

California Department of Education

Executive Office

SBE-005 (REV. 1/2021)

General Waiver

# California State Board of Education March 2023 Agenda Item #W-05

## Subject

Request by threelocal 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

* Chula Vista Elementary School District (CVESD) 1-11-2022
* Hemet Unified School District (HUSD) 2-12-2022
* San Marcos Unified School District (SMUSD) 11-12-2022

## Type of Action

Action, Consent

## Summary of the Issue(s)

Three local educational agencies (LEAs) request to provide instruction in fewer than the 20 school days required by law for extended school year (ESY). The LEA proposes an alternate schedule that will allow 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: No
* Approval with conditions: Yes
* Denial: No

The California Department of Education recommends the State Board of Education (SBE) approve the request from three LEAs to provide ESY services for fewer than 20 days with the condition school day hours are consistent with those provided to the general education enrollment at the same grade level unless an IEP specifies otherwise. Also, special education and related services offered during the ESY period must be 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

### Chula Vista Elementary School District

The CVESD is submitting a waiver for a reduced ESY schedule. The proposed schedule consists of 15 days with 5.4 instructional hours per day for a total of 81 instructional hours for Kindergarten through Sixth grade. The CVESD will run a second proposed ESY schedule for Pre-Kindergarten students that consists of 15 days with 4 instructional hours per day for a total of 60 instructional hours. Per the CVESD, longer school days provide greater opportunity for instructional impact, and an unintentional positive consequence is that operating for fewer days saves operational, facilities, and transportation costs. The CVESD operates a year-round schedule with only a six-week summer break. It is difficult for CVESD to encourage families to attend a four-week ESY program. Additionally, the CVESD had difficulties staffing a four-week ESY program because it impedes families’ and staff’s only ability to take summer vacations. Operating under a shorter ESY model provides for the equivalent number of instructional minutes for students, while maximizing attendance and staffing options.

Demographic Information: The CVESD has a student population of 29,000 and is located in an urban area in San Diego County.

### Hemet Unified School District

The HUSD is submitting a waiver for a reduced ESY schedule. The proposed schedule consists of 15 days with 5.33 instructional hours per day for a total of 80 instructional hours. Per the HUSD, the longer ESY schedule aligns with the regular school year schedule, therefore providing more consistency for the students served. Additionally, the proposed schedule would allow the HUSD to hire highly qualified staff that works with students during the school year and would provide more continuity for the delivery of instruction between general education and special education. The HUSD also states that the 15-day schedule better serves their students over a wide geographical area while saving the district costs in transportation, utilities, and administration.

Demographic information:The HUSD has a student population of 22,735 and is located in an urban area in Riverside County.

### San Marcos Unified School District

The SMUSD is submitting a waiver for a reduced ESY schedule. The proposed schedule consists of 16 days with 5 instructional hours per day for a total of 80 instructional hours. Per the SMUSD, the proposed schedule will increase the participation of highly qualified and trained classroom teachers and staff who already work with the same students during the school year. The SMUSD also found the shorter weeks help increase eligible student attendance, along with improving overall daily attendance. The shorter ESY schedule also helps the SMUSD facilitate cost-effective services related to transportation, utilities, and custodial services.

**Demographic Information:** The SMUSD has a student population of 19,657 and is located in an urban area of 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 (2 pages) ***Revised Attachment 1 posted on March 3, 2023 reflecting San Marcos Unified School District General Waiver Request dated 11-12-2022.***
* **Attachment 2:** Chula Vista Elementary School District General Waiver Request 1-11-2022 (2 pages). (Original waiver request is signed and on file in the Waiver Office.)
* **Attachment 3:** Hemet Unified School District General Waiver Request 2-12-2022 (3 pages). (Original waiver request is signed and on file in the Waiver Office.)
* **Attachment 4:** San Marcos Unified School District General Waiver Request 8-11-2022 (3 pages). (Original waiver request is signed and on file in the Waiver Office.) ***Revised Attachment 4 posted on March 3, 2023 reflecting San Marcos Unified School District General Waiver Request dated 11-12-2022.***

# 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 |
| --- | --- | --- | --- | --- | --- | --- | --- |
| 1-11-2022 | Chula Vista Elementary School District (CVESD) | **Requested:**  June 7, 2023, to June 28, 2023  **Recommended:**  June 7, 2023, to June 28, 2023 | To provide a 15-day extended school year (ESY) program instead of a 20-day ESY program | Approval with conditions to allow the local educational agency (LEA) to provide a 15-day ESY program instead of a 20-day ESY program | Chula Vista Educators, Rosie Martinez, President 9/16/22 Support | 10/19/2022 | The LEA may not provide a 15-day ESY program |
| 2-12-2022 | Hemet Unified School District (HUSD) | **Requested:**  June 5, 2023, to June 30, 2023  **Recommended:**  June 5, 2023, to June 30, 2023 | To provide a 15-day extended school year (ESY) program instead of a 20-day ESY program | Approval with conditions to allow the local educational agency (LEA) to provide a 15-day ESY program instead of a 20-day ESY program | CSEA/HTA, Samantha Zavilla/Jason Crest, President/President, 11/2/22, 9/19/2022 Support/Support | 11/15/2022 | The LEA may not provide a 15-day ESY program |
| 11-12-2022 | San Marcos Unified School District (SMUSD) | **Requested:**  June 26, 2023, to July 20, 2023  **Recommended:**  June 26, 2023, to July 20, 2023 | To provide a 16-day extended school year (ESY) program instead of a 20-day ESY program | Approval with conditions to allow the local educational agency (LEA) to provide a 16-day ESY program instead of a 20-day ESY program | California School Employees Assoc Chapter 413, Yvonne Brett, President 10/19/22 Support  San Marcos Educators Association, Dale Pluciennik, President 10/18/22  Support | 11/10/2022 | The LEA may not provide a 16-day ESY program |

Created by the California Department of Education

December 2022

# Attachment 2: Waiver 1-11-2022 Chula Vista Elementary School District

**California Department of Education**

**WAIVER SUBMISSION – General**

CD Code: 3768023

Waiver Number: 1-11-2022

Active Year: 2022

Date In: 11/2/2022 12:16:56 PM

Local Education Agency: Chula Vista Elementary

Address: 84 East J St.

Chula Vista, CA 91910

Start: 6/7/2023

End: 6/28/2023

Waiver Renewal: N

Previous Waiver Number:

Previous SBE Approval Date:

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: *California Code of Regulations*

*Education Code* or *CCR* to Waive: *CCR*, Title 5, Section 3043(d), requires a minimum of 20 school days of attendance for an extended school year (summer school) for special education students.

Outcome Rationale: Chula Vista Elementary School District requests a waiver to modify the required Special Education extended school year from 20 days to 15 days. There is no summer school program for general education students in the District.

The Chula Vista Elementary School District operates a year-round schedule with only a six-week summer break. It is difficult to have families attend with a four-week ESY program and also difficult to staff a four-week ESY program because that impedes families’ and staff’s only ability to take summer vacations with families. Operating under this model provides for the equivalent number of instructional minutes for students, while maximizing attendance and staffing options.

In order to provide Extended School Year services to all students, we are requesting a reduced number of days, while still providing the same number of hours as would have been provided in a 20-day program (80 hours). Without it, we experience difficulties with both staffing and attendance of students.

The program for K-6 will be: June 7 – June 28, 2023 (June 19, District Holiday); 5 hours 25 minutes/day (80 hours); PreK will be: June 7 – June 28, 2023; 4 hours/day (60 hours). This will provide an appropriate break for staff and students and allow us to appropriately staff the program and provide services to all students across the District. Students would receive the full 80 hours (K-6) and 60 hours (PreK) of instruction required by Ed Code. In addition, we have learned that longer school days provide greater opportunity for instructional impact, and an unintentional positive consequence is that operating for fewer days saves operational, facilities, and transportation costs.

Student Population: 29000

City Type: Urban

Public Hearing Date: 10/19/2022

Public Hearing Advertised: On the District website and on a public bulletin board.

Local Board Approval Date: 10/19/2022

Community Council Reviewed By: Special Education Task Force Advisory Committee and Special Education Parent Committee.

Community Council Reviewed Date: 10/11/2022

Community Council Objection: N

Community Council Objection Explanation:

Audit Penalty Yes or No: N

Categorical Program Monitoring: N

Submitted by: Ms. Sharon Casey

Position: Assistant Superintendent

E-mail: [sharon.casey@cvesd.org](mailto:sharon.casey@cvesd.org)

Telephone: 619-425-9600 x181701

Fax:

Bargaining Unit Date: 09/16/2022

Name: Chula Vista Educators

Representative: Rosie Martinez

Title: CVE President

Phone: 619-425-9600

Position: Support

Comments:

# Attachment 3: Waiver 2-12-2022 Hemet Unified School District

**California Department of Education**

**WAIVER SUBMISSION – General**

CD Code: 3367082

Waiver Number: 2-12-2022

Active Year: 2022

Date In: 12/12/2022 11:14:27 AM

Local Education Agency: Hemet Unified

Address: 1791 West Acacia Ave.

Hemet, CA 92545

Start: 6/5/2022

End: 6/30/2022

Waiver Renewal: N

Previous Waiver Number:

Previous SBE Approval Date: 12/12/2022

Waiver Topic: Special Education Program

Ed Code Title: Extended School Year (Summer School)

Ed Code Section: 5 CCR 3043

Ed Code Authority: 33050

Education Code or CCR to Waive: Education Code or California Code of Regulations section to be waived. If the request is to waive a portion of a section, type the text of the pertinent sentence of the law.

3043 Extended school year services shall be provided 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 handicaps 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 handicapping condition. The lack of clear evidence of such factors may not be used to deny an individual an extended school year program if the individualized education program team determines the need for such a program

Outcome Rationale: Hemet Unified School District (HUSD) is proposing to provide an Extended School Year (ESY) utilizing a 15-day schedule of 5 hours and 20 minutes per day, totaling 80.0 hours of instruction. The proposed 15-day schedule will provide more program time than the typical 20-day ESY schedule of services to students with disabilities from preschool to age 22. This proposal of a longer ESY day better aligns with the regular school year schedule, therefore providing more consistency for the students served. The HUSD states the proposed schedule will allow them to hire highly-qualified staff that works with students during the school year, and provide more continuity for the delivery of instruction between general education and special education.

The HUSD serves a large geographical region and the proposed 15-day schedule will better accommodate the many students who require designated instructional services. Parents, students, and staff support the shortened ESY schedule. In addition, the 15-day ESY schedule will result in substantial savings in transportation, utilities, food services, janitorial, administration, and clerical costs.

Student Population: 22735

City Type: Urban

Public Hearing Date: 11/15/2022

Public Hearing Advertised: Posted online and at all School sites

Local Board Approval Date: 11/15/2022

Community Council Reviewed By: County Advisory Committee CAC

Community Council Reviewed Date: 9/13/2022

Community Council Objection: N

Community Council Objection Explanation:

Audit Penalty Yes or No: N

Categorical Program Monitoring: N

Submitted by: Ms. Yvette Rosales

Position: Special Education Coordinator

E-mail: [yrosales@hemetusd.org](mailto:yrosales@hemetusd.org)

Telephone: 951-765-5100 x4020

Fax:

Bargaining Unit Date: 11/02/2022

Name: CSEA

Representative: Samantha Zavilla

Title: President

Phone: 951-663-8807

Position: Support

Comments:

Bargaining Unit Date: 08/19/2022

Name: HTA

Representative: Jason CrestTitle: President

Phone: 9513921729

Position: Support

Comments:

# Attachment 4: Waiver 11-12-2022 San Marcos Unified School District

**California Department of Education**

**WAIVER SUBMISSION - General**

CD Code: 3773791

Waiver Number: 11-12-2022

Active Year: 2022

Date In: 12/16/2022 1:06:38 PM

Local Education Agency: San Marcos Unified

Address: 255 Pico Ave., Ste. 250

San Marcos, CA 92069

Start: 6/26/2023

End: 7/20/2023

Waiver Renewal: Y

Previous Waiver Number: 10-10-2021-W-08

Previous SBE Approval Date: 3/09/2022

Waiver Topic: Special Education Program

Ed Code Title: Extended School Year (Summer School)

Ed Code Section: *CCR*, Title5, 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: San Marcos Unified School District requests to waive the California *Education Code* of Regulations, Title 5, Section 3043(d), which requires a minimum of 20 school days of attendance of four hours each for an extended school year (summer school) for special education students. The district provides ESY services for eligible students with disabilities in preschool through the Adult Transition Program at two sites during the scheduled program. The district proposes a four-week ESY program over 16 days, equivalent to the number of instructional hours provided in a 20-instructional day calendar (including holidays), by lengthening the daily schedule.

San Marcos Unified School District proposes to provide ESY services utilizing a 16-day model over four weeks at 5 hours per day (15 days x 5 hours = 80 hours attendance hours would be 8:30-1:30), providing the same number of instructional hours as in a traditional 20-day model, including holidays (19 days X 4 hours = 76 hours). The proposed model, which extends daily attendance time, results in required instructional time totals but provides for a reduction in total days of attendance to 16 days, Monday through Thursday, over four weeks.

San Marcos Unified School District believes the proposed model will:

Continue to increase the participation of highly qualified and trained classroom teachers and staff who work with students during the school year and will apply to work during ESY. During the 2022 Extended School Year program, staff was surveyed, and an overwhelming majority (97%) of the respondents stated that they would work during future programs if the 4-day-per-week schedule continued.

Help facilitate cost-effective services within classrooms and reduce related costs for transportation, electricity, custodial services, food services, administration, etc.

Increase eligible student attendance.

Improve overall daily attendance of students during ESY.

This waiver would increase instruction time per day, limiting the impact on instructional minutes caused by student transit time from bus to classroom.

For reimbursement for average daily attendance, the ESY program:

Must provide instruction of at least as many minutes over the shorter period as would have been provided during a typical 20-day program;

Must be the same length of time as the school day for pupils of the same age level attending summer school in the district in which the extended year program is provided, but not less than the minimum school day for that age level unless otherwise specified in the individualized education program to meet a pupil’s unique needs; and

Must offer special education and related services during the extended school year period that are comparable in standards, scope, and quality to the special education program offered during the regular academic year.

Student Population: 19657

City Type: Urban

Public Hearing Date: 10/13/2022

Public Hearing Advertised: Web page

Local Board Approval Date: 11/10/2022

Community Council Reviewed By: LEA Advisory Committee -Special Education

Community Council Reviewed Date: 8/20/2022

Community Council Objection: N

Community Council Objection Explanation:

Audit Penalty Yes or No: N

Categorical Program Monitoring: N

Submitted by: Ms. Lori Cummins

Position: Special Education Director

E-mail: [lori.cummins@smusd.org](mailto:lori.cummins@smusd.org)

Telephone: 760-752-1223

Fax:

Bargaining Unit Date: 10/19/2022

Name: California School Employee Assoc Chapter 413

Representative: Yvonne Brett

Title: President

Phone: yvonne.brett@smusd.org

Position: Support

Comments:

Bargaining Unit Date: 10/18/2022

Name: San Marcos Educators Association

Representative: Dale Pluciennik

Title: President

Phone: [dale.pluciennik@smusd.org](mailto:dale.pluciennik@smusd.org)

Position: Support

Comments: