

**CA Dept of EDUCATION mobile**

---

**Agenda Supplement 2--April 9-10, 2003**

California State Board of Education (SBE) meeting agenda.

---

*State Board Members*

Reed Hastings, President  
Joe Nuñez, Vice President

Robert J. Abernethy  
Don Fisher  
Nancy Ichinaga  
Carol S. Katzman  
Stephanie H. Lee  
Suzanne Tacheny  
Curtis Washington  
Vacancy  
Vacancy

*Secretary & Executive  
Officer*  
Hon. Jack O'Connell

*Executive Director*  
Rae Belisle

**AGENDA**

April 9-10, 2003

**SECOND  
SUPPLEMENT**

**PUBLIC SESSION AGENDA**

**Wednesday, April 9, 2003**

**California Department of Education  
1430 N Street, Room 1101  
Sacramento, California**

**\*\*\*PUBLIC HEARING\*\*\***

The Public Hearing on the following item will be held at or after 2:00 p.m. as the business of the State Board of Education permits.

---

**ITEM 28**  
(PDF;  
77 KB;  
1p.)

Emergency Regulations to implement the Reading First Program, and commencement of the process to adopt permanent regulations.

**ACTION**

- [Last Mln.](#) (Blue) (PDF; 116KB; 6pp.)

**\*\*\*END OF PUBLIC HEARING\*\*\***

---

For more information concerning this agenda, please contact Rae Belisle, Executive Director of the California State Board of Education, or Deborah Franklin, Education Policy Consultant, at 1430 N Street, Room 5111, Sacramento, Ca, 95814; telephone (916) 319-0827; fax (916) 319-0175. To be added to the speaker's list, please fax or mail your written request to the above referenced address/fax number. This agenda is posted on the State Board of Education's Web site at <http://www.cde.ca.gov/be/>

Questions: State Board of Education | 916-319-0827

Last Reviewed: Friday, August 05, 2011

---

California Department of Education

[Mobile site](#) | [Full site](#)



APRIL 2003 AGENDA

<b>SUBJECT:</b> Emergency Regulations to implement the Reading First Program, and commencement of the process to adopt permanent regulations.	<input checked="" type="checkbox"/> ACTION
	<input type="checkbox"/> INFORMATION
	<input type="checkbox"/> PUBLIC HEARING

**RECOMMENDATION:**

As may be necessary, (1) approve Emergency Regulations to implement the Reading First Program and (2) commence the process to adopt permanent regulations.

---

**Summary of Previous State Board of Education Discussion and Action.**

The State Board of Education approved the Reading First Plan at its May 2002 meeting. That plan was approved by the United States Department of Education on August 23, 2002. Since that time, litigation has been filed pertaining, in part, to the applicability of the state regulatory process (i.e., the Administrative Procedure Act) to implementation of various aspects of the state's Reading First Plan. By the time of the State Board's April meeting, developments in that litigation may make it necessary for the State Board to approve Emergency Regulations and to commence the process to adopt permanent regulations. The purpose of this item is to enable such actions to be taken if that is determined to be necessary.

---

**Summary of Key Issue(s).**

If Emergency Regulations and commencement of the permanent rulemaking process are determined to be necessary, a statement of reasons for the regulations will be included in the rulemaking package.

---

**Fiscal Analysis (as appropriate).**

The Emergency Regulations (and permanent regulations) would not, per se, have an impact on the total amount of funding for the Reading First Program. Reading First is entirely federally funded.

---

**Background Information Attached to this Agenda Item.**

If determined to be necessary, the proposed Emergency Regulations and documents relevant to the permanent rulemaking process will be provided as supplements.

# Last Minute Memorandum

April 8, 2003

To: State Board of Education Members

From: Karen M. Steentofte, Chief Counsel

Subject: Item 28, April 2003 Agenda  
Emergency Regulations to implement the Reading First Program, and commencement of the process to adopt permanent Regulations

On March 27, 2003, the Court issued two orders in *Pazmiño, et al. v. California Board of Education, et al.* in San Francisco Superior Court, Case No. CPF-03-502554, granting a peremptory writ of mandate and a preliminary injunction. The writ of mandate orders the State Board of Education (SBE) and the Department of Education (CDE) to cease applying the Frequently Asked Question (FAQ) that stated that Proposition 227 waived classrooms are included in the funding calculation for a Reading First grant if they provide the required 1 hour and 2.5 hours in English Language Arts instruction in English in kindergarten and grades 1-3, respectively, unless and until there is compliance with the Administrative Procedure Act (APA). The preliminary injunction order prohibits the SBE and CDE from applying this FAQ to the current round of funding until there has been compliance with the APA, and from making any efforts to publish or rely upon the FAQ until there has been compliance with the APA.

The attached proposed emergency regulations are necessary to comply with the court order. These proposed emergency regulations would essentially put the FAQ at issue into regulation, thus clarifying how Reading First Program funding is allocated once a grant is approved. In summary, the grant amount would be based on multiplying every K-3 classroom in an approved Reading First school that agreed to implement the full English language arts program in the adopted instructional materials in English for one hour in Kindergarten and 2.5 hours in grades 1-3 each day by the per classroom grant amount. This funding allocation is required by California's Approved Reading First Plan for several reasons. First, the approved plan expressly relies on two English Language Arts instructional materials, which were only available in English at the time that the Plan was approved, by the United States Department of Education and its Panel of Reading Experts, as meeting the scientifically research based requirements of the federal law. Secondly, these two English Language Arts instructional programs in English are fully aligned with California's English-Language Content Standards and will provide students

with the necessary support to reach proficiency on the English-Language Arts Content Standards Test by the end of the third grade; California's equivalent to reading well by the end of the third grade. Finally, the two adopted English Language Arts instructional programs include an additional 30-45 minutes per day of English-language development to assist English language learners to reach proficiency on the English-Language Arts Content Standards Test by the end of the third grade.

Approving the proposed emergency regulations will allow the Round Two applications to be approved and funded at the May 2003 Board meeting. The applications must be approved no later than the May Board so that school districts and schools can be notified, and summer teacher training can be arranged. The week-long summer training for teachers is a crucial part of California's Reading First program and if the training does not occur at that time it is virtually impossible for schools to implement the program in the following school year. Losing a year of implementation would not only severely jeopardize California's ability to receive federal Reading First funds in the future, but just as importantly it would delay proper implementation, and the ensuing benefits to California students, of this program for one full school year. As the federal funding must be spent by September 30, 2004, it is vital that schools be funded in May 2003 so that the program can be properly implemented and grant funds expended in the 2003-2004 school year. If funds are not expended by September 30, 2004, they revert to the federal government and will be lost to California's students forever.

**Title 5. EDUCATION**  
**Division 1. State Department of Education**  
**Chapter 11. Special Programs**

*Add Subchapter 22 and Section 11990 to read:*

**Subchapter 22. Reading First Program**

**Section 11990. Funding Allocation.**

(a) When calculating the amount for each approved Reading First subgrant application, the funding level shall be determined by multiplying the approved per classroom amount by the number of K-3 classrooms that agreed to implement the full English language arts program as provided in the adopted instructional materials in English for one hour in Kindergarten and 2.5 hours in grades 1 to 3, inclusive, each day.

(b) The adopted instructional materials, referenced above, that are scientifically research based as defined in 20 USC 6368(6) to assist students to attain the proficient level on the English Language Arts Content Standards Test by the end of the third grade are the English version of: (1) Houghton Mifflin, California Edition, Reading: *A Legacy of Literacy 2003* or (2) SRA/McGraw-Hill, *SRA Open Court Reading 2000/2002*.

Authority: Education Code 12001, 20 USC 6361 et seq.(Title I, Part B, federal No Child Left Behind Act), California's Approved Reading First Plan as approved by the United States Department of Education on August 23, 2002.

## **EMERGENCY STATEMENT**

### **Reading First Program**

The State Board of Education finds that an emergency exists and that the emergency regulation adoption is necessary for the immediate preservation of the public peace, health and safety, or general welfare. The public welfare is served when limited fiscal resources are made available through competitive grants to local education agencies to support comprehensive scientifically research based English language arts programs that support students achieving proficiency on California's English-Language Arts Content Standards Test by the end of third grade. Achieving proficiency in the English Language Arts Contents Standards by the end of third grade will allow our students to do well throughout the rest of their education, as well as ensure that additional federal funding comes to California for this purpose.

#### **Need for Immediate Action**

Reading skills are the bedrock of future academic achievement. Ensuring that our K-3 students acquire reading skills is a top priority that is made more difficult in these tight fiscal times. California has been approved for participation in the federal Reading First Program that provides funding to implement California's Reading First Plan approved by the United States Department of Education (USDE).

The awarding of Reading First subgrants is to occur at the May 2003 meeting of the State Board of Education (SBE) so that the school districts can arrange with their teachers to attend the week-long summer training that is required to commence the program in the 2003-2004 school year. If this teacher training does not occur, it is virtually impossible for schools to implement the program in the following school year. Losing a year of implementation would not only severely jeopardize California's ability to receive federal Reading First funds in the future, but just as importantly it would delay proper implementation of this program, and the ensuing benefits to California students, for one full school year. As the federal funding must be spent by September 30, 2004, it is vital that schools be funded in May 2003 so that the program can be properly implemented and grant funds expended in the 2003-2004 school year. If funds are not expended by September 30, 2004, they revert to the federal government and will be lost to California's students forever.

On March 27, 2003, the San Francisco Superior Court issued two orders in *Pazmiño, et al. v. California Board of Education, et al.* (Case No. CPF-03-502554) granting a peremptory writ of mandate and a preliminary injunction which both required compliance with the Administrative Procedures Act regarding a Frequently Asked Question affecting how funds were to be allocated to approved subgrant recipients. These emergency regulations are promulgated in order to comply with those court orders and to meet the program timelines so that federal funding will not be lost and K-3 reading programs in approved applicant schools will not be jeopardized.

### **Program Description**

The federal Reading First Program is a competitive grant program that supports scientifically research based K-3 reading programs as defined in 20 USC 6368(6) in schools serving high poverty, low reading ability, students. The purpose of this federal program is to ensure that all students in the program read well by the end of the third grade (20 USC 6361). Funds are released to states after their state plan is reviewed by a panel of reading experts and the USDE has determined that the state plan meets all the program requirements (20 USC 6363).

In order to meet the purpose of this federal program and receive USDE approval, California's Reading First Plan requires that local education agencies (LEAs) implement one of two adopted reading programs and the accompanying professional development for teachers and principals, as well as assessments geared to the particular reading program and California's English-Language Arts Content Standards Test. This comprehensive approach will provide students with the necessary support to reach proficiency on the English-Language Arts Content Standards Test by the end of the third grade; California's equivalent to reading well by the end of the third grade. The two adopted reading programs include an additional 30-45 minutes per day of English-language development to assist English language learners to reach proficiency on the English-Language Arts Content Standards Test by the end of the third grade.

Local education agencies (LEAs) must compete for Reading First funding to conduct this comprehensive reading programs in select schools. Applicant LEAs can include between 50-75% of their eligible schools on their subgrant application. Once the subgrant application is submitted, it is scored against a rubric. Each subgrant application that receives a passing score is then reviewed for the awarding of priority points for serving high numbers of low-income students. Finally, the passing applications are ranked according to score from high to low, and funded until the federal funding is exhausted.

This emergency regulation would affect how the amount of the grant for each approved subgrant application is calculated. Specifically it would provide that the per classroom amount of between \$6,500 and \$8,000 be applied only to classrooms that agreed to implement the full English language arts program in the adopted instructional materials in English for one hour in Kindergarten and 2.5 hours in grades 1-3, inclusive, each day. This is necessary to implement California's Approved Reading First Plan which was approved by the USDE based on California's scientifically research based adopted instructional materials in English that are aligned to California's English-Language Arts Content Standards and support students reaching proficiency on California's English-Language Arts Content Standards Test by the end of third grade.

### **Authority and Reference Citations**

Authority: Education Code 12001, 20 USC 6361 et seq.(Title I, Part B, federal No Child Left Behind Act), California's Approved Reading First Plan as approved by the United States Department of Education on August 23, 2002.

Reference: *Carmen Doe v. Wilson* (1997) 57 Cal.App.4th 296, 305 and *Schenley Affiliated Brands Corp. v. Kirby* (1971) 21 Cal.App.3d 177, 194-195.

**Disclosures Regarding the Proposed Emergency Regulations**

- ✓ Mandate on local educational agencies: None
- ✓ Cost or savings to any state agency: None anticipated, formal analysis pending
- ✓ Cost to any local educational agency which must be reimbursed in accordance with Government Code Section 17561: None anticipated, formal analysis pending
- ✓ Other non-discretionary cost or savings imposed upon local educational agencies: None anticipated, formal analysis pending
- ✓ Cost or savings in federal funding to the state: None
- ✓ Cost impact on private persons or directly affected businesses: None
- ✓ Significant effect on housing costs: None
- ✓ Affect on small businesses: None