

California Department of Education

Executive Office

SBE-006 (REV. 1/2018)

Specific Waiver

# California State Board of Education November 2021 Agenda Item #W-03

## Subject

Request by the **Palmdale Elementary School District,** under the authority of California *Education Code* (*EC*) Section 41382, to waive portions of the *EC* Section 41376(a), (c), and (d) relating to class size penalties for grades one through three. Allowable district class size average is 30 with no individual class larger than 32 students for grades one to three. The district wishes to increase its individual district class size to 34 for grades one to three.

## Waiver Numbers

* 2-8-2021

## Type of Action

Action, Consent

## Summary of the Issue(s)

The Palmdale Elementary School District (ESD) is requesting a waiver of portions of *EC* Section 41376(a), (c), and (d) relating to class size penalties for grades one through three for Fiscal Year 2020–21. During the 2020–21 Fiscal Year, the District had three second grade classes with enrollment in excess of 32 students. These classes each had 34 students. The district’s average class size for grades one through three was 27.5 students. Due to the challenges of the pandemic and remote learning, the district determined that the students were better served staying in their remote classrooms that were slightly over the limit rather than shifting students and creating combination grade level classes in a remote setting. The district anticipates that the student overage will not continue in the 2021–22 school year as students will be provided the opportunity to return to school sites and staffing will be adjusted as needed.

For the 2020–21 school year, Palmdale ESD moved toward a distance learning model due to school closures. The District and school site staff utilized multiple platforms to communicate with students and parents, and technology trainings were provided to staff to ensure that learning continued with as little impact as possible. Through the collaborative efforts of school site staff, teachers and parents, the district states that they reached their Local Control and Accountability Plan goals, fulfilled the needs of each student while minimizing the academic disruption, and provided social-emotional support as needed through the challenges faced during COVID-19.

The district will incur a penalty of $177,146 for Fiscal Year 2020–21 if this waiver is not granted. The district states that without an approved waiver, the district would not have been able to provide the highest level of instruction to high need students in reading and math.

## Authority for Waiver

*EC* Section 41382

## Recommendation

* Approval: Yes
* Approval with conditions: No
* Denial: No

The California Department of Education (CDE) recommends the California State Board of Education (SBE) approve the request by the Palmdale ESD to waive the class size penalty for grades one through three for the recommended period shown on Attachment 1.

The CDE also recommends that the SBE find that the class size penalty provisions of *EC* section 41376 will, if not waived, prevent the district from developing more effective educational programs to improve instruction in reading and mathematics for students in the classes specified in the district’s application.

## Summary of Key Issues

There are two different requirements regarding kindergarten through grade three (K–3) class sizes. The first requirement has been in law since the mid-1960s and is the subject of this waiver. This law requires the CDE to apply a financial class size penalty to a school district’s Local Control Funding Formula (LCFF) entitlement if any of the following occur:

* A single kindergarten class exceeds an average enrollment of 33.
* The average enrollment of all kindergarten classes in the district exceeds 31.
* A single class in grades one through three exceeds an average enrollment of 32.
* The average enrollment of all grades one through three classes in the district exceeds 30.

School districts report their average class enrollment information to the CDE in the spring of the applicable year. If a school district does not meet the requirements, the CDE reduces the district’s final payment for the year. Generally, the penalty is equal to a loss of all funding for enrollment above 31 in kindergarten classes or 30 in grades one through three classes. *EC* Section 41382 allows the SBE to waive this penalty if the associated class size requirements prevent the school and school district from developing more effective education programs to improve instruction in reading and mathematics.

The second requirement, which began in Fiscal Year 2013–14, is related to the K–3 grade-span adjustment (GSA) that increases the LCFF base grant funding for the K–3 grade span by 10.4 percent, resulting in an adjusted base grant amount. In order to receive this adjustment, school districts must meet one of the following conditions at each school site:

* Maintain at that school site an average class enrollment in K–3 of not more than 24 pupils.
* Agree to a collectively-bargained alternative to the statutory K–3 GSA requirements.

If an independent auditor finds that a school district did not meet one of the conditions, the CDE must retroactively remove the K–3 GSA from the district’s LCFF entitlement. *EC* Section 42238.02(d)(3)(E) does not allow the SBE to waive the adjustment.

These two statutes operate independently. It is possible that a district could comply with the ostensibly more restrictive conditions for the K–3 GSA and be out of compliance with the K–3 class size penalty statutes. For instance, the district could have negotiated an alternative to the K–3 GSA class size average that exceeds the class size penalty levels.

In September 2014, the SBE adopted Policy #14-01, which requires districts to provide certain types of information with their waiver requests commencing with Fiscal Year 2014–15. The district’s waiver included the information required by the SBE’s Policy #14-01.

## Summary of Previous State Board of Education Discussion and Action

Before September 2009, no class size penalty waivers had been submitted since 1999. Due to the state budget crisis and resulting significant reduction in funding, the SBE began receiving a large number of waiver requests beginning in 2009. As a result, the SBE approved all class size penalty waiver requests through Fiscal Year 2013–14. In September 2014, the SBE adopted a policy for the type of information districts should provide when submitting a class size penalty waiver request for fiscal years beginning with 2014–15. The policy is available at [https://www.cde.ca.gov/re/lr/wr/waiverpolicies.asp](http://www.cde.ca.gov/re/lr/wr/waiverpolicies.asp), under Class Size Penalties for Grades Kindergarten and Grades One through Three.

## Fiscal Analysis (as appropriate)

See Attachment 1 for actual penalty amounts should the waiver request be denied.

## Attachment(s)

* **Attachment 1:** Summary Table (1 page)
* **Attachment 2:** Palmdale ESD Specific Waiver Request 2-8-2021 (4 pages) (Original waiver request is signed and on file in the Waiver Office.)

# Attachment 1: Summary Table

California *Education Code (EC)* Section 41376(a), (c), and (d)

| **Waiver Number** | **District** | **Period of Request** | **District’s Request** | **CDE Recommendation** | **Local Board and Public Hearing Approval** | **Bargaining Unit Position** | **Penalty Without Waiver** | **Previous Waivers** |
| --- | --- | --- | --- | --- | --- | --- | --- | --- |
| 2-8-2021 | Palmdale Elementary School District | **Requested:**  July 1, 2020, to June 30, 2021  **Recommended:** July 1, 2020, to June 29, 2021 | Overall average 30; no class larger than 34 | Overall average 30; no class larger than 34 | Local Board Approval  August 3, 2021 | Palmdale Elementary Teachers Association  Kelley Brown, Union President,  **Support**  April 14, 2021 | $177,146 | N/A |

Created by California Department of Education   
August 2021

**Attachment 2: Palmdale Elementary School District Specific Waiver Request 2-8-2021**

**California Department of Education**

**WAIVER SUBMISSION – Specific**

CD Code: 1964857

Waiver Number: 2-8-2021

Active Year: 2021

Date In: 8/11/2021 9:10:43 AM

Local Education Agency: Palmdale Elementary

Address: 39139 10th St. East

Palmdale, CA 93550

Start: 7/1/2020

End: 6/30/2021

Waiver Renewal: N

Previous Waiver Number:

Previous SBE Approval Date:

Waiver Topic: Class Size Penalties

Ed Code Title: Over Limit on Grades 1-3

Ed Code Section: portions of 41376 (a) (c) and (d)

Ed Code Authority: 41382

Ed Code or *CCR* to Waive: Ed Code or *CCR* to Waive: *EC* 41376 (a)(c) and (d) The Superintendent of Public Instruction, in computing apportionments and allowances from the State School Fund for the second principal apportionment, shall determine the following for the regular day classes of the elementary schools maintained by each school district: [(a) For grades 1 to 3, inclusive, he shall determine the number of classes, the number of pupils enrolled in each class, the total enrollment in all such classes, the average number of pupils enrolled per class, and the total of the numbers of pupils which are in excess of thirty (30) in each class. For those districts which do not have any classes with an enrollment in excess of 32 and whose average size for all the classes is 30.0 or less, there shall be no excess declared. For those districts which have one or more classes in excess of an enrollment of 32 or whose average size for all the classes is more than 30, the excess shall be the total of the number of pupils which are in excess of 30 in each class having an enrollment of more than 30.] (b) For grades 4 to 8, inclusive, he shall determine the total number of pupils enrolled, the number of full-time equivalent classroom teachers, and the average number of pupils per each full-time equivalent classroom teacher. He shall also determine the excess if any, of pupils enrolled in such grades in the following manner: (1) Determine the number of pupils by which the average number of pupils per each full-time equivalent classroom teacher for the current fiscal year exceeds the greater of the average number of pupils per each full-time equivalent classroom teacher in all the appropriate districts of the state, as determined by the Superintendent of Public Instruction, for October 30, 1964, or the average number of pupils per each full-time equivalent classroom teacher which existed in the district on either October 30, 1964 or March 30, 1964, as selected by the governing board. (2) Multiply the number determined in (1) above by the number of full-time equivalent classroom teachers of the current fiscal year. (3) Reduce the number determined in (2) above by the remainder which results from dividing such number by the average number of pupils per each full-time equivalent teacher for October 30, 1964, as determined by the Superintendent of Public Instruction in (1) above. [(c) He shall compute the product obtained by multiplying the excess number of pupils, if any, under the provisions of subdivision (a) of this section by ninety-seven hundredths (0.97), and shall multiply the product so obtained by the ratio of statewide change in average daily attendance to district change in average daily attendance. Change in average daily attendance shall be determined by dividing average daily attendance in grades 1, 2 and 3 reported for purposes of the first principal apportionment of the current year by that reported for purposes of the first principal apportionment of the preceding year. (d) If the school district reports that it has maintained, during the current fiscal year, any classes in which there were enrolled pupils in excess of thirty (30) per class pursuant to subdivision (a) of this section, and there is no excess number of pupils computed pursuant to subdivision (b) of this section, he shall decrease the average daily attendance reported under the provisions of Section 41601 by the product determined under subdivision (c) of this section.]

Outcome Rationale: Outcome Rationale: Due to Covid, the Palmdale School District has experienced student overage in 3 of our classrooms in the 2nd grade. This year we were faced with the challenge of balancing class size and providing the best experience for a student in a remote setting. Our overall district wide average in grades 1 - 3 is below 29, we have 3 classes that are in excess of the 32 students, for a total of 12 students. We anticipate that the student overage will not continue in the 2021-2022 school year as students will be provided the opportunity to return to school sites after the effect of a full year of distance learning due to Covid-19.

1. In the 2020-2021 school year, our district was over the class size threshold by 23 students. This number includes 12 students in three 2nd grade classrooms in a school site, nine students from classrooms with class sizes above 31 and 2 students from other classroom sizes greater than 32. Due to Covid-19, it is in the student’s best interest to keep them in a consistent grade level remotely. The District believes this is more important than a remote unbalanced combination in class.

2. The district’s LCAP goals include the” increase of academic success, increase in technology access, provide supporting professional development, create positive student learning environment, have appropriately credentialed staff, provide standard based instructional materials, expand and enhance parent & community communication.” By maintaining the students in a consistent remote classroom setting, it allowed the district to reach each individual student’s needs through the effects of COVID-19 and still reach the LCAP goals. Support was provided to school staff, teachers, students and parents.

3. The district provided a description of the promotion of a broader understanding of the changes that the LEA had put into place during COVID-19. “Palmdale School District rapidly moved toward a distance learning model due to school closures. District and school site staff utilized multiple platforms to communicate with students and parents, and technology trainings were provided to staff to ensure that learning continued with as little impact as possible... PSD began the effort to provide high-quality distance learning opportunities by first communicating with stakeholders about school closures, and highlighting the need to our community to remain flexible and vigilant in what was then a highly uncertain and fluid environment.” Through the collaborative efforts of school site staff, teachers and parents, the Palmdale School District fulfills the needs of each student while minimizing the academic disruption and providing social-emotional support as needed through the challenges faced during COVID-19. It was the district’s responsibility to maintain the academic consistency of a student remotely.

4. For the 2021-2022 school year, the district will continue to monitor student success and classroom size to decrease high classroom settings and meet the needs of each individual student while maintaining student and staff safety and minimizing the impact caused during distance learning. If necessary upon return of students to school sites, the Palmdale School District will increase staffing needs to maintain a class size which will benefit the student academic progress.

5. The financial impact of the class size penalty is $177,146 representing 2020-21 base grant per ADA of $7,702.00 multiplied by 23 students. This waiver would allow the district to apply the $177,146 towards the salary of the needed FTE in order to address the overage.

6. MOU is in place during COVID-19, due to expire May 28, 2021, where bargaining units member’s professional expectations of student contacts/class sizes will be maintained at the contractual limits. Student contacts may include students who report physically to their classes on assigned days and /or students who remain on a distance learning schedule.

7. The Palmdale School District contract with the Palmdale Elementary Teacher Association has an agreement through June 30, 2021 that one staffing unit shall be allocated per daily average of twenty-nine students in grades transitional kindergarten through fifth grade (TK-5th) per school site consistent with available site facilities. The annual average class enrollment for each school site shall not exceed twenty-nine (29) students. The District will make every reasonable effort to equalize class loads and stay within Class Sizes. There is also a contractual Overage Compensation for teachers. Compensation was based upon average total student contacts.

Palmdale School District’s focus during the highly uncertain environment that COVID-19 brought upon the health of each individual, was to ensure that learning continued with as little impact as possible for the child’s academic progress and social emotional well being. All stakeholders groups, certificated, classified, parents, and students collaborated to respond to the pandemic and numerous reports suggested that our community has never worked harder for their students.

Yes. A principal may recommend to the governing board or the governing board of the school district may adopt a resolution determining that an exemption should be granted from any of the provisions of Section 41376 and 41378, with respect to such core classes on the basis that such provisions prevent the school and school district from developing more effective education programs to improve instruction in reading and mathematics. (Required see *EC* 41382) A potential penalty of $177146 could be incurred by the district without this waiver.

Student Population: 16680

City Type: Suburban

Local Board Approval Date: 8/3/2021

Audit Penalty Yes or No: N

Categorical Program Monitoring: N

Submitted by: Dr. Frances Ufondu

Position: Chief Business Officer

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Telephone: 661-789-6512

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Bargaining Unit Date: 04/14/2021

Name: Palmdale Elementary Teacher Association

Representative: Kelley Brown

Title: Bargaining Chair

Phone: 661-285-1546

Position: Support

Comments: