

Initial Statement of Reasons

SECTIONS 19813, 19814, 19814.1, 19850, 19851, 19852, 19853, and 19854.

Specific Purpose of the Regulations.

Education Code Section 14502.1 requires EAAP to review, possibly amend, and adopt the content submitted to the Education Audit Appeals Panel (EAAP) by the Controller for inclusion in the audit guide required by that statute. Local education agencies (LEAs) that serve kindergarten or any of grades 1 through 12 (K-12) are required to contract for an annual independent audit (Education Code § 41020), and the audit guide adopted by EAAP must be used in the performance of these audits (Education Code § 14503). Specifically, these regulations will provide definitions of terms and specification of audit procedures to guide accountants in the conduct of the statutorily required financial and compliance audits in the areas proposed by the Controller for inclusion in the audit guide for the 2005-06 fiscal year.

Necessity/Rationale

These regulations are necessary to implement Education Code sections 14501, 14502.1, 14503, 41020, and 47634.2.

Title 5, Division 1.5

Chapter 3. Audits of California K - 12 Local Education Agencies

Article 2 Audit Reports

§ 19813. Report Components.

This section specifies the format of the LEA audits. The State Controller has authority to specify the format of these audit reports (Education Code Section 41020(d)) and has notified EAAP of a change in title (and content) of the report specified in subdivision (e)(1) of this section.¹

In subdivision (e)(2) of Section 19813, the word “Auditor’s” is being deleted to correct a misprint.

§ 19814. Definitions.

Subdivision (d) of this section is amended to reflect the change in title and content of the report specified in Section 19813(e)(1).

Subdivision (e) of this section is amended to include specification of the numbers of audit procedures proposed for inclusion in the audit guide for the 2005-06 fiscal year, and to make various punctuation corrections.

¹ This amendment to Section 19813 is made here as well as in the permanent supplemental audit guide regulations for 2004-05 (File number Z05-0201-03) because these emergency regulations will become effective before the 2004-05 supplement becomes final.

Subdivision (e) is further amended by inserting the phrase “including in charter schools” following Class Size Reduction in the listing of audit procedures for each fiscal year. This change is clarifying only; no change is made in the audit procedures for Class Size Reduction (see Section 19826 and Section 19826.1).

Subdivision (k) is amended to include a description of the Schedule of Instructional Time as it applies to charter schools, and to change the reference in the first part of the sentence from “all auditees” to school districts and county offices of education.

§ 19814.1 Applicability of Audit Procedures by Audit Year.

This section specifies which sections of the audit guide are applicable to each audit year. Rather than repealing and reenacting the audit procedures, this section specifies to the accountants performing the audits which sections are to be included for each audited year.

Because of the addition of an Article 4 to these audit regulations, this section now has a subdivision (a) relating to Article 3 compliance requirements, and a subdivision (b) relating to Article 4 compliance requirements. Former subdivisions (a) and (b) are redesignated as (a)(1) and (a)(2), and a subparagraph (a)(3) is added for fiscal year 2005-06.

New subparagraph (a)(3) specifies that all of the sections of Article 3 of the audit guide are applicable to audits of fiscal year 2005-06 except sections 19817, 19826, and 19828 (which by their terms are applicable only to audits of the 2003-04 fiscal year); and Section 19823 (Instructional Time and Staff Development Reform Program). The Instructional Time and Staff Development Reform Program will be inoperative July 1, 2005 (Education Code § 44579.6).

Article 4. Charter Schools

This article addresses audit requirements that are unique to charter schools. Education Code Section 47634.2(d) provides, “Notwithstanding any other provision of law, charter schools shall be subject, with regard to subdivisions (c) and (d) of Section 47612.5 and this section, to audits conducted pursuant to Section 41020.”[‡]

Sections 19850 through 19854 set forth audit procedures that guide auditors in steps to determine whether an auditee was in compliance with the relevant statutory and regulatory requirements during the period audited. These sections further direct auditors to prepare schedules and include statements in the Findings and Recommendations section of the audit report displaying any instances of noncompliance, and specifying or estimating the dollar value of the noncompliance where appropriate.

§ 19850. Contemporaneous Records of Attendance.

This proposed regulation directs the auditor to trace the Average Daily Attendance reported to the California Department of Education by the charter school to the supporting contemporaneous records as required by Education Code Section 47612.5(a)(2)² (see Education Code Section 47612.5(c)).

² Education Code § 47612.5 provides, in part, “(a) Notwithstanding any other provision of law and as a condition of apportionment, a charter school shall do all of the following:…¶(2)

§ 19851. Nonclassroom-Based Instruction/Independent Study.

This proposed regulation directs the auditor to steps for verifying compliance with the requirements for nonclassroom-based instruction (independent study). (Education Code § 47612.5(b) and (d); Title 5, Cal.CodeRegs., § 11963.1.)

§ 19852. Additional Nonclassroom-Based Instruction.

Average Daily Attendance reported as classroom-based instruction that does not meet the requirements for apportionment of funding as classroom-based instruction can instead be treated as nonclassroom-based instruction for apportionment purposes if it meets the requirements for nonclassroom-based instruction. (Education Code § 47612.5(e) and Title 5, Cal.CodeRegs., §§ 11963 and 11963.1.) The auditor is directed to review any nonqualifying Average Daily Attendance that had been reported as classroom-based instruction pursuant to Section 19851.

§ 19853. Determination of Funding for Nonclassroom-Based Instruction.

The auditor is directed to verify the accuracy of certain data that is submitted to the California Department of Education by charter schools that the State Board of Education uses in making determinations of funding for nonclassroom-based instruction pursuant to Education Code Section 47634.2. (Education Code § 47634.2; Title 5, Cal.CodeRegs., §§ 11963.2 and 11963.3(c).)

§ 19854. Annual Instructional Minutes – Classroom Based.

This proposed regulation directs the auditor to determine whether the charter school offered the required numbers of instructional minutes as required by Education Code Section 47612.5(a)(1)³ (see Education Code Section 47612.5(c)).

Technical, Theoretical, or Empirical Studies, Reports, or Documents.

EAAP did not rely on any technical, theoretical, or empirical studies, reports, or documents in proposing the adoption of these regulations.

Reasonable Alternatives to the Regulations and the Agency’s Reasons for Rejecting Those Alternatives.

No other alternatives were presented to or considered by EAAP.

Reasonable Alternatives to the Regulatory Action that Would Lessen Any Adverse Impact on Any Business.

These regulations are applicable only to certified public accountants and public accountants who audit LEAs, and indirectly to the LEAs themselves. As no adverse impact on small business has been identified, there is no need to examine reasonable alternatives to lessen the impact.

Maintain written contemporaneous records that document all pupil attendance and make these records available for audit and inspection.”

³ Education Code Section 47612.5 provides, in part, “(a) Notwithstanding any other provision of law and as a condition of apportionment, a charter school shall do all of the following: ¶(1) Offer, at a minimum, the same number of minutes of instruction set forth in paragraph (3) of subdivision (a) of Section 46201 for the appropriate grade levels.”

Evidence Supporting Finding of No Significant Adverse Economic Impact on Any Business.

EAAP has determined that adoption of the proposed regulations would not have a significant impact on any business in the State of California. The regulations direct accountants to conduct the steps required for audit of state-funded education programs and Education Code Section 14503 requires the use this audit guide in the performance of audits of LEAs, and provides that, if auditors do not follow the prescribed procedures, they are to state in their audit reports what other procedures were followed.

‡ Education Code sections referenced in Section 47634.2(d):

§ 47612.5 (c) A reduction in apportionment made pursuant to subdivision (a) shall be proportional to the magnitude of the exception that causes the reduction. For purposes of paragraph (1) of subdivision (a), for each charter school that fails to offer pupils the minimum number of minutes of instruction specified in that paragraph, the Superintendent of Public Instruction shall withhold from the charter school's apportionment for average daily attendance of the affected pupils, by grade level, the sum of that apportionment multiplied by the percentage of the minimum number of minutes of instruction at each grade level that the charter school failed to offer.

(d) (1) Notwithstanding any other provision of law and except as provided in paragraph (1) of subdivision (e), a charter school that has an approved charter may receive funding for nonclassroom-based instruction only if a determination for funding is made pursuant to Section 47634.2 by the State Board of Education. The determination for funding shall be subject to any conditions or limitations the State Board of Education may prescribe. The State Board of Education shall adopt regulations on or before February 1, 2002, that define and establish general rules governing nonclassroom-based instruction that apply to all charter schools and to the process for determining funding of nonclassroom-based instruction by charter schools offering nonclassroom-based instruction other than the nonclassroom-based instruction allowed by paragraph (1) of subdivision (e). Nonclassroom-based instruction includes, but is not limited to, independent study, home study, work study, and distance and computer-based education. In prescribing any conditions or limitations relating to the qualifications of instructional personnel, the State Board of Education shall be guided by subdivision (l) of Section 47605.

(2) Except as provided in paragraph (2) of subdivision (b) of Section 47634.2, a charter school that receives a determination pursuant to subdivision (b) of Section 47634.2 is not required to reapply annually for a funding determination of its nonclassroom-based instruction program if an update of the information the State Board of Education reviewed when initially determining funding would not require material revision, as that term is defined in regulations adopted by the board. A charter school that has achieved a rank of 6 or greater on the Academic Performance Index for the two years immediately prior to receiving a funding determination pursuant to subdivision (b) of Section 47634.2 shall receive a five-year determination and is not required to annually reapply for a funding determination of its nonclassroom-based instruction program if an update of the information the State Board of Education reviewed when initially determining funding would not require material revision, as that term is defined in regulations adopted by the board. Notwithstanding any provision of law, the State Board of Education may require a

charter school to provide updated information at any time it determines that a review of that information is necessary. The State Board of Education may terminate a determination for funding if updated or additional information requested by the board is not made available to the board by the charter school within a reasonable amount of time or if the information otherwise supports termination. A determination for funding pursuant to Section 47634.2 may not exceed five years.

(3) A charter school that offers nonclassroom-based instruction in excess of the amount authorized by paragraph (1) of subdivision (e) is subject to the determination for funding requirement of Section 47634.2 to receive funding each time its charter is renewed or materially revised pursuant to Section 47607. A charter school that materially revises its charter to offer nonclassroom-based instruction in excess of the amount authorized by paragraph (1) of subdivision (e) is subject to the determination for funding requirement of Section 47634.2.

§ 47634.2. (a) (1) Notwithstanding any other provision of law, the amount of funding to be allocated to a charter school on the basis of average daily attendance that is generated by pupils engaged in nonclassroom-based instruction, as defined by paragraph (2) of subdivision (d) of Section 47612.5, including funding provided on the basis of average daily attendance pursuant to Sections 47613.1, 47633, 47634, and 47664, shall be adjusted by the State Board of Education. The State Board of Education shall adopt regulations setting forth criteria for the determination of funding for nonclassroom-based instruction, at a minimum the regulation shall specify that the nonclassroom-based instruction is conducted for the instructional benefit of the pupil and substantially dedicated to that function. In developing these criteria and determining the amount of funding to be allocated to a charter school pursuant to this section, the State Board of Education shall consider, among other factors it deems appropriate, the amount of the charter school's total budget expended on certificated employee salaries and benefits and on schoolsites, as defined in paragraph (3) of subdivision (d) of Section 47612.5, and the teacher-to-pupil ratio in the school.

(2) For the 2001-02 fiscal year only, the amount of funding determined by the State Board of Education pursuant to this section shall not be less than 90 percent of the unadjusted amount to which a charter school would otherwise be entitled on the basis of average daily attendance.

(3) For the 2002-03 fiscal year, the amount of funding determined by the State Board of Education pursuant to this section shall not be more than 80 percent of the unadjusted amount to which a charter school would otherwise be entitled, unless the State Board of Education determines that a greater or lesser amount is appropriate based on the criteria specified in paragraph (1) of subdivision (a).

(4) For the 2003-04 fiscal year and each fiscal year thereafter, the amount of funding determined by the State Board of Education pursuant to this section shall not be more than 70 percent of the unadjusted amount to which a charter school would otherwise be entitled, unless the State Board of Education determines that a greater or lesser amount is appropriate based on the criteria specified in paragraph (1) of subdivision (a).

(5) This section does not authorize the board to adjust the amount of funding a charter school receives on the basis of average daily attendance generated through classroom-based instruction, as defined for purposes of calculating average daily attendance for

classroom-based instruction apportionments by paragraph (1) of subdivision (d) of Section 47612.5.

(b) (1) The State Board of Education shall appoint an advisory committee to recommend criteria to the board in accordance with this section if it has not done so by the effective date of the act adding this section. The advisory committee shall include, but is not limited to, representatives from school district superintendents, charter schools, teachers, parents, members of the governing boards of school districts, county superintendents of schools, and the Superintendent of Public Instruction.

(2) If a charter school submits a substantially complete request for a determination for funding by February 13, 2002, and the State Board of Education does not act on that request by March 19, 2002, full funding is automatically granted for the 2001-02 fiscal year, but the charter school shall reapply for a determination for funding for the 2002-03 fiscal year.

(3) The determination for funding shall be on a percentage basis and the superintendent shall implement the determination for funding by reducing the charter school's reported average daily attendance by the determination for funding percentage specified by the State Board of Education.

(4) If the State Board of Education denies request for a determination for funding or provides a reduction as authorized by subdivision (a), the board shall, in writing, give the reasons for its denial or reduction and, if appropriate, may describe how any deficiencies or problems may be addressed.

(c) Each charter school offering nonclassroom-based instruction shall, in each report provided to the Superintendent of Public Instruction for apportionment purposes, identify the portion of its average daily attendance that is generated through nonclassroom-based instruction as defined in paragraph (2) of subdivision (d) of Section 47612.5.

(d) Notwithstanding any other provision of law, charter schools shall be subject, with regard to subdivisions (c) and (d) of Section 47612.5 and this section, to audits conducted pursuant to Section 41020.