

California Department of Education

Executive Office

SBE-006 (REV. 1/2018)

Specific Waiver

# California State Board of Education September 2020 Agenda Item #W-02

## Subject

Requests by **two school districts** under the authority of the California *Education Code* Sections 46206(a) and 47612.6, to waive *Education Code* sections 46201(a) and 47612.5, the audit penalty for offering insufficient instructional minutes during the 2018–19 school year.

## Waiver Numbers

* 7-3-2020 Tulare Joint Union High School District
* 15-6-2020 Oakland Unified School District

## 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 district and the charter school were short instructional minutes for the 2018–19 school year. Per *Education Code* (*EC*) sections 46206(a) and 47612.6, the SBE may waive the fiscal penalties set forth in this article for a school district or charter school that fails to maintain the prescribed minimum length of instruction, upon the condition that the school or schools in which the minutes were lost maintain 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* sections 46206 and 47612.6

## 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 minutes for the requested period shown in Attachment 1, as long as the conditions outlined in Attachment 1 are met by Tulare Joint Union High School District and Oakland Unified School District.

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

## Summary of Key Issues

During an audit of instructional time for 2018–19, it was discovered that Accelerated Charter High School failed to offer the required 64,800 annual minutes for grades nine through twelve by 1,017 minutes. The spreadsheet used by the charter school to calculate the instructional minutes contained a formula error, which resulted in the spreadsheet showing more minutes than what was offered. This resulted in a shortage of annual instructional minutes.

Tulare Joint Union High School District (TJUHSD) would like to use school years  
2021–22 and 2022–23 to make up the shortfall of the instructional minutes. TJUHSD has submitted documentation showing Accelerated Charter High School will offer additional minutes for grades nine through twelve during the 2021–22 and 2022–23 school years to comply with the terms of the waiver.

During an audit of instructional time for 2018–19, it was discovered that Oakland Unified School District (OUSD) failed to offer the required 54,000 annual minutes for grades four and five by 540 minutes at two school sites. Due to an oversight, a misalignment between the bell schedules and the instructional minute tool used by the district went unnoticed. The shortage in the planned instructional minutes was not corrected, resulting in a loss of instructional minutes at both sites.

OUSD would like to use school years 2021–22 and 2022–23 to make up the shortfall of the instructional minutes. OUSD has submitted documentation showing the affected school sites will offer additional minutes for grades four and five during the 2021–22 and 2022–23 school years to comply with the terms of the waiver.

**Demographic Information:**

Tulare Joint Union High School District has a student population of 5,686 and is located in a rural area in Tulare County.

Oakland Unified School District has a student population of 36,110 and is located in an urban area in Alameda County.

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

The SBE has approved similar requests with conditions. *EC* sections 46206 and 47615.6 authorize 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 TJUHSD 2018–19 instructional minute penalty amount of $24,493 is calculated as follows (some differences due to rounding):

* The average daily attendance (ADA) of 132.95 for students in grades nine through twelve multiplied by the charter school’s funding rate of $11,734.37 (value per ADA rate) is equal to the district’s Local Control Funding Formula (LCFF) apportionment of $1,560,084.
* A shortfall of 1,017 instructional minutes for grades nine through twelve divided by the 64,800 minutes requirement is equal to 1.57 percent of minutes not offered.
* The affected LCFF apportionment of $1,560,084 multiplied by the percentage of minutes not offered is equal to the penalty amount of $24,493.

The OUSD 2018–19 instructional minute penalty amount of $542,726 is calculated as follows (some differences due to rounding):

* The ADA of 5,678.19 for students in grades four and five multiplied by the district’s funding rate of $9,558.08 (value per ADA rate) is equal to the district’s LCFF apportionment of $54,272,594.
* A shortfall of 540 instructional minutes for grades four and five divided by the 54,000 minutes requirement is equal to 1.00 percent of minutes not offered.
* The affected LCFF apportionment of $54,272,594 multiplied by the percentage of minutes not offered is equal to the penalty amount of $542,726.

## Attachment(s)

* **Attachment 1:** Summary Table (2 pages)
* **Attachment 2:** Tulare Joint Union High School District Specific Waiver Request 7-3-2020 (2 pages). (Original waiver request is signed and on file in the Waiver Office.)
* **Attachment 3:** Oakland Unified School District Specific Waiver Request 15-6-2020 (2 pages). (Original waiver request is signed and on file in the Waiver Office.)

# Attachment 1: Summary Table

California *Education Code (EC)* sections 47612.5 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** |
| --- | --- | --- | --- | --- | --- | --- | --- | --- |
| 7-3-2020 | Tulare Joint Union High School District | **Requested:**  July 1, 2018, to June 30, 2019  **Recommended:**  July 1, 2018, to June 30, 2019 | District requests waiving *EC* Section 47612.5 to avoid the audit penalty in exchange for offering increased instructional minutes in 2021–22 and 2022–23, consistent with *EC* Section 47612.6. | **Approval** of waiver, consistent with *EC* Section 47612.6 with the following conditions:  (1) District maintains increased instructional minutes at Accelerated Charter High School for grades nine through twelve of at least the amount required by law plus 1,017 minutes, for a period of two years beginning in 2021–22 through 2022–23, and (2) District reports the annual instructional minutes in its annual audit report. | California School Employees Association  Filomena Rocha, President  February 26, 2020  **Neutral**  California Teachers Association  David Flores, President  February 26, 2020  **Neutral** | Local Board Approval  March 5, 2020 | $24,493 | None |

| **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** |
| --- | --- | --- | --- | --- | --- | --- | --- | --- |
| 15-6-2020 | Oakland Unified School District | **Requested:**  July 1, 2018, to June 30, 2019  **Recommended:**  July 1, 2018, to June 30, 2019 | District requests waiving *EC* Section 46201 to avoid the audit penalty in exchange for offering increased instructional days and minutes in 2021–22 and 2022–23, consistent with *EC* Section 46206. | Approval of waiver, consistent with EC Section 46206 with the following conditions:  (1) District maintains increased instructional minutes for grades four and five at affected school sites of at least the amount required by law plus 540 minutes, for a period of two years beginning in 2021–22 through 2022–23, and (2) District reports the increased annual instructional minutes offered in in its annual audit report. | Oakland Education Association  Keith Brown, President  May 20, 2020  **Support** | Local Board Approval  June 10, 2020 | $542,726 | Yes |

Created by California Department of Education

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# Attachment 2: Tulare Joint Union High School District Specific Waiver Request 7-3-2020

**California Department of Education**

**WAIVER SUBMISSION – Specific**

CD Code: 5472249

Waiver Number: 7-3-2020

Active Year: 2020

Date In: 3/6/2020 8:10:42 AM

Local Education Agency: Tulare Joint Union High

Address: 426 North Blackstone

Tulare, CA 93274

Start: 7/1/2018

End: 6/30/2019

Waiver Renewal: No

Waiver Topic: Instructional Time Requirement Audit Penalty

Ed Code Title: Charter – Minimum Instructional Time

Ed Code Section: 47612.5(a)(1)

Ed Code Authority: 47612.6(a)

Ed Code or *CCR* to Waive: 47612.5 [(3)(c) A reduction in apportionment made pursuant to subdivision (a) shall be proportional to the magnitude of the exception that causes the reduction. For purposes of paragraph (1) of subdivision (a), for each charter school that fails to offer pupils the minimum number of minutes of instruction specified in that paragraph, the Superintendent shall withhold from the charter school’s apportionment for average daily attendance of the affected pupils, by grde level, the sum of that apportionment multiplied by the percentage of the minimum number of minutes of instruction at each grade level that the charter school failed to offer.]

Outcome Rationale: Accelerated Charter High School, Charter #1781

The district changed from a 3x3 block schedule to a 4x4 block schedule for 2018-19. The spreadsheet used to calculate the instructional minuted for Accelerated Charter High School contained a formula error which resulted in showing more minutes than were actually offered. This was a clerical error of five (5) minutes per day.

Student Population: 130

City Type: Rural

Local Board Approval Date: 3/5/2020

Audit Penalty Yes or No: Yes

Categorical Program Monitoring: No

Submitted by: Ms. Vivian Hamilton

Position: Business Manager

E-mail: [Vivian.hamilton@tulare.k12.ca.us](mailto:Vivian.hamilton@tulare.k12.ca.us)

Telephone: 559-688-2021 x2001

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Bargaining Unit Date: 02/26/2020

Name: California School Employees Association

Representative: Filomena Rocha

Title: President

Phone: (559) 303-3840

Position: Neutral

Comments:

Bargaining Unit Date: 02/26/2020

Name: California Teachers Association

Representative: David Flores

Title: President

Phone: (559) 799-1735

Position: Neutral

Comments:

# Attachment 3: Oakland Unified School District Specific Waiver Request 15-6-2020

**California Department of Education**

**WAIVER SUBMISSION – Specific**

CD Code: 0161259

Waiver Number: 15-6-2020

Active Year: 2020

Date In: 6/26/2020 10:10:33 AM

Local Education Agency: Oakland Unified

Address: 1000 Broadway, Ste. 300

Oakland, CA 94607

Start: 7/1/2018

End: 6/30/2019

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: The shortage of instructional minutes for both school was due to human error and oversight. With Sequoia, the misalignment of the Instructional Minute Tool and the School’s bell schedule contributed to the shortage of the minutes for Sequoia’s 4th and 5th grades. The school’s lunch duration was 40 minutes but the bell schedule reflected 45 minutes. Therefore, the Instructional Minute Tool calculation was attributing an additional 5 minutes of non-instructional time causing 5 minutes less of instructional time per day for grade 4 and 5. For Bridges, the shortage of instructional minutes was a result of administrative oversight. The instructional time instead of the

non-instructional time for the recess period on the minimum days was entered in the District’s Instructional Minutes Tool for calculation.

Student Population: 36110

City Type: Urban

Local Board Approval Date: 6/10/2020

Audit Penalty Yes or No: Yes

Categorical Program Monitoring: No

Submitted by: Ms. Lisa Spielman

Position: Director of Strategic Resources Planing

E-mail: [lisa.spielman@ousd.org](mailto:lisa.spielman@ousd.org)

Telephone: 510-381-3972

Fax:

Bargaining Unit Date: 05/20/2020

Name: Oakland Education Association

Representative: Keith Brown

Title: President

Phone: (510) 879-4291

Position: Support

Comments:

Requests by two districts and one charter school under the authority of the California *Education Code* Sections 46206(a) and 47612.6, to waive *Education Code* sections 46201(a) and 47612.5, the audit penalty for offering insufficient instructional minutes during the 2018–19 school year.