

TITLE 5. Education
Education Audit Appeals Panel

Notice of Proposed Rulemaking

Supplement to Audits of K-12 Local Education Agencies
Fiscal Year 2020-21 as of March 1, 2021

The Education Audit Appeals Panel (EAAP) proposes to adopt an Audit Guide for Fiscal Year 2020-21, Supplemented as of March 1, 2021, as well as the Guide's incorporating regulation, as described below, after considering all comments, objections, and recommendations regarding the proposed action. The Supplemented Audit Guide, because it makes atypical changes resulting from Legislative action related to the COVID-19 pandemic, will be incorporated in new section 19810.5.

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 on **Tuesday, June 1, 2021**. EAAP will consider only written comments received by that time. Written comments for EAAP's consideration should be directed to:

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Education Audit Appeals Panel
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Sacramento, CA 95814

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Authority and Reference:

Authority cited: Section 14502.1, Education Code.

Reference: Sections 14502.1, 14503, 42010, and 41024 of the Education Code.

Informative Digest/Policy Statement Overview:

This rulemaking adopts the Supplemental Audit Guide for 2020-21, as required by Section 14502.1, through incorporation by reference in Sections 19810 (Appendices) and 19810.5 (Main text of Audit Guide). 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. This supplemental filing ensures that audits include subjects pertinent to

and/or required by Legislation through January 1, 2021. Of particular significance are various provisions of Senate Bill 98 (Chapter 24, Statutes of 2020) which suspends for one year normal attendance reporting and instead apportions based on 2019-20 ADA. Due to the significant changes, the supplemental audit guide, which is the subject of this rulemaking, was created as a new guide incorporated by reference in the new section 19810.5. This methodology was taken to provide a shorter, simpler guide and avoid confusion to readers, specifically auditors and LEAs.

The Controller, in a letter dated February 2, 2021, pursuant to Education Code section 14502.1, proposed supplemental changes to the 2020-21 audit guide. The proposed changes derive from the Controller's proposals and 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 complying with regulatory requirements, and that educational funds are being properly utilized, which would ultimately affect the quality of students' educational experiences. 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 the addition of section 19810.5, plus 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 Appendices A, B and C of the "2020-21 Guide for Annual Audits of K-12 Local Education Agencies and State Compliance Reporting," (July March 1, 2021), adopted by the Education Audit Appeals Panel, is are incorporated by reference. The guide itself, which provides the audit steps, reporting requirements, and other guidance, for the required annual financial and compliance audits, is incorporated by reference in Section 19810.5 (rather than this section) for the 2020-21 audit year only. subject to auditor judgment where alternative or additional audit steps may be appropriate. The appendices to the annual guide is are superseded by a supplemental appendices to the audit guide, if needed, adopted before March 1 of each fiscal year. Each annual guide, including Appendices A, B and C 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 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.~~

Note: Authority cited: Sections 14502.1 and 41024, Education Code.

Reference: California Constitution Article XIII B, Section 1.5; and Education Code Sections 14501, 14502.1, 14503, 15286, 17070.63, 17076.10, 17375, 41020, and 41024.

§ 19810.5. Annual Audit Guide 2020-21.

The “2020-21 Guide for Annual Audits of K-12 Local Education Agencies and State Compliance Reporting,” (March 1, 2021), 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. This audit guide, excluding Appendices (A, B and C), supersedes, only for fiscal year 2020-21, the guide adopted July 1, 2020. This guide reflects legislation passed to make changes to the requirements of school districts resulting from the COVID-19 pandemic. Appendices A, B and C, were not impacted by such legislation and remain incorporated by section 19810. This audit guide, together with the applicable version of the Appendices incorporated by section 19810, is 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 2574, 14501, 14502.1, 14503, 37700, 41020, 42238.02, 43500, 43501, 43502, 43504, 43505, 43509, 44258.9, 45037, 46300, 47612.5, 47634.2 and 48000, Education Code.

Supplement to Informative Digest: Incorporation by Reference

This supplemental rulemaking would adopt by incorporation and reference the document entitled “2020-21 Guide for Annual Audits of K-12 Local Education Agencies and State Compliance Reporting (March 1, 2021)” which supersedes the version of the same title but dated July 1, 2020. This supplemental filing ensures that audits include subjects pertinent to and/or required by Legislation through January 1, 2021. Copies of the proposed audit guide, its previous version, and the final audit guides for several previous years, are available at EAAP’s website, www.eaap.ca.gov.

As mentioned above, the supplemental 2020-21 Audit Guide is largely based on preexisting text effective July 1, 2020, with notable changes making inapplicable a number of provisions in light of the Legislature’s decision to use ADA numbers from 2019-20 as the basis for apportionment in 2020-21. Due to the use of remote learning during the COVID-19 pandemic, most LEAs will not report ADA to CDE for 2020-21. Instead, pursuant to Education Code section 43502(b), except for newly operational charter schools, the 2019-20 reported data will be used to calculate 2020-21 funding.

Sections of the Audit Guide that remain unchanged from the July 1, 2020 version of the Audit Guide will be noted; and sections made inapplicable for 2020-21 will be identified by their prior title with a notation that they are not part of the supplemental 2020-21 Audit Guide.

Audit Guide Amendments

The proposed supplemental 2020-21 Audit Guide includes the following changes:

- **Materiality Levels:** For 2020-21 only, the existing introductory sentence mandating use of tabulated levels of materiality is replaced with a narrower applicability for the 2020-21 year, specifically, Section Y Independent Study—Course Based. All other ADA-related sections are suspended for 2020-21, including Sections:
 - D. Independent Study,
 - E. Continuation Education,
 - M. Juvenile Court Schools, and
 - N. Middle or Early College High Schools.

The language for 2020-21 only includes that Independent Study—Course Based for LEAs other than charter schools that were classified as nonclassroom-based for 2019-20, be audited as a part of Section A. Attendance and Distance Learning. Finally, audit procedures for charter schools classified as nonclassroom-based for 2019-20 apply to programs related to Sections Y. Independent Study—Course based, CC. Nonclassroom Based Instruction/Independent Study, and DD. Determination of funding for Nonclassroom Based Instruction.

- **Report Components:** For 2020-21 only, item 5b, Schedule of ADA, which was in the July 1, 2020 version of the Audit Guide is suspended, because ADA numbers are not to be reported, nor audited, for 2020-21. Item 5c, Schedule of Instructional Time (now item 5b), deletes the requirements to show annual instructional minutes requirements and offerings. Relatedly, item 6a, Findings and Recommendations, deletes references to ADA for the 2020-21 Audit Guide.

Local Education Agencies

- **Section A. Attendance and Distance Learning:** For the 2020-21 Audit guide only, the Section A language included in the July 1, 2020 Audit Guide is replaced with language to evaluate a LEA’s compliance with attendance for in person and distance learning instruction and well as distance learning record keeping requirements pursuant to Education Code sections 43500-43504. The July 1, 2020 language will be reinstated for the 2021-22 audit guide. Section A includes language to verify that the LEA accurately reported in-person learning and distance-learning, with new provisions for sampling in such reviews. In addition, the new section provides for auditing of written tiered reengagement strategies for pupils who are absent more than three schooldays or 60 percent of the days in a school week. Further, using the same samples, the auditor is to compare records to specified “snapshot” enrollment counts as reported in either the Student Information System or a designated section of the (CALPADS). Finally, the auditor is directed to review the daily

engagement record policies of the LEA and determine whether the pupils in the sample maintained a completed weekly engagement record in compliance with Education Code section 46504(e); that the schools documented participation in distance learning consistent with Education Code section 46504(d); and that the schools documented as absent, days on which a pupil did not participate in distance learning. Finally, the audit report is to state in a finding the number of days out of compliance with the daily and/or weekly participation record requirements, excluding days prior to September 1, 2020, and to estimate their dollar value pursuant to Education Code section 46504(i)(2).

- **B. Teacher Certification and Misassignments:** uses language identical to the July 1, 2020 Audit Guide, but for the 2020-21 year only, makes technical amendments in paragraphs 1, 3b and 4. The reference is now to the new Section A.1 (previously the reference was to 3(c) in the prior Section A).
- **C. Kindergarten Continuance:** uses language identical to the July 1, 2020 Audit Guide, but for the 2020-21 year only, modifies prior language to identify any noncompliance with the requirement to use an approved Kindergarten Continuance Form or a signed alternative agreement, without any financial consequence.
- **D. Independent Study:** In accordance with the information digest above, this section is suspended for 2020-21 only, but will apply to 2021-22.
- **E. Continuation Education:** In accordance with the information digest above, this section is suspended for 2020-21 only, but will apply to 2021-22.
- **F. Instructional Time:** is revised for the 2020-21 guide, but will revert to the original form for 2021-22. The changes accommodate distance learning and the inapplicability of ADA reporting or reports of total annual minutes of instruction. The Section is made applicable not only to school districts (as existed in the July 1, 2020 audit guide) but also to classroom-based charters and any newly operational charter schools that began instruction in the 2020-21 school year by September 30, 2020. The audit steps require the auditor to determine whether qualifying days of instruction in each grade level met the requirements of Education Code sections 43504(c) and 37700 (applicable to a small number of identified districts authorized to operate on the basis of four-day school weeks). A shortfall requires calculation of the amount of any applicable penalties.
- **G. Instructional Materials:** retains the language of the July 1, 2020 audit guide, but makes two technical changes. This rulemaking eliminates references to Education Code sections 60605 and 60605.8 which no longer appear in reference to content standards referred to in section 60119(a)(1)(A); and change the phrase “foreign language” to “world language in accordance with the change in section 60619(a)(1)(C).
- **H. Ratio of Administrative Employees to Teachers:** retains the language of the July 1, 2020 audit guide.
- **I. Classroom Teacher Salaries:** retains the language of the July 1, 2020 audit guide.

- **J. Early Retirement Incentive:** retains the language of the July 1, 2020 audit guide.
- **K. Gann Limit Calculation:** retains the language of the July 1, 2020 audit guide.
- **L. School Accountability Report Card:** retains the language of the July 1, 2020 audit guide, with a technical change of “teacher misassignment” to the plural “teacher misassignments.”
- **M. Juvenile Court Schools:** In accordance with the information digest above, this section is suspended for 2020-21 only, but will apply to 2021-22.
- **N. Middle or Early College High Schools:** In accordance with the information digest above, this section is suspended for 2020-21 only, but will apply to 2021-22.
- **O. K-3 Grade Span Adjustment:** retains the language of the July 1, 2020 audit guide, with an amendment for 2020-21 only to refer to school districts that “received funding for K-3 Grade Span Adjustment,” rather than “reported ADA,” because LEAs will not report ADA in 2020-21.
- **P. Requirements for Transportation Maintenance of Effort:** In accordance with the information digest above, this section is suspended for 2020-21 only, but will apply to 2021-22.
- **Q. Apprenticeship:** retains the language of the July 1, 2020 audit guide.
- **R. Comprehensive School Safety Plan:** retains the language of the July 1, 2020 audit guide.
- **S. District of Choice:** retains the language of the July 1, 2020 audit guide.

School Districts, County Offices of Education, and Charter Schools

- **T. California Clean Energy Jobs Act:** retains the language of the July 1, 2020 audit guide.
- **U. After/Before School Education and Safety Program[s]:** In accordance with the information digest above, this section is suspended for 2020-21 only, but will apply to 2021-22.
- **V. Proper Expenditure of Education Protection Account Funds:** retains the language of the July 1, 2020 audit guide.
- **W. Unduplicated Local Control Funding Formula Pupil Counts:** retains the language of the July 1, 2020 audit guide, with changes to distinguish between EL (English Learner) and the new designation of “ADEL” (Adult English Learner) and to add a requirement that the auditor verify that the LEA has documentation stating the student is an ADEL.

- **X. Local Control and Accountability Plan:** In accordance with the information digest above, this section is suspended for 2020-21 only, but will apply to 2021-22.
- **Z. Immunizations:** In accordance with the information digest above, this section is suspended for 2020-21 only, but will apply to 2021-22.

Charter Schools

- **Y. Independent Study-Course Based:** retains the language of the July 1, 2020 audit guide, but suspends this section for 2020-21 only, for school districts and county offices of education. This section is moved to the Charter School portion of the audit guide. This section is amended to remove LEAs and add nonclassroom-based charter schools, and to include a link to a listing of such. The amendments also delete references to ADA, the financial impact of disallowed ADA, and the Independent Study Ratio, as there is no ADA being reported for 2020-21.
- **AA. Attendance:** For the 2020-21 year only, this section is amended to eliminate provisions relating to reported ADA, since LEAs will not report ADA for 2020-21. It calls for reporting the number of attendance days inappropriately reported, but with such findings having no financial impact. For 2020-21 only, the verification of the annual days is moved to Section CC, since charters will not report the number of days offered in 2020-21.
- **BB. Mode of Instruction:** For the 2020-21 year only, this section is amended to determine whether the charter school was classified as a nonclassroom-based charter for 2019-20. If so, the auditor is referred to Section CC and DD. If not, the auditor is referred to Section A.
- **CC. Nonclassroom-Based Instruction/Independent Study:** For the 2020-21 year only, this section is amended to determine whether the charter school was classified as a nonclassroom-based charter for 2019-20. If so, the auditors will follow audit procedures similar to the July 1, 2020 version of the audit guide, with the addition of verification of annual days, which was moved from Section AA.
- **DD. Determination of Funding for Nonclassroom-Based Instruction:** For the 2020-21 year only, this section is amended to determine whether the charter school was classified as a nonclassroom-based charter for 2019-20. If so, the auditors will follow audit procedures similar to the July 1, 2020 version of the audit guide, with the addition of language added to procedure 2 to report any inappropriately reported 2019-20 ADA by grade span and to estimate their dollar value.
- **EE. Annual Instructional Minutes-Classroom Based:** In accordance with the information digest above, this section is suspended for 2020-21, but will apply to 2021-22.
- **FF. Charter School Facility Grant Program:** retains the language of the July 1, 2020 audit guide.

Appendices

- **Appendix A. Local School Construction Bond Audits:** retains the language of the July 1, 2020 audit guide.
- **Appendix B School Facility Program Bond Fund Audits and Appendix C Full Day Kindergarten Program Audits:** addition of two sentences to various steps in Appendix B and Appendix C to clarify the audit steps. The added information currently resides in regulations, specifically Form SAB 50-06.

Specificity about audit hard costs less than 60 percent is added to:

Appendix B, Procedures II.A.10, III.A.11, and V.A.11

Appendix C, Procedure II.A.11

Detail, which clarifies non-compliance related to matching funds and the potential for loss of funding, is added to:

Appendix B, Procedures II.A.2, II.B.3, III.A.2, III.B.3, IV.A.2, IV.B.2, V.A.2, and V.B.2

Appendix C, Procedures II.A.2 AND II.B.2

NOTE: The changes described above are already in effect on an emergency basis.

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.

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 visiting EAAP's website, or 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.

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 IV, at tmorgan@eaap.ca.gov, or Mary C. Kelly, Executive Officer, at mkelly@eaap.ca.gov.