

## Minutes of the Education Audit Appeals Panel

Monday, April 27, 2020

Skype Conference Call

### Call to Order and Roll Call

Joel Montero called the meeting to order at 1:33 p.m.

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

### Approval of Minutes

**Action:** The minutes of the February 24, 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 have been filed and no determinations were made. Determinations have been made on the cases of Lemoore Union High and Contra Costa County Office of Education, however, EAAP is withholding notification of determinations until LEAs' return to normal business. Due to short timelines for a response to the decisions, EAAP wants to ensure timely receipt of the determinations. There was one additional formal appeal filed since the last meeting, Trinity Alps Unified. It is an Independent Study case in the amount of \$127,815. Yreka Union HSD submitted a Settlement Agreement, but it was not timely for the April panel meeting.

EAAP is currently working with the Department of Education (CDE) and the State Controller's Office (SCO) to delay sending time sensitive materials to LEAs during times when staff may not be available to receive and act. SCO has begun submitting certification letters to the districts, so requests for Summary Review will resume.

The meeting agenda includes rulemaking procedures for 2020-21 Audit Guide that has to be in place by July 1, 2020. The Permanent 2019-20 Supplemental Audit Guide has been noticed and the 45-day comment period ends on May 18, 2020. Traditionally, EAAP holds a Panel Meeting after the comment period to discuss any comments received. In the event that no comments are received, Ms. Kelly has been working with the Office of Administrative Law (OAL) to ascertain how to submit a certificate of compliance without the need for an additional meeting. OAL is willing to accept contingent approval of certificate of compliance from the Panel, if no comments are received.

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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There were no comments from the public.

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 potential issues with the 30-day deadline that LEAs have to submit a Summary Review request after receiving a SCO certification letter. A LEA also has 60 days in which to request a formal appeal from EAAP. EAAP has been working with DOF, CDE and SCO to develop ways to provide flexibility to the LEAs in meeting those deadlines. There are concerns over the 30-day Summary Review deadline; if that deadline is missed, a case would proceed to Formal Appeal. EAAP is working with DOF to develop language to extend the deadlines. We are exploring a 90-day deadline for Summary Review requests and 120-day deadline for Formal Appeals, or, alternatively, a set date for all Summary Review requests. SCO will continue to send certification letters during the school closures, since CPA firms will not receive their final withhold until the letters are issued. EAAP will continue to work with DOF on developing language for an executive order or trailer bill.

Item 4	Emergency Adoption of Regulations: 2020-21 Audit Guide. Take action as appropriate to adopt or amend the proposed regulations.	Information Action
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Item 5	Notice of Proposed Rulemaking: Permanent Regulations: 2020-21 Audit Guide – authorization to begin regular rulemaking process.	Information Action
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The text of the proposed emergency and permanent regulations is identical, so Items 4 and 5 were discussed together.

If approved by the Panel, the Emergency Rulemaking Regulations will be posted on EAAP’s website and forwarded to its interested party list. Five days later, the package will 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 five days to review the regulations and file with the Secretary of State. This emergency process will allow us to meet our July 1, 2020 deadline.

The proposed annual 2020-21 Audit Guide includes the following amendments from the existing 2019-20 Audit Guide:

- *Section R. Comprehensive School Safety Plan* is technically amended to ensure that each school has adopted or reviewed and updated by March 1 its comprehensive school safety plan as provided by Education Code section 32286. In addition, procedure 3 is amended to delete notification to the California Department of Education by October 15, as that requirement crosses into the next fiscal year; and instead refers to the requirement to obtain approval from the school district or county office of education pursuant to Education Code section 32288.
- *Section Y. Independent Study – Course Based* is amended to add a procedure to verify that no days of attendance were reported prior to the signing of the agreement with all parties, consistent with parallel provisions in Section D, procedure 3.i. and Section CC, procedure 4.h. Additional language is added in procedure 4 to clarify the amount that is subject to the statewide average rate of absence reduction pursuant to Education Code section 51749.5. Other than resulting renumbering, the remaining change is the remove the ‘(a)’ from the citation to Education Code section 51745.6, as subdivision (a) applies only to school districts and county office of education, whereas section 51745.6 applies to school districts, county offices of education, and charter schools. That change ensures like treatment of the Course Based Independent Study ratio calculations for charter schools.

- *Section Z. Immunizations* is a new requirement in 2020-21 requiring 2 doses of Varicella instead of one dose. This section includes procedures to audit immunization requirements for tetanus, diphtheria and pertussis.
- *Section AA. Attendance* is amended to account for proportional reduction of ADA if a school offered fewer than 175 instructional days – unless that number is reduced pursuant to a Form J-13A approval accounting for unavoidable school closures.
- *Section BB. Mode of Instruction* amends subparagraph 1.d. and adds new Subparagraph 1.e. consistent with Education Code section 7600(s) which includes an alternative way to satisfy the requirement that 80 percent of instructional time offered shall be at the school site. The alternative applies to pupils taking classes at a community college pursuant to a College and Career Access Pathway Agreement. New procedure 1.e. requires audit of a sample of such pupils to ensure that their schedules follow this alternative or those for Early or Middle College High Schools.
- *Appendix B. School Facility Program Bond Fund Audits* is revised to specify the manner and timing for required filing of these audit reports with the State Controller’s Office; requires that the report note the state bond fund providing funding for the audited project; and in various places removes directions to locate certain details on the Office of Public School Construction (OPSC) web page and instead instructs auditors to contact the OPSC for that information.
- *Appendix C. Full-Day Kindergarten Program Audits* is entirely new. It specifies audit procedures for construction projects (new or by retrofit) done to facilitate the move to universal Full-Day Kindergarten. This appendix constitutes the guide for the performance audits required in Education Code Section 41024 for a LEA agency that receives any funds (commencing May 22, 2019) pursuant to the Full Day Kindergarten Facilities Grant Program (FDKFGP). Assembly Bill (AB) 1808, added Article 1 (commencing with Education Code Section 17375) to Chapter 3 of Part 10.5 of Division 1 of Title 1 of the Education Code (EC) to create the FDKFGP. AB 1808 provided \$100 million for the FDKFGP from the General Fund. The FDKFGP allows school districts that lack the facilities to provide full-day kindergarten to apply for one-time grants to construct new school facilities or retrofit existing school facilities for the purpose of providing full-day kindergarten classrooms.

**Action:** The Panel members unanimously adopted the proposed Emergency Rulemaking Regulations. The Panel members also approved the initiation of the rulemaking process for the Permanent Regulations for the 2020-21 Audit Guide.

Item 6	Permanent Supplemental Regulations 2019-20 Take action to review and approve the 2019-20 Supplemental Audit Guide, contingent on no substantive changes, recommendations or objections during the 45-day comment period.	Information Action
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The Panel is asked to approve on a contingent basis the 2019-20 Permanent Supplemental Regulations, contingent on there being no substantive changes, recommendations or objections during the 45-day comment period, which ends May 18, 2020. This will give staff the ability to submit the final certification that makes 2019-20 Audit Guide and its appendixes legally effective. This contingent approval, which meets OAL’s approval, would allow staff to move forward on the rulemaking process without the need of holding an additional meeting.

**Action:** The Panel members unanimously approved the 2019-20 Supplemental Audit Guide, contingent on there being no substantive changes, recommendations or objections during the 45-day comment period.

Item 7	Permanent Regulations 2020-21 Take action to review and approve the 2020-21 Annual Audit Guide, contingent on no substantive changes, recommendations or objections during the 45-day comment period.	Information Action
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The Panel is asked to approve on a contingent basis the 2020-21 Permanent Regulations, contingent on there being no substantive changes, recommendations or objections during the 45-day comment period. The Panel approved the initiation of the rulemaking process for the Permanent Regulations for the 2020-21 Audit Guide in Item 5. Similar to Item 6, this contingent approval, which meets OAL’s approval, would allow staff to move forward on the rulemaking process without the need of holding an additional meeting.

**Action:** The Panel members unanimously approved the 2020-21 Annual Audit Guide, contingent on there being no substantive changes, recommendations or objections during the 45-day comment period.

Item 8	Education Code sections 41344(d) and 41344.1(d) establish deadlines for the filing of formal appeals and summary reviews. Discuss options to account for delays in LEAs’ receipt of SCO certification letters and their subsequent response, due to the COVID19 shelter in place order.	Information Action
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Ms. Kelly previously discussed this topic during the Legislation Report. She was seeking suggestions on methods to afford LEAs adequate time to respond to significant audit findings included in the SCO certification letters.

Mr. Montero asked if EAAP’s recommended changes would become a change to the Ed. Code, since EAAP does not have the authority to change it. Ms. Kelly replied that the change could be included in trailer bill language. The language EAAP suggested to DOF, proposed that LEAs have a 90-day deadline to request a Summary Review and 120-day deadline to file a Formal Appeal, after receipt of SCO’s certification letter. Another suggestion was to establish a 30-day deadline after the lifting of the shelter in place order. The concern with this suggestion was that the LEAs would face significant workload after the reopening and deadlines could still be missed.

Ms. Whitaker questioned if LEA staff would have issues with meeting deadlines, if they are working remotely. Ms. Kelly replied that SCO’s certification is physically mailed, and the concern was that mail was not timely received by LEA staff. Ms. Constancio asked if SCO had any plans to deliver certification letters electronically. Ms. Kelly advised of previous issues SCO had with e-mail delivery. Letters are mailed out physically via Certified U.S. Mail to verify delivery. Ms. Whitaker recommended to use language that specifying that deadline changes are due to the COVID19 shelter in place order and would revert back once the order is lifted.

Raquel Tucker, CDE, noted that her unit, Audit Resolution, is contacting LEAs, and advising Chief Business Officers of appeal deadlines. Some are having issues with receiving their mail, especially in remote locations. Some LEAs are even experiencing networks issues causing delayed e-mails. Ms. Tucker expressed that the extended deadlines would be very helpful for the LEAs resolving audit findings.

**Action:** The Panel members unanimously authorized EAAP to move forward drafting and forwarding language to extend deadlines for the filing of formal appeals and summary reviews, due to the COVID19 shelter in place order.

Item 9	Next Meeting May 18, 2020	Information Action
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**Adjournment**

Mr. Montero adjourned the meeting at 2:33 p.m.