

California Department of Education

Executive Office

SBE-005 (REV. 1/2018)

General Waiver

# California State Board of Education September 2019 Agenda Item #W-01

## Subject

Request by **South Bay Union Elementary** 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 Number

14-6-2019

## Type of Action

Action, Consent

## Summary of the Issue(s)

South Bay Union Elementary (SBUE) is requesting, on behalf of the South Bay Charter School (SBCS – Charter #1303) identified in Attachment 1, that the California State Board of Education (SBE) waive a portion of the *California Code of Regulations*, Title 5 (5 *CCR*) Section 11963.6, in order to allow the charter school to request a nonclassroom-based funding determination for their respective funding time period.

SBUE submitted a determination of funding request after the February 1 filing deadline. This waiver is to allow SBUE to submit a late funding request that would cover the period from July 1, 2018, through June 30, 2022. SBUE is currently receiving funding based on estimated attendance submitted by the school. If the waiver is approved by the SBE, SBUE may then submit a retroactive funding determination request for consideration to 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

## 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.

The charter school listed in Attachment 1 is requesting to submit a determination of funding request after the filing deadline, thereby making the request retroactive.

**Demographic Information:**

SBUE is requesting a waiver for SBCS (Charter #1303), which serves a student population of 76 and is located in a small city in Humboldt 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

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 average daily attendance (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 Waiver Summary Table (1 page)
* **Attachment 2:** South Bay Union Elementary General Waiver Request   
  14-6-2019 (3 pages). (Original waiver request is signed and on file in the Waiver Office.)

# Attachment 1: Nonclassroom-Based Funding Determination Deadline Waiver Summary Table

California *Education Code (EC)* Section 47612.5, 47634.2

| 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 |
| --- | --- | --- | --- | --- | --- | --- | --- |
| 14-6-2019 | South Bay Union Elementary | South Bay Charter School  1303 | 2011–12 | **Requested:** 2018–19 through 2019–20  **Recommended:** July 1, 2018 through June 30, 2019 | 6/26/2019 | Times-Standard newspaper. | South Bay Union Elementary Charter Council  **No objections** |

Created by California Department of Education  
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# Attachment 2: South Bay Union Elementary General Waiver Request 14-6-2019

**California Department of Education**

**WAIVER SUBMISSION - General**

CD Code: 1263032

Waiver Number: 14-6-2019

Active Year: 2019

Date In: 6/28/2019 10:42:53 AM

Local Education Agency: South Bay Union Elementary

Address: 6077 Loma Ave.

Eureka, CA 95503

Start: 2/1/2018

End: 6/30/2020

Waiver Renewal: No

Previous Waiver Number:

Previous SBE Approval Date:

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: “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: \*Note: Total charter = 76 students. Of those, 19 are NCB and 57 are classroom-based.

South Bay Charter School (SBCS) did not have significant parent interest in the charter school’s independent study component prior to the 2018-2019 school year. By the time SBCS realized its student enrollment numbers for nonclassroom based learning were going to exceed 20%, therefore requiring SBCS to file a Nonclassroom-Based Funding Determination Form, the February 1 deadline for the 2018-2019 school year had passed. However, SBCS was operating under the mistaken belief that it was considered a new charter school for filing purposes, as it was filing for the first time. Therefore, SBCS filed its Nonclassroom-Based Funding Determination Form seeking approval for the years 2018-2019 through 2023-2024 with the California Department of Education on December 3, 2018. Because of that filing, SBCS believed it had met the deadline for the 2019-2020 school year. It was only after the February 1 deadline for the 2019-2020 passed that SBCS determined that it had missed a second deadline for the 2019-2020 year. Therefore, SBCS seeks a waiver of the filing deadlines of February 1 2018 and February 1, 2019, set forth in *California Code of Regulations*, title 5, Section 11963.6(c) to allow SBCS to apply to receive nonclassroom based funding for the 2018-2019 and 2019-2020 school year.

Student Population: 76

City Type: Small

Public Hearing Date: 6/26/2019

Public Hearing Advertised: Times-Standard newspaper, June 21 - 27, 2019

Local Board Approval Date: 6/26/2019

Community Council Reviewed By: The charter council

Community Council Reviewed Date: 5/15/2019

Community Council Objection: No

Community Council Objection Explanation:

Audit Penalty Yes or No: No

Categorical Program Monitoring: No

Submitted by: Mr. Gary Stortso

Position: Superintendent

E-mail: [gstorts@southbayusd.org](mailto:gstorts@southbayusd.org)

Telephone: 707-267-9174

Fax: 707-476-8968

Bargaining Unit Date: 05/06/2019  
Name: CSEA, Elk River 766  
Representative: Julie Bonomini  
Title: President  
Position: Support  
Comments:

Bargaining Unit Date: 05/06/2019  
Name: South Bay Teachers' Association (SBTA)  
Representative: Alisa Coan Ross  
Title: Bargaining Chair  
Position: Support  
Comments: