

TITLE 5. Education
Education Audit Appeals Panel

Notice of Proposed Rulemaking

Supplement to Audits of K-12 Local Education Agencies
Fiscal Year 2013-14

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, May 5, 2014**. EAAP will consider only written comments received by that time. Written comments for EAAP's consideration should be directed to:

Christine Pentoney
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, 14503 and 41020. The audit guide provides guidance, by defining terms and specifying 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 2013-14. The proposed changes derive from the Controller's proposals and also contain changes designed to clarify audit steps, as well as to update the names of parts of audit

reports required by applicable federal audit guidance publications. Conforming changes to definitional sections are also made.

A proposed revision reflected in various sections seeks to increase clarity and streamline the directions for reporting audit findings, and to provide for allocation of “ungraded” units of average daily attendance among the new grade spans. (Sections 19817.2(e), 19819(a)(3) and (d); 19820(g); 19840(i); 19850(d), 19851(b), 19852(e), and 19853(b).)

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). Portions of these sections applicable to audit years prior to 2012-13 are deleted as no longer necessary for current audits and available in annual booklet form on EAAP’s web site. A new subdivision (*l*) of Section 19816 updates the definitional description of the audit report’s “Schedule of Instructional Time” to correspond with the Local Control Funding Formula changes reflected in Section 19824. Conforming amendments, to reflect the changes and additions to audit procedures applicable to fiscal year 2013-14, are proposed in new subparagraph (f)(2) of Section 19816, and in new subparagraphs (a)(2), (b)(2) and (c)(2) of Section 19816.1.

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

Education finance reform legislation enacted in 2013 to implement the Local Control Funding Formula (Stats. 2013, ch. 47 (AB97; and ch. 49 (SB 91)), required an update to the rules, in Section 19824, governing instructional time requirements, and revisions to Sections 19817.2, 19819, 19820, 19840, and four Article 4 Sections as discussed below (Sections 19850 through 19853), to reflect the shift of apportionment focus from grade levels to grade spans. Changes in fiscal year applicability reflect the termination or defunding of certain programs, so that the procedures in Sections 19828.4 (Instructional Materials) and 19845.2 (Class Size Reduction) do not apply to fiscal year 2013-14. In addition, Section 19839 is proposed for deletion because the “flexibility” legislation and the public hearing requirement in it have become obsolete.

Article 3.1. State Compliance Procedures: School Districts, County Offices of Education, and Charter Schools.

The Local Control Funding Formula legislation requires the addition of new sections to the audit guide: new Section 19843 to verify the LEA’s awareness of the 2013-14 requirements of the Local Control Funding Formula; Section 19844 concerning the expenditure of funds derived from the California Clean Energy Jobs Act (Proposition 39, as implemented by Stats. 2013 ch. 29 (SB 73)); Section 19848 concerning the expenditure of Common Core State Standard implementation funds provided for in the Budget Act of 2013 (Stats. 2013 ch. 48, § 85); and Section 19849 to test the accuracy of the LEA’s reported “unduplicated” counts of pupils eligible for free or reduced price meals, designated as English Learners, or in foster care: information needed for implementation of the Local Control Funding Formula.

Article 4. State Compliance Procedures: Charter Schools.

The proposed substantive amendments to Section 19850 are required by new subdivision (e) of Education Code Section 47612, consistent with the new provisions in subdivision (d) relating to charter schools operating on a multitrack calendar. Sections 19850, 19851, 19852 and 19853 were also amended to reflect the new grade spans approach to attendance. New Section 19855, calls for audit review of expenditures of funds from the Charter School Grant Facility Program, Education Code Section 47614.5.

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 2013-14 (former section 19839) and generally update the audit guide to conform to the Local Control Funding Formula reform legislation and to comply with legislative directions.
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 requirements (Gov. Code § 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.

Consistency with Existing Regulations

EAAP has conducted an evaluation, in consultation the persons and entities identified in the second paragraph of this Finding of Emergency, of the proposed regulations, and determined that the proposed changes do not create conflict or inconsistency with existing state regulations.

Anticipated Benefit of the Proposed Regulations:

The regulations proposed for adoption, amendment, or repeal serve to update the Audit Guide used by private auditors in the conduct of the compliance portion of annual audits of K-12 LEA's. Obsolete provisions, including one obsolete section (Section 19839) will be removed for clarity and to save space. Other changes begin the update of the Audit Guide to the ongoing reforms in K-12 education including in particular the Local Control Funding Formula.

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, or 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 <http://leginfo.legislature.ca.gov/faces/billSearchClient.xhtml>.

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.