# FINDING OF EMERGENCY

## Readoption of Emergency Regulations

## California Assessment of Student Performance and Progress (CAASPP)

The State Board of Education (SBE) finds that an emergency exists and that the emergency regulations adopted are necessary to avoid serious harm to the public peace, health, safety, or general welfare, especially the welfare of students attending California’s public schools.

### SPECIFIC FACTS DEMONSTRATING THE EXISTENCE OF AN EMERGENCY AND THE NEED FOR IMMEDIATE ACTION

#### Necessity for Readoption for Emergency Regulations

The proposed regulations, Title 5 of the California Code of Regulations (5 CCR), section 855, must be adopted, on an emergency basis, in order for the California Department of Education (CDE) to make statewide summative CAASPP results publicly available on or before October 15 in accordance with Education Code (EC) section60641. The purpose of the proposed amendments is to ensure the timely reporting of assessment results according to required state and federal guidelines and, in so doing, prevent harm to the general welfare of pupils.

A delay in the release of the CAASPP results will precipitate a delay in the ability of local educational agencies (LEAs) to incorporate key data in integral instructional and programmatic decisions for the coming school year. This would cause serious harm to the welfare of students and LEAs by adversely affecting the timely delivery of services to students and the LEAs’ ability to set effective academic goals.

One example of this is reclassification of English Learners (ELs). Reclassification is the process whereby a student is reclassified from EL status to Fluent English Proficient (RFEP) status. Reclassification can take place at any time during the academic year, immediately upon the student meeting all the criteria for RFEP status. Each LEA establishes a locally approved reclassification process in order to determine when students are eligible for RFEP status changes due to meeting each of the four criteria listed in EC section 313(f).

Specifically, criterion 4 of the reclassification criteria requires a comparison of the performance of the pupil in basic skills against an empirically established range of performance in basic skills based upon the performance of English proficient pupils of the same age, which demonstrates whether the pupil is sufficiently proficient in English to participate effectively in a curriculum designed for pupils of the same age whose native language is English. Smarter Balanced Assessment Consortium English language arts scores, LEA benchmarks, or other assessments identified by the LEA that measures progress in English language arts can be used to meet the requirements for Criterion 4.

Timely reclassification allows students (especially in middle and high school) to be placed in core content courses and electives prior to the school year, which would provide more course options for these students’ schedules. Furthermore, moving the release of results earlier in the year will minimize the number of EL students that have their instruction disrupted in the fall when they are removed from their English Language Development courses part way into the term and into mainstream classrooms.

Delayed results also impact the ability of LEAs to engage in the actions needed to create their Local Control and Accountability Plan (LCAP). The LCAP is intended as a comprehensive planning tool to support student outcomes and is an important component of the Local Control Funding Formula. Educators, in consultation with students and families, examine data on student performance to improve academic achievement, increase college/career readiness, and support English learners and students with disabilities. Lack of timely CAASPP results will negatively impact an LEA’s ability to use that data to set academic goals.

Following the passage of Senate Bill (SB) No. 293 in September 2023, the CDE began working with its testing contractor, ETS, to determine the bill’s impact on the CDE’s schedule of deliverables related to results reporting for the CAASPP on the Test Results for California’s Assessment website.

Once it was confirmed that a change to the end date of the state testing window would help ensure that all aggregate results could be publicly reported on or before October 15, the CDE began the rulemaking process. In order to accommodate sufficient time for each level of review, revision, and approval, the development and review timeline for these rulemaking documents began in November so that they could be placed on the SBE’s March meeting agenda. The necessary review timeline could not have been accomplished between the time the bill was chaptered in late September and the posting date for the January SBE meeting, and it was determined that March was the earliest date at which the CDE could bring the proposed changes to the SBE for review and approval. This timeline also confirmed that there would be a need for emergency rulemaking so that the proposed changes would go into effect for the 2023–2024 administration, as requirements set forth in SB 293 mandate that all 2023–2024 CAASPP results be reported on or before October 15, 2024.

Allowing the emergency regulations to expire prior to the adoption of these amendments through the regular rulemaking process when not all of the testing, scoring and reporting of the CAASPP results has yet been completed, will undermine the CDE’s guidance to LEAs and jeopardize the reliability and validity of the results, causing further harm to the general welfare of students. All of the circumstances justifying the initial adoption of the emergency regulations remain unchanged and the emergency justifying the original adoption of the emergency regulations still exists. Therefore, the Finding of Emergency that was submitted to and approved by the Office of Administrative Law (OAL) with the adoption of the CAASPP emergency regulations effective April 2, 2024, is incorporated by reference herein, as though fully set forth in this document.

#### Showing of Substantial Progress

The CDE brought the emergency regulations to the SBE for approval at its March 2024 meeting.

During this meeting, the SBE also approved the rulemaking package for the permanent regulations including commencement of the 45-day public comment period from April 5 through May 21, 2024.

| **Action\*** | **Completion Date or Estimated Completion Date** |
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| SBE approves agenda items for the adoption of the emergency regulations and the commencement of the permanent rulemaking process | March 6, 2024 |
| 5-business day pre-notice of the proposed emergency regulations for readoption | March 13 – 21, 2024 |
| 10-calendar day review by OAL | March 21 – April 2, 2024 |
| 45-day public comment period for permanent regulations | April 5 – May 21, 2024 |
| Emergency regulations effective | April 2 – September 30, 2024 |
| CAASPP permanent regulations public hearing | May 21, 2024 |
| July SBE Meeting* Emergency regulations readoption agendized
* Final Statement of Reasons for permanent regulations presented to SBE
 | July 10 – 11, 2024 |
| 15-day comment period for permanent regulations  | September 16 – October 1, 2024 |
| Submit rulemaking to OAL if a second 15-day comment period is not necessary | August 2024  |
| OAL approval—Regulations effective\*  | September 2024 |

\*In the event that a 15-day comment period is necessary, these dates will change, and the readoption will accommodate the effectiveness of the regulations.

2024-04-21 [California Department of Education]