

California Department of Education

Executive Office

SBE-005 (REV. 1/2021)

General Waiver

# California State Board of Education July 2023 Agenda Item #W-12

## Subject

Request by **National Elementary School District** 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

2-2-2023

## Type of Action

Action, Consent

## Summary of the Issue(s)

The local educational agency (LEA) requested to provide instruction in fewer than the 20 school days required by law for extended school year (ESY). The LEA had an alternate schedule that allowed 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: Yes
* Approval with conditions: No
* Denial: No

The California Department of Education (CDE) recommends the State Board of Education (SBE) approve the request from the LEA to provide ESY services for fewer than 20 days, from June 9, 2023, to June 30, 2023. The CDE recommends no conditions at this time since this waiver is retroactive and the LEA met all the conditions that the CDE would have recommended as a condition of approval of the waiver, as described below. Specifically, CDE has verified that school day hours were consistent with those provided to the general education enrollment at the same grade level unless an IEP specifies otherwise, and that special education and related services offered during the ESY period were comparable in standards, scope, and quality to the special education program offered during the regular academic year as required by *CCR,* Title 5, Section 3043.

## Summary of Key Issues

### National Elementary School District (NESD)

The NESD requested a reduced Extended School Year Program schedule that allowed the district to operate their program for a total of 15 days in June 2023, from June 9, 2023 to June 30, 2023. The NESD stated that the shortened schedule enabled the District to attract and retain experienced staff for the program. In addition, NEDS stated that with retention of staff, they were able to maintain consistency and assurance of an educational benefit for the students. The NESD stated that they are on a year round calendar, with a shortened summer break and a reduced ESY schedule is more proportionate to the school calendar.

CDE verified that NESD’s ESY program operated for 5.4 hours per day, five days per week (Monday through Friday, exclusive of the Juneteenth holiday) totaling 81 hours. This is more hours than if NESD provided the ESY program for 20 days. CDE verified that the 5.4 hours per day of the ESY program aligned with NESD’s general education summer school program hours.

**Demographic Information:** The NESD has a student population of 4,733 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 instruction in fewer days during the ESY for students with disabilities.

## 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 *California Code of Regulations (CCR)*, Title 5, Section 3043(f).

## Attachment(s)

* **Attachment 1:** Summary Table (1 page)
* **Attachment 2:** National Elementary School District General Waiver Request 2-2-2023 (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 Recommendation | Bargaining Unit Representatives Consulted, Date and Position | Local Board and Public Hearing Approval | Penalty Without Waiver |
| --- | --- | --- | --- | --- | --- | --- | --- |
| 2-2-2023 | National Elementary School District | **Requested:**  June 9, 2023, to June 30, 2023  **Recommended:**  June 9, 2023, to June 30, 2023 | 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 Employees Association (CSEA),  Mona Ribada, President 1/25/2023 Support  National City Teachers Association (NCTA), Irma Sanchez President  1/25/2023  Support | 3/8/2023 | The LEA may not provide a 15-day ESY program |

Created by the California Department of Education

May 2023

# Attachment 2: Waiver 2-4-2023 Mount Diablo Unified School District

**California Department of Education**

**WAIVER SUBMISSION - General**

CD Code: 3768221

Waiver Number: 2-2-2023

Active Year: 2023

Date In: 2/10/2023 2:25:27 PM

Local Education Agency: National Elementary

Address: 1500 N Ave.

National City, CA 91950

Start: 6/9/2023

End: 6/30/2023

Waiver Renewal: No

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: 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. (d) An extended year program shall be provided for a minimum of 20 instructional days, including holidays.

Outcome Rationale: The National School District can meet the needs of students over a 15 day 5.4 hour day ESY program better than a 20 day 4 hour program due to shortage of experience staff and maintaining a more regular schedule for student to ensure educational benefit and continuity of program. Additionally, National School District is on a year-round calendar and the number of dates during breaks are shorter than a traditional school calendar.

Student Population: 4377

City Type: Urban

Public Hearing Date: 2/8/2023

Public Hearing Advertised: The meeting date was posted at the District Office in a public area for parents to access. The hearing was posted on the public district website.

Local Board Approval Date: 2/8/2023

Community Council Reviewed By: District Parent Advisory Committee

Community Council Reviewed Date: 1/18/2023

Community Council Objection: No

Audit Penalty Yes or No: No

Categorical Program Monitoring: No

Submitted by: Ms. Maria Garcia

Position: Coordinator of Student Support Services

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Bargaining Unit Date: 01/25/2023

Name: California School Employee Association

Representative: Mona Ribada

Title: President

Phone: 619-336-8200

Position: Support

Bargaining Unit Date: 01/25/2023

Name: National City Teacher's Association

Representative: Irma Sanchez

Title: President

Phone: 619-336-8200

Position: Support