

TITLE 5. Education
Education Audit Appeals Panel

Notice of Proposed Rulemaking

Supplement to Audits of K-12 Local Education Agencies
Fiscal Year 2012-13

The Education Audit Appeals Panel (EAAP) proposes to amend the Audit Guide regulations as described below after considering all comments, objections, and recommendations regarding the proposed action.

Public Hearing:

A public hearing regarding this proposal is not currently scheduled. Not later than 15 days prior to the close of the written comment period, any interested person, or his or her authorized representative, may make a written request for a public hearing pursuant to Government Code section 11346.8, and a public hearing will be held. Requests for a public hearing should be addressed to Timothy Morgan.

Written Comment Period:

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action. The written comment period closes at **5:00 p.m. on Monday, April 1, 2013**. EAAP will consider only written comments received by that time. Written comments for EAAP's consideration should be directed to:

Christine Pentoney, AGPA
Education Audit Appeals Panel
770 L Street, Suite 1100
Sacramento, CA 95814

Fax: (916) 445-7626
e-mail: cpentoney@eaap.ca.gov

Authority and Reference:

Authority cited: Section 14502.1, Education Code.

Reference: Sections 14501, 14502.1, 14503, and 41020 of the Education Code.

Informative Digest/Policy Statement Overview:

The regulations in Title 5 of the California Code of Regulations, Division 1.5, Chapter 3, constitute the audit guide required by Education Code sections 14502.1, 1450.3 and 41020. The audit guide provides guidance, through definitions of terms and specification of procedures, to auditors in the conduct of statutorily required financial and compliance audits of local education agencies.

The Controller, pursuant to Education Code Section 14502.1, has proposed amending the audit guide for fiscal year 2012-13. The proposal would make audit steps related to the public hearing

requirements of Education Code Section 42605 inapplicable for audit year 2012-13. Conforming changes to definitional sections are also made.

The anticipated benefit of the proposed amendment is to eliminate the potential for auditor confusion, and for inconsistent audit approaches among the private accountants who audit most LEAs, with regard LEA compliance with Education Code section 42605 in the form currently reflected in the audit guide and as later amended.

The proposed amendment is not inconsistent or incompatible with existing state regulations, because rather than changing LEAs' compliance duties, the audit guide only specifies which duties must be audited and provides suggested procedures for doing so. The underlying law, Education Code section 42605, remains unchanged. Neither that law nor audit procedures addressing it conflict with other existing regulations, state or federal.

Title 5, Division 1.5
Chapter 3. Audits of California K - 12 Local Education Agencies

Article 2 Audit Reports

Article 2 prescribes report components (Section 19815), provides definitions of terms (Section 19816), and specifies which sections of the audit guide are applicable to each audit year (Section 19816.1). Conforming amendments, to reflect the change in applicable years for the audit procedure set out in Section 19839, are proposed in Section 19816(h), and in subparagraph (a)(10) of Section 19816.

**Article 3. State Compliance Requirements: Local Education Agencies
Other Than Charter Schools.**

§ 19839. Public Hearing Requirement – Receipt of Funds

This section directs the auditor to determine whether school districts and county offices of education complied with the public hearing requirements that Education Code Section 42605 makes a condition for receipt of funds. The section was not previously amended to reflect changes to those public hearing requirements effective March 24, 2011 (Stats. 2011, c. 7 (S.B. 70) and January 1, 2012 (Stats. 2011 c, 606 (A.B. 189)). This rulemaking would make section 19839 inapplicable to the 2012-13 Audit Guide.

Disclosures Regarding the Proposed Action:

1. Mandate on local agencies and school districts pursuant to Government Code Section 17500 et seq.: None
2. Cost to any local agency or school district which must be reimbursed in accordance with Government Code Section 17561: None
3. Cost or savings to any state agency: None
4. Other non-discretionary cost or savings imposed upon local educational agencies: None
5. Cost or savings in federal funding to the state: None
6. Significant effect on housing costs: EAAP has made an initial determination that the proposed regulatory action would not affect housing costs.

7. Significant, statewide adverse economic impact directly affecting business including the ability of California businesses to compete with businesses in other states: None.
8. Results of the Economic Impact Assessment:
 - (a) Adoption of these regulations will not:
 - create or eliminate jobs within California;
 - create new businesses or eliminate existing businesses within California; or
 - affect the expansion of businesses currently doing business within California.
 - (b) Benefits of the regulation to the health and welfare of California residents: Adoption of these amendments will make an outdated and ambiguous requirement inapplicable to the Audit Guide for 2012-13.
9. Cost impact on a representative private person or business: EAAP is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.
10. Business report (Gov. Code §§ 11346(a)(11), 11346.3(d)): None.
11. Effect on small businesses: The proposed regulations will have no effect on small businesses because they do not materially alter the requirements for LEA audits.

Consideration of Alternatives:

In accordance with Government Code Section 11346.5(a)(13), EAAP must determine that no reasonable alternative it has considered or that has otherwise been identified and brought to the EAAP's attention would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

EAAP invites interested persons to present statements or arguments regarding alternatives to the proposed regulations during the written comment period.

Contact Persons:

Inquiries concerning the substance of the proposed action, requests for a copy of the proposed text of the regulations, the Initial Statement of Reasons, the modified text of the regulations, if any, and other technical information upon which the rulemaking is based, and questions on the proposed administrative action may be directed to Timothy Morgan, Staff Attorney III, at (916) 445-7745 or by e-mail: tmorgan@eaap.ca.gov. The back-up contact person for general inquiries is Mary C. Kelly, Executive Officer, at (916) 445-7745.

Availability of Rulemaking File:

The entire rulemaking file will be available for inspection and copying throughout the rulemaking process at EAAP's office at the above address. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulations, the initial statement of reasons, and the Economic Impact Assessment. A copy may be obtained by contacting Timothy Morgan at the above address. The bill analyses are also available online at www.leginfo.ca.gov/bilinfo.html.

Availability of Changed or Modified Text:

Following the comment period, and a hearing, if requested, and consideration of all timely and relevant comments received, EAAP may adopt the proposed regulations substantially as described in this notice. If EAAP makes modifications that are sufficiently related to the originally proposed text, the modified text (with changes clearly indicated) will be available to the public for at least 15 days before EAAP adopts the regulations as revised. Requests for copies of any modified regulations should be sent to the attention of Timothy Morgan at the address stated above. EAAP will accept written comments on the modified regulations for 15 days after the date on which they are made available.

Availability of the Final Statement of Reasons:

Upon completion of the Final Statement of Reasons, a copy may be obtained by contacting Christine Pentoney at the above address, or from EAAP's website.

Availability of Documents on the Internet:

Copies of the Notice of Proposed Rulemaking, Initial Statement of Reasons, text of the regulations in underline and strikeout, any changed or modified text, and the Final Statement of Reasons will be accessible through the EAAP website: www.eaap.ca.gov.