

California Department of Education

Executive Office

SBE-006 (REV. 1/2018)

Specific Waiver

# California State Board of Education July 2021 Agenda Item #W-02

## Subject

## Request by KIPP Empower Academy a charter school under the authority of the California *Education Code* Section 47612.6, to waive *Education Code* Section 47612.5, the audit penalty for offering insufficient instructional minutes during the 2018–19 school year.

## Waiver Number

* 13-2-2021

## Type of Action

Action, Consent

## Summary of the Issue(s)

The charter school above is requesting that the California State Board of Education (SBE) waive the instructional time requirement audit penalty. The charter school was short instructional minutes for the 2018–19 school year. Per *Education Code* (*EC*) Section 47612.6, the SBE may waive the fiscal penalties set forth in this article for a 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* Section 47612.6

## Recommendation

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

## The California Department of Education (CDE) recommends that the SBE approve the request by the charter school to waive the instructional time penalty for offering less than the required number of instructional minutes for the requested period shown in Attachment 1, as long as the conditions outlined in Attachment 1 are met by the charter school.

If the charter school should close voluntarily, or due to non-renewal, prior to meeting the conditions of the waiver, the charter school will be subject to the full audit penalty and CDE will take action to recover the penalty amount from the charter school.

## Summary of Key Issues

During an audit of instructional minutes and days for 2018–19, it was discovered that KIPP Empower Academy failed to offer the required 36,000 annual minutes in kindergarten by 20,385 minutes. The school was out of compliance with teacher credentialing requirements resulting in disallowance of instructional minutes, leading to a shortage of annual instructional minutes.

KIPP Empower Academy (KEA) would like to use school years 2021–22 and 2022–23 to make up the shortfall of the instructional minutes. KEA has submitted documentation showing the school will offer additional minutes for kindergarten during the 2021–22 and 2022–23 school years to comply with the terms of the waiver.

As additional information, KEA did not receive this audit finding due to a lack of instructional minutes scheduled for students. The finding was due to uncredentialed teachers, which led to the school being unable to claim the instructional minutes provided to students under the uncredentialed teachers. While the number of additional minutes KEA is required to offer in order to meet the condition of the waiver is above normal, the school routinely offers instructional minutes far beyond the 36,000 total number of minutes required for kindergarten students annually. The additional minutes will fall within the regularly scheduled school day for KEA kindergarten students.

**Demographic Information:**

KIPP Empower Academy has a student population of 584 and is located in an urban area in Los Angeles County.

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

The SBE has approved similar requests with conditions. *EC* Section 47612.6 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 were lost, maintain minutes 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 (as appropriate)

The KEA 2018–19 instructional minute penalty amount of $166,259 is calculated as follows (some differences due to rounding):

* The average daily attendance (ADA) of 26.79 for students in kindergarten multiplied by the funding rate of $10,958.89 (value per ADA rate) is equal to the charter’s Local Control Funding Formula (LCFF) apportionment of $293,589.
* A shortfall of 20,385 instructional minutes for the affected grade levels divided by the 36,000-minute requirement is equal to 56.63 percent of minutes not offered.
* The affected LCFF apportionment of $293,589 multiplied by the percentage of minutes not offered is equal to the instructional minute penalty amount of $166,259.

## Attachment(s)

* **Attachment 1:** Summary Table (1 page)
* **Attachment 2:** KIPP Empower Academy Specific Waiver Request 13-2-2021 (2 pages). (Original waiver request is signed and on file in the Waiver Office.)

# Attachment 1: Summary Table

California *Education Code (EC)* Section 47612.5

| **Waiver Number** | **Charter** | **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** |
| --- | --- | --- | --- | --- | --- | --- | --- | --- |
| 13-2-2021 | KIPP Empower Academy | **Requested:**  July 1, 2018, to June 30, 2019  **Recommended:**  July 1, 2018, to June 30, 2019 | Charter 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) Charter maintains increased instructional minutes for kindergarten at KIPP Empower Academy of at least the amount required by law plus 20,385 minutes, for a period of two years beginning in 2021–22 through 2022–23, and (2) Charter reports the increased annual instructional minutes offered in in its annual audit report. | **Not Applicable** | **Local Board Approval**  February 11, 2021 | $166,259 | None |

Created by California Department of Education

April 2021

# Attachment 2: KIPP Empower Academy Specific Waiver Request 13-2-2021

**California Department of Education**

**WAIVER SUBMISSION – Specific**

CD Code: 1964733

Waiver Number: 13-2-2021

Active Year: 2021

Date In: 2/22/2021 11:23:06 AM

Local Education Agency: KIPP Empower Academy

Address: 3601 East First Street

Los Angeles, CA 90063

Start: 7/1/2018

End: 6/30/2019

Waiver Renewal: N

Previous Waiver Number:

Previous SBE Approval Date:

Waiver Topic: Instructional Time Requirement Audit Penalty

Ed Code Title: Charter - Minimum Instructional Time

Ed Code Section: 47612.5(c)

Ed Code Authority: 47612.6(a)

Ed Code or *CCR* to Waive: Waive *Education Code* (*EC*) Section 47612.5(c) pursuant to *EC* Section 47612.6 (a)

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 grade 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.

Pursuant to *EC* Section 47612.6, the SBE may waive fiscal penalties for charter schools that fail to offer the minimum number of instructional minutes for the school year. Such waivers may only be granted upon the condition that the school(s) 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 required, for twice the number of years that it failed to maintain the prescribed minimum number of instructional minutes or days for the school year.

Outcome Rationale: KIPP Empower Academy Charter School is requesting a waiver for FY18-19 instructional minutes finding penalty for Grade K that was taught by the teacher whose short-term permit was not approved. Due to credentialing non-compliance pursuant to ED Code 47605, the Kindergarten instructional minutes thought by the teacher were disqualified. Total minutes short in FY18-19 for Kindergarten were 20,385. Pursuant to *EC* Section 47612.5, the minimum instructional minutes for grades K should be 36,000. The following table presents $166,259 penalty calculations (see attached in FY18-19 Audit):

Affected grade level ADA 26.79

Derived Value of ADA $10,958.89

Number of required minutes 36,000

Number of minutes short 20,385

Percentage of Minutes Not Offered 57%

Affected LCFF Apportionment $293,589

Instructional Minutes Penalty $166,259

KIPP Empower, which serves Grades TK-4, implemented a number of changes to secure full compliance with credentialing requirements. As a result, FY19-20 showed no findings (see attached FY19-20 Audit, pages 50-54),

KIPP Empower is projecting to provide substantially greater than required minutes equal to those lost and in addition to the amount required for FY21-22 and FY22-23 (see attached minutes). Waiver of penalties will help to secure financial operations of the school in times of increased costs due to pandemic and state funding deferrals.

Student Population: 27

City Type: Urban

Local Board Approval Date: 2/11/2021

Audit Penalty Yes or No: Y

Categorical Program Monitoring: N

Submitted by: Ms. Alvina Arutyunyan

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