

California Department of Education

Executive Office

SBE-005 (REV. 1/2021)

General Waiver

# California State Board of Education September 2023 Agenda Item #W-07

## Subject

Request by **Tuolumne County Superintendent of Schools** towaive *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

5-5-2023

## 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 July 3, 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 *California Code of Regulations (CCR),* Title 5, Section 3043.

## Summary of Key Issues

### Tuolumne County Superintendent of Schools

The Tuolumne County Superintendent of Schools (TCSOS) requested a reduced ESY program schedule that allowed the TCSOS to operate their program for a total of 15 days in June and July 2023, from June 12, 2023 to July 3, 2023.

CDE verified that TCSOS’s program operated for 5.5 hours per day, five days per week (Monday through Friday, exclusive of the Juneteenth Holiday) totaling 82.5 hours. This is more hours than if the TCSOS provided the ESY program for 20 days. The CDE verified that the 5.5 hours per day of the ESY program aligned with TCSOS’s general education summer school program hours.

**Demographic Information**: The TCSOS has a student population of 103 and is located in a rural area in Tuolumne 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:** Tuolumne County Superintendent of Schools General Waiver Request 5-5-2023 (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 | LEA | Period of Request | LEA’s Request | CDE Recommendation | Bargaining Unit Representatives Consulted, Date and Position | Local Board and Public Hearing Approval | Penalty Without Waiver |
| --- | --- | --- | --- | --- | --- | --- | --- |
| 5-5-2023 | Tuolumne County Super-intendent of Schools | **Requested:**  June 12, 2023, to July 3, 2023  **Recommended:**  June 12, 2023, to July 3, 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. | Brian Ward, Union President; Tuolumne County Special Educator’s Federation, AFT; February 21, 2023;  Support. | April 10, 2023 | The LEA may not provide a 15-day ESY program |

Created by the California Department of Education

# Attachment 2: Waiver 5-5-2023 Tuolumne County Superintendent of Schools

**California Department of Education**

**WAIVER SUBMISSION - General**

CD Code: 5510553

Waiver Number: 5-5-2023

Active Year: 2023  
Date In: 5/15/2023 11:46:41 AM

Local Education Agency: Tuolumne County Superintendent of Schools  
Address: 175 Fairview Ln.  
Sonora, CA 95370

Start: 6/12/2023   
End: 7/3/2023

Waiver Renewal: Yes  
Previous Waiver Number: 15-5-2022-W-08  
Previous SBE Approval Date: 9/14/2022

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 Education Code of Regulations, Title 5, Section 3043(d), which requires a minimum of 20 school days.

Outcome Rationale: Tuolumne County Superintendent of Schools proposes to provide Extended School Year (ESY) services utilizing a 15-day model over a four week period, equivalent to the number of instructional hours provided in a 20-day instructional day calendar by lengthening the daily schedule. The proposed schedule would be from June 12, 2023 - July 3, 2023 and will exclude June 19 in observance of the federal holiday. The proposed school days will be 5.5 hours of instruction per day for the duration of the program.

Student Population: 79

City Type: Rural

Public Hearing Date: 3/13/2023  
Public Hearing Advertised: Website, posting on building, posting at programs.

Local Board Approval Date: 4/10/2023

Community Council Reviewed By: Tuolumne County Board of Education  
Community Council Reviewed Date: 4/25/2023  
Community Council Objection: No

Audit Penalty Yes or No: No

Categorical Program Monitoring: No

Submitted by: Ms. Sarah Gillum  
Position: Director II, Special Education  
E-mail: [sgillum@tcsos.us](mailto:sgillum@tcsos.us)   
Telephone: 209-536-2000 x2055  
Fax: 209-536-2003

Bargaining Unit Date: 02/21/2023  
Name: Tuolumne County Special Educator's Federation, AFT  
Representative: Brian Ward  
Title: Union President  
Phone: 2095362000  
Position: Support