

## **Minutes of the Education Audit Appeals Panel**

Monday, February 27, 2023

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 Elizabeth Dearstyne, designee of the Superintendent of Public Instruction.

### **Approval of Minutes**

**Action:** The minutes of the November 28, 2022 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, seven new summary reviews were filed and five determinations were made. Latrobe Elementary, Southern Humboldt Joint USD, Marcum-Illinois Union Elementary, Lakeside Joint School District, Yosemite Unified, Children's Community Charter, Bonny Doon Union Elementary and Corona-Norco Unified all filed for summary review. Many of the cases were Instructional Time findings, this was to due audit guide changes regarding Covid-19. Relief was fully granted in the cases of: Julian Union School District, Latrobe Elementary, Marcum-Illinois Union Elementary and Lakeside Joint School District. Relief was partially granted in the case of Wildflower Open Classroom.

There was one additional formal appeal filed was since the last meeting; Rescue Union School District filed for formal appeal. Rescue Union School District missed the deadline to file a summary review. Conservatory of Vocal and Instrumental Arts High withdrew their formal appeal. Bishop Unified School District is on today's closed session agenda.

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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Eric Premack, of Charter Schools Development Center, Inc, had comments regarding the State Controller's Office (SCO) and the audit guide workgroup meetings. Mr. Premack states that SCO and the audit guide workgroup are working in private and are not allowing the public to participate. He believes this is a violation of the Bagley Keene Open meetings law. He has raised the issue a few times with SCO. SCO staff occasionally send drafts of things that they're working on, but he does not have the ability to observe the deliberations nor participate in them. Mr. Premack believes the proposed rulemaking is not appropriate for Panel consideration until SCO allows public participation in audit guide workgroup meetings.

Ms. Kelly stated that the audit guide group is considered a work group, not a committee or panel or anything else that would have to abide by the open meeting laws. Ms. Kelly believes it could be cumbersome to have multiple representatives from of audit groups, charter schools, school districts and members of the public all attending the meetings. She stated that the 5-day notice and comment period associated with emergency regulation allows opportunity for Mr. Premack and all other interested parties to comment. Suggested making comments on how procedures are structured and written.

Mr. Montero suggested EAAP staff follow up with SCO to see if they had something in writing that could address Mr. Premack's concerns.

Anton Jungherr attempted to make a public comment. Due to technical issues, the Panel and additional meeting attendees were unable to hear Mr. Jungherr. Martin Vazquez was advised to message Mr. Jungherr and address his comments later in the meeting. At approximately 2:41 PM, M. Vazquez attempted to have Mr. Jungherr present his comment, but Mr. Jungherr was not connected on Microsoft Teams. The Public Session recessed at 2:43 p.m.

Item 3	Legislation Report Discussion and action as appropriate regarding any legislation that may affect EAAP	Information Action
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The legislation session just started and there are bills being introduced that EAAP staff are following. Currently there is nothing to discuss but EAAP staff will continue following them.

Item 4	<i>Emergency Supplemental Regulations: 2022-23 Audit Guide</i> To address issues resulting from legislative changes to the conditions of apportionment, and make non-substantive edits.	Information Action
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The text of the proposed emergency and permanent regulations is identical, so Items 4 & 5 were discussed together.

Statute requires any such changes be adopted by March 1, 2023. 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.

Ms. Kelly anticipates the rulemaking process for the 2023-24 Audit Guide to begin in March or April 2023.

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 as a result of amended Education Code section 46120, which 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 (AB181).
- *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

Mr. Montero had comments regarding Section D. Independent Study and Section UU. Independent Study Certification for ADA Loss Mitigation. He believes changes in the trailer bill language between June and August will lead to confusion with auditors and could result in multiple audit appeals being filed.

Mr. Premack shared the same concerns as Mr. Montero. States he has received calls from auditors and CFOs over issues of interpretation.

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

Item 5	Notice of Proposed Rulemaking: Permanent Supplemental Regulations: 2022-23 Audit Guide	Information Action
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**Action:** The Panel members unanimously approved the initiation of the permanent rulemaking process for the 2022-23 Supplemental Audit Guide

Item 6	Next Meeting March 27, 2023	Information Action
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The Public Session recessed at 2:43 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 3:00 p.m.

### **Closed Session Report:**

In closed session, the Panel unanimously approved the Stipulated Agreements of the parties in the matter of Bishop Unified School District, EAAP Case 22-03.

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