

California Department of Education

Executive Office

SBE-005 (REV. 1/2021)

General Waiver

# California State Board of Education September 2024 Agenda Item #W-09

## Subject

Request by **two 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

* South Whittier Elementary School District 11-6-2024
* Hesperia Unified School District 15-4-2024

## Type of Action

Action, Consent

## Summary of the Issue(s)

Two local educational agencies (LEAs) requested to provide instruction in fewer than the 20 school days required by law for extended school year (ESY). Each LEA had an alternate schedule that allowed them to provide hours consistent with and comparable to the number of hours that would have been provided to students if the length of the ESY was 20 days, 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 both LEAs to provide ESY services for fewer than 20 days. The CDE recommends no conditions at this time as these waiver requests are retroactive and the LEAs 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

### South Whittier Elementary School District

The South Whittier Elementary School District (SWESD) requested a reduced ESY schedule of 16 days in 2024 from June 17, 2024, to July 11, 2024. The SWESD stated that the shortened number of ESY days facilitated cost-effective services within the classroom and reduced related costs for transportation, electricity, custodial services, food services, administration, etc.

The CDE verified that SWESD’s program operated 5.25 hours per day, four days per week (Monday through Thursday, exclusive of holidays), totaling 84 hours. This is consistent and comparable to the number of hours SWESD would have provided in an ESY program of 20 days. The CDE verified that the ESY program aligned with SWESD’s general education summer school program hours.

**Demographic Information:** The SWESD has a student population of 2,272 and is located in a small area in Los Angeles County.

### Hesperia Unified School District (HUSD)

The Hesperia Unified School District (HUSD) requested a reduced ESY schedule of 16 days in June 2024 from June 5, 2024 to June 27, 2024. Per HUSD, the requested program schedule ensured healthy staffing levels and a positive school climate, to benefit student performance and streamline local agency operations.

The CDE verified that HUSD’s program operated for 5 hours per day, five days per week (Monday through Friday, exclusive of the Juneteenth Holiday), totaling 80 hours. This is consistent with and comparable to the number of hours HUSD would have provided in an ESY program of 20 days. The CDE verified that the 5 hours per day of the ESY program aligned with HUSD’s general education summer school program hours.

**Demographic Information:** The HUSD has a student population of 25,356 and is located in a rural area in San Bernardino 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 ESY in fewer than 20 days if the alternative schedule consistent with and comparable to the amount of instruction that would have been provided to students if the length of the ESY was 20 days.

## 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 (2 pages)
* **Attachment 2:** South Whittier Elementary School District General Waiver Request 11-6-2024 (2 pages). (Original waiver request is signed and on file in the Waiver Office.)
* **Attachment 3:** Hesperia Unified School District General Waiver Request   
  15-4-2024 (3 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 |
| --- | --- | --- | --- | --- | --- | --- | --- |
| 11-6-2024 | South Whittier Elementary School District | **Requested:**  June 17, 2024, to July 11, 2024  **Recommended:**  June 17, 2024, to July 11, 2024 | To provide a 16-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 16-day ESY program instead of a 20-day ESY program. | Stephanie Gonzales,  CA School Employees Association, President;  2-27-2023; Neutral.  Carlos Rivera, South Whittier Teacher’s Association, President. 2-27-2023;  Support. | 3-7-2023 | The LEA may not provide a 16-day ESY program |

| 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 |
| --- | --- | --- | --- | --- | --- | --- | --- |
| 15-4-2024 | Hesperia Unified School District | **Requested:**  June 5, 2024, to June 27, 2024.  **Recommended:**  June 5, 2024, to June 27, 2024 | To provide a 16-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 16-day ESY program instead of a 20-day ESY program. | California School Employees Association, Emily Penn, President; 2/20/2024; Support  Hesperia Teachers Association, Vice President, Paula Kondratko; Support | 4/15/2024 | The LEA may not provide a 16-day ESY program |

# Attachment 2: South Whittier Elementary School District General Waiver Request 11-6-2024

**California Department of Education**

**WAIVER SUBMISSION - General**

CD Code: 1965037

Waiver Number: 11-6-2024

Active Year: 2024

Date In: 6/26/2024 9:48:19 AM

Local Education Agency: South Whittier Elementary

Address: 11200 Telechron Ave.

Whittier, CA 90605

Start: 6/17/2024

End: 7/11/2024

Waiver Renewal: No

Previous Waiver Number: 11-3-2023.

Previous SBE Approval Date: 3/7/2023

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

Outcome Rationale: Request waiver for two years from the California State Board of Education to cover ESY 2023 and ESY 2024. The district seeks to provide a higher number of instructional hours than provided within the 20 instructional day calendar, which includes holidays (20 days x 4 hours=80 hours). Instead, the district will provide 16 instructional day calendar, which includes holidays (16 days x 5.25 =84 hours). ESY 2024 will operate similarly and is tentatively scheduled the weeks of June 17, 2024 to July 11, 2024. The overall instructional time will increase or stay the same; However, there is a reduction in days of attendance over a four week period in order to:

1) Increase the likelihood that highly qualified and trained classroom teachers and staff working with special education students during the school year will apply to work during Extended School Year.

2) Facilitate cost-effective services within the classroom and reduce related costs for transportation, electricity, custodial services, food services, administration, etc.

Student Population: 2325

City Type: Small

Public Hearing Date: 3/7/2023

Public Hearing Advertised: A notice was posted on the district website, in the district’s front office, in each of the 6 schools' websites, and in each of the 6 schools' front offices.

Local Board Approval Date: 3/7/2023

Community Council Reviewed By: Board of Trusees

Community Council Reviewed Date: 3/7/2023

Community Council Objection: No

Audit Penalty Yes or No: No

Categorical Program Monitoring: No

Submitted by: Ms. Diana Huizar

Position: Director of Special Education

E-mail: [dhuizar@swhittier.net](mailto:dhuizar@swhittier.net)

Telephone: 562-944-6231 x2019

Bargaining Unit Date: 02/27/2023

Name: California School Employees Association (CSEA)

Representative: Stephanie Gonzales

Title: President

Phone: 562-941-2123

Position: Support

Bargaining Unit Date: 02/27/2023

Name: South Whittier Teachers Association (SWTA)

Representative: Carlos Rivera

Title: President

Phone: 562-941- 2132

Position: Support

# Attachment 3: Hesperia Unified School District General Waiver Request 15-4-2024

**California Department of Education**

**WAIVER SUBMISSION - General**

CD Code: 3675044

Waiver Number: 15-4-2024

Active Year: 2024

Date In: 4/22/2024 2:23:47 PM

Local Education Agency: Hesperia Unified

Address: 15576 Main Street

Hesperia, CA 92345-5934

Start: 6/4/2024

End: 6/27/2024

Waiver Renewal: Yes

Previous Waiver Number: 1-5-2023-W-04

Previous SBE Approval Date: 9/20/2023

Waiver Topic: Special Education Program

Ed Code Title: Extended School Year (Summer School)

Ed Code Section: *CCR* 3043 (d)

Ed Code Authority: 33050

*Education Code* or *CCR* to Waive: (d) An extended year program shall be provided for a minimum of 20 instructional days, including holidays.

Outcome Rationale: The *California Code of Regulations* §3043 requires that 20 days of Extended School Year (ESY) be provided to special education students with severe regression and recoupment issues over the summer break. Districts in California are required to provide 80 hours of instruction over the 20-day ESY Program. The California Department of Education will consider a special waiver allowing a district to hold shorter ESY programs so long as 80 hours of instruction are still provided in the summer.

In many instances, the district is able to complete the ESY obligation during the month of June. However, this year’s school calendar will not allow us to complete ESY without entering into the month of July and requiring students and staff to return for class after the Independence Day holiday.

In the past, when ESY was extended in July, we have seen a decrease in student enrollment. In addition, extending ESY into July presents challenges with hiring staff for ESY. Typically, staff prefer to have a longer summer and not have their Independence Day holiday impacted by working in ESY. As a result, we have more substitutes who are not familiar with student needs working in ESY. Creating an ESY calendar that is contained within the month of June allows us to hire and retain the appropriate staff, complete ESY in the month of June, and continue to provide 80 hours of instruction to our students.

This waiver is necessary to ensure that HUSD can provide a high-quality ESY program with the quality and quantity of staff necessary to deliver instruction and provide a safe environment for all of our students who participate in our ESY program.

Student Population: 23522

City Type: Rural

Public Hearing Date: 4/15/2024

Public Hearing Advertised: District Website/Board Agenda

Local Board Approval Date: 4/15/2024

Community Council Reviewed By: District Advisory Committee (DAC)

Community Council Reviewed Date: 2/7/2024

Community Council Objection: No

Audit Penalty Yes or No: No

Categorical Program Monitoring: No

Submitted by: Mr. Eric Land

Position: Director of Special Services

E-mail: [eric.land@hesperiausd.org](mailto:eric.land@hesperiausd.org)

Email: Telephone: 760-244-4411 x7209

Bargaining Unit Date: 02/20/2024

Name: California School Employees Association

Representative: Emily Penn

Title: President

Phone: 760-244-4411

Position: Support

Bargaining Unit Date: 02/20/2024

Name: Hesperia Teachers Association

Representative: Paula Kondratko

Title: Vice President

Phone: 760-244-4411

Position: Support