

California Department of Education

Executive Office

SBE-003 (REV. 11/2017)

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# California State Board of EducationJuly 2023 AgendaItem #05

## Subject

California High School Proficiency Examination: Approve Commencement of a 45-Day Public Comment Period for Proposed Amendments to California Code of Regulations, Title 5, Section 11520.

## Type of Action

Action, Information, Consent

## Summary of the Issue(s)

The *California Code of Regulations*, Title 5, (5 *CCR*) Section 11520 must be updated and revised to include definitions that clarify a student’s eligibility to take the proficiency examination and the administration costs associated with the fee.

## Recommendation

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

* Approve the Notice of Proposed Rulemaking (Notice)
* Approve the Initial Statement of Reasons (ISOR)
* Approve the proposed regulations
* Direct the CDE to commence with the rulemaking process
* Authorize the CDE to take any necessary action to respond to any direction or concerns expressed by the Office of Administrative Law during its review of the Notice, ISOR, and proposed regulations

## Brief History of Key Issues

California *Education Code* (*EC*) Section 48412 provides for the administration of an examination to verify an eligible test taker’s proficiency in basic skills taught in high school. The law requires the SBE to award a certificate of proficiency to persons who demonstrate that proficiency. The law further requires the CDE to develop standards of competency in basic skills taught in public high schools and to provide for the administration of examinations prepared by, or with the approval of, the CDE to verify competency.

New definitions are needed to align 5 *CCR* Section 11520 with the eligibility criteria in *EC* Section 48412(a)(1). This is to clarify that payment is required at the time of the examination registration or when requesting services, and administration fees are comprised of different costs.

The objective of the proposed definition for “eligibility” is to confirm how the student shall demonstrate enrollment as required in *EC* Section 48412(a)(1).

In *EC* Section 48412(c)(1), “fee” is defined to be “an amount sufficient to recover the costs” to administer the test. This amount is a combination of costs, which includes vendor, testing center, and state administration costs, as well as costs for additional score reports or certificates if needed.

Thus, 5 *CCR* Section 11520 must be updated to ensure that the public understands what is necessary to verify eligibility to take the examination and that the administration fee (cost of the examination) is made up of multiple fees.

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

In October 2022, the CDE notified the SBE that on July 1, 2023, the California High School Proficiency Exam will transition to the use of the high school equivalency (HSE) subtests for language arts and mathematics to demonstrate their basic proficiency (<https://www.cde.ca.gov/be/pn/im/documents/oct22memoadad02.docx>).

In June 2019, the CDE notified the SBE of the status of the three HSE testing programs (<https://www.cde.ca.gov/be/pn/im/documents/memo-pptb-adad-jun19item01.docx>).

In March 2014, the SBE authorized the use of the official tests for the HSE Exam (<https://www.cde.ca.gov/be/ag/ag/yr14/documents/mar14item12.doc>).

## Fiscal Analysis

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

## Attachment(s)

* Attachment 1: Notice of Proposed Rulemaking (7 pages)
* Attachment 2: Initial Statement of Reasons (4 pages)
* Attachment 3: Proposed Regulations (1 page)
* Attachment 4: Economic and Fiscal Impact Statement (STD. 399) (5 pages)

**CA DEPARTMENT OF EDUCATION**

**TONY THURMOND**

State Superintendent of Public Instruction

**CA STATE BOARD OF EDUCATION**

**LINDA DARLING-HAMMOND**

President

**NOTICE OF PROPOSED RULEMAKING**

AMENDMENTS TO CALIFORNIA CODE OF REGULATIONS, TITLE 5, REGARDING CALIFORNIA HIGH SCHOOL PROFICIENCY EXAMINATION (CHSPE)

Notice published August 11, 2023

**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***

California Department of Education (CDE) staff, on behalf of the SBE, will hold a virtual public hearing at 9:00 a.m. on September 26, 2023.

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

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

<https://us02web.zoom.us/j/84505129532>

Passcode: 137735

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

669-900-6833

213-338-8477

Meeting ID: 845 0512 9532

Passcode: 137735

For persons intending to attend the Zoom meeting, those persons 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 public hearing also submit a written summary of their statements. No oral statements will be accepted subsequent to this 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 Gita Raman, Assessment Development and Administration Division, 1430 N Street, Room 4409, Sacramento, CA, 95814; telephone, 916-319-0500. It is recommended that assistance be requested at least two weeks prior to the hearing.

Pursuant to Government 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 his or her 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, Room 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 September 26, 2023. 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: Sections 48410 and 48412, Education Code

References: Sections 48410 and 48412, Education Code

***INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW***

Education Code (EC) section 48412 provides for a program of assessment that allows a student 16 years of age or older, who is enrolled in the second semester of their sophomore year, to “have their proficiency in basic skills taught in public high schools verified according to criteria established by the department.” EC section 48412 further states that the CDE shall develop the standards of competency in basic skills and shall administer the tests annually. Upon successfully passing the examination, the student shall receive a certificate of proficiency, awarded by the SBE, that is equivalent to a California high school diploma.

***Policy Statement Overview***

New definitions are needed to align title 5 of the California Code of Regulations (5 CCR) section 11520 with the eligibility criteria in EC section 48412(a)(1) and to clarify that payment is required at the time of the examination registration or when requesting services and that administration fees are comprised of different costs.

The objective for the proposed definition for “eligibility” is to clarify that the test will be administered to students who are at least in their second semester of their sophomore year of high school.

In EC section 48412(c)(1), “fee” is defined to be “an amount sufficient to recover the costs” to administer the test. This amount is a combination of costs, which includes vendor costs, testing center costs, and state administration costs, as well as the costs for additional score reports or certificates, if needed.

***Anticipated Benefits of the Proposed Regulation***

The benefits of using these definitions are to provide the public consistency and clarity regarding the criteria for eligibility to take a test of proficiency, and what costs are included in the fee charged to the test taker to register for an examination.

***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 CHSPE regulations.

***DISCLOSURES REGARDING THE PROPOSED ACTION/ FISCAL IMPACT***

The SBE has made the following initial determinations:

*Mandated by federal law or regulations*: No

*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*: No

*Cost or savings to any state agency*: No

*Other non-discretionary costs or savings imposed on local agencies, including local educational agencies*: No

*Costs or savings in federal funding to the state*: N/A

*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*: No

*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 they are designed to address students’ eligibility for the high school proficiency exam and will not expand or eliminate small businesses currently doing business within the State of California.

***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 benefit the educational options of California’s residents and will not adversely affect the welfare of California residents, worker safety or the State’s environment.

***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:

Gita Raman, Education Programs Consultant

Assessment Development and Administration Division

California Department of Education

1430 N Street, Room 4409

Sacramento, CA 95814

Telephone: 916-319-0500

Email: graman@cde.ca.gov

Inquiries concerning the regulatory process may be directed to Lorie Adame, Regulations Coordinator, or the backup contact person, Gerri White. The Regulations Coordinator and the backup contact person 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 Proposed Rulemaking and Regulations web page at [*http://www.cde.ca.gov/re/lr/rr/*](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 Proposed Rulemaking and Regulations web page at [*http://www.cde.ca.gov/re/lr/rr/*](http://www.cde.ca.gov/re/lr/rr/).

05-01-2023 [California Department of Education]

**INITIAL STATEMENT OF REASONS**

California High School Proficiency Examination (CHSPE)

**INTRODUCTION**

Education Code (EC) section 48412 provides for the administration of an examination to verify an eligible test taker’s proficiency in basic skills taught in high school. The law requires the State Board of Education (SBE) to award a certificate of proficiency to persons who demonstrate that proficiency. The law further requires the CDE to develop standards of competency in basic skills taught in public high schools and to provide for the administration of examinations prepared by, or with the approval of, the CDE to verify competency.

**PROBLEM AGENCY INTENDS TO ADDRESS**

New definitions are needed to align title 5 of the California Code of Regulations (5 CCR) section 11520 with the eligibility criteria in EC section 48412(a)(1) and to clarify that payment is required at the time of the examination registration or when requesting services and that administration fees are comprised of different costs.

The objective for the proposed definition for “eligibility” is to confirm how the student shall demonstrate enrollment as required in EC section 48412(a)(1).

In EC section 48412(c)(1), “fee” is defined to be “an amount sufficient to recover the costs” to administer the test. This sufficient amount is the combination of costs, e.g., vendor costs, testing center costs, and state administration costs, and also includes costs for requesting services, such as additional score reports or certificates.

Thus, 5 CCR section 11520 must be updated to ensure that the public understands what is necessary to verify eligibility to take the examination and that the administration fee (cost of the examination) is made up of multiple fees.

**BENEFITS ANTICIPATED FROM REGULATORY ACTION**

The benefits of using these definitions are to provide the public consistency and clarity of what can be used to determine eligibility to take a test of proficiency and what costs are included in the fee charged for the test taker to register for an examination. Proposed section 11520(c) is being added to state that a student must provide proof of enrollment in at least their second semester of sophomore year to be eligible to take one of the proficiency exams. Proposed section 11520(d) is being added to show that the test taker will have to pay a fee to take the exam, as well as when requesting additional documentation such as score reports or certificates.

**SPECIFIC PURPOSE OF EACH SECTION – GOV. CODE SECTION 11346.2(b)(1)**

The specific purpose of each adoption or amendment, and the rationale for the determination that each adoption or amendment is reasonably necessary to carry out the purpose of which it is proposed, together with a description of the public problem, administrative requirement, or other condition or circumstance that each adoption or amendment is intended to address, is as follows:

General changes were made to the proposed regulations to include grammatical edits, and renumbering and/or re-lettering to reflect deletions or additions.

**SECTION 11520**

**Proposed Section 11520(c)** is added to clarify how a student’s eligibility shall be verified. This change is necessary to ensure the 5 CCR regulations for students’ eligibility for the proficiency examination are in alignment with EC section 48412(a)(1).

**Proposed Section 11520(d)** is added to clarify that “fee” includes all costs of registration, and includes other costs for services after the registration, including ordering additional score reports. This change is necessary so students are fully aware of what costs may be included in their payment for the examination.

**Economic Impact ASSESSMENT PER GOV. CODE SECTION 11346.3(b)**

This amendment to the regulations will not have an economic impact on the State of California as this test is voluntary and not mandated by the State or federal government.

***Purpose:***

The proposed regulations will not have any effect on agencies.

***Creation or Elimination of Jobs within the State of California: N/A***

The proposed regulations directly impact potential test takers, test contractors, and testing centers. They are designed to provide clarity regarding the documentation required to prove a test taker’s eligibility and identity. There is no evidence that the regulations will either create or eliminate jobs within California.

***Creation of New or Elimination of Existing Businesses within the State of California: N/A***

The proposed regulations directly impact potential test takers, test contractors and testing centers. The regulations are designed to provide clarity regarding eligibility and proper documentation required to prove a test taker’s eligibility and identity. There is no evidence the regulations will either create or eliminate existing businesses within California.

***Expansion of Businesses or Elimination of Businesses Currently Doing Business within the State of California: N/A***

The proposed regulations directly impact potential test takers, test contractors and testing centers. The regulations are designed to provide clarity regarding eligibility and proper documentation required to prove a test taker’s eligibility and identity. There is no evidence the regulations will either expand or eliminate businesses within California.

***Benefits of the Regulations to the Health and Welfare of California Residents, Worker Safety, and the State’s Environment – Gov. Code Section 11346.1(b)(1): N/A***

These proposed regulations will have no adverse effect nor benefit on worker safety or the State’s environment.

***Reasonable Alternatives that Would Lessen the Impact on Small Businesses – Gov. Code Section 11346.2(b)(4)(B):***

The SBE has not identified any alternatives that would lessen any adverse impact on small business.

***Evidence Relied Upon to Support the Initial Determination that the Regulations Will Not Have a Significant Adverse Economic Impact on Business – Gov. Code Section 11346.2(b)(5):***

The proposed regulations would not have a significant adverse economic impact on any business because individuals who take and pass the proficiency examination would only have a positive impact on business by increasing the pool of eligible employment candidates.

**OTHER REQUIRED SHOWINGS**

***Studies, Reports or Documents Relied Upon – Gov. Code. Section 11346.2(b)(3):***

The SBE did not rely upon any technical, theoretical, or empirical studies, reports, or documents in proposing the adoption, amendment, or repeal of these regulations.

***Reasonable Alternatives Considered or Agency’s Reasons for Rejecting Those Alternatives – Gov. Code Section 11346.2(b)(4)(A):***

No other alternatives were presented to or considered by the SBE.

***Analysis of Whether the Regulations are an Efficient and Effective Means of Implementing the Law in the Least Burdensome Manner – Gov. Code Section 11346.3(e):***

The proposed regulations have been determined to be the most efficient and effective means of implementing the law in the least burdensome manner.

***Determination of Inconsistent/Incompatible Existing Regulations – Gov. Code Section 11346.5(a)(3)(D):***

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).

06-22-2023 [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 11. Special Programs
Subchapter 8. High School Proficiency Certificates**

**Article 1. Certificate of Proficiency**

**§ 11520. Definitions.**

 (a) “Certificate” means a certificate of proficiency awarded by the State Board of Education (SBE) as described in Education Code section 48412(a)(2).

 (b) “Certification” means documentation from a services provider, or a county or state agency, certifying the examinee is a homeless youth or a foster youth.

 (c) “Eligibility” shall be verified by the student’s demonstration of a local educational agency-issued official or unofficial transcript showing current enrollment.

 (d) “Fee” refers to a payment that shall be submitted at the time of registration or when requesting services such as ordering additional score reports or certificates.

 (~~c~~e) “Parent” as used in Education Code section 48410(e), relating to verified parental approval, means the natural parent, or adoptive parent or legal guardian, having legal custody of the pupil.

 (~~d~~f) “Testing accommodations” means any variation in the assessment environment or process that does not fundamentally alter what the test measures or affect the comparability of scores.

NOTE: Authority cited: Sections 48410 and 48412, Education Code. Reference: Sections 48410 and 48412, Education Code.

06-20-2023 [California Department of Education]