

**Education Audit Appeals Panel
State of California**

Appeal of Fiscal Year 2004-05
Audit Findings 2005-6 and 2005-7 by:

Hayward Unified School District,

Appellant.

EAAP Case No. 06-08

OAH No. N2006060222

Decision

The Education Audit Appeals Panel has adopted the attached Stipulation and Proposed Decision of the parties as its Decision in the above-entitled matter.

Effective date: July 28, 2006.

IT IS SO ORDERED.

July 28, 2006
Date

(Original Signed)
Thomas E. Dithridge, Chairperson
for Education Audit Appeals Panel

1
2 **BEFORE THE**
3 **EDUCATION AUDIT APPEALS PANEL**
4 **STATE OF CALIFORNIA**

5 **In the Matter of the Appeal from the Audit**
6 **Findings Against:**

7 **HAYWARD UNIFIED SCHOOL DISTRICT,**
8

9
10 **Appellant.**

Case No. EAAP 06-08

OAH No. 2006060222

**STIPULATION AND PROPOSED
DECISION**

11 This Stipulation (Stipulation) is entered into by and between, and on behalf of, the
12 Hayward Unified School District (District), the Department of Finance (Finance), the Office of
13 the State Controller (Controller), hereinafter referred to, collectively, as the Parties.

14 This Stipulation is made for the following purpose and with reference to the following
15 recital of facts:

16 **STATEMENT OF PURPOSE**

17 It is the intent of the Parties to establish a schedule whereby the District may make up and
18 satisfy, in part, a substantial shortage of instructional minutes and ADA (average daily
19 attendance) disallowance, for the 2004-2005 and 2005-2006 school years. The District will also
20 repay, through installments from its apportionment, a portion of the instructional time penalty
21 and disallowed ADA funding.

22 It is the further intent of the Parties that this Agreement will fully resolve any and all
23 audit findings or other claims, actual or potential, now or hereafter arising, relating to the
24 District's instructional minutes and ADA related to its high schools' four blocks of school
25 period, during the 2004-2005 and 2005-2006 school years.

26 **RECITAL OF FACTS**

27 A. The District's independent auditor, Boceta, Macon, Workman & Associates,
28 conducted a financial and compliance audit of the District for the fiscal year ended June 30,

1 2005, and thereafter issued an Audit Report.

2 B. The Audit Report, as certified by the Controller on May 5, 2006, includes Audit
3 Finding 2005-06/40000 and Audit Finding 2005-07/10000.

4 C. Audit Finding 2005-06/40000 reports that during the 2004-2005 school year, the
5 District's instructional minutes requirement, in order to comply with Education Code section
6 46201 subdivision (a)(3), for grades 9-12, was 64,800. The Finding further reports that, in fact,
7 at two of the three high schools of the District, the instructional minutes at Hayward High School
8 for grades 9-12 were 50,100 and the instructional minutes at Mt. Eden High School for grades 9-
9 12 were 49,930. Penalties for this non-compliance are \$6,189,171. A true and correct copy of
10 Audit Finding 2005-06/40000 (with related Schedule 2) is attached to this Stipulation as Exhibit
11 A.

12 D. Audit Finding 2005-07/10000 reports that the District offered four blocks of
13 school periods at Hayward High School and at Mt. Eden High School. Students who were
14 enrolled in three blocks were not enrolled for 240 minutes on minimum days, assembly days and
15 final exam days. No apportionment credit for those students can be earned by the District for
16 those days. There were eight minimum days, assembly days and final exam days at Hayward
17 High School. There were five minimum days and exam days at Mt. Eden High School.
18 Apportionment attendance was overstated by a total of 13,836 days, or 108.10 ADA at Second
19 Period, with a resulting penalty in the estimated amount of \$538,000. A true and correct copy of
20 Audit Finding 2005-07/10000 is attached to this Stipulation as Exhibit B.

21 E. The Parties acknowledge, and stipulate, that the instructional minute shortage at
22 issue for fiscal years 2004-2005 and 2005-2006 is so large that the District cannot reasonably
23 avail itself of the waiver provisions of Education Code section 46206. The Parties also
24 acknowledge, and stipulate, that the penalties and ADA reduction for fiscal years 2004-2005 and
25 2005-2006 are so large that requiring an immediate, full repayment would create a financial
26 hardship upon the District such that the District would become insolvent. Further, the Parties
27 acknowledge, and stipulate, that owing to the timing, late in the 2005-2006 fiscal year, of the
28 issuance of the audit findings involved in this Appeal, the District was unable to correct the non-

1 compliance with the required instructional time requirements in the fiscal year 2005-2006 and
2 therefore the District anticipates similar audit findings for that fiscal year in an estimated amount
3 of \$6,727,171.

4 F. The District timely filed an audit appeal of Audit Finding 2005-06/40000 and
5 Audit Finding 2005-07/10000 pursuant to Education Code section 41344.

6 G. Finance timely moved to intervene in this Appeal and shall be deemed by the
7 Parties to be a party to this Appeal.

8 F. This Stipulation is subject to approval by and adoption as its Decision by the
9 Education Audit Appeals Panel, pursuant to Education Code section 41344.1, subdivision (b).

10 NOW, THEREFORE, in consideration of the mutual promises contained herein and for
11 good and valuable consideration, the receipt and sufficiency which is hereby acknowledged, the
12 Parties stipulate as follows:

13 STIPULATIONS

14 1. The District shall increase the instructional time offering at Hayward High School
15 to 68,585 minutes during fiscal years 2006-2007 and 2007-2008 and the District shall increase
16 the instruction time offering at Mt. Eden High School and Tennyson High School to 68,560
17 during fiscal years 2006-2007 and 2007-2008. In subsequent years, the District shall offer no
18 less than 64,800 instructional minutes at its high schools. Although Tennyson High School is
19 being included in the resolution of the appeal of the District, the audit findings at issue in this
20 appeal do not involve Tennyson High School.

21 2. The District shall repay a total of \$1,110,378 in six annual installments beginning
22 with the 2008-2009 P1 Principal Apportionment - to wit: \$185,063 will be deducted annually
23 from the District's P1 Principal Apportionment for fiscal years 2008-2009 through 2013-2014.

24 3. Finance and the Controller agree, and stipulate, each will release all claims to
25 penalties or reduction in ADA for failure of this District to comply with Education Code sections
26 46202 and 46010, insofar as that non-compliance is related to the four block high school class
27 schedule in fiscal years 2004-2005 or 2005-2006 or both. The District will not be required to
28 adjust its reported ADA for failure to meet the minimum day requirement due to a student's

1 enrollment in three block classes (instead of four block classes) for those fiscal years.

2 4. Utilizing the number of instructional minutes specified in Education Code section
3 46201, subdivision (a)(3)(D) (presently 64,800) as a baseline, the District shall maintain
4 sufficient instructional minutes at its three high school campuses to provide a cumulative annual
5 instructional minute overage at those school sites (3,785 at Hayward High School for two years
6 and 3,760 at Mt. Eden High School and Tennyson High School for two years) in the amount of
7 22,610 instructional minutes for the two consecutive fiscal years, commencing July 1, 2006, and
8 concluding June 30, 2008.

9 5. The District shall require an independent auditing firm to review the progress of
10 additional instruction minutes consistent with this Stipulation. The report of the annual audit of
11 the District for each year in which the additional instructional minutes are to be maintained
12 pursuant to this Stipulation shall specifically report on the Schedule of Instructional Time, with
13 respect to each site, the number of additional instructional minutes made up in the current year
14 and the balance of additional instructional minutes that remain for the second year. The
15 District's failure to report specifically such information in its annual audit report shall not be a
16 breach of this Stipulation, but shall constitute grounds for the Controller to refuse to certify the
17 District's annual audit report.

18 6. If the District fails to make up the total number of additional instructional minutes
19 required under this Stipulation by June 30, 2008, the Controller shall withhold from the District's
20 next succeeding principal apportionment, in lieu of any other penalty or other loss of funding, an
21 amount equal to \$104.05 multiplied by the number of minutes remaining to meet the total
22 additional instructional minutes required by this Stipulation.

23 7. This Stipulation shall fully resolve any and all claims, demands, audit findings,
24 obligations and/or causes of action, now or hereafter arising, relating to the instructional minutes
25 and ADA disallowance regarding Hayward High School and Mt. Eden High School concerning
26 the findings at issue during the 2004-2005 school year.

27 8. Finance and the Controller expressly waive any right or claim, or right to assert
28 thereafter any claim, demand, audit finding, obligation and/or cause of action relating to non-

1 compliance of instructional minutes or ADA allowance during the 2004-2005 or 2005-2006
2 school years insofar as that non-compliance is related to the appeal of the audit findings at issue
3 regarding the four block high school class schedule in fiscal years 2004-2005 or 2005-2006 or
4 both.

5 9. The Parties agree that this Stipulation may be signed in counterparts and facsimile
6 copies accepted as the original if necessary. This Stipulation shall be considered fully binding as
7 if the parties had executed the same document at the same time.

8 **SO STIPULATED:**

9
10 Dated: 7/27/06

**OFFICE OF THE STATE
CONTROLLER**

(Original Signed)

Kelly W. Ching
Staff Counsel
Attorney for Steve Westly, State Controller

11
12
13
14
15 Dated: 7/26/06

**HAYWARD UNIFIED SCHOOL
DISTRICT**

(Original Signed)

Dale Vigil, Superintendent of the
Hayward Unified School District.

16
17
18
19
20 Dated: 7/25/06

DEPARTMENT OF FINANCE

BILL LOCKYER, Attorney General
of the State of California
DOUGLAS PRESS
Supervising Deputy Attorney General

(Original Signed)

CHARLTON G. HOLLAND, III
Deputy Attorney General
Attorneys for Department of Finance

Exhibit A

HAYWARD UNIFIED SCHOOL DISTRICT
SCHEDULE OF AUDIT FINDINGS AND QUESTIONED COSTS
FOR THE YEAR ENDED JUNE 30, 2005

MAY 2 - 2006

FINDING 2005-06
AB3627 Code 40000
Incentives for Longer Instructional Day

Specific Requirements: A school district that participates in the instruction time incentive funding must offer over at least the amount of time offered in 1982-83 or the amount specified in Education Code Section 46201(a)(3), whichever is greater. The required minutes for grades 9-12 amount to 64,800.

Condition: The District offers a four block schedule at Mt. Eden and Hayward High Schools and counts all four blocks toward the instructional minute requirement. However, it was determined that the fourth block is not required and that over 50% of the students do not enroll in the fourth block. Therefore, the District should not include the fourth block in their instructional minute offering. As a result, the District did not meet the instructional minutes requirements of Education Code 46201(a)(3).

Questioned Costs: Not Applicable

Context: We reviewed the bell schedules and instructional minute calculations of all three high schools and found Mt. Eden and Hayward High Schools to be out of compliance.

Effect: The penalties for not meeting the requirements of Education Code 46201(a) amount to approximately \$6,189,171.

Cause: The District's fourth block which had been counted in the total instructional minutes did not constitute a valid offering.

Recommendation: The District should review the bell schedules and the enrollment requirements at the high schools. Appropriate modifications should be made to the bell schedules and the enrollment requirements to ensure that all State requirements are met.

District Response: The District concurs with the recommendation presented for this finding. The District was in the process of correcting the issue of instructional minutes as the problem had been identified internally by administration when the auditors requested a further review of this area. The District will be working with an outside consultant to resolve this issue, so that the District remains fiscally solvent. The District has just returned to a positive certification, after having a fiscal advisor in place for more than two years, and will strive to maintain that status and continue to provide educational needs to our students.

MAY 2 - 2006
SCHEDULE 2

HAYWARD UNIFIED SCHOOL DISTRICT
SCHEDULE OF INSTRUCTIONAL TIME
FOR THE FISCAL YEAR ENDED JUNE 30, 2005

GRADE LEVEL	1982-83 ACTUAL MINUTES	1986-87 MINUTES REQUIREMENT	2004/05 ACTUAL MINUTES	NUMBER OF DAYS TRADITIONAL CALENDAR	NUMBER OF DAYS MULTITRACK CALENDAR	STATUS
Kindergarten	31,500	36,000	36,000	180	180	In Compliance
Grades 1-3	43,875	50,400	50,400	180	180	In Compliance
Grades 4-6	53,375	54,000	54,100	180	180	In Compliance
Grades 7-8	53,375	54,000	61,372	180	N/A	In Compliance
Grades 9-12	64,750	64,800	49,930	180	N/A	Not In Compliance*

* The minutes shown on the above schedule are a districtwide compilation, which demonstrates the District's compliance with the instructional minutes requirements. The following is a list of the individual school sites which were not in compliance with instructional minutes requirements:

	2004/05 ACTUAL MINUTES
Hayward High School Grades 9 - 12	50,100
Mt. Eden High School Grades 9 - 12	49,930

See accompanying Notes to Supplementary Information.

Exhibit B

HAYWARD UNIFIED SCHOOL DISTRICT
SCHEDULE OF AUDIT FINDINGS AND QUESTIONED COSTS
FOR THE YEAR ENDED JUNE 30, 2005

32456

FINDING 2005-07
AB3627 Code 10000
Attendance Reporting

Specific Requirements: Title 5, Section 403 states, "Subject to the provisions of Sections 402, 404 and 405, for apportionment purposes a pupil enrolled in a regular day class or special day class for the minimum school day applicable to him (except pupils whose attendance is recorded by clock hour) is deemed present for the entire school day, unless he is absent for the entire school day, prescribed by the local governing board under Education Code 46100."

Condition: Students who are enrolled in only three blocks at Mt. Eden and Hayward High Schools are not enrolled for 240 minutes on minimum days, assembly days and final exam days. As a result, no apportionment credit can be earned by these students on those days.

Questioned Costs: Not Applicable

Context: There were eight minimum days, assembly days and final exam days at Hayward High School. There were five minimum days and exam days at Mt. Eden High School.

Effect: Apportionment attendance was overstated by a total of 13,836 days, or 108.10 ADA at Second Period. Because the District is experiencing declining enrollment, the loss of approximately \$538,000 in revenue limit funding will be recognized in fiscal year 2005-06.

Cause: Students were not required to take all four blocks that were included in the bell schedule.

Recommendation: The District must revise the Second Period and Annual attendance reports by (108.10) ADA. The District should review the current bell schedule and enrollment requirements to ensure that all high school students are enrolled for the statutory minimum day.

District Response: The District does concur with the above-mentioned recommendation. However, the District will be exploring options (in the form of a repayment plan) regarding the loss of revenue in light of the fact that the District has been under a Fiscal Advisor for more than two years. The correction of this finding will be accomplished through the adjustment of the overall instructional minutes for the District (see Finding 2005-06).