

California Department of Education

Executive Office

SBE-005 (REV. 1/2018)

General Waiver

# California State Board of Education March 2021 Agenda Item #W-01

## Subject

Request by **Whitmore Union Elementary School District** to waive portions of *California Code of Regulations*, Title 5 Section 11963.6, relating to the submission of and action on a determination of funding request regarding nonclassroom-based instruction.

## Waiver Number

* Whitmore Union Elementary School District 5-9-2020

## Type of Action

Action

## Summary of the Issue

Whitmore Union Elementary School District is requesting, on behalf of the charter school identified in Attachment 1, that the California State Board of Education (SBE) waive portions of *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 its respective funding period.

New Day Academy (NDA), charter number 1920, failed to submit a determination of funding request by the regulatory deadline, thereby making its request retroactive. If the waiver is approved by the SBE, the SBE may then act on NDA’s retroactive funding determination request.

The California Department of Education (CDE) presented NDA’s retroactive funding determination request to the Advisory Commission on Charter Schools (ACCS) at its February 11, 2021, meeting, prior to the school receiving an SBE-approved waiver. The CDE notes that, typically, retroactive funding determination requests are presented to the ACCS after an approved waiver from the SBE has been received. However, the CDE recognizes the unforeseen consequences of the COVID pandemic as well as the significant impacts the lack of an approved funding determination has on the school’s nonclassroom-based funding for fiscal year 2020–21.

Both Whitmore Union Elementary School District and New Day Academy have confirmed that the school is in compliance with the geographic location requirements outlined in Assembly Bill 1507; the school does not operate a resource center outside of its authorizing district’s boundaries. The resource center that was operating outside of the school’s authorizing district’s boundaries closed on June 30, 2020. All program services are delivered via an independent study model.

The CDE’s funding determination recommendation as well as the recommendation moved by the ACCS are contingent upon the SBE approving the waiver at its March 17–18, 2021, meeting.

## Authority for Waiver

California *Education Code* (*EC*) Section 33050

## Recommendation

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

The CDE recommends that the SBE approve the request by Whitmore Union Elementary School District to waive portions of 5 *CCR* Section 11963.6(c) relating to the submission deadline in order to allow NDA to submit a determination of funding request for the specified fiscal years. Approval of this waiver request will allow the SBE to consider a retroactive determination of funding request from this school. Without an approved waiver, the SBE may not consider the retroactive request, and the charter school’s nonclassroom-based average daily attendance (ADA) may not be funded for the affected fiscal years.

## 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(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. The funding determination request must be submitted by February 1 of the fiscal year prior to the year the funding determination will be effective.

NDA is requesting to submit a determination of funding request after the submission deadline, thereby making the request retroactive.

Whitmore Union Elementary School District, on behalf of NDA, has requested for a portion of 5 *CCR* Section 11963.6(c) relating to the submission deadline to be waived. Whitmore Union Elementary School District cites the reason the charter school missed the submission deadline as being that the school originally planned to close at the end of fiscal year 2019–20 to comply with AB 1507, which restricted resource center locations for nonclassroom-based charter schools. Therefore, the school did not submit a request to renew its funding determination.

NDA’s closure plans included the transfer of some of its pupils to Shasta View Academy, which is authorized by Columbia Elementary School District and operated by New Day Academy, Inc. However, pursuant to Senate Bill 98 and SB 820, 2019–20 reported ADA will be used to calculate 2020–21 funding. Due to the passage of these bills, all Local Control Funding Formula funding for the students who attended NDA for the 2019–20 school year would be lost with the closure of the school as Shasta View Academy would not be able to claim the revenues associated with any student transfers. As a result, New Day Academy, Inc. reversed its decision to close NDA, meaning that the school would need to renew its funding determination to continue to receive funding for its nonclassroom-based instruction in fiscal year 2020–21.

### Demographic Information

Whitmore Union Elementary School District is requesting a waiver for NDA, which serves a student population of 111 and is located in a rural city in Shasta County.

**Because this is a general waiver, if the SBE decides to deny the waiver, it must cite one of the seven reasons in *EC* Section 33051(a), which is 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

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 ADA to be funded at the funding determination rate approved by the SBE for the specified fiscal years.

## Attachments

* **Attachment 1:** Nonclassroom-Based Funding Determination Deadline Waiver (1 page)
* **Attachment 2:** Whitmore Union Elementary School District General Waiver Request 5-9-2020 (3 pages). (Original waiver request is signed and on file in the Waiver Office.)

# Attachment 1: Nonclassroom-Based Funding Determination Deadline Waiver

California *Education Code* sections 47612.5 and 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 |
| --- | --- | --- | --- | --- | --- | --- | --- |
| 5-9-2020 | Whitmore Union Elementary School District | New Day Academy  1920 | 2018–19 | **Requested:** July 1, 2020 to June 30, 2021  **Recommended:** July 1, 2020 to June 30, 2021 | 9/18/2020 | Notice posted at the District main office, charter school resource centers, charter school main office, and the school’s website | New Day Academy, Inc. Board of Directors  **No objections** |

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# Attachment 2: Whitmore Union Elementary School District General Waiver Request 5-9-2020

**California Department of Education**

**WAIVER SUBMISSION - General**

CD Code: 4570169

Waiver Number: 5-9-2020

Active Year: 2020

Date In: 9/21/2020 6:03:50 PM

Local Education Agency: Whitmore Union Elementary

Address: 30611 WHITMORE Rd.

WHITMORE, CA 96101

Start: 7/1/2020

End: 6/30/2021

Waiver Renewal: N

Previous Waiver Number:

Previous SBE Approval Date:

Waiver Topic: Charter School Program

Ed Code Title: Nonclassroom-Based Funding

Ed Code Section: *CCR* 11963.6

Ed Code Authority: 33050

*Education Code* or *CCR* to Waive: (c) 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: New Day Academy (NDA) is operated by New Day Academy, Inc. and authorized by the Whitmore Union Elementary School District, located in a remote area of northern California. The school serves students in Shasta, Modoc, Lassen, and Tehama Counties with a non-classroom based Independent Study model. NDA began serving students in August 2018 with a petition valid through June 2023. The school program included a resource center located outside of the Whitmore UESD boundary. As the passage of AB 1507 (restricting resource center locations for non-classroom based charter schools), became imminent, New Day Academy leadership sought approval for a second school petition that would allow the location of a resource center within the district boundary and bring the organization into compliance with AB-1507. A charter petition for Shasta View Academy was presented to the Columbia Elementary School District Board and approved on June 13, 2019. Shasta View Academy began serving students on August 21, 2019 with an enrollment of 100 students.

In the 2019-2020 school year, New Day Academy, Inc. operated both New Day Academy (P-2 ADA of 383.62) and Shasta View Academy (P-2 ADA of 99.62). After the new school was established, the New Day Academy, Inc. Executive Director and the School Board began to implement a fiscally sound plan to close New Day Academy at the end of the 2019-2020 school year.

In February of 2020, the Executive Director sought direction from the CDE charter school division regarding the filing of the SB-740 funding determination for New Day Academy. Email correspondence from Mr. Yu indicated that no filing was needed if the school was closing at the end of the 19-20 school year. Given this information, the funding determination for NDA was not filed by the February 2020 deadline.

In June 2020, the NDA closure actions were being implemented to include the NDA Redding Resource Center closure and enrollment of any NDA students interested in attending Shasta View Academy for the 20-21 school year. On June 27, 2020 we received information about SB-98 which included the unprecedented departure from the traditional per pupil state funding model, to an annual funding calculation based solely on the February 28, 2020 P-2 filing (Shasta View Academy P-2 ADA of 99.62 and NDA P-2 ADA of 383.62). Our leadership realized that the bill passage would be devastating to our organization with the loss of all LCFF funding for 383.62 students (approximately $4,000,000) who had been with NDA through the 19-20 school year.

Given the magnitude of the loss and more importantly, our obligation to serve the enrolled 495 (Shasta View Academy 111 students, NDA 384 students), the NDA, Inc. Board of Directors voted on June 29, 2020 to maintain the status quo and to keep NDA open for the 20-21 school year. Due to unexpected and unprecedented turn of events that caused the late June reversal of the New Day Academy closure, the SB-740 funding determination deadline (February 2020), was not, and could not have been met.

New Day Academy has submitted an SB-740 funding determination for the 2020-2021 school year concurrently with this waiver with the understanding that upon waiver approval, the funding request will be reviewed by the ACCS and require SBE approval.

Student Population: 111

City Type: Rural

Public Hearing Date: 9/18/2020

Public Hearing Advertised: Notice posted at the District main office, Charter School Resource Centers, Charter School main office, and NewDayAcademy.net.

Local Board Approval Date: 9/18/2020

Community Council Reviewed By: New Day Academy, Inc. Board of Directors

Community Council Reviewed Date: 9/17/2020

Community Council Objection: N

Community Council Objection Explanation:

Audit Penalty Yes or No: N

Categorical Program Monitoring: N

Submitted by: Ms. Laura Blachman

Position: Executive Director

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