**CALIFORNIA DEPARTMENT OF EDUCATION**

TONY THURMOND

State Superintendent of Public Instruction

 **CALIFORNIA STATE BOARD OF**

 **EDUCATION**

 LINDA DARLING-HAMMOND

 President

# NOTICE OF PROPOSED RULEMAKING

## AMENDMENT TO CALIFORNIA CODE OF REGULATIONS, TITLE 5, REGARDING

CALIFORNIA ASSESSMENT OF STUDENT PERFORMANCE AND PROGRESS

Notice published April 5, 2024

**NOTICE IS HEREBY GIVEN** that the State Board of Education (SBE) proposes to adopt the regulations described below after considering all comments, objections, or recommendations regarding the proposed action.

The SBE invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations at the scheduled hearing or during the written comment period.

### Public Hearing

The California Department of Education (CDE) staff, on behalf of the SBE, will hold a virtual public hearing at 9:00 A.M. on May 21, 2024.

Any interested person may participate in the public hearing via the videoconference in Zoom by logging in per the following instructions:

* Click the following link or paste the link into the browser to join the videoconference and enter the passcode:

<https://us02web.zoom.us/j/87200092804>

Passcode: 141897

* To connect with audio only and no video, call one of the following telephone numbers and enter the meeting ID and password:

+1 669 900 6833 US (San Jose)

+1 213 338 8477 US (Los Angeles)

Meeting ID: 872 0009 2804

Passcode: 141897

 Persons intending to attend the Zoom meeting may check their computers by:

* Clicking on the test link: <https://zoom.us/test>.
* For any issues regarding connecting with Zoom, go to <https://support.zoom.us/hc/en-us> for assistance.

At the hearing, any person may present statements or arguments, orally or in writing, relevant to the proposed action described in the Informative Digest. The SBE requests, but does not require, that persons who make oral comments at the virtual public hearing also submit a written summary of their statements. No oral statements will be accepted subsequent to this virtual public hearing.

### REASONABLE ACCOMMODATION FOR ANY INDIVIDUAL WITH A DISABILITY

Pursuant to the *Rehabilitation Act of 1973,* the *Americans with Disabilities Act of 1990,* and the *Unruh Civil Rights Act,* any individual with a disability who requires reasonable accommodation to attend or participate in a public hearing on proposed regulations, may request assistance by contacting Devin Triplett, Assessment Development and Administration Division, 1430 N Street, Sacramento, CA, 95814 or by telephone at

916-319-0803. It is recommended that assistance be requested at least two weeks prior to the hearing.

Pursuant to Government Code (Gov. Code) section 11346.6(a)(3) and (b), because some of these regulations pertain to special education, the following provisions also apply:

Upon request from a person with a visual disability or other disability for which effective communication is required under state or federal law, the CDE shall provide that person a narrative description of the additions to, and deletions from, the regulations. The description shall identify each addition to or deletion from the regulations by reference to the subdivision, paragraph, subparagraph, clause, or subclause within the proposed regulation containing the addition or deletion. The description shall provide the express language proposed to be added to or deleted from the regulations and any portion of the surrounding language necessary to understand the change in a manner that allows for accurate translation by reading software used by the visually impaired.

The CDE shall provide the information described above within 10 business days, unless the CDE determines that compliance with this requirement would be impractical and notifies the requester of the date on which the information will be provided.

Notwithstanding any other law, if information is provided to a requester as described above, the CDE shall provide that requester at least 45 days from the date upon which the information was provided to the requester to submit a public comment regarding the proposed regulation. The CDE shall not take final action to adopt the regulation until the requester has submitted a public comment or the extended 45-day comment period expires, whichever occurs first.

### WRITTEN COMMENT PERIOD

Any interested person, or their authorized representative, may submit written comments relevant to the proposed regulatory action to:

Lorie Adame, Regulations Coordinator

Administrative Support and Regulations Adoption Unit

California Department of Education

1430 N Street, Suite 5319

Sacramento, CA 95814

Comments may also be submitted by facsimile (FAX) at 916-322-2549 or by email to regcomments@cde.ca.gov.

Comments must be received by the Regulations Coordinator prior to or on May 21, 2024. All written comments received by CDE staff during the public comment period are subject to disclosure under the Public Records Act.

### AUTHORITY AND REFERENCE

Authority: section 33031, 60605 and 60640, Education Code.

References: sections 60605, 60640, 60641 and 60642.5, Education Code.

### INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Assembly Bill No. 484 (Stats. 2013, chapter 489; hereafter AB 484) authorized a new statewide testing program, the California Assessment of Student Performance and Progress (CAASPP) System. Provisions of AB 484 took effect in January 2014. Pursuant to Education Code (EC) section 60640, the CDE has updated the CAASPP System since 2014 to include the following assessments: the California Science Test (CAST), aligned with the California Next Generation Science Standards (CA NGSS); the California Alternate Assessments (CAAs) for English Language Arts (ELA), Mathematics, and Science, aligned with the Core Content Connectors; and the California Spanish Assessment (CSA), aligned with the Common Core State Standards en Español. CAASPP test results are used to improve teaching and learning in schools and local educational agencies (LEAs) in California. In addition, the CAASPP tests are developed, administered, and reported in accordance with federal requirements.

As required by EC section 60640(q), California Code of Regulations title 5 (5 CCR)sections 850 through 864 were amended to conform to the State’s testing regulations for the CAASPP System for the first operational administration of the CAASPP, which occurred in the 2014–2015 school year. Subsequent amendments were adopted on an emergency basis and through the regular rulemaking process for the second operational year of the CAASPP in 2015–2016, the third operational year of the CAASPP in 2016–2017, the fifth operational year of the CAASPP in 2018–2019, and in the seventh operational year of the CAASPP in 2021–2022.

All CAASPP assessments are administered within a CAASPP LEA testing window designated by each LEA within the larger CAASPP state testing window. Per 5CCR section 855, the LEA testing window may begin on the day in which 66 percent of the school's or track's annual instructional days have been completed, but no earlier than the start of the state testing window, and testing may continue up to and including the last day of instruction for the regular school's or track's annual calendar, but no later than the end of the state testing window.

The state testing window for all CAASPP assessments—with the exception of the CAA for Science—begins no earlier than the second Tuesday in January of each year. The state testing window for the CAA for Science begins on a date in September as determined by the CDE so that each of the CAA for Science performance tasks can be embedded within the instruction relevant to each performance task. Currently, per 5CCRsection 855, the state testing window for all CAASPP assessments ends each year on July 15, or on the weekday following July 15 if July 15 was not a weekday.

Following the end of the CAASPP state testing window, the CDE’s testing contractor, ETS, moves all tests that have not been completed to the post-administration processes of scoring and reporting. Prior to the public release of all aggregate results to the Test Results for California’s Assessments website at [https://caaspp-elpac.ets.org](https://caaspp-elpac.ets.org/), ETS and the CDE will conduct a series of quality control processes to ensure that all individual and aggregate data reported is correct.

In September 2023, Governor Newsom signed Senate Bill (SB) No. 293, which amended EC section 60641 to require the CDE to make statewide summative CAASPP results publicly available on or before October 15 each year and for the SBE’s calendar for delivering results to the CDE to be consistent with that deadline. In order for the CDE and ETS to have sufficient time to complete all necessary post-administration processes prior to the public release of results on or before October 15, the CDE finds it necessary that 5 CCR section 855 be amended to indicate that the CAASPP state testing window close no later than June 30 each year. The CDE and ETS have reviewed data from prior years’ test administration and have confirmed that only a few LEAs have selected testing windows that end in July and no tests have been administered in the time between June 30 and July 15 in prior years, so this change will have little to no effect on LEAs’ administration of assessments.

The proposed amendments to the CAASPP regulations for 2023–2024 were needed on an emergency basis, so emergency regulations were implemented to ensure that 2023–2024 CAASPP results are publicly reported on or before October 15, in accordance with the recent amendments to EC section 60641. These proposed amendments will make permanent the earlier changes made in the emergency regulations to ensure that future CAASPP results will be publicly reported on or before October 15, in accordance with the recent amendments to EC section 60641.

#### Policy Statement Overview

The proposed amendments for CAASPP regulations for 2023–2024 are designed to ensure that all CAASPP results are publicly reported on or before October 15 each year, in accordance with the recent amendments to EC section 60641. Additionally, the proposed amendments support increased local control, and strengthen an LEA’s ability to access achievement results in a timely manner so that achievement data can be used for the purposes for guiding instruction, gauging students’ readiness for career and college, and for meeting state and federal accountability requirements.

#### Anticipated Benefits of the Proposed Regulation

The anticipated benefit of enacting the proposed amendments is that the CDE and ETS will have sufficient time to effectively, consistently, and reliably complete all post-administration processes—including annual scoring, reporting, and quality control processes—prior to the public release of aggregate CAASPP results on or before October 15, as required by EC section 60641. Additionally, the proposed amendments support increased local control, and strengthen an LEA’s ability to access achievement results in a timely manner so that achievement data can be used for the purposes for guiding instruction, gauging students’ readiness for career and college, and for meeting state and federal accountability requirements.

#### Evaluation of Inconsistency/Incompatibility with Existing State Regulations

An evaluation of the proposed regulations has determined they are not inconsistent/incompatible with existing regulations, pursuant to Government Code section 11346.5(a)(3)(D). After conducting a review for any regulations that would relate to or affect this area of law, the SBE has concluded that these are the only regulations that concern the CAASPP regulations.

### DISCLOSURES REGARDING THE PROPOSED ACTION/ FISCAL IMPACT

The SBE has made the following initial determinations:

**Other statutory requirements:** There are no other matters as are prescribed by statute applicable to the specific state agency or to any specific regulations or class of regulations.

**Mandate on local agencies and school districts**: No

**Costs to any local agencies or school districts for which reimbursement would be required pursuant to Part 7 (commencing with section 17500) of division 4 of the Government Code**: None

**Cost or savings to any state agency:** None

**Other non-discretionary costs or savings imposed on local agencies, including local educational agencies:** None

**Costs or savings in federal funding to the state:** None

**Effect on housing costs:** None

**Significant, statewide adverse economic impact directly affecting business including the ability of California businesses to compete with businesses in other states:** None because the amendments only concern the CDE, ETS, and LEAs, and will not cause adverse economic impact to California businesses.

**Cost impacts on a representative private person or businesses:** The SBE is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

**Report required:** The proposed regulations do not require a report to be made.

**Effect on small businesses:** The proposed regulations would not have an effect on any small business because theamendments are made to aspects of existing regulations that will not impose new or additional work on the LEAs or impact small businesses in any way.

### results of the Economic Impact Analysis/ASSESSMENT

**Benefits of the Regulations to the Health and Welfare of California Residents, Worker Safety, and the State’s Environment – Gov. Code section 11346.5(a)(10):**

The SBE concludes that it is unlikely that these proposed regulations will: 1) create or eliminate jobs within California; 2) create new businesses or eliminate existing businesses within California; or 3) affect the expansion of businesses currently doing business within California.

Benefits of the Proposed Action: The proposed regulations will not benefit the health of California residents, worker safety and the State’s environment, but it will benefit the welfare of California students by ensuring the CDE and ETS will have sufficient time to effectively, consistently, and reliably complete all post-administration processes before the required public release on or before October 15 pursuant to EC section 60641. Moreover, the proposed regulations will support increased local control, and strengthen an LEA’s ability to access achievement results in a timely manner so that achievement data can be used to guide instruction, gauge California students’ readiness for career and college, and to meet state and federal accountability requirements.

### CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5(a)(13), the SBE must determine that no reasonable alternative it considered or that has otherwise been identified and brought to the attention of the SBE, 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.

The SBE invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations during the written comment period.

### CONTACT PERSONS

Inquiries concerning the content of these proposed regulations should be directed to:

Devin Triplett, Education Programs Consultant

Assessment Development and Administration Division

California Department of Education

1430 N Street, Suite 4409

Sacramento, CA 95814

Telephone: 916-319-0803

Email: DTriplett@cde.ca.gov

Inquiries concerning the regulatory process may be directed to Lorie Adame, Regulations Coordinator, or the backup contact person, Gerri White, Analyst. The Regulations Coordinator and the Analyst may be reached by email at regulations@cde.ca.gov or by telephone at 916-319-0860.

### AVAILABILITY OF INITIAL STATEMENT OF REASONS, TEXT OF PROPOSED REGULATIONS AND INFORMATION

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 (ISOR), the agenda and a recording of the SBE meeting where the SBE approved commencement of this rulemaking activity, and Fiscal and Economic Impact Statement (STD. 399). These documents upon which the proposed action is based may be obtained upon request from the Regulations Coordinator. In addition, this Notice, the text of the proposed regulations and the ISOR may also be viewed on CDE’s website at <http://www.cde.ca.gov/re/lr/rr/>.

### AVAILABILITY OF CHANGED OR MODIFIED TEXT

Following the public hearing and considering all timely and relevant comments received, the SBE may adopt the proposed regulations substantially as described in this Notice

or may modify the proposed regulations if the modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified regulation will be available to the public for at least 15 days prior to its adoption from the Regulations Coordinator and will be mailed to those persons who submit written comments related to this regulation, or who provide oral testimony at the public hearing, or who have requested notification of any changes to the proposed regulations. The SBE will accept written comments on the modified regulations for 15 days after the date on which they are made available.

### AVAILABILITY AND LOCATION OF THE FINAL STATEMENT OF REASONS AND RULEMAKING FILE

You may obtain a copy of the Final Statement of Reasons, once it has been finalized, by making a written request to the Regulations Coordinator.

All the information upon which the proposed regulations are based is contained in the rulemaking file which is available for public inspection by contacting the Regulations Coordinator.

### AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulations with modifications highlighted, as well as the Final Statement of Reasons, when completed, and modified text, if any, can be accessed via CDE’s website at <http://www.cde.ca.gov/re/lr/rr/>.

11-29-2023 [California Department of Education]