

Minutes of the Education Audit Appeals Panel

Monday, February 28, 2022

Teams 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, Cheryl McCormick, designee of the Director of the Department of Finance and Lisa Constancio, Elizabeth Dearstyne, designee of the Superintendent of Public Instruction.

Elizabeth Dearstyne, Division Director of the School Fiscal Services Division, was introduced to the Panel as the designee of the Superintendent of Public Instruction.

Approval of Minutes

Action: The minutes of the November 15, 2021 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that since the last meeting, four new summary reviews were filed, two determinations were made and one case was withdrawn. Contra Costa County Office of Education, Heber Elementary, Ingenium Clarion Charter Middle and Snelling-Merced Falls Union Elementary requested a summary review. Heber Elementary withdrew their request and anticipates that Snelling-Merced Falls Union Elementary will withdraw as well. Los Angeles College Prep Academy's request was denied.

There were two additional formal appeals filed since the last meeting. Conservatory of Vocal and Instrumental Arts High is appealing a finding regarding Independent Study. Yosemite-Wawona Elementary Charter is appealing a finding related to Regular and Special (Education) Day Classes. The closed session agenda has the proposed settlement in the case of Saddleback Valley and Ralph A. Gates.

EAAP is still undergoing a Purchasing Authority audit from the Department of General Services, EAAP is also currently working on responding to a State Personnel Board audit and addressing their findings.

Item 2	<p>Public Participation</p> <p>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.</p> <p>No comment will be taken on matters at issue in items on the Closed Session Agenda, or on any pending adjudicatory proceeding.</p>	Information
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There were no comments from the public.

Item 3	<p>Legislation Report</p> <p>Discussion and action as appropriate regarding any legislation that may affect EAAP</p>	Information Action
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Assembly Bill No. 130 extended the deadline to file the 2020-21 audit report of each local educational agency audit to no later than January 31, 2022, so the annual certification for 2021 audits are due June 15, 2022. As a result, EAAP anticipates that summary review requests will be received two months later than usual.

Item 4	<p>EAAP Rulemaking Calendar</p> <p>Approve the rulemaking calendars for 2022</p>	Information Action
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Government Code requires state agencies to prepare a rulemaking calendar by February 14th of that year. EAAP received an extension since there was no meeting that would enable us to meet that deadline. The Office of Administrative Law (OAL) collects and compiles the agencies rulemaking calendars into one calendar. These calendars, Schedule A and B, follow the template prescribed by OAL. The rulemaking calendars require Panel review and approval.

Action: The Panel members unanimously approved the rulemaking calendars for 2022.

Item 5	<p><i>Emergency Supplemental Regulations: 2021-22 Audit Guide</i></p> <p>To address issues resulting from legislative changes to the conditions of apportionment, and make non-substantive edits.</p>	Information Action
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The text of the proposed emergency and permanent regulations is identical, so Items 5 & 6 were discussed together. Statute requires any such changes be adopted by March 1. Because of the limited time, and LEAs are anxious to see the supplemental audit guide, the drafts were noticed last week to ensure that they were available on March 1, 2022. EAAP is still required to go through the emergency rulemaking process.

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.

As soon as that is completed, EAAP will make changes on the audit guide and the supplements, based on feedback from OAL. Those versions will be used to complete the permanent rulemaking procedures for the 2021-22 Audit Guide. That text along, with suggestions from the audit guide committee, will be used in for the 2022-23 Audit Guide emergency rulemaking process. Ms. Kelly anticipates this to be completed in May of 2022.

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

- The Audit Guide Table of Contents was purposely left out due to technical issues, but it will be included once approved.
- *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 Omicron-drive rise in Covid-19 cases.
- *Section D, Independent Study*, implements new provisions in Education Code section 51747. Changes update the independent study pupil to teacher calculation to exclude short-term ADA 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 provident 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 K, 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 AZ, Educator Effectiveness Funds Grant* adds 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. This section only applies to the 2021-22 school year.

Charter Schools

- *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.

Ms. Kelly stated that changes to Appendices B and C were not programmatic changes, but instead provide guidance and clarification.

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

- Appendixes B and C – Added 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 –Updated 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, added 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 – Added an Information box with examples.

- Appendix B Procedure II.A.17, and Appendix C Procedures II.A.18 and II.B.9 – Updated 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.

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

Mr. Montero previously reviewed the material and believed changes to Appendices B and C were minor and was comfortable moving on to the approval process. Ms. McCormick and Ms. Dearstynne agreed.

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

Item 6	Notice of Proposed Rulemaking: Permanent Supplemental Regulations: 2021-22 Audit Guide	Information Action
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Action: The Panel members unanimously approved the initiation of the rulemaking process.

Item 7	Next Meeting March 28, 2022 Tentative EAAP meeting calendar for 2022	Information Action
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Action: The Panel members unanimously approved the EAAP meeting calendar for 2022.

The Public Session recessed at 2:35 p.m.

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 3:07 p.m.

Closed Session Report:

In closed session, the Panel unanimously approved the Stipulated Agreements of the parties in the matter of Saddleback Valley and Ralph A. Gates, EAAP Case 20-07.

In addition, the Panel heard a comment related to pending litigation in the matter of California Virtual Academies and Insight Schools of California, EAAP Case 17-20. The Panel unanimously approved EAAP's Notice of Deemed Rejection of Proposed Decision and of Deadline for Written Comment.

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