

**Education Audit Appeals Panel  
State of California**

Appeal of 2009-10 Audit Finding 10-7 by:

EAAP Case No. 11-13  
OAH No. 2012070021

Orinda Union School District,  
Appellant.

**Decision**

The Education Audit Appeals Panel has adopted the attached Proposed Decision of the Administrative Law Judge as its Decision in the above-entitled matter.

Effective date: March 26, 2013.

IT IS SO ORDERED.

March 26, 2013  
Date

*Original Signed*  
David Botelho, Chairperson  
for Education Audit Appeals Panel

BEFORE THE  
EDUCATION AUDIT APPEALS PANEL  
STATE OF CALIFORNIA

In the Matter of the Appeal of Fiscal Year  
2009-2010 Audit Finding 10-07 by:

ORINDA UNION SCHOOL DISTRICT,

Appellant,

OFFICE OF THE STATE CONTROLLER,

Respondent,

DEPARTMENT OF FINANCE,

Intervenor.

Case No. 11-13

OAH No. 2012070021

**PROPOSED DECISION**

Administrative Law Judge Ruth S. Astle, State of California, Office of Administrative Hearings, heard this matter in Oakland, California, on October 17, 2012.

Megan E. Macy, Attorney at Law, represented appellant Orinda Union School District.

Gary D. Hori, Attorney, represented respondent Office of the State Controller.

Charles J. Antonen, Deputy Attorney General, represented intervenor Department of Finance.

Submission of the matter was deferred to January 17, 2013 for receipt of final arguments, which were received, marked for the record, and considered. Appellant Orinda Union School District also filed objections to evidentiary citations in respondents' reply brief, which was marked for the record and considered. The declaration of Melody Canady was considered as administrative hearsay pursuant to Government Code sections 11513, subdivision (d), and 11514, subdivision (b). This is a *de novo* appeal.

The matter was submitted on January 17, 2013.

## FACTUAL FINDINGS

1. Orinda Union School District (district) was audited by an independent auditor (Stephen Roatch Accountancy Corporation) for the Fiscal Year ending June 30, 2010 (2009-2010 Fiscal Year). In the audit report dated January 24, 2011, the auditor found (Audit Finding 10-7) that \$638,745 must be returned because the district did not comply with a requirement that it take public testimony on the use of funds received by the district for Tier 3 Programs.
2. As a result of an economic crisis in education, in February of 2009, the legislature passed Education Code section 42605, on an emergency basis, to allow school districts to use certain restricted funds for 39 special programs (Tier 3 Programs) for unrestricted purposes. The districts were allowed to transfer the restricted funds to unrestricted accounts for the day-to-day operation of the schools. The disadvantage of exercising the option to “flex” these funds was that the Tier 3 Programs would be reduced or eliminated.
3. The district adopted Budget Guidelines requiring categorical programs to be self-supporting. This included the Tier 3 Programs. The programs would continue to operate based on the revenue received for each program from State or Federal resources and those funds would not be used for other, non-categorical purposes. The district received state funding for Tier 3 Programs, and continued those programs.
4. According to Audit Finding 10-7, the district failed to comply with Education Code section 42605, subdivision (c)(2), because the “Governing Board did not take testimony from the public, did not discuss the proposed use of the funding and did not approve or disapprove any proposed use of funding for fiscal year 2009-10.”
5. The district’s budget adoption process began April 13, 2009 and was completed June 22, 2009. The budget was listed on the agenda and public comment was received. The budget was also on the Board agenda on May 11, June 1, June 8, and June 22, 2009.
6. Education Code section 42605, subdivision (c)(2), was amended July 2009 to add a provision that required school districts to make explicit for each of the budget items (categorical funded programs) the purposes for which the funds will be used. The district complied with the Code section as written at the time they finalized the budget for the 2009-2010 fiscal year. There is nothing in the amendment that would make it retroactive. Since the district used the Tier 3 categorical funds for their intended purposes and did not flex the funds, they were not required to comply with the amendment that was enacted after the budget process was complete.
7. It is not necessary to reach the issue of the district’s claim that even if they were subject to the amendment that they were in substantial compliance with the material

requirements of the funding program. The amendment did not apply to them under the circumstances. They did not flex any funds and they used the funds for the purposes for which the funds were intended.

8. The Department of Finance and the Office of the State Controller's contention that the district's actions in subsequent years shows that the district admits that they were not in compliance for the 2009-2010 fiscal year, is without merit. In subsequent years, the district was subject to the Code section with the July 2009 amendment. In subsequent years the district did flex some of its Tier 3 program funds and complied with the requirements of Education Code section 42605, subdivision (c)(2), as amended in July 2009.

### LEGAL CONCLUSIONS

1. Education Code section 41344, subdivision (d), allows the district to appeal a final audit report if it believes the report was based on errors of fact or interpretation of law. The standard of review is "*de novo*." Questions of law are generally reviewed independently.

Whether a statute is to be applied retroactively is a matter of law and should be reviewed *de novo* (*In re Marriage of Fellows* (2006) 39 Cal. 3d 969, 985-987). Generally, statutes are prospective unless a different intention is clearly expressed or implied from the context of the enactment (*City of Monte Sereno v. Padgett* (2009) 149 Cal.App.4th 1530, 1538). The July 2009 amendment does not state whether or not it is to be applied retroactively. Based on all the evidence presented in this matter, this amendment was not intended to be retroactive.

2. The auditor erred when she applied the July 2009 amendment of Education Code section 42605 to this audit. The applicable law to this school district for the budget process for the 2009-2010 fiscal year was the law in effect in June 2009. The district complied with the requirements in effect at the time the budget was completed. They could not have known that the law would be amended and therefore acted reasonably under the circumstances. The district was not required to reopen their budget process.

3. This decision is based solely on the facts in this particular case. If the district had decided to flex the funds, or if the district had not completed the budget process by June 2009, there may have been a different result. Based on the specific findings in this case, the district complied with applicable law.

ORDER

The appeal by Orinda Union School District of the Fiscal Year 2009-2010 Audit Finding 10-07 is granted. The Orinda Union School District is not required to return any funds to the state based on Audit Finding 10-07.

DATED: 2/28/2013

*Original Signed*

RUTH S. ASTLE

Administrative Law Judge

Office of Administrative Hearings