

California Department of Education

Executive Office

SBE-006 (REV. 1/2018)

Specific Waiver

# California State Board of Education September 2019 Agenda Item #W-14

## Subject

Requests by **two districts** under the authority of California *Education Code* (*EC*) Section 41382, to waive portions of the *EC* Section 41376(a), (c), and (d) relating to class size penalties for grades one through three. Allowable district class size average is 30 to one with no individual class larger than 32 students for grades one to three. The districts are requesting to increase their individual class size for grades one to three.

## Waiver Numbers

* El Rancho Unified School District 6-5-2019
* El Rancho Unified School District 7-5-2019
* Garden Grove Unified School District 3-5-2019

## Type of Action

Action, Consent

## Summary of the Issue(s)

The El Rancho Unified School District (USD) is requesting a waiver of portions of *EC* Section 41376(a), (c), and (d) relating to class size penalties for grades one through three for fiscal years 2017–18 and 2018–19.

The Garden Grove USD is requesting a waiver of portions of *EC* Section 41376(a), (c), and (d) relating to class size penalties for grades one through three for fiscal year   
2018–19.

## Authority for Waiver

*EC* Section 41382

**Recommendation**

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

The California Department of Education (CDE) recommends the California State Board of Education (SBE) approve the requests by the two districts to waive the class size penalties for grades one through three for the recommended period shown on Attachment 1, provided the overall average and individual class size average is not greater than the CDE-recommended level shown on Attachment 1. Should the districts exceed these conditions, the class size penalty will be applied per statute.

The CDE also recommends that the SBE find that the class size penalty provisions of *EC* sections 41376 and 41378 will, if not waived, prevent the districts from developing more effective educational programs to improve instruction in reading and mathematics for students in the classes specified in the district’s application.

## Summary of Key Issues

There are two different requirements regarding kindergarten through grade three (K–3) class sizes. The first requirement has been in law since the mid-1960s and is the subject of this waiver. This law requires the CDE to apply a financial class size penalty to a school district’s Local Control Funding Formula (LCFF) funding if any of the following occur:

* A single kindergarten class exceeds an average enrollment of 33.
* The average enrollment of all kindergarten classes in the district exceeds 31.
* A single class in grades one through three exceeds an average enrollment of 32.
* The average enrollment of all grades one through three classes in the district exceeds 30.

School districts report their average class enrollment information to the CDE in the spring of the applicable year. If a school district does not meet the requirements, the CDE reduces the district’s final payment for the year. Generally, the penalty is equal to a loss of all funding for enrollment above 31 in kindergarten classes or 30 in grades one through three classes. *EC* Section 41382 allows the SBE to waive this penalty if the associated class size requirements prevent the school and school district from developing more effective education programs to improve instruction in reading and mathematics.

The second requirement, which began in fiscal year 2013–14, is related to the K–3 grade-span adjustment (GSA) that increases the LCFF target funding for the

K–3 grade span by 10.4 percent. The LCFF target represents what a school district would receive if the state had the resources to fully fund LCFF. In order to receive this adjustment, school districts must meet one of the following conditions at each school site:

* If a school site’s average class enrollment in K–3 was more than 24 pupils in the prior year, make progress toward maintaining at that school site an average class enrollment in K–3 of not more than 24 pupils.
* If a school site’s average class enrollment in K–3 was 24 pupils or less in the prior year, maintain at that school site an average class enrollment in K–3 of not more than 24 pupils.
* Agree to a collectively-bargained alternative to the statutory K–3 GSA requirements.

If an independent auditor finds that a school district did not meet one of the conditions, the CDE must retroactively remove the K–3 GSA from the district’s funding. *EC* Section 42238.02(d)(3)(E) does not allow the SBE to waive the adjustment.

These two statutes operate independently. It is possible that a district could comply with the ostensibly more restrictive conditions for the K–3 GSA and be out of compliance with the K–3 class size penalty statutes for several reasons. For instance, the district could have negotiated an alternative to the K–3 GSA class size average that exceeds the class size penalty levels. Similarly, districts could be meeting the conditions for the K–3 GSA by making progress towards achieving an average class size of 24 at a school site, but still exceed the levels that trigger a class size penalty.

In September 2014, the SBE adopted Policy #14-01, which requires districts to provide certain types of information with their waiver requests commencing with fiscal year 2014–15. The districts’ waivers included the information required by the SBE’s Policy #14-01. The districts state that without an approved waiver, the core reading and math programs will be compromised by the three multilevel classes that would need to be created to avoid the penalty. Allowable class size average for grades one through three is 30 to one with no individual class larger than 32.

**El Rancho Unified School District**

In fiscal year 2017–18, the El Rancho USD had one class that exceeded the maximum individual class size of 32 students by one student. In fiscal year 2018–19, the district had four classes that exceeded the maximum individual class size of 32 students by one student and one class that exceeded the maximum individual class size by two students. The district’s average class size in grades one through three was 24.1 in fiscal year 2017–18 and 23.6 in fiscal year 2018–19. The district has experienced declining enrollment over the last several fiscal years and in order to maintain fiscal solvency has negotiated a Memorandum of Understanding (MOU) to allow class sizes in excess of 30 for grades one through three. In order to prevent students from having to move schools, some classes exceeded the allowable individual class size. The district believes it would be more detrimental to move students from their local school than to have one excess student. The district incurred a penalty of $76,639 in fiscal year 2017–18 and $111,930 in fiscal year 2018–19. The district is continuing to work towards all classes being at 30 or below and is incorporating smaller class sizes into its updated Local Control and Accountability Plan for 2019–20.

**Garden Grove Unified School District**

In fiscal year 2018–19, the Garden Grove USD had two classes that exceeded the maximum individual class size by one student due to miscalculations. The district’s overall average class size for grades one through three was 24.9. The errors were not discovered until late in the year. The district did not feel it would be beneficial to reconfigure classes at that time as it would have been disruptive to reading and math instruction. The district incurred a penalty of $126,854 for fiscal year 2018–19. The district has improved its calculation process, continues to monitor class sizes, and will return to the statutory levels in the 2019–20 fiscal year.

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

Before September 2009, no class size penalty waivers had been submitted since 1999. Due to the state budget crisis and resulting significant reduction in funding, the SBE began receiving a large number of waiver requests beginning in 2009. As a result, the SBE approved all class size penalty waiver requests through fiscal year 2013–14. In September 2014, the SBE adopted a policy for the type of information districts should provide when submitting a class size penalty waiver request for fiscal years beginning with 2014–15. The policy is available at [https://www.cde.ca.gov/re/lr/wr/waiverpolicies.asp](http://www.cde.ca.gov/re/lr/wr/waiverpolicies.asp), under Class Size Penalties for Grades Kindergarten and Grades One through Three.

## Fiscal Analysis (as appropriate)

See Attachment 1 for actual/estimated penalty amounts should the waiver requests be denied.

## Attachment(s)

* **Attachment 1:** Summary Table (2 pages)
* **Attachment 2:** El Rancho Unified School District Waiver 6-5-2019 (2 pages) (Original waiver request is signed and on file in the Waiver Office.)
* **Attachment 3:** El Rancho Unified School District Waiver 7-5-2019 (2 pages) (Original waiver request is signed and on file in the Waiver Office.)
* **Attachment 4:** Garden Grove Unified School District Waiver 3-5-2019 (4 pages) (Original waiver request is signed and on file in the Waiver Office.)

# Attachment 1: Summary Table

California *Education Code (EC)* Section 41376(a), (c), and (d)

| **Waiver Number** | **District** | **Period of Request** | **District’s Request** | **CDE Recommendation** | **Local Board and Public Hearing Approval** | **Bargaining Unit and Representative, Date of Action, and Position** | **Penalty Without Waiver** |
| --- | --- | --- | --- | --- | --- | --- | --- |
| 6-5-2019 | El Rancho Unified School District | **Requested:**  August 13, 2018, to June 29, 2019  **Recommended:** July 1, 2018, to June 29, 2019 | Overall average 30; no class larger than 34 | Overall average 30; no class larger than 34 | Local Board Approval  May 7, 2019 | El Rancho Federation of Teachers  Representative  Lilia Carreon, President  September 1, 2019  **Support** | 2018-19  $111,930 |
| 7-5-2019 | El Rancho Unified School District | **Requested:**  August 14, 2017, to June 29, 2018  **Recommended:** July 1, 2017, to June 29, 2018 | Overall average 30; no class larger than 34 | Overall average 30; no class larger than 34 | Local Board Approval  May 7, 2019 | El Rancho Federation of Teachers  Representative  Lilia Carreon, President  September 1, 2019  **Support** | 2017-18  $76,639 |
| 3-5-2019 | Garden Grove Unified School District | **Requested:**  July 1, 2018, to June 30, 2019  **Recommended:** July 1, 2018, to June 30, 2019 | Overall average 30; no class larger than 33 | Overall average 30; no class larger than 33 | Local Board Approval  May 7, 2019 | Classified School Employees Association  05/07/2019  Chris Leon, President  **Support**  Name: Garden Grove Education Association  05/01/2019  Paul Kim, Executive Director  **Support** | 2018–19  $126,854 |

Created by California Department of Education   
June 2019

# Attachment 2: El Rancho Unified School District Waiver 6-5-2019

**California Department of Education**

**WAIVER SUBMISSION – Specific**

CD Code: 1964527

Waiver Number: 6-5-2019

Active Year: 2019

Date In: 5/13/2019 4:49:27 PM

Local Education Agency: El Rancho Unified

Address: 9333 Loch Lomond Dr.

Pico Rivera, ca 90660

Start: 8/13/2018

End: 6/29/2019

Waiver Renewal: No

Previous Waiver Number:

Previous SBE Approval Date:

Waiver Topic: Class Size Penalties

Ed Code Title: Over Limit on Grades 1-3

Ed Code Section: portions of 41376 (a) (c) and (d)

Ed Code Authority: 41382

Ed Code or CCR to Waive: (B) For those school districts that do not have any classes with an enrollment in excess of 32 and whose average size for all the classes is 30.0 or less, there shall be no excess declared. For those school districts [that have one or more classes in excess of an enrollment of 32 or] whose average size for all the classes is more than 30, the excess shall be the total of the number of pupils which are in excess of 30 in each class having an enrollment of more than 30.

Outcome Rationale: The District has decline by 1,200 students since 2012-13, to maintain financial solvency the District negotiated an MOU to allow class size in excess of 30 for Grades 1-3. Copy of MOU attached. The District has been working to obtain an average of less than 30 in all classes.

At some school sites to facilitate students being able to attend their local school, classes have exceed the 30.

Under these circumstances the MOU requires an instructional aide to assist the teacher.

No class has exceeded by more than three students. Maintaining all class at less than 30, would have required the District to transferred students to other school sites or do multilevel classes.

The District believes in having students attend their local school site and the single level classes provide the most appropriate educational environment. The overall class size average grade 1-3 is 23.4. The District will continue to work towards all classes being at 30 or below.

The cost of the Class size penalty is $131,760 and would take away from the funds available for the class rooms.

Yes. A principal may recommend to the governing board or the governing board of the school district may adopt a resolution determining that an exemption should be granted from any of the provisions of Section 41376 and 41378, with respect to such core classes on the basis that such provisions prevent the school and school district from developing more effective education programs to improve instruction in reading and mathematics. (Required see EC 41382) A potential penalty of $131760 could be incurred by the district without this waiver.

Student Population: 8440

City Type: Suburban

Local Board Approval Date: 5/7/2019

Audit Penalty Yes or No: N

Categorical Program Monitoring: N

Submitted by: Mr. Zac Ige

Position: Assistant Director of Fiscal

E-mail: [zige@erusd.org](mailto:zige@erusd.org)

Telephone: 562-801-7422

Fax: 562-801-7425

Bargaining Unit Date: 09/01/2019

Name: El Rancho Federation of Teachers

Representative: Lilia Carreon

Title: President of El Rancho Federation of Teachers

Position: Support

Comments:

# Attachment 3: El Rancho Unified School District Waiver 7-5-2019

**California Department of Education**

**WAIVER SUBMISSION – Specific**

CD Code: 1964527

Waiver Number: 7-5-2019

Active Year: 2019

Date In: 5/13/2019 4:58:44 PM

Local Education Agency: El Rancho Unified

Address: 9333 Loch Lomond Dr.

Pico Rivera, ca 90660

Start: 8/14/2017

End: 6/29/2018

Waiver Renewal: No

Previous Waiver Number:

Previous SBE Approval Date:

Waiver Topic: Class Size Penalties

Ed Code Title: Over Limit on Grades 1-3

Ed Code Section: portions of 41376 (a) (c) and (d)

Ed Code Authority: 41382

Ed Code or CCR to Waive: (B) For those school districts that do not have any classes with an enrollment in excess of 32 and whose average size for all the classes is 30.0 or less, there shall be no excess declared. For those school districts [that have one or more classes in excess of an enrollment of 32 or] whose average size for all the classes is more than 30, the excess shall be the total of the number of pupils which are in excess of 30 in each class having an enrollment of more than 30.

Outcome Rationale: The District has decline by 1,050 students since 2012-13, to maintain financial solvency the District negotiated an MOU to allow class size in excess of 30 for Grades 1-3. Copy of MOU attached. The District has been working to obtain an average of less than 30 in all classes.

At some school sites to facilitate students being able to attend their local school, classes have exceed the 30.

Under these circumstances the MOU requires an instructional aide to assist the teacher.

No class has exceeded by more than three students. Maintaining all class at less than 30, would have required the District to transferred students to other school sites or do multilevel classes.

The District believes in having students attend their local school site and the single level classes provide the most appropriate educational environment. The overall class size average grade 1-3 is 25.1. The District will continue to work towards all classes being at 30 or below.

The cost of the Class size penalty is $119,115 and would take away from the funds available for the class rooms.

Yes. A principal may recommend to the governing board or the governing board of the school district may adopt a resolution determining that an exemption should be granted from any of the provisions of Section 41376 and 41378, with respect to such core classes on the basis that such provisions prevent the school and school district from developing more effective education programs to improve instruction in reading and mathematics. (Required see EC 41382) A potential penalty of $119115 could be incurred by the district without this waiver.

Student Population: 8696

City Type: Suburban

Local Board Approval Date: 5/7/2019

Audit Penalty Yes or No: No

Categorical Program Monitoring: No

Submitted by: Mr. Zac Ige

Position: Assistant Director of Fiscal

E-mail: [zige@erusd.org](mailto:zige@erusd.org)

Telephone: 562-801-7422

Fax: 562-801-7425

Bargaining Unit Date: 09/01/2019

Name: El Rancho Federation of Teachers

Representative: Lilia Carreon

Title: President of El Rancho Federation of Teachers

Position: Support

Comments:

# Attachment 4: Garden Grove Unified School District Waiver 3-5-2019

**California Department of Education**

**WAIVER SUBMISSION – Specific**

CD Code: 3066522

Waiver Number: 3-5-2019

Active Year: 2019

Date In: 5/8/2019 8:13:22 AM

Local Education Agency: Garden Grove Unified School District

Address: 10331 Stanford Ave.

Garden Grove, CA 92840

Start: 7/1/2018

End: 6/30/2019

Waiver Renewal: No

Previous Waiver Number:

Previous SBE Approval Date:

Waiver Topic: Class Size Penalties

Ed Code Title: Over Limit on Grades 1-3

Ed Code Section: portions of 41376 (a) (c) and (d)

Ed Code Authority: 41382

Ed Code or CCR to Waive: 41376.

(a) The Superintendent, in computing apportionments and allowances from the State School Fund for the second principal apportionment, shall determine the following for the regular day classes of the elementary schools maintained by each school district:

(1) (A) For grades 1 to 3, inclusive, the Superintendent shall determine the number of classes, the number of pupils enrolled in each class, the total enrollment in all such classes, the average number of pupils enrolled per class, and the total of the numbers of pupils which are in excess of thirty (30) in each class.

(B) For those school districts that do not have any classes with an enrollment in excess of 32 and whose average size for all the classes is 30.0 or less, there shall be no excess declared. For those school districts that have one or more classes in excess of an enrollment of 32 or whose average size for all the classes is more than 30, the excess shall be the total of the number of pupils which are in excess of 30 in each class having an enrollment of more than 30.

(2) For grades 4 to 8, inclusive, the Superintendent shall determine the total number of pupils enrolled, the number of full-time equivalent classroom teachers, and the average number of pupils per each full-time equivalent classroom teacher. The Superintendent shall also determine the excess if any, of pupils enrolled in such grades in the following manner:

(A) Determine the number of pupils by which the average number of pupils per each full-time equivalent classroom teacher for the current fiscal year exceeds the greater of the average number of pupils per each full-time equivalent classroom teacher in all the appropriate districts of the state, as determined by the Superintendent for October 30, 1964, or the average number of pupils per each full-time equivalent classroom teacher which existed in the school district on either October 30, 1964, or March 30, 1964, as selected by the governing board of the school district.

(B) Multiply the number determined in subparagraph (A) by the number of full-time equivalent classroom teachers of the current fiscal year.

(C) Reduce the number determined in subparagraph (B) by the remainder that results from dividing such number by the average number of pupils per each full-time equivalent teacher for October 30, 1964, as determined by the Superintendent in subparagraph (A).

(3) The Superintendent shall compute the product obtained by multiplying the excess number of pupils, if any, in paragraph (1) by ninety-seven hundredths.

(4) If the school district reports that it has maintained, during the current fiscal year, any classes in which there were enrolled pupils in excess of 30 per class pursuant to paragraph (1), and there is no excess number of pupils computed pursuant to paragraph (2), the Superintendent shall decrease the average daily attendance reported under the provisions of Section 41601 by the product determined pursuant to paragraph (3).

(5) If the school district reports that it has maintained, during the current fiscal year, no classes in which there were enrolled pupils in excess of 30 per class determined pursuant to paragraph (1), and there is an excess number of pupils computed pursuant to paragraph (2), the Superintendent shall compute the product obtained by multiplying the excess number of pupils computed pursuant to paragraph (2) by ninety-seven hundredths. The Superintendent shall decrease the average daily attendance reported under the provisions of Section 41601 by the resulting product.

(6) If the school district reports that it has maintained, during the current fiscal year, any classes in which there were enrolled pupils in excess of 30 per class determined pursuant to paragraph (1), and there is an excess number of pupils computed pursuant to paragraph (2), the Superintendent shall add to the product determined pursuant to paragraph (3), the product determined pursuant to paragraph (5), and shall decrease the average daily attendance reported under the provisions of Section 41601 by this total amount.

(c) For purposes of this section, a “full-time equivalent classroom teacher” means an employee of an elementary, high school, or unified school district, employed in a position requiring certification qualifications and whose duties require him to teach pupils in the elementary schools of that district in regular day classes for the full time for which he is employed during the regular school day. In reporting the total number of full-time equivalent classroom teachers, there shall be included, in addition to those employees defined above, the full-time equivalent of all fractional time for which employees in positions requiring certification qualifications are required to devote to teaching pupils in the elementary schools of the district in regular day classes during the regular school day.

(d) For purposes of this section, the number of pupils enrolled in each class means the average of the active enrollment in that class on the last teaching day of each school month that ends before April 15 of each school year.

Outcome Rationale: During the 2018-19 school year, one first-grade and one third-grade classroom (not at same school) had an average of 33 students, one student over the state Education Code maximum of 32 for that grade level. Due to the timing in which the students enrolled and the class configurations at the site, it would not have been in the best interest of the students to shift instruction in all core subjects, including reading and mathematics. The district monitors classes, and for grades 1-3, our overall class size average is well under 30:1. Thank you for your consideration.

Yes. A principal may recommend to the governing board or the governing board of the school district may adopt a resolution determining that an exemption should be granted from any of the provisions of Section 41376 and 41378, with respect to such core classes on the basis that such provisions prevent the school and school district from developing more effective education programs to improve instruction in reading and mathematics. (Required see EC 41382) A potential penalty of $185000 could be incurred by the district without this waiver.

Student Population: 42586

City Type: Urban

Local Board Approval Date: 5/7/2019

Audit Penalty Yes or No: N o

Categorical Program Monitoring: No

Submitted by: Mr. Rick Nakano

Position: Assistant Superintendent Business Services

E-mail: [rnakano@ggusd.us](mailto:rnakano@ggusd.us)

Telephone: 714-663-6446

Fax:

Bargaining Unit Date: 05/07/2019

Name: Classified School Employees Association

Representative: Chris Leon

Title: President

Position: Support

Comments:

Bargaining Unit Date: 05/01/2019

Name: Garden Grove Education Association

Representative: Paul Kim

Title: Executive Director

Position: Support

Comments: