

California Department of Education

Executive Office

SBE-005 (REV. 1/2021)

General Waiver

# California State Board of Education March 2022 Agenda Item #W-08

## Subject

Request by **three 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

* Butte County Office of Education 9-10-2021
* National Elementary School District 7-12-2021
* San Marcos Unified School District 10-10-2021

## 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). Each 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

California *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

### Butte County Office of Education (BCOE) 9-10-2021

The Butte County Office of Education (BCOE) has applied for a waiver to *CCR*, Title 5, Section 3043 which discusses ESY services. The waiver request addresses the length of day and number of days an ESY program is offered. The California Department of Education (CDE) has granted the waiver to BCOE since the 2011–12 school year. The BCOE is seeking to renew this request for a General Waiver from the CDE. If granted, the waiver would be in effect for one school year. Rationale: BCOE proposes to provide ESY services to identified students with special needs utilizing a fifteen (15) days, five and one half (5.5) hours/day instructional model, rather than the traditional model of twenty (20) days, four (4) hours/day of instructional time. Students will receive the same or greater number of instructional minutes. The longer school day will align better with the regular school year providing more consistency for the students served. Additionally, the operation of ESY for 15 days instead of 20 will better match the district calendars of host sites where BCOE classes are located, allowing students more opportunities to be with their typically developing peers. On a fiscal side, fewer ESY days will result in substantial savings in transportation, utilities, janitorial, food service, administration, and clerical costs to districts. Lastly, the proposed model providing a 15-day service will allow for all the expenses to be accounted for in one fiscal year, rather than two.

### National Elementary School District (NESD) 7-12-2021

The National Elementary School District can meet the needs of students over a 15-day 5.5. (82.5 total hours) hour day model better than with the 20-day 4 hours per day model due to shortage of experienced staff and maintaining a more regular schedule for students which is more closely aligned to their instructional day. The time would be shifted to lengthen the day but still maintain the instructional time needed to ensure educational benefit and continuity of programming.

### San Marcos Unified School District (SMUSD) 10-10-2021

The San Marco Unified School District (SMUSD) 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. The proposed schedule would be June 27, 2022, through July 21, 2022, Monday through Thursday, from 8:30 a.m. to 1:30 p.m. for transitional kindergarten (TK)–adult transition program (ATP) age students and 8:30 to 10:30 a.m. for preschool students.

The SMUSD proposes to provide ESY services utilizing a 16-day model over a four-week period at 5 hours per day (16 days x 5 hours = 80 hours), providing the same number of instructional hours as in a traditional 20-day model, including holidays (20 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 a four-week period.

The SMUSD 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 to also apply to work during ESY.
* 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, thereby limiting the impact on instructional minutes caused by student transit time from bus to classroom.

**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.

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 IEP requires it. LEAs may request a waiver to provide an ESY program for fewer days than the traditional mode.

## 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 (3 pages)
* **Attachment 2:** Butte County Office of Education General Waiver Request   
  9-10-2021 (3 pages). (Original waiver request is signed and on file in the Waiver Office.)
* **Attachment 3:** National Elementary School District General Waiver Request

7-12-2021 (2 pages). (Original waiver request is signed and on file in the Waiver Office.)

* **Attachment 4:** San Marcos School District General Waiver Request

10-10-2021 (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 Recommended | Bargaining Unit Representatives Consulted, Date, and Position | Local Board and Public Hearing Approval | Penalty Without Waiver |
| --- | --- | --- | --- | --- | --- | --- | --- |
| 9-10-2021 | Butte County Office of Education | **Requested:**  June 6, 2022, to June 24, 2022  **Recommended:**  June 6, 2022, to June 24, 2022 | 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 | California School Employees Association Chapter 436, Veronica Rosales, President, 9/9/2021, Support  California School Employees Association Chapter 736, Cynde Landers, President, 9/9/2021, Support  Butte County Teacher Association, Nicole Eads, President, 9/9/2021, Support | 10/11/2021 | The LEA may not provide a 15-day ESY program |
| 7-12-2021 | National Elementary School District | **Requested:**  June 13, 2022, to July 1, 2022  **Recommended:**  June 13, 2022, to July 1, 2022 | To provide a 15-day ESY program instead of a 20-day ESY program | Approval with conditions to allow the LEA to provide a  15-day ESY program instead of a 20-day ESY program | California School Employees Association,  Mona Ribada, President, 10/7/2021, Support  National City Elementary Teacher's Association, Irma Sanchez, President, 10/12/2021, Support | 10/27/2021 | The LEA may not provide a 15-day ESY program |
| 10-10-2021 | San Marcos Unified School District | **Requested:**  June 27, 2022, to July 21, 2022  **Recommended:**  June 27, 2022, to July 21, 2022 | To provide a 16-day ESY program instead of a 20-day ESY program | Approval with conditions to allow the LEA to provide a  16-day ESY program instead of a 20-day ESY program | California School Employee Association Chapter 413,  Yvonne Brett, President, 10/14/2021, Support  San Marcos Educators Association, Dale Pluciennik, President,  10/13/2021,  Support | Local Board 10/19/2021  Public Hearing 9/21/2021 | The LEA may not provide a 16-day ESY program |

Created by the California Department of Education January 2022

# Attachment 2: Butte County Office of Education General Waiver Request 9-10-2021

**California Department of Education**

**WAIVER SUBMISSION - General**

CD Code: 0410041

Waiver Number: 9-10-2021

Active Year: 2021

Date In: 10/26/2021 12:06:06 PM

Local Education Agency: Butte County Office of Education

Address: 1859 Bird St.

Oroville, CA 95965

Start: 6/6/2022

End: 6/24/2022

Waiver Renewal: N

Previous Waiver Number: 1-1-2021-W-07

Previous SBE Approval Date: 5/12/2021

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: 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 and includes extended school year in the individualized education program pursuant to subsection (f).

(a) Extended year special education and related services shall be provided by a school district, special education local plan area, or county office offering programs during the regular academic year.

(b) Individuals with exceptional needs who may require an extended school year are those who: (1) Are placed in special classes or centers; or (2) Are individuals with exceptional needs whose individualized education programs specify an extended year program as determined by the individualized education program team.

(c) The term “extended year” as used in this section means the period of time between the close of one academic year and the beginning of the succeeding academic year. The term “academic year” as used in this section means that portion of the school year during which the regular day school is maintained, which period must include not less than the number of days required to entitle the district, special education services region, or county office to apportionments of state funds.

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

The strike-out on the preceding 3043(d) indicates the exact language being waived but is still valid.

Outcome Rationale: Butte County Office of Education (BCOE) has applied for a waiver to Ed Code 5 *CCR* 3043 which discusses Extended School Year (ESY) services. The waiver request addresses the length of day and number of days an ESY program is offered. CDE has granted the waiver to BCOE since the 2011-12 school year. We are seeking to renew this request for a General Waiver from the California Department of Education. If granted, the waiver would be in effect for one school year. Rationale: BCOE proposes to provide ESY services to identified students with special needs utilizing a fifteen (15) day, five and one half (5.5) hours/day instructional model, rather than the traditional model of twenty (20) days, four (4) hours/day of instructional time. Students will receive the same or greater number of instructional minutes. The longer school day for will align better with the regular school year providing more consistency for the students served. Additionally, the operation of ESY for 15 days instead of 20 will better match the district calendars of host sites where BCOE classes are located, allowing students more opportunities to be with their typically developing peers. On a fiscal side, fewer ESY days will result in substantial savings in transportation, utilities, janitorial, food service, administration and clerical costs to districts. Lastly, the proposed model providing 15 days of service will allow for all the expenses to be accounted for in one fiscal year, rather than two.

Student Population: 99

City Type: Rural

Public Hearing Date: 10/11/2021

Public Hearing Advertised: Notice posted at each school site and at 3 other non-school locations.

Local Board Approval Date: 10/11/2021

Community Council Reviewed By: School Site Counsel.

Community Council Reviewed Date: 9/9/2021

Community Council Objection: N

Community Council Objection Explanation:

Audit Penalty Yes or No: N

Categorical Program Monitoring: N

Submitted by: Ms. Stacy Doughman

Position: Senior Director, Special Education

E-mail: [sdoughma@bcoe.org](mailto:sdoughma@bcoe.org)

Telephone: 530-712-2230

Fax: 530-532-5794

Bargaining Unit Date: 09/09/2021

Name: 436

Representative: Veronica Rosales

Title: President

Phone: 530-228-4847

Position: Support

Comments:

Bargaining Unit Date: 09/09/2021

Name: 736

Representative: Cynde Landers

Title: President

Phone: 530-532-5603

Position: Support

Comments:

Bargaining Unit Date: 09/09/2021

Name: BCTA

Representative: Nicole Eads

Title: President

Phone: 530-879-2343

Position: Support

Comments:

# **Attachment 3:** National Elementary School District General Waiver Request 7-12-2021

**California Department of Education**

**WAIVER SUBMISSION - General**

CD Code: 3768221

Waiver Number: 7-12-2021

Active Year: 2021

Date In: 12/13/2021 12:27:12 PM

Local Education Agency: National Elementary School District

Address: 1500 N Ave.

National City, CA 91950

Start: 6/13/2022

End: 7/1/2022

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: 33050

*Education Code* or *CCR* to Waive: 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 and includes extended school year in the individualized education program pursuant to subsection: [(d) An extended year program shall be provided for a minimum of 20 instructional days, including holidays].

Outcome Rationale: The National School District can meet the needs of students over a 15 day 5.5. hour day model better than with the 20 day 4 hours per day model due to shortage of experienced staff and maintaining a more regular schedule for students which is more closely aligned to their instructional day. The time would be shifted to length the day but still maintain the instructional time needed to ensure educational benefit and continuity of programming.

Student Population: 4443

City Type: Urban

Public Hearing Date: 10/27/2021

Public Hearing Advertised: The meeting dates are provided to parents within the Annual Notice Handbook yearly and are also posted on the public school district website.

Local Board Approval Date: 10/27/2021

Community Council Reviewed By: District Parent Advisory Council (DPAC)   
Community Council Reviewed Date: 12/8/2021

Community Council Objection: N

Community Council Objection Explanation:

Audit Penalty Yes or No: N

Categorical Program Monitoring: N

Submitted by: Ms. Janna Piper

Position: Director, Student Support Services

E-mail: [jpiper@nsd.us](mailto:jpiper@nsd.us)

Telephone: 619-336-7748

Fax:

Bargaining Unit Date: 10/07/2021

Name: California School Employees Association

Representative: Mona Ribada

Title: Union President

Phone: 6193368300

Position: Support

Comments:

Bargaining Unit Date: 10/12/2021

Name: National City Elementary Teacher's Association

Representative: Irma Sanchez

Title: Union President

Phone: 6193368200

Position: Support

Comments:

# Attachment 4: San Marcos Unified School District General Waiver Request 10-10-2021

**California Department of Education**

**WAIVER SUBMISSION - General**

CD Code: 3773791

Waiver Number: 10-10-2021

Active Year: 2021

Date In: 10/29/2021 8:23:22 AM

Local Education Agency: San Marcos Unified School District

Address: 255 Pico Ave., Ste. 250

San Marcos, CA 92069

Start: 6/27/2022

End: 7/21/2022

Waiver Renewal: N

Previous Waiver Number: 2-12-17-W-13

Previous SBE Approval Date: 3/17/2021

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: ??Summary of Key Issues

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 who are in preschool through the Adult Transition Program at two sites. 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. The proposed schedule would be June 27, 2022-July 21, 2022, Monday through Thursday from 8:30-1:30 for TK–ATP age students and 8:30-10:30 for preschool students.

San Marcos Unified School District proposes to provide ESY services utilizing a 16-day model over a four-week period at 5 hours per day (15 days x 5 hours = 80 hours), providing the same number of instructional hours as in a traditional 20-day model, including holidays (20 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 a four-week period.

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 will apply to work during ESY.

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, thereby limiting the impact on instructional minutes caused by student transit time from bus to classroom.

For the purposes of reimbursement for average daily attendance, an 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: 20501

City Type: Urban

Public Hearing Date: 9/21/2021

Public Hearing Advertised: Web page

Local Board Approval Date: 10/19/2021

Community Council Reviewed By: Google Form sent to all 2021 ESY families.84% responded in favor of 4 day per week schedule

Community Council Reviewed Date: 7/15/2021

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

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Telephone: 760-752-1223

Fax: 760-471-1898

Bargaining Unit Date: 10/14/2021

Name: California School Employee Assoc Chapter 413

Representative: Yvonne Brett

Title: President

Phone: 760-290-2230

Position: Support

Comments:

Bargaining Unit Date: 10/13/2021

Name: San Marcos Educators Association

Representative: Dale Pluciennik

Title: President

Phone: 760.651.2554

Position: Support

Comments: