

**TITLE 5. Education**  
**Education Audit Appeals Panel**

Notice of Proposed Rulemaking

*Supplement to Audits of K-12 Local Education Agencies*  
Fiscal Year 2022-23 as of March 1, 2023

The Education Audit Appeals Panel (EAAP) proposes to adopt an Audit Guide for Fiscal Year 2022-23, Supplemented as of March 1, 2023, 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, June 5, 2023**. 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](mailto: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 2022-23, supplemented as of March 1, 2023, 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, 2023.

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 letters dated January 30, 2023 and February 14, 2023, pursuant to Education Code section 14502.1, proposed supplemental changes to be reflected in the 2022-23 audit guide. The proposed changes derive from the Controller’s proposals and also 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 "2022-23 Guide for Annual Audits of K-12 Local Education Agencies and State Compliance Reporting," (~~March~~July 1, 2022~~3~~), 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](http://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 2022-23 Audit Guide includes the following deletions, amendments and additions:

#### Deletions:

*Section DZ. Expanded Learning Opportunities Program* is deleted (for 2022-23 only) because subdivision (c) of amended Education Code section 46120 requires that audits of the Expanded Learning Opportunities Program commence with the 2023-24 school year.

#### Amendments:

*Section D. Independent Study* is amended to add and modify procedures, to ensure alignment with the amended provisions of independent study contained in Education Code section 51747.

*Section W. Unduplicated Local Control Funding Formula Pupil Counts* is amended to make technical amendments to Procedure 1 to change the title of the 1.18 report to LCFF Unduplicated Pupil Student List, and to remove obsolete language regarding age eligibility.

*Section X. Local Control and Accountability Plan* has a technical amendment to add “estimated” to Procedure 3 to conform to Education Code section 52064(b)(7).

*Section Y. Independent Study – Course Based* is amended to incorporate requirements of Education Code sections 51749.5 and 51749.6 into Procedures 1 and 2.

*Section AZ. Educator Effectiveness* is amended to change Procedures 1 and 2, and add Procedures 3 and 4, as a result of changes in Education Code section 41480. Procedures 1 and 2 remove verification of the annual report and add language to determine whether LEAs developed and adopted a plan, and to include return of funds if not. Procedures 3 and 4 were added to address fees charged for services.

*Section BZ. Expanded Learning Opportunities Grant (ELO-G)* is amended to make technical amendments to Procedure 2, and to delete Procedures 3 and 4, which pertained to one-time funding and distance learning.

*Section CC. Nonclassroom-Based Instruction/Independent Study* is amended to add and modify procedures to ensure alignment with the amended provisions of independent study contained in Education Code section 51747 (AB181).

Additions:

*Section TT. Home-To-School Transportation* adds procedures for a new program that increases transportation funding to school districts and county offices of education. The procedures verify LEAs' compliance with requirements of Education Code sections 41850.1 and 39800.1, specifically the development of a plan describing transportation services it will offer to pupils, including prioritization of services.

*Section EZ. Transitional Kindergarten (TK)* adds procedures for a new two-year kindergarten program to provide early education to ensure younger pupils obtain the necessary preparation to succeed in school. The procedures will verify LEAs and charter schools' compliance with requirements of Education Code section 48000, including average class enrollment and adult to pupil ratio requirements.

*Section UU. Independent Study Certification for ADA Loss Mitigation* adds procedures to verify compliance with requirements of Education Code section 42238.023, which would increase an LEAs 2021-22 average daily attendance for the Local Control Funding Formula, to mitigate the negative impact COVID-19 had on attendance rates. LEAs are eligible for the ADA Loss Mitigation funding if they meet specific requirements related to offering independent study programs or received a waiver.

The proposed supplemental 2022-23 Audit Guide includes the following changes to Appendices B and C:

Appendix B – Amendment

This rulemaking proposes technical amendments and additional audit procedures regarding modular school facilities piggyback contracts entered after August 21, 2022. Six sub-procedures were added to each of the following sections:

- I. Initial Steps, B. Documents Needed to Audit – All Projects Procedures 1
- II. Non-Financial Hardship Projects, A. Closeout Audit, Procedures 8
- II. Non-Financial Hardship Projects, B. Reduced to Costs Incurred, Procedures 15
- III. Financial Hardship Projects, A. Closeout Audit, Procedures 9
- III. Financial Hardship Projects, B. Reduced to Costs Incurred, Procedures 16
- IV. Career Technical Education, A. Closeout Audit, Procedures 8
- IV. Career Technical Education, B. Reduced to Costs Incurred, Procedures 8
- V. Charter School Facilities Program, A. Closeout Audit, Procedures 9
- V. Charter School Facilities Program, B. Reduced to Costs Incurred, Procedures 8

Appendix B – Addition and Deletion

This rulemaking adds additional procedures related to savings to each section of Appendix B, and deletes two procedures related to savings and unspent funds in each section, as follows:

- III. Financial Hardship Projects, A. Closeout Audit, Procedures 22-23
- III. Financial Hardship Projects, C. Savings Audit, Procedures 1-3
- IV. Career Technical Education, A. Closeout Audit, Procedures 14-16

- IV. Career Technical Education, C. Savings Audit, Procedures 1-3
- V. Charter School Facilities Program, A. Closeout Audit, Procedures 22-23
- V. Charter School Facilities Program, C. Savings Audit, Procedures 1-3

#### Appendix C – Amendment

This rulemaking proposes technical amendments and additional audit procedures regarding modular school facilities piggyback contracts entered after August 21, 2022. Six sub-procedures were added to each of the following sections:

- I. Initial Steps, A., Procedures 1 (b), Reduction to Costs Incurred
- I. Initial Steps, B. Documents Needed to Audit – All Projects, Procedures 1
- II. Full-Day Kindergarten Program, A. Closeout Audit, Procedures 8

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 education 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 letters dated January 30, 2023 and February 14, 2023, which proposed changes to the 2022-23 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](http://www.eaap.ca.gov)

## **Contact Persons**

Direct 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 to Timothy Morgan, Staff Attorney, (916)445-7745, [tmorgan@eaap.ca.gov](mailto:tmorgan@eaap.ca.gov), or Mary C. Kelly, Executive Officer, (916)445-7745, [mkelly@eaap.ca.gov](mailto:mkelly@eaap.ca.gov).