s)

The school districts (districts) above are requesting that the California State Board of Education (SBE) waive the instructional time requirement audit penalty. The districts were short instructional days and/or minutes for the 2016–17 and 2017–18 school years. Per *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 days and/or minutes were lost maintain days and 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 the requests by the two districts to waive the instructional time penalties for offering less than the required instructional days and/or minutes for the requested period shown in Attachment 1, as long as the conditions outlined in Attachment 1 are met by the districts.

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

## Summary of Key Issues

During an audit of instructional time for 2017–18, it was discovered that Redwood Heights Elementary School failed to offer the required 54,000 annual minutes for grades four and five by 450 minutes. Adjustments were made to the Wednesday minimum day schedule leading to a shortage. Due to staff turnover, new staff was unaware of the instructional time requirements and the shortage was not identified. This resulted in a shortage of annual instructional minutes.

### Oakland Unified School District

Oakland Unified School District (OUSD) would like to use school years 2019–20 and 2020–21 to make up the shortfall of the instructional minutes. OUSD has submitted documentation showing Redwood Heights Elementary School will offer additional minutes for grades four and five during the 2019–20 and 2020–21 school years to comply with the terms of the waiver.

During an audit of instructional minutes and days for 2016–17, it was discovered that Abraham Lincoln High School failed to offer 180 days of instruction for grades nine through twelve, instead offering only 177 days of instruction for the school year, resulting in a shortage of three school days. In addition, Abraham Lincoln High School failed to offer the required 64,800 minutes for grades nine through twelve by 519 minutes. Revisions to the school calendar were made mid-way through the school year, resulting in the shortages.

### San Francisco Unified School District

San Francisco Unified School District (SFUSD) would like to use school years 2020–21 and 2021–22 to make up the shortfall of the instructional days and minutes. SFUSD has submitted documentation showing Abraham Lincoln High School will offer additional days and minutes for grades nine through twelve during the 2020–21 and 2021–22 school years to comply with the terms of the waiver.

### Demographic Information:

Oakland Unified School District has a student population of 36,485 and is located in an urban area in Alameda County.

San Francisco Unified School District has a student population of 57,000 and is located in an urban area in San Francisco 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 or days were lost, maintain minutes or days 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 OUSD 2017–18 instructional minute penalty amount of $428,456 is calculated as follows (some differences due to rounding):

* The average daily attendance of 6,005.61 for students in grades four and five multiplied by the district’s funding rate of $8,595.49 (transition rate) is equal to the district’s Local Control Funding Formula (LCFF) apportionment of $51,621,161.
* A shortfall of 450 instructional minutes for grades four and five divided by the 54,000 minute requirement is equal to .83 percent of minutes not offered.
* The affected LCFF apportionment of $51,621,161 multiplied by the percentage of minutes not offered is equal to the penalty amount of $428,456.

The SFUSD 2016–17 total penalty amount of $3,296,981 includes penalties for the instructional day and minute shortages calculated individually as follows (some differences due to rounding):

Instructional Day Penalty

* The average daily attendance of 14,638.76 for all students in grades nine through twelve multiplied by the funding rate of $9,081.56 (transition rate) is equal to the LCFF apportionment of $132,942,777.
* The affected LCFF apportionment of $132,942,777 multiplied by the number of days not offered is equal to $398,828,331.
* $398,828,331 multiplied by the instructional day penalty factor of 0.0056 results in an instructional day penalty in the amount of $2,233,439.

Instructional Minute Penalty

* The average daily attendance of 14,638.76 for all students in grades nine through twelve multiplied by the funding rate of $9,081.56 (transition rate) is equal to the LCFF apportionment of $132,942,777.
* A shortfall of 519 instructional minutes for the affected grade levels divided by the 64,800 minute requirement is equal to 0.80 percent of minutes not offered.
* The affected LCFF apportionment of $132,942,777 multiplied by the percentage of minutes not offered is equal to the instructional minute penalty amount of $1,063,542.

## Attachment(s)

* **Attachment 1:** Summary Table (2 pages)
* **Attachment 2:** OUSD Specific Waiver Request 6-7-2019 (2 pages). (Original waiver request is signed and on file in the Waiver Office.)
* **Attachment 3:** SFUSD Specific Waiver Request 4-7-2019 (2 pages). (Original waiver request is signed and on file in the Waiver Office.)

# Attachment 1: Summary Table

California *Education Code (EC)* Sections 46200 and 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** |
| --- | --- | --- | --- | --- | --- | --- | --- | --- |
| 6-7-2019 | Oakland Unified School District | **Requested:**  July 1, 2017, to June 30, 2018  **Recommended:**  July 1, 2017, to June 30, 2018 | District requests waiving *EC* Section 46201 to avoid the audit penalty in exchange for offering increased instructional minutes in 2019–20 and 2020–21, consistent with *EC* Section 46206. | **Approval** of waiver, consistent with *EC* Section 46206 with the following conditions:  (1) District maintains increased instructional minutes at Redwood Heights Elementary School for grades four and five of at least the amount required by law plus 450 minutes, for a period of two years beginning in 2019–20 through 2020–21, and (2) District reports the annual instructional minutes in its annual audit report. | Oakland Education Association  Keith Brown, President  June 18, 2019  **Support** | Local Board Approval  June 26, 2019 | $428,456 | None |
| 4-7-2019 | San Francisco Unified School District | **Requested:**  July 1, 2016, to June 30, 2017  **Recommended:**  July 1, 2016, to June 30, 2017 | District requests waiving *EC* Sections 46200 and 46201 to avoid the audit penalty in exchange for offering increased instructional days and minutes in 2020– 21 and 2021–22, consistent with *EC* Section 46206. | **Approval** of waiver, consistent with *EC* Section 46206 with the following conditions:  (1) District maintains increased instructional days and minutes for grades nine through twelve at Abraham Lincoln High School of at least the amount required by law plus 3 days and 519 minutes, for a period of two years beginning in 2020–21 through 2021–22, and (2) District reports the increased annual instructional days and minutes offered in in its annual audit report. | United Educators of San Francisco  Susan Soloman, Director  May 13, 2019  **Neutral** | Local Board Approval  May 14, 2019 | $3,296,981 | None |

Created by California Department of Education

September 2019

# Attachment 2: Oakland Unified School District Specific Waiver Request 6-7-2019

**California Department of Education**

**WAIVER SUBMISSION – Specific**

CD Code: 0161259

Waiver Number: 6-7-2019

Active Year: 2019

Date In: 7/10/2019 9:16:09 AM

Local Education Agency: Oakland Unified School District

Address: 1000 Broadway, Ste. 680

Oakland, CA 94607

Start: 7/1/201

End: 6/30/2018

Waiver Renewal: No

Waiver Topic: Instructional Time Requirement Audit Penalty

Ed Code Title: Fallen Below 180 Days

Ed Code Section: 46201

Ed Code Authority: 46206

Ed Code or *CCR* to Waive: 46206(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.

Outcome Rationale: During an audit of instructional minutes for 2017-18, it was discovered that Redwood Heights Elementary failed to offer the required number of minutes for grades 4 and 5.

During the same year, the State and Federal department experienced personnel turnover and personnel reduction. As a result of transition, personnel charged with the responsibility of managing instructional minutes, for the site in question, was unaware of the requirements regarding instructional time. The principal was asked to correct the calendar to reflect the minimum days on Wednesdays and was not aware that such action caused a deficit in instructional minutes. As a result, Redwood Heights Elementary fell 450 minutes short of 54,000 minute requirement.

Student Population: 36485

City Type: Urban

Local Board Approval Date: 6/26/2019

Audit Penalty Yes or No: Yes

Categorical Program Monitoring: No

Submitted by: Ms. Kayla Le

Position: Controller

E-mail: [kayla.le@ousd.org](mailto:kayla.le@ousd.org)

Telephone: 510-879-1012

Bargaining Unit Date: 06/18/2019

Name: Oakland Education Association

Representative: Keith Brown

Title: President

Position: Support

Comments:

# Attachment 3: San Francisco Unified School District Specific Waiver Request 4-7-2019

**California Department of Education**

**WAIVER SUBMISSION – Specific**

CD Code: 3868478

Waiver Number: 4-7-2019

Active Year: 2019

Date In: 7/3/2019 4:20:55 PM

Local Education Agency: San Francisco Unified School District

Address: 555 Franklin St.

San Francisco, CA 94102

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: 41020

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

Outcome Rationale: The site administration of Abraham Lincoln HS altered the school's instructional calendar for the school year, resulting in a shortfall in instructional minutes and days. As a result of this audit finding, a penalty was applied to the school district's entire 9-12 grade span. The penalty totals over $3.2 million, and will deny the district's high schools needed instructional resources.

Student Population: 57000

City Type: Urban

Local Board Approval Date: 5/14/2019

Audit Penalty Yes or No: Yes

Categorical Program Monitoring: No

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Submitted By: Mr. Michael Davis

Position: Director:

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Bargaining Unit Date: 05/13/2019

Name: United Educators San Francisco

Representative: Susan Soloman

Title: Director

Position: Neutral

Comments: