

TITLE 5. Education
Education Audit Appeals Panel

Notice of Proposed Rulemaking

Supplement to Audits of K-12 Local Education Agencies
Fiscal Year 2021-22 as of March 1, 2022

The Education Audit Appeals Panel (EAAP) proposes to adopt an Audit Guide for Fiscal Year 2021-22, Supplemented as of March 1, 2022, 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 will be derived from and incorporated in Section 19810.

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 **Monday, May 16, 2022**. 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: Section 14502.1, Education Code.

Reference: Sections 14502.1, 14503, 42010, and 41024 of the 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 2021-22, supplemented as of March 1, 2022, with any technical and clarifying revisions and legislative changes that will affect audits and possibly the conditions for

apportionment of school funding. This supplemental filing ensures that audits include subjects pertinent to and/or required by legislation through January 1, 2022.

This rulemaking meets the requirements of Education Code section 14502.1, which mandates that an annual audit guide be adopted by EAAP, and the additional laws and Constitutional provisions listed under “Authority cited” below the proposed amended text of Section 19810, as shown below. 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, in a letter dated January 31, 2022, pursuant to Education Code section 14502.1, proposed supplemental changes to be reflected in the 2021-22 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. The regulations direct accountants to perform the steps necessary for the annual audits required by Education Code Section 41020. 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 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 "2021-22 Guide for Annual Audits of K-12 Local Education Agencies and State Compliance Reporting," (March 1, 2022), 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, including Appendices A, B and C and any applicable supplement, is available on www.eaap.ca.gov/audit-guide, with paper or electronic copies available on request.

Note: Authority cited: Article XIII, Section 36 and Article XIII A, Section 1, California Constitution; and Sections 14502.1 and 47612, Education Code. Reference: Article XIII B, Section 1.5, California Constitution; and Sections 2574, 14501, 14502.1, 14503, 37700, 41020, 41480,

42238.02, 43500, 43501, 43502, 43504, 43505, 43509, 43520, 43521, 43522, 44258.9, 45037, 46146, 46300, 47605, 47612, 47614, 47634, 48000, 48206, 48306, 48313, 51747, 51749, 52060, 53071, 56026, 56340 and 76004, Education Code.

Audit Guide Amendments

The proposed supplemental 2021-22 Audit Guide includes the following changes:

- *Section B, Teacher Certification and Misassignments*, implements Executive Order N-3-22 dated January 11, 2022, by adding Procedure 1.a, to incorporate temporary flexibilities regarding administrative process and other requirements. Such flexibilities, including the hiring of staff without valid certification documents, allow the LEA to maintain in-person services for students despite staffing shortages caused by the rise in Covid-19 cases with the appearance of the Omicron Variant of the virus.
- *Section D, Independent Study*, implements new provisions in Education Code section 51747. Changes update the independent study pupil to teacher ratio calculation to exclude short-term and intermittent independent study. The amendments and new subdivision (g) amend the audit procedures regarding adoption and implementation of independent study policies regarding satisfactory educational progress, educational content, tiered reengagement strategies for pupils with gaps in attendance, communication with a pupil's parent or guardian regarding a pupil's academic progress, ensuring access to sufficient connectivity and devices, detailing supports to be provided for pupils not performing at grade level or otherwise in need of support (including mental health support), verification of live interaction and synchronous instruction, computer based evidence of engagement, and notification of the option for in-person instruction. Also requires verification that the LEA offered a pupil-parent-educator conference before execution of the agreement.
- *Section G, Gann Limit Calculations*, amends procedure 1.a for LEAs with excess Gann limit in the 2020-21 fiscal year, due to statutory changes required by Assembly Bill 130.
- *Section W, Unduplicated Local Control Funding Formula Pupil Counts*: amended to add note regarding Executive Order N-18-21, clarifying that for some LEAs impacted by wildfire, additional students identified as EL in the 2021-22 CALPADS UPC Source File (K-12) were not included in CALPADS snapshot report 1.18.
- *Section X, Local Control and Accountability Plans* makes technical amendments to Procedure 3 due to Local Control and Accountability Plan template amendments.
- *Section Y, Independent Study, Course-Based*: amendments implement new provisions of Education Code section 51749.5(d) including verification of adequate connectivity and devices, support for pupils not performing at grade level, English learner and special needs pupils in need of other support. Amendments to the provisions of the independent study agreement and confirmation that the LEA has a plan for live interaction and synchronous instruction consistent with Education Code section 51749.5. Amendments include the verification of the offer of a pupil-parent-educatory conference before execution of the

agreement. Finally, a CDE website is identified for purposes of correctly calculating the independent study ratio.

- *Section BB, Mode of Instruction*, adds Procedure 1.a.(1) to incorporate temporary flexibilities regarding administrative processes, staffing, and other requirements, as allowed by Executive Order N-3-22.
- *Section CC, Nonclassroom-Based Instruction/Independent Study* adds technical clarifications and additional details to Procedures 1, 2, and 4.
- *Section AZ, Educator Effectiveness Funds Grant* add this new audit guide section to include procedures for verifying LEAs' compliance with requirements of Education Code section 41480, applicable to the Educator Effectiveness Block Grant funds.
- *Section BZ, Expanded Learning Opportunities Grant* adds this new audit guide section to include procedures for verifying LEAs' compliance with the requirements of the Expanded Learning Opportunity Grant funding.
- *Section CZ, Career Technical Educator Incentive Grant* adds this new audit guide section to include procedures for verifying LEAs' compliance with matching requirements of the Career Technical Educator Incentive Grant funding.
- *Section DZ, In-Person Instruction Grant* adds this new audit guide section to include procedures for verifying LEAs' compliance with requirements of the In-Person Instruction Grant Funding.

The proposed supplemental 2021-22 Audit Guide includes the following changes to Appendices B and C:

- Appendixes B and C: adds Procedure I.B.2, which requires auditors to present the required schedules in the format established by the Office of Public School Construction (OPSC).
- Appendix B Procedure II.A.11 and Appendix C Procedure II.A.11: updates terminology used in the procedures and the required table of hard construction costs to more accurately describe the calculation of costs that is to be presented in the auditor's report.
- Appendix B Procedure II.A.13 and Appendix C Procedures II.A.14 and II.B.17: updates procedures to add the following sentence to the end of the procedure:

Prepare the table to report the percent established for Restricted Maintenance Account and display the table in the audit report. The first year required to be audited and displayed is the fiscal year in which the funding was received. All subsequent fiscal years up to the year of the audit will be included in the audit and displayed in the table.

Also, adds a table and note to the table to ensure compliance with California Education Code section 17075.75.

- Appendix B Procedure II.A.13, and Appendix C Procedures II.A.14 and II.B.17: adds an Information box with examples.
- Appendix B Procedure II.A.17, and Appendix C Procedures II.A.18 and II.B.9: updates procedures to add the following sentence to the end of the information boxes:

Obtain a copy of the required site clearance letter from DTSC. You can obtain a copy of the site clearance letter from the DTSC online EnviroStor.
<https://www.envirostor.dtsc.ca.gov/public/>.

- Appendix B Procedures II.A.21 and II.A.22, and Appendix C Procedures II.A.21, II.A.23, and II.B.18: adds the word “Required” before “District Contribution” in the Information box.

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. The Economic Impact Assessment found that 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.
 - benefit or harm worker safety or the state’s environment.

As stated in the Informative Digest/Policy Statement Overview above, EAAP has determined that the proposed amendments will ultimately benefit the welfare of California residents by ensuring that local education agencies follow regulatory requirements, and that educational funds are being properly utilized, which would ultimately affect the quality of pupils and students’ educational experiences.

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.

Technical, Theoretical, or Empirical Studies, Reports, or Documents

EAAP relied upon the Controller's Office letter of January 31, 2022, which proposed changes to the 2021-22 Audit Guide.

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 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

Direct any inquiries concerning the proposed administrative action, or requests for the proposed text, the Initial Statement of Reasons, any modified text of the regulations, or technical information supporting the rulemaking may be directed to Timothy Morgan, Staff Attorney, at (916) 445-7745 or by e-mail: tmorgan@eaap.ca.gov, or Mary C. Kelly, Executive Officer, at (916) 445-7745.