

California Department of Education

Executive Office

SBE-005 (REV. 1/2021)

General Waiver

# California State Board of Education September 2023 Agenda Item #W-06

## Subject

Request by **South Bay Union School District** to waive *California Code of Regulations (CCR),* 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

14-3-2023

## 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 12, 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, the 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

### South Bay Union School District

The South Bay Union School District (SBUSD) requested a reduced ESY program schedule that allowed the district to operate their program for a total of 14 days in June, 2023, from June 12, 2023 to June 30, 2023. The SBUSD stated that the 14-day ESY program, combined with the shortened period in the summer with no school, allowed for the district to address the regression and recoupment needs of the students. In addition, the SBUSD stated that longer ESY days provided greater opportunity for instructional impact.

The CDE verified that SBUSD’s program operated for 5.75 hours per day, five days per week (Monday through Friday, exclusive of the Juneteenth Holiday) totaling 80.5 hours. This is more hours than if the SBUSD provided the ESY program for 20 days. The CDE verified that the 5.75 hours per day of the ESY program aligned with SBUSD’s general education summer school program hours.

**Demographic Information:** The SBUSD has a student population of 1,120 and is located in a suburban 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 *CCR*, Title 5, Section 3043(f).

## Attachment(s)

* **Attachment 1:** Summary Table (1 page)
* **Attachment 2:** South Bay Union School District General Waiver Request 14-4-2023 (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 |
| --- | --- | --- | --- | --- | --- | --- | --- |
| 14-4-2023 | South Bay Union School District | **Requested:**  June 12, 2023, to June 30, 2023  **Recommended:**  June 12, 2023, to June 30, 2023 | To provide a 15-day extended school year (ESY) program instead of a 20-day ESY program | Retroactive approval with no conditions as the CDE has verified that the local educational agency (LEA) has provided a 15-day ESY program instead of a 20-day ESY program. | Martha Rodriguez, President;  California School Employees Association- Chapter #59;  February 15, 2023;  Support.  Brenda Robles, Negotiations Chair;  Southwest Teacher’s Association;  March 8, 2023;  Support. | January 19, 2023 | The LEA may not provide a 15-day ESY program |

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# Attachment 2: Waiver 14-4-2023 South Bay Union School District

**California Department of Education**

**WAIVER SUBMISSION - General**

CD Code: 3768395

Waiver Number: 14-4-2023  
Active Year: 2023  
Date In: 4/19/2023 12:51:10 PM

Local Education Agency: South Bay Union  
Address: 601 Elm Ave.  
Imperial Beach, CA 91932

Start: 6/12/2023  
End: 6/30/2023

Waiver Renewal: Yes  
Previous Waiver Number: 19-3-2022  
Previous SBE Approval Date: 7/13/2022

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: California Code of Regulations, Title 5, Section 3043(d) requires a minimum of 20 school days for an extended school year (summer School) for students with disabilities.

Outcome Rationale: The South Bay union School District proposes to provide Extended School Year services using a 14 day schedule of 5.75 hours per day totaling 86 hours of instruction. The proposed schedule will provide more instructional time than a typical 20 day schedule (80 hours). A 15 day ESY program (June 12, 2023 – June 30, 2023, for 5.75 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. In addition, the longer days can provide greater opportunity for instructional impact. This waiver request is a renewal of waiver number 1-12-2019.

Student Population: 1120

City Type: Suburban

Public Hearing Date: 1/19/2023  
Public Hearing Advertised: On district website and SBUSD Twitter and Instagram pages

Local Board Approval Date: 1/19/2023

Community Council Reviewed By: SWTA Special Education Working Together Committee  
Community Council Reviewed Date: 1/19/2023  
Community Council Objection: NoCommunity Council Objection Explanation:

Audit Penalty Yes or No: No  
Categorical Program Monitoring: No

Submitted by: Mr. Bruce Cochrane  
Position: Director  
E-mail: [bcochrane@sbusd.org](mailto:bcochrane@sbusd.org)   
Telephone: 619-628-1660

Bargaining Unit Date: 02/15/2023  
Name: CSEA Chapter #59  
Representative: Martha Rodriguez  
Title: President  
Phone: 619-628-1660  
Position: Support

Bargaining Unit Date: 03/08/2023  
Name: Southwest Teachers Association  
Representative: Brenda Robles  
Title: Negotiations Chair  
Phone: 619-628-1608  
Position: Support