

TITLE 5. Education
Education Audit Appeals Panel

Notice of Proposed Rulemaking

Audits of K-12 Local Education Agencies
Fiscal Year 2018-19

The Education Audit Appeals Panel (EAAP) proposes to adopt an Audit Guide for Fiscal Year 2018-19 using the Guide's incorporating regulation, 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 Mary Kelly.

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 **Monday, September 17, 2018**. EAAP will consider only written comments received by that time. Written comments for EAAP's consideration should be directed to:

Mary Kelly, Executive Officer
Education Audit Appeals Panel
770 L Street, Suite 1100
Sacramento, CA 95814

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

Authority and Reference:

Authority cited: Sections 14501, 14502.1, 14503 and 41024, California Constitution. Article XIII, Section 36, subdiv. (e), subpara 7, and Article XIII A, Section 1, subdiv. (b), subparas 3(C) and 3(D). Reference: Reference: California Constitution Article XIII B, Section 1.5; and Sections 2574(b)(3)(C), 8482.3(f)(5), 14501, 14502.1, 14503, 14509, 15286, 41024, 42238.02(b)(3)(B), 47612.5, 47634.2 and 48000, Education Code.

Informative Digest/Policy Statement Overview:

This rulemaking amends title 5, California Code of Regulations, section 19810 to clarify the incorporation by reference language and make reference to the audit guide. It also adopts the audit guide for 2018-19 which makes clarifying revisions and addresses legislative changes in the conditions of apportionment of school funding.

This rulemaking meets the requirements of Education Code section 14502.1, which mandates that an annual audit guide be adopted by the EAAP. The purpose of the audit guide is to define terms and specify procedures to guide accountants in the conduct of statutorily required financial and compliance audits of K-12 local education agencies. The Controller, pursuant to Education Code section 14502.1, has proposed changes from the previous year's audit guide to be reflected in the 2018-19 audit guide. The proposed changes derive from the Controller's proposals and also contain changes designed to clarify audit steps.

EAAP does not anticipate that these proposed amendments would create specific benefits for the protection of public health and safety, worker safety, or the environment, the prevention of discrimination, the promotion of fairness or social equity, nor the increase in openness and transparency in business and government. EAAP has determined that the proposed amendments will ultimately benefit the welfare of California residents by ensuring that local education agencies are in compliance with regulatory requirements. In developing the rulemaking, EAAP evaluated the proposed changes to regulations and determined that they are not inconsistent or incompatible with existing regulations, state or federal.

A description of proposed changes to section 19810, and a discussion of revisions to the audit guide, follow.

Title 5, Division 1.5
Chapter 3. Audits of California K - 12 Local Education Agencies
Article 1 General Provisions

§ 19810. Annual Audit Guides.

The “~~2017-18~~ 2018-19 Guide for Annual Audits of K-12 Local Education Agencies and State Compliance Reporting,” (July 1, 2018~~March 1, 2018~~), adopted by the Education Audit Appeals Panel, is incorporated by reference. The guide provides the audit steps, reporting requirements, and other guidance, for the required annual financial and compliance audits, subject to auditor judgment where alternative or additional audit steps may be appropriate. The annual guide is superseded by a supplemental audit guide, if needed, adopted before March 1 of each fiscal year. Each annual guide and any applicable supplement are available on www.eaap.ca.gov/audit-guide, with paper or electronic copies available on request.

Note: Authority cited: Sections 14502.1 and 47612, Education Code; California Constitution, Article XIII, Section 36, subdiv. (e), subpara 7, and Article XIII A, Section 1, subdiv. (b), subparas 3(C) and 3(D). Reference: California Constitution Article XIII B, Section 1.5; and Sections), 8482.3(f)(5), 2574(b)(3)(C), 8482.3(f)(5), 14501, 14502.1, 14503, 14509, 15286, 41020, 41024, 42238.02(b)(3)(B), 47612.5, 47634.2 and 48000, Education Code.

Audit Guide Amendments

The proposed annual 2018-19 Audit Guide uses the text of existing 2017-18 Audit Guide with the following amendments:

Deletion:

- *Section R Educator Effectiveness* was funded for fiscal years 2015-16, 2016-17 and 2017-18, with LEAs to submit a final report on the use of those funds on July 1, 2018 (Assembly Bill 104, Section 58(b)(1) (Chapter 13, Statutes of 2015), as amended by Senate Bill 103, Section 8 (Chapter 324, Statutes of 2015). The Controller recommended not including this item in the audit guide for 2018-19 because the funding period was over and there were no expenditures that had not been evaluated as consistent with that program.

Additions:

- *Section R* is added to ensure every public school has reviewed and revised, or adopted, a comprehensive safety plan, by March 1, and has submitted it for approval to the school district or county office of education. The auditor will verify that the LEA has a process in place to ensure that its schools have such a plan and will check a representative sample of schools to verify compliance, or to verify that the LEA notified the State Department of Education by October 15 of any school not having a comprehensive safety plan.
- *Section S District of Choice* is added to verify that school districts electing to be “districts of choice” pursuant to Education Code sections 48300-48317 acted in compliance with the statutory requirements for board resolution, specification of the number of transfer pupils to be accepted, election, registration with CDE, and utilization of a neutral selection process except as to giving priority to pupils eligible for free or reduced-price meals, siblings of current pupils, and children of military personnel; and collected the data required by Education Code section 48313(a) about the district of choice procedure and results.
- *New Amendment B School Facilities Program Bond Fund Audits* fulfills the Legislative mandate in Education Code Section 41024(b)(1) to revamp expenditure audits of State grants for new construction and modernization projects, with distinct provisions for Financial Hardship and Non-Financial Hardship grants, as well as construction and modernization grants for charter schools and career technical education (CTE) schools’ facilities projects. This section is necessary to effectuate Education Code Section 41024(b)(1), as well as the specific citations within the text, namely various sections in Education Code, Public Contracting Code, and title 2, chapter 3, subchapter 4, group 1 of the California Code of Regulations (School Facility Program regulations). For audit guide steps, EAAP relied upon the expert opinion of the audit guide workgroup, led by the State Controller’s Office, and including representatives of the Department of Finance, Department of Education, Office of Public School Construction, and stakeholders, including school districts, Certified Public Accounts and education associations.

Amendments:

- *General Provisions Auditing Standards* is revised to adopt a table for guidance as to the size of samples tested in audits, parallel to the standards used in federal audits and consistent with the federal compliance requirements contained in the American Institute of Certified Public Accountants, Audit Guide for Government Auditing Standards and Single Audits. Education Code section 41020(b)(4) requires that these annual audits are conducted in accordance with Government Auditing Standards. Minor and technical changes also clarify existing sampling directions in Sections A, D, E, F, M, O, and W.
- *General Provisions Report Components* Item 6.a.(6), is revised for the auditor to add a note if the finding is a repeat of or related to a finding in the previous audit year. This statement is added to ensure consistency with the Government Auditing Standards, under which these audits are conducted. Government Auditing Standards states that auditors should follow up on findings and recommendations from previous audits, and whether the auditee has taken corrective action.
- *Section D Independent Study* is revised as proposed by the Controller to add new paragraph 3(g) which requires the auditor to verify that independent study pupils meet the age requirements of Education Code sections 46300.1 and 46300.4. This amendment is to include the age eligibility requirements to the “Local Education Agencies Other Than Charter Schools” section. The current Audit Guide includes instructions for auditors to check the pupil’s age eligibility in order to claim attendance for the purpose of funding for the course-based independent study program (Section Y of the Audit Guide), but did not have a step regarding age eligibility requirements for pupils participating in an independent study program at a district or county school. This amendment corrects that oversight.
- *Section W Unduplicated Local Control Funding Formula Pupil Counts* is revised to clarify that procedure 1 requires the auditor to use the certified report that excludes any transitional kindergarten pupils who had their fifth birthday after December 2, to clarify procedures 1.b. and 1.c. to facilitate identifying which pupils are eligible only under the ELAS (English Learner) designation and which are eligible under both the ELAS and NSLP (National School Lunch Program) designations. In addition, a clarification to sampling procedures authorizes the auditor to substitute a new selection for a pupil who received ELAS designation while enrolled in a different LEA, to avoid uncertainties that can result from delays in obtaining documentation from the LEA for the ELAS designation.

Name of document incorporated by reference: 2018-19 Guide for Annual Audits of K-12 Local Education Agencies and State Compliance Reporting (July 1, 2018).

Disclosures Regarding the Proposed Action:

1. Mandate on local agencies and school districts: None
2. Cost to any local agency or school district which must be reimbursed: None
3. Cost or savings to any state agency: None
4. Other non-discretionary cost or savings imposed upon local agencies: None
5. Cost or savings in federal funding to the state: None

6. Significant effect on housing costs: None
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) Benefit of the proposed regulation to the health and welfare of California residents, worker safety, or the State's environment and quality of life: As stated under the "Informative Digest/Policy Statement Overview" above, the proposed regulations will update and improve audit procedures of K-12 local education agencies, which would ultimately benefit the welfare of California residents by ensuring that local education agencies are in compliance with regulatory requirements.
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: 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.

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, 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 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.