

California Department of Education

Executive Office

SBE-005 (REV. 1/2021)

General Waiver

# California State Board of Education May 2022 Agenda Item #W-03

## Subject

Request by **four 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

* Fremont Union High School District 6-1-2022
* Hemet Unified School District 11-12-2021
* Oroville City Elementary School District 5-1-2022
* San Ysidro Elementary School District 4-2-2022

## Type of Action

Action, Consent

## Summary of the Issue(s)

Four 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 (CDE) recommends the State Board of Education (SBE) approve the request from four 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

**Fremont Union High School District (FUHSD)**

FUHSD requests to be allowed to provide instruction in fewer than the 20 days required for extended school year (ESY). The LEA requests an alternate schedule that will allow FUHSD to provide the minimum number of hours required, but in fewer days, utilizing a 15-day model over a three-week period at 300 minutes per day (15 days X 330 minutes per day = 4950 minutes), providing the same number of minimum hours as in a traditional 20-day model. The proposed model, which extends daily attendance time, results in sufficient time totals, but provides for a reduction in total days of attendance to 15 days, Monday through Friday, over a three-week period. The FUHSD believes the proposed model will provide more continuity for delivery of instruction and promotion of community-based instruction and increase the opportunities for travel training. Additionally, this would allow students and families the flexibility to plan extended vacation breaks without interrupting the students’ educational program

Demographic Information: The FUHSD has a student population of 10,836 and is located in an urban area in Santa Clara County.

**Hemet Unified School District (HUSD)**

The proposed 15-day schedule will provide ESY services to students with disabilities with the minimum number of hours required by law but in fewer days than the regular 20-day schedule. HUSD serves a large geographical region and the proposed 15-day schedule will better accommodate the many students who require designated instructional services within the district. Parents, students and staff support the shortened ESY schedule, and fewer ESY days will result in substantial savings in transportation, utilities, food services, janitorial services, administration and clerical support. Additionally, this schedule will help HUSD to hire highly qualified special education teachers and support staff that ordinarily would not be able to accept the ESY positions due to personal summer vacation schedules extending into July.

Demographic Information: The HUSD has a student population of 22,401 and is located in a rural area in Riverside County.

### Oroville City Elementary School District (OCESD)

The OCESD proposes to provide ESY services to identified special education students utilizing a 13-day, 6.25 hour per day instructional model. Students will receive the same or greater number of instructional minutes as they would in a 20-day program. This will enable the District to align its schedule to match, as closely as possible, the ESY program offered by the Butte County Office of Education (BCOE). BCOE provides support services to some of our students during ESY and coordinating calendars allows for close collaboration. Transportation and support service personnel will be able to work together with calendars that are closely aligned.

Demographic Information: The OCESD has a student population of 2,533 and is located in a rural area in Butte County.

**San Ysidro Elementary School District (SYESD)**

The SYESD is requesting a waiver to modify the 20-day ESY program to 15 days for the 2021-2022, school year. SYESD has approximately 221 students who qualify for ESY. A 15-day ESY program from 06/13/2021 to 07/01/2021, for 5.75 hours/day (86.25 hours total) combined with a shortened period in the summer with no school, would allow the SYESD to address the repression and recoupment needs of identified students. In addition, the longer days can provide greater opportunity for instructional impact.

Demographic Information: SYE has a student population of 4,571 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 Section 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 instructional time 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 (4 pages)
* **Attachment 2:** Fremont Union High School District General Waiver Request 11-12-2021 (3 pages) (Original waiver request is signed and on file in the Waiver Office.)
* **Attachment 3:** Hemet Unified School District General Waiver Request   
  1-1-2021 (3 pages). (Original waiver request is signed and on file in the Waiver Office
* **Attachment 4:**  Oroville City Elementary School District General Waiver Request 1-2-2021. (3 pages). (Original waiver request is signed and on file in the Waiver Office.)
* **Attachment 5:** San Ysidro Elementary School District General Waiver Request 11-12-2020 (2 pages). (Original waiver request is signed and on file in the Waiver Office.)

# Attachment 1: Summary Table

*California Code of Regulations,* Title 5, Section 3043(d)

| 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 |
| --- | --- | --- | --- | --- | --- | --- | --- |
| 6-1-2022 | Fremont Union High School District | **Requested:**  June 18, 2022, to July 1, 2022  **Recommended:**  June 18, 2022, to July 1, 2022 | 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, Ron McNeil, Fremont Education Association  Jason Heskett,  Union Representatives (Classified)  12/10/2021  Support | 1/5/2022 | The LEA may not provide a 15-day ESY program |
| 11-12-2021 | Hemet Unified School District | **Requested:**  June 8, 2022, to June 29, 2022  **Recommended:**  June 8, 2022, to June 29, 2022 | To provide a 15-day ESY program instead of a 20-day ESY program | Approval with conditions to allow the LEA to provide a  15-day ESY program instead of a 20-day ESY program | California School Employee Association, Michelle Nealeigh, President  10/13/2021 Support  HTA  Jason Crest 10/15/2021  Support | 12/14/2021 | The LEA may not provide a 15-day ESY program |
| 5-1-2022 | Oroville City Elementary School District | **Requested:**  June 7, 2022, to June 30, 2023  **Recommended:**  June 7, 2022, to June 30, 2023 | To provide a 13-day ESY program instead of a 20-day ESY program | Approval with conditions to allow the LEA to provide a  13-day ESY program instead of a 20-day ESY program | California School Employees Association,  Holly Hurley  President  10/12/2021 Support  OETA, Beth Parmentier, President, 10/04/2021 Support | 11/17/2021 | The LEA may not provide a 13-day  ESY program |
| 4-2-2022 | San Ysidro Elementary School District | **Requested:**  June 18, 2022, to July 1, 2022  **Recommended:**  June 18, 2022, to July 1, 2022 | To provide a 15-day ESY program instead of a 20-day ESY program | Approval with conditions to allow the LEA to provide an  15-day ESY program instead of a 20-day ESY program | California School Employees Association,  Maria Rios, President 01/04/2022 Support  SYEA,  Jennifer Cuestas Grievance Chair  12/03/2021 Support | 1/27/2022 | The LEA may not provide a 15-day ESY program |

Created by the California Department of Education

June 2021

**Attachment 2: Waiver 6-1-2022 Fremont Union High School District**

**California Department of Education**

**WAIVER SUBMISSION – Specific**

CD Code: 4369468

Waiver Number: 6-1-2022

Active Year: 2022

Date In: 1/18/2022 3:26:54 PM

Local Education Agency: Fremont Union High

Address: 589 West Fremont Ave.

Sunnyvale, CA 94087

Start: 6/18/2022

End: 7/1/2022

Waiver Renewal: N

Previous Waiver Number:

Previous SBE Approval Date:

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: 3043

Ed Code or *CCR* to Waive: This section requires a minimum of 20 school days of attendance for an extended school year (summer school) for students with special needs.

Outcome Rationale: Outcome Rationale: FREMONT UNION HIGH SCHOOL DISTRICT requests to be allowed to provide instruction in fewer than the 20 days required by law for extended school year (ESY). The LEA requests an alternate schedule that will allow it to provide the minimum number of hours required, but in fewer days utilizing a 15-day model over a three-week period at 300 minutes per day (15 days X 330 minutes per day = 4950 minutes), providing the same number of minimum hours as in a traditional 20-day model. The proposed model, which extends daily attendance time, results in sufficient time totals, but provides for a reduction in total days of attendance to 15 days, Monday through Friday, over a three-week period. The FREMONT UNION HIGH SCHOOL DISTRICT School District believes the proposed model will:

\* Provide more continuity for delivery of instruction and promotion of community-based instruction and increase the opportunities for travel training. Additionally, this would allow students and families the flexibility to plan extended vacation breaks without interrupting the students’ educational program.

\* Facilitate cost effective services within classrooms and reduce related costs for transportation, electricity, custodial services, food services, administration, etc.

\* Expand uninterrupted opportunities for school custodial staff to improve facilities before school reopens in the Fall.

Outcome Rationale: Fremont Union High School District is requesting a waiver to modify the required 20 day extended school year (ESY) program to 15 days, due to the circumstances described below.

Remont Union High School District has approximately 135 students with IEPs who qualify for extended school year.

A 15-day ESY program (June 13, 2022 - July 1, 2022, for 5.5 hours/day) combined with a shortened period in the summer with no school, would still allow the district to address the regression and recoupment needs of identified students. The longer day allows for greater balance to address academic skill development and expanded opportunities for community-based instruction, life skill development and vocational experience to gain greater levels of independence. An additional benefit would be the likelihood that the students’ teachers and paraeducators will choose to work if the session is shorter.

The ESY program, for the purposes of reimbursement for average daily attendance, will provide instruction of at least as many minutes over the 15-day period as it would have during the typical 20-day ESY program and will receive the reimbursement for the 20 days of instruction. Longer days can provide greater opportunity for instructional impact. Fewer days may save operational and transportation costs.

Outcome Rationale: Over time we have seen a decrease in the number of students who begin the program and remain during the duration of the program. When inquiring with parents as to why their children drop out of ESY, many respond that the program is too long or that they want a chance to travel with family. Finally, qualified staff to teach our student population is limited. With such limited staff, they are often left with little motivation to participate in district offered professional development that takes place during the summer months, as they desire to take a break from teaching in the ESY program.

School custodial staff use the summer months to complete deep cleaning and a variety of maintenance and repairs when there are fewer schedule disruptions. The reduction of one week would give greater availability of facility repairs.

As such, the district is requesting that the waiver be approved to allow our ESY to operate from June 13th, 2022 - July 1st, 2022, from 8:30 a.m. - 2:00 p.m. This meets the required 80 hours of instruction. It also will reduce the attrition of student attendance and provide facilities staff more time for maintenance and repair.

Student Population: 135

City Type: Urban

Local Board Approval Date: 1/5/2022

Audit Penalty Yes or No: N

Categorical Program Monitoring: N

Submitted by: Mr. Michael Martinez

Position: Coordinator of Special Services

E-mail: [michael\_martinez@fuhsd.org](file:///C:/Users/jamick/Downloads/michael_martinez@fuhsd.org)

**Attachment 3**: **Hemet Unified School District General Waiver Request 11-12-2021**

**California Department of Education**

**WAIVER SUBMISSION - General**

CD Code: 3367082

Waiver Number: 11-12-2021

Active Year: 2021

Date In: 12/15/2021 8:31:31 AM

Local Education Agency: Hemet Unified

Address: 1791 West Acacia Ave.

Hemet, CA 92545

Start: 6/8/2022

End: 6/29/2022

Waiver Renewal: N

Previous Waiver Number:

Previous SBE Approval Date:

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: Extended school year services shall be provided, in accordance with 34 C.F.R. section 300.106, 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 disabilities 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 disabling condition. The lack of clear evidence of such factors may not be used to deny an individual an extended school year program if the IEP team determines the need for such a program and includes extended school year in the IEP pursuant to subdivision (e).

(a) Extended year special education and related services shall be provided by a school district, SELPA, 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

(2) Are individuals with exceptional needs whose IEPs specify an extended year program as determined by the IEP 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: Outcome Rationale:

Hemet Unified School District (HUSD) is proposing to provide Extended School Year (ESY) utilizing a 15- day schedule of 5 hours and 30 minutes per day, totaling 82.5 hours of instruction. The proposed 15-day schedule will provide more program time than the typical 20-day ESY schedule of services to students with disabilities from preschool to age 22. Preschool students will be allowed a more traditional day, which prepares them for the transition to longer day as they progress to other levels or programs. This proposal of a longer ESY day better aligns with the regular school year schedule, therefore providing more consistency for the students served. The HUSD states the proposed schedule will allow them to hire highly-qualified staff that work with students during the school year, and provide more continuity for delivery of instruction between general education and special education. The extened hours allows for our Adults to continue the work programs and Community Based instruction to take place without interruption to the times they are working.

The HUSD serves a large geographical region and the proposed 15-day schedule will better accommodate the many students who require designated instructional services. Parents, students and staff support the shortened ESY schedule. In addition, the 15-day ESY schedule will result in substantial savings in transportation, utilities, food services, janitorial, administration, and clerical costs.

Demographic information: The Hemet Unified School District encompasses 650 square miles and has a student population of 22,401.

Student Population: 22401

City Type: Rural

Public Hearing Date: 12/14/2021

Public Hearing Advertised: Letter, website, board agenda items

Local Board Approval Date: 12/14/2021

Community Council Reviewed By: Anna Maria Cruz HUSD CAC Representative, CAC President Vicki Iqueda, Joedan Hulstrum SELPA Coord

Community Council Reviewed Date: 10/20/2021

Community Council Objection: N

Community Council Objection Explanation:

Audit Penalty Yes or No: N

Categorical Program Monitoring: N

Submitted by: Ms. Tammy Griffiths

Position: Special Education Coordinator

E-mail: [tgriffiths@hemetusd.org](mailto:tgriffiths@hemetusd.org)

Telephone: 951-765-5100 x4020

Fax: 951-765-5136

Bargaining Unit Date: 10/13/2021

Name: California School Employee Association

Representative: Michelle Nealeigh

Title: President

Phone: 951-388-9970

Position: Support

Comments:

# Attachment 4: Waiver 5-1-2022 Oroville City Elementary School District

**California Department of Education**

**WAIVER SUBMISSION - General**

CD Code: 0461507

Waiver Number: 5-1-2022

Active Year: 2022

Date In: 1/18/2022 10:49:24 AM

Local Education Agency: Oroville City Elementary

Address: 2795 Yard St.

Oroville, CA 95966

Start: 6/7/2022

End: 6/30/2023

Waiver Renewal: N

Previous Waiver Number: 6-1-2020-W-05

Previous SBE Approval Date: 5/7/2020

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, in accordance with 34.C.F.R. section 300.106, for each individual with exceptional needs who has unique needs and requires soecial education and related services in excess of the regular academic year. Such indidviuals shall have disabilities which are likely to continue indefinitely or for a prolonged period of time, and interrruption of the pupil's educational programing may cause regression, when coupledwith limited recoupment capacity, rendering it impossible or unlikely that the pupil will attain the level of self-sufficiency and independence that would be otherwise expected in virw of his or her disabling condition.

Outcome Rationale: The District proposes to provide Extended School Year (ESY) services to identified special education students utilizing a 13-day, 6.25 hour per day instructional model. Students will receive the same or greater number of instructional minutes as they would in a 20 day program. This will enable the District to align it's schedule to match, as closely as possible, the ESY program offered by the Butte County Office of Education (BCOE). BCOE provides support servicesto some of our students during ESY and coordinating calendars allows for close collaboration with the County Office of Education.Transportation and support service personnel will be able to work together with calendars that are closely aligned.

Student Population: 2105

City Type: Rural

Public Hearing Date: 11/17/2021

Public Hearing Advertised: Posted notice at all BCOE buildings, on our district website, and at the District Office and all school sites districtwide.

Local Board Approval Date: 11/17/2021

Community Council Reviewed By: School Board council, Executive Cabinet members, bargaining unit representatives, parents, and gener

Community Council Reviewed Date: 11/17/2021

Community Council Objection: N

Community Council Objection Explanation:

Audit Penalty Yes or No: N

Categorical Program Monitoring: N

Submitted by: Dr. Spencer Holtom

Position: Superintendent

E-mail: [sholtom@ocesd.net](file:///C:/Users/jamick/Downloads/sholtom@ocesd.net)

Telephone: 530-532-3000 x9

Fax: 530-532-5691

Bargaining Unit Date: 10/12/2021

Name: CSEA

Representative: Holly Hurley

Title: CSEA President

Phone: 530-532-3004

Position: Support

Comments:

Bargaining Unit Date: 10/05/2021

Name: OETA

Representative: Beth Parmentier

Title: OETA President

Phone: 530-532-3004

Position: Support

Comments:

**Attachment 5**: **Waiver 4-2-2022 San Ysidro Elementary School District**

**California Department of Education**

**WAIVER SUBMISSION - General**

CD Code: 3768379

Waiver Number: 4-2-2022

Active Year: 2022

Date In: 2/4/2022 10:36:44 AM

Local Education Agency: San Ysidro Elementary

Address: 4350 Otay Mesa Rd.

San Ysidro, CA 92173

Start: 6/13/2022

End: 7/1/2022

Waiver Renewal: N

Previous Waiver Number: 7-3-2021-w-10

Previous SBE Approval Date: 7/21/2021

Waiver Topic: Special Education Program

Ed Code Title: Extended School Year (Summer School)

Ed Code Section: 3043

Ed Code Authority: 3043(d)

*Education Code* or *CCR* to Waive: During previous ESY sessions, it has been a challenge to retain our permanent employees as ESY instructors and support staff. SYSD employees have indicated that they would be amenable to working at ESY if it could be conducted during the month of June 2022.

Outcome Rationale: CURRENT CONSIDERATIONS: San Ysidro School District is requesting a waiver from the California Department of Education to modify the 20 day extended school year (ESY) program to 15 days for the 2021-2022 school year. SYSD has approximately 221 students who qualify for extended school year. IMPACT ON STUDENT ACHIEVEMENT: A 15 day ESY program from 06/13/2021 to 07/01/2021 for 5.75 hours/day (86.25 hours total) combined with a shortened period in the summer with no school, would allow the District to address the repression and recoupment needs of identified students. In addition, the longer days can provide greater opportunity for instructional impact. FINANCIAL IMPLICATIONS: There is no increase to the General Fund.

Student Population: 4571

City Type: Urban

Public Hearing Date: 1/27/2022

Public Hearing Advertised: Board meeting and District Website

Local Board Approval Date: 1/27/2022

Community Council Reviewed By: SYSD Board, Cabinet, and Community members

Community Council Reviewed Date: 1/27/2022

Community Council Objection: N

Community Council Objection Explanation:

Audit Penalty Yes or No: N

Categorical Program Monitoring: N

Submitted by: Mr. Oscar Madera

Position: Director of Special Education

E-mail: [oscar.madera@sysdschools.org](file:///C:/Users/jamick/Downloads/oscar.madera@sysdschools.org)