

Minutes of the Education Audit Appeals Panel

Monday, February 22, 2021

Skype Conference Call

Sacramento

Call to Order and Roll Call

Joel Montero called the meeting to order at 1:31 p.m.

Panel members present: Joel Montero, designee of the Fiscal Crisis and Management Assistance Team, Lisa Constancio, designee of the Superintendent of Public Instruction and Cheryl McCormick, designee of the Director of the Department of Finance.

Approval of Minutes

Action: The minutes of the November 16, 2020 meeting were approved.

Item 1	Report of the Executive Officer 1. Summary of appeal activities 2. Appeals and Summary Review Caseload 3. Other items of interest	Information
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Ms. Kelly reported that since the last meeting, no summary reviews were filed and two determinations were made. Relief was partially granted in the cases of Upper Lake Unified School District and John Swett Unified School District. Caruthers Unified School District withdrew their request for summary review on December 10, 2020. There are currently four pending summary review requests.

There were no additional formal appeals filed since the last meeting. The closed session agenda has the proposed settlement in the case of Trinity Alps Unified School District.

Ms. Kelly contact Panel members regarding the format of future meetings. She wants to discuss the continuance of virtual meetings once the COVID19 restrictions are lifted. No decision needs to be made today regarding the format.

Item 2	Public Participation This time is reserved for any person to address the Panel. If the subject is on the Public Session Agenda, individuals may comment now or at the time the item is considered. If the subject is not on the Public Session Agenda, the Panel is not empowered to take action on it. Public comment is limited to 3 minutes per speaker; the Panel may extend the limit by a uniform amount per speaker. No comment will be taken on matters at issue in items on the Closed Session Agenda, or on any pending adjudicatory proceeding.	Information
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(The comments from the public are under Item 5)

Item 3	Legislation Report Discussion and action as appropriate regarding any legislation that may affect EAAP	Information Action
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Ms. Kelly reported that Senate Bill 86 is being considered in the legislature and would affect annual audits. There is a section on In-Person Instruction starting with EC 43520 that requires In-Person Instruction to be audited in the 2021-22 audit for actions that are to take place this year.

Item 4	EAAP Rulemaking Calendar Approve the rulemaking calendars for 2021	Information Action
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Ms. Kelly informed the Panel that government code requires state agencies to prepare a rulemaking calendar by January 31 of that year. These calendars, Schedule A and B, follow the template prescribed by Office of Administrative Law. The rulemaking calendars require Panel review and approval.

Action: The Panel members unanimously approved the rulemaking calendars for 2021.

Item 5	<i>Emergency Supplemental Regulations: 2020-21 Audit Guide</i> To address issues resulting from legislative changes to the conditions of apportionment, and make non-substantive edits.	Information Action
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The text of the proposed emergency and permanent regulations is identical, so Items 5 & 6 were discussed together. Ms. Kelly reported that the Audit Guide Committee proposed changes that were incorporated into the proposed 2020-21 Supplemental Audit Guide. The changes correspond with legislation passed to reflect changes in education resulting from the COVID19 pandemic, specifically Senate Bills 98 and 820.

Ms. Kelly reported that she and Mr. Morgan determined the best approach to address the multitude of changes was to create a separate Supplemental Audit Guide for the 2020-21 school year, rather than amending the guide adopted July 1, 2020. A new code section was created, 19811, to incorporate by reference the new guide. This rulemaking adopts the Supplemental Audit Guide 2020-21 through incorporation by reference in Sections 19810 (Appendices) and 19811 (Main text of Audit Guide).

If approved by the Panel, the emergency rulemaking package would be posted on EAAP's website and forwarded to its interested party list, and five days later, the package would be submitted to OAL. After EAAP's filing with OAL, the public would have five calendar days to submit comments in writing to EAAP and OAL. OAL then has 5 days to review the regulations and file with the Secretary of State. Written comments regarding the proposed changes must be submitted to OAL and simultaneously to EAAP by March 8, 2021.

The Permanent Rulemaking process will have a 45-day comment period. The action the Panel would take is to adopt the proposed Emergency Rulemaking Regulations and approve the initiation of the rulemaking process for the Permanent Supplemental Regulations.

The entire document of the 2020-21 Supplemental Audit Guide, with the date of March 1, 2021, is underlined. This is to indicate to OAL that it is new language. For all the sections that are suspended, the Table of Contents will say “Reserved”. Sections D, E, M, N, P, U, X, Z and EE are listed as “Reserved”, and thus are suspended and not included in this audit guide. Most sections that are suspended have to do with ADA, which is not being reported to CDE for the 2020-21 school year.

Section A, Attendance and Distance Learning was rewritten to verify that LEAs accurately report in-person learning and distance-learning, with new provisions for sampling. Mr. Morgan informed the Panel of changes to Section F, Instructional Time. It was also rewritten to accommodate distance learning and the inapplicability of ADA reporting or reports of total annual minutes of instruction. Section F now applies to both school districts and classroom-based charters. Other means of ensuring adequate instructional time, including identifying shorter than usual days, and “time value” certification (based on completed assignments) are identified.

Ms. McCormick asked if the yellow highlights in the appendices were changes. Ms. Kelly stated that yes, the highlighted information in the appendices were amendments and included:

- Underlined language to Appendix **B**, Procedures II.A.10, III.A.11, and V.A.11; and Appendix **C**, Procedure II.A.10: If audited hard costs are less than 60 percent, this does not result in an audit finding; the table is to be presented for information purposes only.
- Underlined language to Appendix **B**, Procedures II.A.2, II.B.3, III.A.2, III.B.3, I.A.2, I.b.2, V.A.2, and V.B.2; and Appendix **C**, Procedures II.2.2 AND II.B.2: Non-compliance related to these matching fund requirements will result in an audit finding, with a potential effect that the non-compliance may result in the project being rescinded and potential loss of funding, as determined by the SAB.

Mr. Montero asked the meeting attendees whether there was any public comment. Mr. Robert Manwaring from Children Now, sent a letter to EAAP and addressed its comments to the Panel. Mr. Manwaring expressed concerns regarding the substantial requirements of distance learning and lack of sufficient oversight. Of significant concern are lack of devices and connectivity; inadequate academic support; live daily interaction; time equivalency requirements; and regular communication with parents. Mr. Manwaring stated that there are many distance learning requirements for which the audit guide could provide effective oversight. Mr. Manwaring sees the potential concern of an audit finding as a motivating factor for districts to address such issues.

Mr. Eric Premack from Charter Schools Development Center, Inc. had concerns regarding participation in the Audit Guide work group. He stated that previously, the State Controller’s Office (SCO) allowed for public participation in the work group meetings but did not offer it this year. He considers this a violation of the Bagley-Keene Act. He stated that he could resolve issues at the work group meetings but now wishes to present his issues to the Panel. Mr. Premack

expressed the following concerns with the Audit Guide: References about which sections are applicable are unclear; mixed treatment of charter specific laws; auditors verifying deviations; and references to sample documents from CDE. He continued that usually changes are minor at this point in the audit guide process and he believes these are such significant changes that the Panel should hold off on approving the Emergency Supplemental Regulations.

Mr. Morgan thanked both Mr. Manwaring and Mr. Premack for sharing their ideas and comments and advised them of the additional opportunity for presenting their comments during the rulemaking public comment period. He stated that he is in favor of stakeholder input at the Audit Guide Work Group meetings and would be in contact with SCO regarding participation.

Action: The Panel members unanimously adopted the proposed Emergency Rulemaking Regulations.

Item 6	Notice of Proposed Rulemaking: <i>Permanent Supplemental Regulations: 2020-21 Audit Guide</i>	Information Action
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Action: The Panel members unanimously approved the initiation of the rulemaking process.

Item 7	Next Meeting March 29, 2021	Information Action
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The Public Session recessed at 2:36 p.m.

M. Vazquez advised the members of the public to email him to request a Closed Session Report.

Members of the public disconnected from the Skype conference call and EAAP staff and Panel members went into closed session. EAAP staff and Panel members met in closed session until 2:42 p.m.

Closed Session Report:

In closed session, the Panel unanimously approved the Stipulated Agreement of the parties in the matter of Trinity Alps Unified School District, EAAP Case 19-11.

Thereafter, there being no public participants in contact, the meeting was adjourned.