

California Department of Education

Executive Office

SBE-003 (REV. 11/2017)

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# California State Board of EducationMarch 2024 AgendaItem #06

## Subject

California Assessment of Student Performance and Progress Regulations—Approve the Finding of Emergency and Proposed Emergency Regulations for Proposed Amendments to the *California Code of Regulations*, Title 5, Section 855.

## Type of Action

Action, Information, Consent

## Summary of the Issue(s)

The California Department of Education (CDE) is submitting proposed amended regulations to adjust the state testing window for the California Assessment of Student Performance and Progress (CAASPP) so that all tests can be scored and reported by October 15 each year, as now required by California *Education Code* (*EC*) Section 60641.

## Recommendation

The CDE recommends the State Board of Education (SBE) take the following actions:

* Approve the Finding of Emergency
* Adopt the proposed Emergency Regulations
* Direct the CDE to circulate the required Notice of Proposed Emergency Action, and then submit the Emergency Regulations to the Office of Administrative Law (OAL) for approval
* Authorize the CDE to take any necessary action to respond to any direction or concern expressed by the OAL during its review of the Finding of Emergency and proposed emergency regulations

## Brief History of Key Issues

The CAASPP system includes the following assessments: the Smarter Balanced Summative Assessments for English language arts/literacy (ELA) and mathematics; the California Science Test (CAST); the California Alternate Assessments (CAAs) for ELA, Mathematics, and Science; as well as the California Spanish Assessment (CSA). CAASPP results are one piece of data used by schools and local educational agencies (LEAs) to improve teaching and learning in California. In addition, each of the CAASPP assessments are developed, administered, and reported in accordance with state and federal requirements.

All CAASPP assessments are administered within a CAASPP LEA testing window designated by each LEA within the larger CAASPP state testing window. Per the California Code of Regulations, Title 5 (5 *CCR*), 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 5*CCR* Section 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 conduct a series of quality control processes to ensure that all individual and aggregate data reported is correct prior to release.

In September 2023, Governor Newsom signed Senate Bill 293, which amends *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 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 reviewed data from prior years’ test administration and 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.

Therefore, the CDE proposes the following amendments to 5 *CCR* Section 855 to meet the reporting requirements established in *EC* Section 60641:

* Proposed amendment to subsection 855(a) of “2023–24” and deletion of
“2015–16” to make clear that the available testing windows described in the subsections to follow are implemented beginning with the 2023–24 administration.
* Proposed amendment to subsections 855(a)(1) and 855(a)(2) of “June 30” and deletion of “July 15” in four instances to make clear that the available testing windows for all CAASPP assessments shall conclude no later than June 30 of each year.
* Proposed amendment to subsections 855(a)(1) and 855(a)(2) of “or the weekday preceding the 30th” and deletion of “or the weekday following the 15th” to make clear that the available testing windows for all CAASPP assessments shall conclude on the weekday preceding June 30 if June 30 is not on a weekday.

## Summary of Previous State Board of Education Discussion and Action

In July 2022, the SBE approved commencement of a 15-day public comment period for additional proposed revisions to the CAASPP and English Language Proficiency Assessments for California (ELPAC) regulations to provide additional clarity to the testing field (<https://www.cde.ca.gov/be/ag/ag/yr22/documents/jul22item06.docx>).

In January 2022, the SBE approved the commencement of the rulemaking process to amend the CAASPP and ELPAC regulations (<https://www.cde.ca.gov/be/ag/ag/yr22/documents/jan22item06.docx>).

In March 2021, the CDE updated the SBE on LEAs challenges in administrating the summative assessments within the current testing windows for the CAASPP and the ELPAC outlined in 5 *CCR,* sections 855 and 11518, respectively due to issues related to the COVID-19 pandemic. The CDE sought approval from the SBE to allow the CDE to put into place emergency regulations that would extend these testing windows and bring some relief to LEAs (<https://www.cde.ca.gov/be/ag/ag/yr21/documents/mar21item05.docx>) (<https://www.cde.ca.gov/be/ag/ag/yr21/mar21item05a4.asp>).

In May 2019, the SBE approved the commencement of a 15-day public comment period for proposed amendments and the readoption of the Finding of Emergency and proposed emergency regulations for the CAASPP (<https://www.cde.ca.gov/be/ag/ag/yr19/documents/may19item05.docx>) (<https://www.cde.ca.gov/be/ag/ag/yr19/documents/may19item06.docx>).

In January 2019, the SBE approved the Finding of Emergency and proposed emergency regulations and the commencement of rulemaking for amendments to the CAASPP regulations (<https://www.cde.ca.gov/be/ag/ag/yr19/documents/jan19item15.docx>) (<https://www.cde.ca.gov/be/ag/ag/yr19/documents/jan19item16.docx>).

In March 2016, the SBE approved changes to the proposed permanent regulations and directed that the amended regulations be circulated for a 15-day public comment period, March 10–25, 2016, and assuming no relevant comments to the proposed changes were received, directed the CDE to deem the proposed permanent regulations adopted. (No relevant comments were received, and the revised permanent regulations were approved by the OAL on May 16, 2016.) (<http://www.cde.ca.gov/be/ag/ag/yr16/documents/mar16item04.doc>).

In November 2015, the SBE adopted the proposed amendments to the CAASPP regulations as emergency regulations. The emergency regulations were approved by the OAL and became effective on November 23, 2015. In addition, the SBE approved the commencement of the regular rulemaking process for permanent amendments to the CAASPP regulations (<http://www.cde.ca.gov/be/ag/ag/yr15/documents/nov15item05-revised.doc>) (<http://www.cde.ca.gov/be/ag/ag/yr15/documents/nov15item06-revised.doc>).

In July 2014, the SBE readopted the emergency regulations for CAASPP. The emergency readoption rulemaking file was submitted to the OAL on July 16, 2014. The readoption of the emergency regulations was approved by the OAL on July 23, 2014. In addition, the SBE adopted the permanent rulemaking file at its July 2014 meeting. The rulemaking file was submitted to the OAL on July 16, 2014, and permanent regulations for CAASPP were approved and became effective on August 27, 2014 (<http://www.cde.ca.gov/be/ag/ag/yr14/documents/jul14item08.doc>) (<http://www.cde.ca.gov/be/ag/ag/yr14/documents/jul14item09.doc>).

In January 2014, the SBE, for the first time, adopted proposed emergency regulations for CAASPP. The emergency regulations were approved by the OAL and became effective on February 3, 2014. In addition, the SBE approved the commencement of the regular rulemaking process for the permanent regulations (<http://www.cde.ca.gov/be/ag/ag/yr14/documents/jan14item05.doc>) (<http://www.cde.ca.gov/be/ag/ag/yr14/documents/jan14item06.doc>).

## Fiscal Analysis

An Economic and Fiscal Impact Statement is provided as Attachment 4.

## Attachment(s)

* Attachment 1: Finding of Emergency (5 pages)
* Attachment 2: Emergency Regulations (2 pages)
* Attachment 3: Notice of Proposed Emergency Action (2 pages)
* Attachment 4: Economic and Fiscal Impact Statement (STD. 399) (5 pages)

**FINDING OF EMERGENCY**

**California Assessment of Student Performance and Progress**

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, particularly the general welfare of students attending California’s public schools.

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

**Overview**

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 California Assessment of Student Performance and Progress (CAASPP) results publicly available on or before October 15 in accordance with Education Code (EC) section60641.

**Background**

Assembly Bill No. 484 (Stats. 2013, ch. 489; hereafter AB 484) authorized California’s current statewide testing program, the CAASPP System. Provisions of AB 484 took effect in January 2014. Pursuant to 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), 5 CCRsections 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. 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 the 5CCR section 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](https://caaspp-elpac.ets.org/caaspp/) website at <https://caaspp-elpac.ets.org>, ETS and the CDE conduct a series of quality control processes to ensure that all aggregate data reported is correct.

**Specific Basis for the Finding of Emergency**

In September 2023, Governor Newsom signed Senate Bill (SB) No. 293, which requires the CDE to make statewide summative CAASPP results publicly available on or before October 15 each year and requires the State Board of Education’s (SBE) calendar for delivering results to the CDE to be consistent with that deadline. In order to allow sufficient time for the CDE and ETS to complete all required processes prior to the release of results, 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 regulations that govern statewide testing must be as clear, efficient, and effective as possible to ensure the federally required goal of producing valid and reliable statewide test results and the timely reporting of those results. The proposed regulatory amendments are necessary to adopt on an emergency basis to ensure that California continues to produce valid and reliable statewide test results on a timeline in accordance with state law.

**These Issues Could Not Be Addressed Through Nonemergency Regulations**

Currently, pursuant to 5 CCR section 855, the 2023–2024 state testing window for CAASPP is scheduled to end on July 15, 2024. This does not provide enough time for the CDE and ETS to complete all annual scoring, reporting, and quality control processes needed to publicly report 2023–2024 results on or before October 15, 2024, as now required by EC section 60641. Thus, 5 CCR section 855 is proposed to be amended to close the testing window on the weekday preceding June 30, 2024, to allow for the completion of all the necessary processes needed to produce valid and reliable statewide test results by the October 15, 2024, deadline now imposed by EC section 60641.

The CDE is also proposing nonemergency rulemaking for permanent amendments to 5 CCR section 855 that makes these same changes. Since the CDE does not expect the nonemergency, permanent regulations to go into effect until after June 30, 2024 due to compliance with the rulemaking requirements pursuant to the Administrative Procedure Act (Gov. Code, §11340 et seq.), the CDE finds that a need for immediate action is necessary for these proposed regulations to be adopted as emergency regulations, so the CAASPP results for the 2023-24 testing window can be publicly reported by October 15, 2024, as now required by EC section 60641.

**NON-DUPLICATION**

Government Code section 11349 prohibits unnecessary duplication of state or federal statutes in regulation. In this case, duplication of the language of certain state statutes in the proposed emergency regulations is necessary in order to provide additional specific detail not included in the applicable state statutes.

**AUTHORITY AND REFERENCE**

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

Reference: Sections 60605, 60640, 60641 and 60642.5, Education Code.

**INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW**

As stated above, EC section 60641 was amended by SB 293 to require the CDE to make statewide summative CAASPP results publicly available on or before October 15 each year, which impacts the end date for the CAASPP testing window to allow the CDE and ETS to have sufficient time to complete all necessary post-administration processes. Since section 855 of 5 CCR provides for the timing of the testing window for administration of the CAASPP tests, the SBE proposes amendments to 5 CCR section 855 to meet the reporting requirements established in EC section 60641 by SB 293.

To meet the reporting requirements established in EC section 60641, the SBE is proposing the following amendments to the regulations:

* Proposed amendment to subsection 855(a) of “2023–2024” and deletion of “2015–16” to make clear that the available testing windows described in the subsections to follow are implemented beginning with the 2023–2024 administration.
* Proposed amendment to subsections 855(a)(1) and 855(a)(2) of “June 30” and deletion of “July 15” to make clear that the available testing windows for all CAASPP assessments shall conclude no later than June 30 of each year.
* Proposed amendment to subsections 855(a)(1) and 855(a)(2) of “or the weekday preceding the 30th” and deletion of “or the weekday following the 15th” to make clear that the available testing windows for all CAASPP assessments shall conclude on the weekday preceding June 30 if June 30 is not on a weekday.

The proposed amendments for CAASPP regulations for 2023–2024 are needed on an emergency basis 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.

**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.

**Determination 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.

**specific benefits anticipated by the proposed regulations**

The 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.

**TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORTS, OR DOCUMENTS RELIED UPON**

The SBE did not rely upon any technical, theoretical, empirical studies, reports, or other documents in drafting these regulations.

**MANDATE ON LOCAL AGENCIES OR SCHOOL DISTRICTS**

The proposed regulations do not impose a mandate on local agencies or school districts because amendments are made to aspects of existing regulations that will not impose new or additional work on the LEAs.

**FISCAL IMPACT ESTIMATION**

These emergency regulations will not result in any additional costs or savings to state agencies, or federal funding to the State. These emergency regulations will not result in any additional cost to any local agency or school district that is required to be reimbursed under Government Code section 17500 et seq. The emergency regulations will not result in any additional non-discretionary costs or savings upon local agencies.

11-30-2023 [California Department of Education]

* The State Board of Education has illustrated changes to the original text in the

following manner: text originally proposed to be added is underlined; text proposed to be deleted is displayed in ~~strikeout~~.

**Title 5. EDUCATION
Division 1. California Department of Education**

**Chapter 2. Pupils
Subchapter 3.75. California Assessment of Student Performance and Progress (CAASPP)**

**Article 2. Achievement Tests and Any Primary Language Assessment**

**§ 855. Available Testing Window and Selected Testing Period(s).**

 (a) Beginning in the ~~2015-16~~2023–2024 school year, the CAASPP operational achievement tests pursuant to Education Code section 60640(b) shall be administered to each pupil at some time during the following available testing windows:

 (1) Unless otherwise stated in these regulations, the available testing window shall 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 second Tuesday in January of each year, and testing may continue up to and including the last day of instruction for the regular school's or track's annual calendar, but in no case later than June 30 ~~July 15 or the next weekday following the15th~~  or the weekday preceding the 30th if the 30th ~~15th~~ is not a weekday.

 (2) The CAA for science shall be administered annually beginning on a date in September as determined by the CDE through the last day of instruction for the regular school's or track's annual calendar, but in no case later than June 30 ~~July 15 or the next weekday following the 15th~~  or the weekday preceding the 30th if the 30th ~~15th~~ is not a weekday.

 (b) An LEA may designate one selected testing period for each school or track within the available testing window set forth in subdivision (a) above, subject to the following conditions:

 (1) If a school has multiple tracks, a selected testing period may be designated for each track. (i.e., a year-round school with three tracks may select three different selected testing periods);

 (2) An LEA shall not exceed 6 selected testing periods within the available testing window;

 (3) A selected testing period shall be no fewer than 25 consecutive instructional days; and

 (4) An LEA may extend a selected testing period up to an additional 10 consecutive instructional days if still within the available testing window set forth in subdivision (a) above.

 (c) If an LEA does not designate a selected testing period for a school or track, then the available testing window, pursuant to subdivisions (a)(1) and (2) above, shall be the selected testing period for that school or track.

NOTE: Authority cited: Sections 33031, 60605 and 60640, Education Code. Reference: Sections 60605, 60640, 60641 and 60642.5, Education Code.

09-15-2023 [California Department of Education]

**CALIFORNIA DEPARTMENT OF EDUCATION**

TONY THURMOND

State Superintendent of Public Instruction

 **CALIFORNIA STATE BOARD OF**

 **EDUCATION**

 LINDA DARLING-HAMMOND

 President

**NOTICE OF PROPOSED EMERGENCY ACTION**

**CALIFORNIA ASSESSMENT OF STUDENT PERFORMANCE AND PROGRESS (CAASPP)**

Adoption of Emergency Regulations, Title 5, Section 855

Pursuant to the requirements of Government Code section 11346.1(a)(1), the State Board of Education (SBE) is providing notice of proposed emergency action with regards to the above-entitled emergency regulation.

**SUBMISSION OF COMMENTS**

Government Code section 11346.1(a)(2) requires that, at least five working days prior to submission of the proposed emergency action to the Office of Administrative Law (OAL), the adopting agency provide a Notice of the Proposed Emergency Action to every person who has filed a request for notice of regulatory action with the agency. After submission of the proposed emergency to the OAL, the OAL shall allow interested persons five calendar days to submit comments on the proposed emergency regulations as set forth in Government Code section 11349.6.

Any interested person may present statements, arguments, or contentions, in writing, submitted via U.S. mail, email or fax, relevant to the proposed emergency regulatory action. Written comments must be received at the OAL and the California Department of Education within five days after the SBE submits the emergency regulations to the OAL for review.

Please reference submitted comments as regarding “California Assessment of Student Performance and Progress” addressed to:

 Reference Attorney

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For the status of the action submitted by the SBE to the OAL for review, and the end of the five-day written comment period, please consult the web site of the OAL at [www.oal.ca.gov](http://www.oal.ca.gov/) under the heading “Emergency Regulations.”

11-14-2023 [California Department of Education]