

SPECIFIC WAIVER COVER SHEET
CALIFORNIA STATE BOARD OF EDUCATION
MARCH 2003 AGENDA
Item No. W-4

<p>TITLE: Request by Emery Unified School District for a retroactive waiver of <i>Education Code</i> (EC) Section 60119 regarding Annual Public Hearing on the availability of textbooks or instructional materials. The district has an audit finding for the 2000-2001 fiscal year that they failed to “prove” the required posting in three places for 10 days.</p> <p>CDSIS: 11-01-2003</p>	<p><u> X </u> ACTION <u> </u> INFORMATION <u> </u> PUBLIC HEARING <u> </u> CONSENT</p>
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RECOMMENDATION:

The Department recommends: Approval

Summary of Previous State Board of Education Discussion and Action:

The State Board of Education (SBE) has a policy, **Instructional Materials Sufficiency (*Education Code* Section 60119) Waiver of Retroactive Audit Penalty (01-06)**. However, this particular waiver may not be processed for consent, as this is the **second year that this same audit finding was discovered at the Emery Unified School District**. The district had a previous waiver approved for fiscal year 1999-2000 on April 25, 2002 (CDSIS-38-2-2002-WC-2) by the SBE.

Summary of Key Issue(s):

There were three items in the Audit Guide which were found out of compliance in the districts involved in audit findings of noncompliance with *EC* 60119: 1) failure to hold the public hearing, and complete a local board resolution on the sufficiency of textbooks and instructional materials (within the 2000-2001 fiscal year) and/or, 2) failure to give the required ten days notice of the public hearing, and/or 3) failure to post the notice of the public hearing in required three places.

Emery Unified School District was found out of compliance with E.C. Section 60119 during an audit for fiscal year 2000-2001. The auditor cited the district for being **unable to provide the auditor with “proof”** that the required public notices were posted for 10 days and in 3 places.

The district maintains that it did post the notices for the required public hearing for 14 days as is standard practice, and at all 3 of the school sites. Emery Unified has since revised their procedures to **ensure that documentation is readily available to “prove” the noticing**. Unfortunately, this is the second year in a row that the district has had an audit finding for this E.C. Section. In fiscal year 1999-2000, the district could **not provide evidence to the auditor that that had held a public hearing at all**. Due to the disorganization of the district at the time this was true.

However, since **August 6, 2001, the district has been under state administration**, the district has undergone many changes for the better and on May 20, 2002, for the 2001-2002 year the district held a public hearing and passed a resolution, posted properly and for the required ten days. The resolution found that students in Emery do have sufficient texts (See attached)

The department recommends approval of this waiver request, since the district did not act maliciously and is making an effort to comply with all requirements – in fact it would appear the auditor might be overdoing the “proof requirement,” given that it is standard practice. It would serve no possible purpose to penalize this district by making it repay the funds (\$67,310) it received for the Schiff-Bustamante and Instructional Material Funds in 2000-2001.

Authority for the waiver: *EC* Section 41344.3

Effective dates of request: 7/1/00 to 6/30/01 Audit Year

Fiscal Analysis (as appropriate): This waiver if approved will relieve district of **\$67,310** in total penalties.

Background Information:

Waiver request form and supporting documents are attached.