

**Education Audit Appeals Panel
State of California**

Appeal of 2005-06 Audit Finding 06-4 by:

EAAP Case No. 07-14
OAH No. 2007110683

Moraga Elementary School District,
Appellant.

DECISION

On October 17, 2008, the Office of Administrative Hearings (OAH) issued a Proposed Decision in this matter. At its meeting on November 17, 2008, the Education Audit Appeals Panel (EAAP) rejected the Proposed Decision in order to decide the case itself under the provisions of Government Code Section 11517(c)(2)(E). EAAP issued a Notice of Rejection of Proposed Decision on November 19, 2008, inviting additional briefing by December 15, 2008, particularly with regard to substantial compliance in the context of the particular facts of this matter and the provisions of Education Code Section 46200(c). Additional briefs were received from Appellant Moraga Elementary School District (in the form of a letter from the district superintendent), and Intervenor Department of Finance.

FINDINGS OF FACT

1. Stephen Roatch Accountancy Corporation conducted an annual financial and compliance audit of Moraga Elementary School District (District) for the fiscal year that ended June 30, 2006. Such audits are required by law. (Education Code § 41020.¹)
2. The District filed a timely appeal to Finding 06-4, which found that the District did not comply with the requirements of the Longer Year incentive program established by Section 46200.
3. Finding 06-4 of the audit report serves as the Statement of Issues in this matter. (See Ex. 2.)
4. The State of California provides financial incentives under the Longer Year program to school districts that offer their students 180 days or more of instruction during a school year (§ 46200).² Penalties for noncompliance with the Longer Year program are specified in Section 46200(c). The Longer Year incentive program was enacted in 1983 as part of the Hughes-Hart Educational Reform Act of 1983. Under that act, the state separately

¹ All statutory references are to the Education Code unless otherwise indicated.

² The baseline requirement is 175 days (currently set out in § 41420)

provides financial incentives to school districts that offer a certain minimum number of instructional minutes over the course of a school year, referred to as the "Longer Day" program (§ 46201); the penalties for noncompliance are specified in Section 46201(d). Among the purposes of the Hughes-Hart Educational Reform Act is to "assure that pupils achieve academic proficiency in the essential areas of skills and knowledge." (Stats. 1983, ch. 498, §2. p. 2034.) The Longer Year and the Longer Day incentive programs each advance that purpose.

5. The length of a minimum schoolday for grades one through three is 230 minutes (§ 46112); for grades four through eight, it is 240 minutes (§ 46113). State law permits school districts to use an averaging method to meet the minutes requirements to constitute a creditable schoolday. Even when the averaging method is used, however, the number of minutes in any schoolday cannot under any circumstances be less than 170 for grades one through three or less than 180 for grades four through eight. (§ 46114.³)

6. In Finding 06-4, the auditor concluded that the District offered 177 days of instruction, not 180 days as required under the Longer Year program. The factual basis for the audit finding is that, on three days during the school year, students at the District's three K-5 schools received 160 minutes of instructional time, 10 minutes less than the minimum required for grades one through three and 20 minutes less than the minimum required for grades four and five. The auditor concluded that, because of the shortage of instructional minutes on those three days, the District did not satisfy its obligation under the Longer Year program to offer 180 days of instruction:

Each of the District's elementary schools were open for school on three school days where the scheduled instructional time, for student grades one through five, was less than the absolute minimum instructional time that must be offered in order to be considered a school day. Accordingly, all students enrolled in grades one through five during fiscal year 2005-06, were only provided 177 days of instruction, instead of the 180 days required by state law. As a result, the District did not qualify to receive longer instructional year incentive funding for these students.

The audit applied the penalty set forth in Section 46200(c) for failure to provide 180 days of instruction. The penalty amounts to \$75,991. (See Ex. 2.)

7. The District does not contest the factual basis for Finding 06-4. At the

³ § 46114(a) provides "The minimum schoolday in grades 1, 2, and 3 in elementary schools may be computed by determining the number of minutes of attendance in any 10 consecutive schooldays and dividing that number by 10. If the resulting quotient is 230 or more, the pupils shall be deemed to have complied with Section 46112, even if the number of minutes attended in any one schoolday is less than 230, but not less than 170." Subdivision (b) provides for the same 10-day averaging for grades 4 through 8, providing that a resulting quotient greater than 240 shall be deemed compliant with § 46113, "even if the number of minutes attended in any one schoolday is less than 240, but not less than 180."

September 22, 2008 hearing, the District submitted a "Statement of Facts" (Exhibit A, a letter dated May 7, 2008), a Notice of Appeal letter (Exhibit B, dated November 14, 2007), and a letter as a "backup" to the Notice of Appeal (Exhibit C, dated November 16, 2007) in which the District claimed substantial compliance and stated it had misinterpreted the absolute minimum minutes as allowed by the averaging provisions of Section 46114.⁴ Attached to the District's Exhibits A and C was a chart entitled "Instructional Minutes Summary 2005-06," and another chart entitled "API scores" which presented Academic Performance Index scores for each of the District's schools for school years from 2003-04 to 2006-07. Also attached to Exhibit A were four pages of more detailed District API information. The District's documentation did not include any mention of bell schedules (scheduled daily instructional times and recesses).

The District's "Instructional Minutes Summary 2005-06" chart presented by grade span, for each of the District's three K-5 schools: the total instructional minutes for 2005-06, the District's 1982-83 actual minutes,⁵ the difference or "Minutes Above Requirement," the results of dividing the difference by the minimum day requirements (230 or 240 minutes), the District's "regular day" minutes (which ranged from 328 to 350 minutes), and the results of dividing the "Minutes Above Requirement" by the regular day minutes.

The District's superintendent testified at the hearing. Referring to the "Instructional Minutes Summary 2005-06," the District superintendent argued that the "Minutes Above Requirement" for the Longer Day program were the "equivalent" of 8 to 22 more days than required by the Longer Year program. He presented the documentation regarding the District's API, and stated his understanding of the purpose of the Longer Year and Longer Day programs to provide additional time for students to improve performance.⁶ The superintendent further testified that the District used the three days at issue "for parent conferencing, and an additional recess was added and that's what threw us off."⁷

The District superintendent testified that the District corrected the following year's bell schedule and the schools are now in compliance. He asserted that the error was inadvertent because "It was not intended to be noncompliant with the instructional minute regulation," and that the District acted in good faith, not intending to short students of instructional time.⁸

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⁴ Ex. A, page 2, paragraph 3; Ex. B, page 1, paragraph 3; Ex. C, page 1, paragraph 3.

⁵ Because the District's actual instructional minutes in 1982-83 were greater than the numbers prescribed in Section 46201(a)(3), the District's required instructional minutes under the Longer Day program are its 1982-83 actual minutes. (§ 46201(b).)

⁶ Reporter's Transcript (RT), 15:11 to 17:7; and 19:2 to 21:17.

⁷ RT, 18:25 to 19:1.

⁸ RT, 17:7-8, 17:13-15.

8. The State Controller sent notice to the parties and to OAH that it is his position that the District substantially complied with the requirements of the Longer Year program, and for that reason, the Controller would not participate in this matter. (Ex. I.⁹)¹⁰

9. Intervenor Department of Finance asserts that the total instructional minutes the District offered during the 2005-2006 school year are not relevant to whether it substantially complied with the Longer Year program. Intervenor argues that the Longer Day and Longer Year programs are separate and independent, and that the Legislature intended that school districts meet the requirements of both programs separately.

LEGAL CONCLUSIONS

1. Under Section 41344(d), a local educational agency may appeal a finding in a final audit report if the agency believes that the report contains any finding that was based on errors of fact or interpretation of law, or if the agency believes in good faith that it was in substantial compliance with all legal requirements.

Section 41344.1(c) provides:

Compliance with all legal requirements is a condition of the state's obligation to make apportionments. A condition may be deemed satisfied if the [Education Audit Appeals Panel] finds there has been compliance or substantial compliance with all legal requirements. "Substantial compliance" means nearly complete satisfaction of all material requirements of a funding program that provide an educational benefit substantially consistent with the program's purpose. A minor or inadvertent noncompliance may be grounds for a finding of substantial compliance provided that the local educational agency can demonstrate that it acted in good faith to comply with the conditions established in law or regulation necessary for apportionment of funding. The [Education Audit Appeals Panel] may further define "substantial compliance" by issuing regulations or through adjudicative opinions, or both.

EAAP has not further defined "substantial compliance" by regulation.

2. The District bears the burden of proof in this proceeding. (§ 41344(d); *In the Matter of the Statement of Issues Against: Fresno County Office of Education* (2001) EAAP Case No. 00-03; OAH Case No. N2000050273; Evid. Code § 500.)

⁹ Roman numeral one; RT, 7:8-15.

¹⁰ The State Controller's statutory duty is to be a party to all audit appeals. (§ 41344.1(b).) The power to determine substantial compliance is allocated to EAAP. (§ 41344.1(c).) Therefore, no weight is given to the State Controller's position regarding the appellant's compliance status.

3. The Longer Year program is set out in Section 46200. The Legislature provided an incentive of \$35 per unit of average daily attendance (ADA), as specified, for each school district that certifies that it offers 180 days or more of instruction per school year. Since 1985-86, the incentive amount has been included in districts' base revenue limits. (§ 46200(a).) The penalty for offering fewer than the required 180 days is an offset of the district's apportionment for the ADA for each affected grade level the sum of 0.0056 multiplied by that apportionment for each day less than 180. (§ 46200(c).) In sum, the material requirements of the Longer Year incentive funding program are the offer of 180 *days* or more of instruction each year, with each of those days being of at least the minimum number of minutes for any creditable day under Section 46114.

4. The Longer Day program is set out in Section 46201. The Legislature provided an incentive of \$20 per unit of ADA, as specified, for kindergarten and grades 1 to 8 for each school district that certifies that it offers at least the amount of instructional time specified in this subdivision at a grade level or levels each fiscal year. (§ 46201(a).) The instructional time specified in Section 46201(a)(3) applies to all districts unless there is a lesser number of minutes for that grade level than actually provided by the district in the same grade in the 1982-83 fiscal year, in which case, the 1982-83 actual minutes are instead the requirement. (§ 46201(b).) The penalty for reducing the instructional time offered below the minimum amounts specified is an offset of the district's apportionment for the ADA of each affected grade level, the sum of that apportionment multiplied by the percentage of the minimum offered minutes at that grade level that the district failed to offer. (§ 46201(d).) In sum, the material requirements of the Longer Day incentive funding program are the offer of *at least* the specified number of *minutes* of instruction each year for every grade level.

5. For the fiscal years from 1985-86 to 2000-01, inclusive, penalties for a shortfall in the Longer Day program were specified. (§ 46201(c)(1), (2), and (3).) During that six-year period, no penalty was imposed for a shortfall in the 180 days required for the Longer Year program *unless* there was also a shortfall in the number of instructional minutes required for the Longer Day program. (§ 46200(b).) That is, if the 180-day requirement was not met, but the minimum instructional minutes required in the Longer Day were provided, there was no penalty for the Longer Year program. If a school district failed to offer 180 days *and* fell short of the minimum instructional minutes requirement, a penalty was imposed for the Longer Year shortfall (§ 46200(b)) and another penalty for the Longer Day shortfall (§ 46201(c)(1), (2), or (3), as appropriate to the fiscal year.)

However, from 2001-02 to the present time, a penalty has been specified for falling short of the 180-day Longer Year requirement without regard to the whether the school district is in compliance with the Longer Day requirements. (§ 46200(c).) A separate penalty for a shortfall in the Longer Day minimum requirements continues to be specified. (§ 46201(d), applicable to fiscal years 2001-02 and following.)

6. When a school district accepts incentive funding under both the Longer Year and Longer Day programs, the state expects the district to comply with both programs: a school

district cannot demonstrate compliance with one program by demonstrating compliance with the other. The instructional minutes provided by the District beyond its minimum requirements for the Longer Day program have no application to the “nearly complete satisfaction” standard of substantial compliance with the material requirements of the Longer Year program. The Longer Day and the Longer Year provisions are fully set forth in the law each independent of the other; to conflate them would be to defeat the Legislature’s clear intent that they be met separately.

7. The API is used to measure the academic performance of pupils and the performance of schools. (§ 52052(a)(1).) Although the Longer Year, Longer Day, and API programs all have the purpose of improving the academic achievement of pupils, the same can be said of virtually all education programs. The substantial compliance test of “nearly complete satisfaction” goes to “all material requirements of a funding program.” The District’s ability to meet or exceed its growth targets under the API provisions has no relationship to satisfaction of the funding requirements of the Longer Year program and cannot be used to show substantial compliance with the latter.

8. The law provides that “A minor or inadvertent noncompliance may be grounds for a finding of substantial compliance *provided* that the local educational agency can demonstrate that it acted in good faith to comply with the conditions established in law or regulation necessary for apportionment of funding.” (§ 41344.1(c), emphasis added.) The District did not meet its burden of showing that its shortfall on three different schooldays was minor. A shortfall of ten minutes as against an absolute minimum for a day of 170 minutes for grades 1, 2, and 3 (30 minutes total within just three schooldays), and a shortfall of 20 minutes as against an absolute minimum for a day of 180 minutes for grades 4 and 5 (60 minutes total within just three schooldays) is not minor.

9. The District contended that its “misreading” of Section 46114 was inadvertent. The averaging provisions of Section 46114, including the absolute minimum number of minutes per schoolday, were added to the Education Code in 1973. (Educ. Code 1959, § 11006.5, added by Stats. 1973, c. 533, p. 1031, § 1.) The District’s “misreading” of the clear provisions of subdivisions (a) and (b) of Section 46114 showed an unreasonable neglect of statutory requirements. Such neglect cannot be viewed as a basis to conclude the District acted in good faith to comply with the conditions necessary for apportionment of funding under the Longer Year program. The District offered no other explanation of how a deficient bell schedule was put in place for 2005-06 and no member of its professional administration noticed during the course of the school year.

10. Accordingly, the appeal of the District is denied pursuant to the provisions of sections 41344.1(c), 46200, and 46114; Findings of Fact 1 through 9; and Legal Conclusions 1 through 9.

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ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

The appeal of Moraga Elementary School District of the fiscal year 2005-06 audit finding 06-4 is denied, effective 2-4-2009.

Date: 2-4-2009

Original Signed

Diana L. Ducay, Chairperson
for Education Audit Appeals Panel