

California Department of Education

Executive Office

SBE-005 (REV. 1/2018)

General Waiver

# California State Board of Education January 2020 Agenda Item #W-06

## Subject

Request by three local educational agencies to waive *California Code of Regulations,* Title 5, Section 3043(d), which requires a minimum of 20 school days for an extended school year (summer school) for students with disabilities.

## Waiver Number

* Hemet Unified School District 6-10-2019
* Manteca Unified School District 5-10-2019
* San Marcos Unified School District 15-9-2019

## Type of Action

Action, Consent

## Summary of the Issue(s)

Three local educational agencies (LEAs) request to provide instruction in fewer than the 20 school days required by law for extended school year (ESY). Each LEA proposes an alternate schedule that will allow them to provide the minimum number of hours required, but in fewer days.

ESY is the term for the education of students with disabilities “between the close of one academic year and the beginning of the next,” similar to a summer school. The ESY must be provided for each student with a disability whose individualized education program (IEP) requires it. LEAs may request a waiver to provide an ESY program for fewer days than the traditional mode.

## Authority for Waiver

*Education Code (EC)* Section 33050

## Recommendation

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

The California Department of Education recommends the State Board of Education (SBE) approve the request from three LEAs to provide ESY services for fewer than 20 days with the condition school day hours are consistent with those provided to the general education enrollment at the same grade level unless an IEP specifies otherwise. Also, special education and related services offered during the ESY period must be comparable in standards, scope, and quality to the special education program offered during the regular academic year as required by *California Code of Regulations (CCR),* Title 5, Section 3043.

## Summary of Key Issues

### Hemet Unified School District

The Hemet Unified School District (HUSD) proposes to provide ESY services utilizing a 15-day schedule of 5 hours and 20 minutes per day totaling 80 hours. The proposed schedule will provide the same amount of program time as a 20-day ESY schedule. The HUSD states they serve a large geographical region, and the proposed schedule will better accommodate the many students who require designated instructional services. Parents, students, and staff support the shortened schedule which will also help the HUSD to recruit and hire highly qualified special education teachers currently employed by the district. Students will benefit from a more traditional school day length, thus allowing for cohesive services that closely mirror the regular school year schedules.

Demographic Information: The HUSD has a student population of 23,000 and is located in a rural area in Riverside County.

### Manteca Unified School District

The Manteca Unified School District (MUSD) proposes to provide ESY services utilizing a 15-day schedule of 5 hours and 20 minutes per day totaling 80 hours. The proposed schedule will provide the same amount of program time as a 20-day ESY schedule. This waiver request is a renewal of waiver number 5-3-2019-W-15 which was approved on July 12, 2019. The MUSD states ESY attendance increased for the 2019 program, and it is hoped that a continued shortened ESY schedule will continue to increase student attendance and improve participation of highly qualified ESY staff.

Demographic Information: The MUSD has a student population of 24,000 and is located in an urban area in San Joaquin County.

### San Marcos Unified School District

The San Marcos Unified School District (SMUSD) proposes to provide ESY services utilizing a 16-day schedule of 5 hours per day totaling 80 hours. The proposed schedule will provide the same amount of program time as a 20-day ESY schedule. This waiver request is a renewal of waiver number 18-10-2018-W-16 which was approved on January 18, 2019. The SMUSD states the previous ESY waiver schedules improved participation of highly qualified staff and student attendance, and believes the proposed schedule will continue this success. Fewer ESY days will also result in substantial operational cost-savings.

Demographic Information: The SMUSD has a student population of 21,057 and is located in an urban area in San Diego County.

**Because these are general waivers, if the SBE decides to deny the waivers, it must cite one of the seven reasons in *EC* 33051(a), available on the California Legislation Information Web page at** <http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=33051.&lawCode=EDC>.

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

In the past, the SBE approved waivers to allow school districts to provide the required minimum amount of instruction in fewer days during the ESY for students with disabilities.

ESY is the term for the education of students with disabilities “between the close of one academic year and the beginning of the next,” similar to a summer school. The ESY must be provided for each student with a disability whose IEP requires it. LEAs may request a waiver to provide an ESY program for fewer days than the traditional mode.

## Fiscal Analysis (as appropriate)

There is no statewide fiscal impact of waiver approval. However, in order for an LEA to qualify for average daily attendance (ADA) revenues for extended year pupils, LEAs must comply with the ADA requirements in *CCR*, Title 5, Section 3043(f).

## Attachment(s)

* **Attachment 1:** Summary Table (3 pages)
* **Attachment 2:** Hemet Unified School District General Waiver Request   
  6-10-2019 (2 pages). (Original waiver request is signed and on file in the Waiver Office.)
* **Attachment 3:** Manteca Unified School District General Waiver Request

5-10-2019 (3 pages). (Original waiver request is signed and on file in the Waiver Office.)

* **Attachment 4:**  San Marcos Unified School District General Waiver Request 15-9-2019 (3 pages). (Original waiver request is signed and on file in the Waiver Office.)

# Attachment 1: Summary Table

California *Education Code (EC)* Section 41402

| Waiver Number | District | Period of Request | District’s Request | CDE Recommended | Bargaining Unit Representatives Consulted, Date and Position | Local Board and Public Hearing Approval | Penalty Without Waiver |
| --- | --- | --- | --- | --- | --- | --- | --- |
| 6-10-2019 | Hemet Unified School District | **Requested:**  June 8, 2020, to June 26, 2020  **Recommended:**  June 8, 2020, to June 26, 2020 | To provide a 15-day extended school year (ESY) program instead of a 20-day ESY program | Approval with conditions to allow the local educational agency (LEA) to provide a 15-day ESY program instead of a 20-day ESY program | California School Employees Association, Michelle Nealiegh, President 8/23/2019 Support  Hemet Teachers Association, Jason Crest, President 8/23/2019 Support | **Local Board:**  9/17/2019  **Public Hearing:**  9/18/2019 | The LEA may not provide a 15-day ESY program |
| 5-10-2019 | Manteca Unified School District | **Requested:**  June 3, 2020, to June 23, 2020  **Recommended:**  June 3, 2020, to June 23, 2020 | To provide a 15-day extended school year (ESY) program instead of a 20-day ESY program | Approval with conditions to allow the local educational agency (LEA) to provide a 15-day ESY program instead of a 20-day ESY program | California School Employees Association, Mary Buchanan, President of Chapter 50 10/1/2019 Support  Manteca Educators Association, Ken Johnson, President 9/26/2019 Support | 10/8/2019 | The LEA may not provide a 15-day ESY program |
| 15-9-2019 | San Marcos Unified School District | **Requested:**  June 29, 2020, to July 23, 2020  **Recommended:**  June 29, 2020, to July 23, 2020 | To provide a 16-day ESY program instead of a 20-day ESY program | Approval with conditions to allow the LEA to provide a  16-day ESY program instead of a 20-day ESY program | San Marcos Educators’ Association,  Michael DeVries  President  8/13/2019  Neutral | **Local Board:**  9/17/2019  **Public Hearing:**  8/13/2019 | The LEA may not provide a 16-day  ESY program |

Created by the California Department of Education

November 2019

# Attachment 2: Waiver 6-10-2019 Hemet Unified School District

**California Department of Education**

**WAIVER SUBMISSION - General**

CD Code: 3367082

Waiver Number: 6-10-2019

Active Year: 2019

Date In: 10/11/2019 9:55:11 AM

Local Education Agency: Hemet Unified School District

Address: 1791 West Acacia Ave.

Hemet, CA 92545

Start: 6/8/2020

End: 6/26/2020

Waiver Renewal: No

Waiver Topic: Special Education Program

Ed Code Title: Extended School Year (Summer School)

Ed Code Section: 5*CCR* 3043

Ed Code Authority: 33050

*Education Code* or *CCR* to Waive: Cod of Regulations which requires a minimum of 20 school days of attendance for an extended school year ( summer program) for students with special needs.

Outcome Rationale: Period of Recommendation June 8, 2010 to June 26, 2020

Hemet Unified School Dist (HUSD) is proposing to provide Extended School Year (ESY) utilizing a 15 day schedule of 5 hours and 20 minutes per day, totaling 80 hours of instruction. The proposed 15 day schedule will provide ESY services to students with disabilities from pre-school to high school and 18 - 22 year program. The HUSD serves a large geographic region and the proposed 15 day schedule will better accommodate the many student who require designated instructional services. Parents, students and staff support the shortened ESY schedule. Fewer ESY days will result in substantial savings with transportation, utilities, food services, janitorial administrative and clerical costs. This schedule will also ensure the HUSD to recruit and hire highly qualified special education teachers currently employed by the district. Students will benefit from a more traditional school day length, thus allowing for cohesive services that more closely mirror the regular school year schedules. Curriculum continuation and cohesive ongoing supports for behavioral, language, physical and academic achievement.

The HUSD encompasses 650 square miles and has a student population fo 22058 students, of those 3478 are student who receive special education and related services.

Student Population: 23000

City Type: Rural

Public Hearing Date: 9/18/2019

Public Hearing Advertised: web based, and postings at each school

Local Board Approval Date: 9/17/2019

Community Council Reviewed By: Communit Advisory Committee Riverside County Special Education Local Plan Area, Anna Maria Cruz

Community Council Reviewed Date: 8/20/2019

Community Council Objection: No

Community Council Objection Explanation:

Audit Penalty Yes or No: No

Categorical Program Monitoring: No

Submitted by: Ms. Tammy Griffiths

Position: Coordinator Special Educaton

E-mail: [tgriffiths@hemetusd.org](file:///\\CDE.Cal\DATA\SEDATA\CENTRAL\Division-wide\WAIVERS\Waiver%20Items\2020\January%20SBE%20Meeting\tgriffiths@hemetusd.org)

Telephone: 951-765-5100 x4002

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# Attachment 3: Waiver 5-10-2019 Manteca Unified School District

**California Department of Education**

**WAIVER SUBMISSION - General**

CD Code: 3968593

Waiver Number: 5-10-2019

Active Year: 2019

Date In: 10/10/2019 11:51:04 AM

Local Education Agency: Manteca Unified School District

Address: 2271 W. Louise Ave.

Manteca, CA 95337

Start: 6/3/2020

End: 6/23/2020

Waiver Renewal: Yes

Previous Waiver Number: 5-3-2019-W-15

Previous SBE Approval Date: 7/12/2019

Waiver Topic: Special Education Program

Ed Code Title: Extended School Year (Summer School)

Ed Code Section: *CCR*, Title 5, Section 3043 (d)

Ed Code Authority: 33050

*Education Code* or *CCR* to Waive: 3043 Extended school year services shall be provided for each individual with exceptional needs who has unique needs and requires special education and related services in excess of the regular academic year. Such individuals shall have handicaps which are likely to continue indefinitely or for a prolonged period, and interruption of the pupil’s educational programming may cause regression, when coupled with limited recoupment capacity, rendering it impossible or unlikely that the pupil will attain the level of self-sufficiency and independence that would otherwise be expected in view of his or her handicapping condition. The lack of clear evidence of such factors may not be used to deny an individual an extended school year program if the individualized education program team determines the need for such a program and includes extended school year in the individualized education program pursuant to subsection (f). (a) Extended year special education and related services shall be provided by a school district, special education local plan area, or county office offering programs during the regular academic year. (b) Individuals with exceptional needs who may require an extended school year are those who: (1) Are placed in special classes or centers; or (2) Are individuals with exceptional needs whose individualized education programs specify an extended year program as determined by the individualized education program team. (c) The term “extended year” as used in this section means the period of time between the close of one academic year and the beginning of the succeeding academic year. The term “academic year” as used in this section means that portion of the school year during which the regular day school is maintained, which period must include not less than the number of days required to entitle the district, special education services region, or county office to apportionments of state funds. [(d) An extended year program shall be provided for a minimum of 20 instructional days, including holidays]

Outcome Rationale: Manteca USD proposes to provide ESY services utilizing a 15-day schedule of 5 hours and 20 minutes per day, totaling 80 hours of instruction. The proposed schedule will provide the required amount of instructional time as required by the California Department of Education, continue to allow for MUSD to address the regression and recoupment needs of identified students, and mirror the regular school day for the grade levels served. ESY during previous years has seen an inconsistent attendance rate (25% in 2017; 28% in 2018). Last year, with board and state approval, ESY was shortened to the 15-day schedule and attendance increased to 35%. It is hoped that a continued shortened ESY schedule will increase student attendance throughout the program, improve participation of highly qualified staff, as well as result in substantial operational cost savings. Both classified and certificated staff support this shortened schedule for the upcoming ESY.

Student Population: 24000

City Type: Urban

Public Hearing Date: 10/8/2019

Public Hearing Advertised: Agenda was posted at the district office as well as at each school site in a location visible for public view

Local Board Approval Date: 10/8/2019

Community Council Reviewed By: Community Advisory Committee

Community Council Reviewed Date: 10/9/2019

Community Council Objection: No

Community Council Objection Explanation:

Audit Penalty Yes or No: No

Categorical Program Monitoring: No

Submitted by: Dr. Jody Burriss

Position: Coordinator of Special Education

E-mail: [jburriss@musd.net](file:///\\CDE.Cal\DATA\SEDATA\CENTRAL\Division-wide\WAIVERS\Waiver%20Items\2020\January%20SBE%20Meeting\jburriss@musd.net)

Telephone: 209-858-0722

Bargaining Unit Date: 10/01/2019

Name: California School Employees Association (CSEA)

Representative: Mary Buchanan

Title: CSEA President of Chapter 50

Position: Support

Comments:

Bargaining Unit Date: 09/26/2019

Name: Manteca Educators Association

Representative: Ken Johnson

Title: MEA President

Position: Support

Comments:

# Attachment 4: Waiver 15-9-2019 San Marcos Unified School District

**California Department of Education**

**WAIVER SUBMISSION - General**

CD Code: 3773791

Waiver Number: 15-9-2019

Active Year: 2019

Date In: 9/26/2019 3:00:11 PM

Local Education Agency: San Marcos Unified School District

Address: 255 Pico Ave., Ste. 250

San Marcos, CA 92069

Start: 6/29/2020

End: 7/23/2020

Waiver Renewal: Yes

Previous Waiver Number: 2-12-17-W-13

Previous SBE Approval Date: 1/18/2019

Waiver Topic: Special Education Program

Ed Code Title: Extended School Year (Summer School)

Ed Code Section: *CCR*, Title 5, Section 3043(d)

Ed Code Authority: 33050

*Education Code* or *CCR* to Waive: [(d) An extended year program shall be provided for a minimum of 20 instructional days, including holidays]

Outcome Rationale: Summary of Key Issues

San Marcos Unified School District requests to waive California *Education Code* of Regulations, Title 5, Section 3043(d), which requires a minimum of 20 school days of attendance of four hours each for an extended school year (summer school) for special education students. The district provides ESY services for eligible students with disabilities who are in preschool through the Adult Transition Program at two sites during the scheduled program. The district is proposing to provide a four-week ESY program over 16 days, equivalent to the number of instructional hours provided in a 20-instructional day calendar (including holidays) by lengthening the daily schedule.

San Marcos Unified School District proposes to provide ESY services utilizing a 16-day model over a four-week period at 5 hour per day (15 days x 5 hours = 80 hours), providing the same number of instructional hours as in a traditional 20-day model, including holidays (19 days X 4 hours = 76 hours). The proposed model, which extends daily attendance time, results in required instructional time totals, but provides for a reduction in total days of attendance to 16 days, Monday through Thursday, over a four-week period.

San Marcos Unified School District believes the proposed model will:

Continue to increase the participation of highly qualified and trained classroom teachers (2017=~30%, 2018=~60%, and 2019=~77.5%) and staff who work with students during the school year will apply to work during ESY.

Help facilitate cost-effective services within classrooms and reduce related costs for transportation, electricity, custodial services, food services, administration, etc.

Increase eligible student attendance (an increase of 6% from 2017 to 2018 and stable in 2019)

Improve overall daily attendance of students during ESY (an increase of 1% from 2018-2019)

This waiver would increase instruction time per day thereby limiting the impact on instructional minutes caused by transit time from bus to classroom.

For the purposes of reimbursement for average daily attendance, an ESY program:

Must provide instruction of at least as many minutes over the shorter period as would have been provided during a typical 20-day program;

Must be the same length of time as the school day for pupils of the same age level attending summer school in the district in which the extended year program is provided, but not less than the minimum school day for that age level unless otherwise specified in the individualized education program to meet a pupil’s unique needs; and

Must offer special education and related services during the extended school year period that are comparable in standards, scope, and quality to the special education program offered during the regular academic year.

Student Population: 21057

City Type: Urban

Public Hearing Date: 8/20/2019

Public Hearing Advertised: District Web page, notice posted at district office and schools

Local Board Approval Date: 9/17/2019

Community Council Reviewed By: North County Consortium for Special Education Community Advisory Committee -San Marcos Parents

Community Council Reviewed Date: 9/24/2019

Community Council Objection: No

Community Council Objection Explanation:

Audit Penalty Yes or No: No

Categorical Program Monitoring: No

Submitted by: Ms. Lori Cummins

Position: Director of Special Education

E-mail: [lori.cummins@smusd.org](file:///\\CDE.Cal\DATA\SEDATA\CENTRAL\Division-wide\WAIVERS\Waiver%20Items\2020\January%20SBE%20Meeting\lori.cummins@smusd.org)

Telephone: 760-752-1223

Bargaining Unit Date: 08/13/2019

Name: San Marcos Educators' Association

Representative: Michael DeVries

Title: President

Position: Neutral

Comments: