

California Department of Education

Executive Office

SBE-003 (REV. 11/2017)

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# California State Board of EducationJanuary 2018 AgendaItem #10

## Subject

California High School Proficiency Examination: Readoption of the Finding of Emergency and Proposed Emergency Regulations for Amendments to the *California Code of Regulations*, Title 5, Sections 11520, 11524, 11525, and 11526.

## Type of Action

Action, Information

## Summary of the Issue(s)

The California Department of Education (CDE) is responsible for administering the California High School Proficiency Examination (CHSPE) to individuals who are at least sixteen years of age or meet other eligibility requirements. Individuals taking the CHSPE may earn a certificate of proficiency, awarded by the State Board of Education (SBE), which is equivalent to a high school diploma, according to California *Education Code* (*EC*) Section 48412. Assembly Bill (AB) 2656 (O’Donnell), signed by Governor Brown on September 27, 2016, prohibits the CDE from charging fees to administer the CHSPE to a certified foster youth who is under twenty-five years of age. In addition, AB 2656 requires the SBE to adopt emergency regulations to implement the provisions of this new law.

Similar amendments were made to existing regulations regarding homeless youths, and were adopted by the SBE in May 2016, to meet the requirements of Senate Bill (SB) 252 (Leno), which prohibited the charging of fees to certified homeless youths. SB 252 was signed by the Governor on September 30, 2015. The proposed amendments to *California Code of Regulations*, Title 5 (5 *CCR*) sections 11520, 11524, 11525, and 11526 provide continuity between homeless and foster youth requirements. These proposed amendments also allow other certification options in addition to the previously incorporated certification form.

Emergency regulations, as required by AB 2656, were readopted by the SBE on May 10, 2017, and September 13, 2017. In a separate September 2017 Agenda Item, the SBE approved commencement of the regular rulemaking process. The readopted emergency regulations will expire on February 27, 2018, but the earliest estimated effective date of the permanent regulations is March 5, 2018. It is possible the SBE will approve an additional 15-day comment period as part of the regulation approval process. In this scenario, the Office of Administrative Law (OAL) could not approve the regulations until April 2018. Due to this possibility, a second readoption of the emergency regulations is necessary to prevent a lapse of time between the expiration of the emergency regulations and the final approval of the regulations.

## Recommendation

The CDE recommends that the SBE take the following actions:

* Approve the Finding of Emergency.
* Approve the proposed emergency regulations.
* Direct the CDE to circulate the required Notice of Proposed Emergency Action, and then submit to the OAL for readoption.
* Authorize the CDE to take any necessary action to respond to any direction or concern expressed by the OAL during its review of the revised Finding of Emergency and readoption of the proposed emergency regulations.

## Brief History of Key Issues

Individuals who are at least sixteen years of age, or have been enrolled in grade ten for one academic year or longer, or are completing their final semester of grade ten are eligible to take the CHSPE to earn a certificate of proficiency, which is equivalent to a California high school diploma. The CHSPE is administered by the Sacramento County Office of Education under a contract with the CDE.

Individuals who take the CHSPE must register for the test and pay the fee for the administration and scoring of the test. AB 2656 provides the opportunity for a certified foster youth, who is under the age of twenty-five and meets other eligibility requirements, to take the CHSPE at no cost. The law requires that a service provider who has knowledge of the examinee’s status certify that the examinee is eligible for the fee waiver. *EC* sections 48412(h)(1) and (2) define a foster youth as:

* A child who was the subject of a petition filed pursuant to Section 300 of the *Welfare and Institutions Code* (*WIC*) and removed from his or her home by the juvenile court pursuant to sections 319 or 361 of the *WIC*.
* A child who was the subject of a petition filed pursuant to Section 602 of the *WIC* and removed from his or her home by the juvenile court pursuant to Section 727 of the *WIC*.

SB 252 (Leno), signed by Governor Brown on September 30, 2015, prohibits the CDE from charging fees to administer the CHSPE to a certified homeless youth who is under twenty-five years of age. AB 2656 requires the SBE to adopt emergency regulations, in addition to the regular regulation approval process, to implement the provisions of the law for certified foster youth. This agenda item proposes amendments to existing CHSPE regulations for that purpose. The proposed amendments include, but are not limited to, the following:

* Addition of information to specify that foster youth certification is provided by a county or state agency
* Amendment of a section to specify that the contractor shall not collect a registration fee from a certified foster youth who registers by the regular registration deadline
* Amendment of a section to specify that fees for other services for the foster youth will not be waived
* Addition of information to specify that a homeless-services provider or the provider’s agency shall not charge any fees to a homeless youth seeking certification
* Addition of a section that includes the documentation to be provided by the foster youth to verify his or her status
* Addition of a section that stipulates the fee waiver is valid until the foster youth reaches twenty-five years of age
* Addition of a section that requires the contractor to maintain original certification documentation until the foster youth reaches twenty-eight years of age and provide the original certification to the CDE upon request
* Addition of information to specify that the services provider or the service provider’s agency shall not charge any fees to a foster youth seeking certification

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

On September 13, 2017, the SBE readopted the emergency regulations to prevent a lapse of time between the expiration of the emergency regulations and the effective date of the permanent regulations as required by AB 2656. In a separate item, the SBE also approved commencement of the rulemaking process and approved the proposed regulations. These items are available on the SBE September 2017 Agenda Web page at <https://www.cde.ca.gov/be/ag/ag/yr17/agenda201709.asp>.

On May 10, 2017, the SBE adopted emergency regulations as required by AB 2656. This item is available on the SBE May 2017 Agenda Web page at <https://www.cde.ca.gov/be/ag/ag/yr17/agenda201705.asp>.

On September 9, 2016, the SBE adopted regulations that prohibited a fee being charged to homeless youths. This item is available on the SBE September 2016 Agenda Web page at <https://www.cde.ca.gov/be/ag/ag/yr16/agenda201609.asp>.

On May 12, 2016, the SBE adopted emergency regulations prohibiting the charging of a fee to homeless youths wishing to take the CHSPE. This item is available on the SBE May 2016 Agenda Web page at <https://www.cde.ca.gov/be/ag/ag/yr16/agenda201605.asp>.

Under a separate item, the SBE approved the commencement of the standard rulemaking process to make permanent amendments to 5 *CCR* sections 11520, 11524, 11525, and 11526. This item is available on the SBE May 2016 Agenda Web page at <https://www.cde.ca.gov/be/ag/ag/yr16/agenda201605.asp>.

## Fiscal Analysis (as appropriate)

An Economic and Fiscal Impact Statement is attached.

## Attachment(s)

* Attachment 1: Finding of Emergency (3 pages)
* Attachment 2: Emergency Regulations (4 pages)
* Attachment 3: Notice of Proposed Emergency Action (1 page)
* Attachment 4: Economic and Fiscal Impact Statement (STD. 399) (6 pages)

# Attachment 1: Finding of Emergency

**FINDING OF EMERGENCY**

**READOPTION OF EMERGENCY REGULATIONS**

**California High School Proficiency Examination**

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

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

**Necessity for Readoption of Emergency Regulations**

The proposed amendments to California Code of Regulations, Title 5, sections 11520, 11524, 11525, and 11526 must be readopted on an emergency basis in order ensure foster youth under the age of 25 continue to have the ability to prove their eligibility for CHSPE fee waivers and in so doing prevent harm, to the public peace, health, safety and general welfare of pupils. The changes to sections 11525(f) and 11526(d) were primarily based on the fact that a variety of agencies and non-profits may be able to provide certification services to homeless and foster youth, not just homeless services providers. These changes were necessary to expand the type of agencies that can provide the certification and to eliminate the mandate of using only the form produced by the CDE and provides additional permissions to certify. In addition, the California Department of Education (CDE) will be hindered in collecting required data and meeting the statutory-established timelines as set forth in California Education Code (EC) Section 48412, as established by Assembly Bill (AB) 2656 (O’Donnell) (Statutes of 2016). Finally, the SBE will be out of compliance with AB 2656 which requires emergency regulations be in effect until the regular rulemaking process concludes.

Specifically, *EC* Section 48412 requires that, on or before December 1, 2018, the State Superintendent of Public Instruction shall submit a report to the appropriate policy and fiscal committees of the Legislature that includes the number of foster youths who took the high school proficiency exam at no cost in the 2016, 2017, and 2018 calendar years. Allowing the emergency regulations to expire prior to the conclusion of the regular

rulemaking process will lead to eligible foster youths losing access to the waiver and interfere with the data collection required to provide the statutorily required reports and recommendations to the Legislature.

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 CHSPE emergency regulations effective June 2, 2017, 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 May 2017 meeting. Because the SBE meets only every other month and the CDE is finalizing administrative and contact processes, the approval for commencement of the regular rulemaking process was being submitted to the SBE at its September 2017 meeting. While the SBE and CDE have made substantial progress in the regular rulemaking process, the emergency regulations expire on February 27, 2018, and the earliest possible date the permanent rulemaking can be made effective is March 5, 2018. As a result, these emergency regulations must be readopted to avoid a lapse in their effect. Concurrently, the CDE continues to finalize detailed administrative and contract procedures with the CHSPE contractor that will allow the provisions of AB 2656 to be fully implemented before the conclusion of the permanent rulemaking process.

The following timeline illustrates the necessity for readoption of the emergency regulations in order for the CDE to meet the requirements of the *EC*.

| **Action\*** | **Estimated Completion Date** |
| --- | --- |
| SBE approves agenda item for the commencement of the emergency regulations. | May 10, 2017 |
| Emergency regulations become effective. | June 2, 2017 |
| SBE approves agenda items for the commencement of the permanent rulemaking process. | September 13–14, 2017 |
| 45-day public comment period is open for permanent regulations. | September 29–November 13, 2017 |
| CHSPE public hearing is conducted. | November 13, 2017 |
| First readoption of emergency regulations effective  | November 29, 2017 |
| Emergency regulations expire | November 30, 2017 |
| SBE adopts permanent regulations or approves a 15-day comment period. | January 10–11, 2018 |
| Rulemaking is submitted to OAL if SBE adopts regulations. (OAL has 30 working days to review file.) | January 19, 2018  |
| Second readoption of emergency regulations effective | February 26, 2017 |
| Firs readoption of emergency regulations expire.  | February 28, 2018 |
| OAL Approval – Regulations are effective immediately. (If there is a 15-day comment period, depending on comments received, could be April 2018.) | On/ about March 5, 2018 |

\*These actions represent a small, but relevant, fraction of the detail of the adoption process.

# Attachment 2: Emergency Regulations

* 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) ~~“Homeless Certification Form” means a form provided by the California Department of Education (CDE) that is to be completed by an authorized homeless services provider to verify that a youth is homeless as defined in Education Code section 48412. The Homeless Certification Form (issued 03/2016) is incorporated by reference in California Code of Regulations, title 5, section 11530.~~ “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) “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) “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.

**§ 11524. Waiver of Fees.**

 (a) The contractor selected to administer the examination shall not collect fees from individuals who are under 25 years of age, meet all other registration requirements, and are ~~verified~~ certified to be a homeless youth by a homeless services provider or a foster youth as defined in Education Code section 48412, except for fees for additional services not related to regular test registration including, but not limited to, registration for a test administration after the regular registration deadline set by the contractor, request to change the testing date after the regular registration deadline set by the contractor, request for a transcript or duplicate certificate, or request to expedite services. The contractor shall not charge fees to individuals who are certified ~~verified~~ to be a homeless youth or a foster youth for any other administrative services without prior approval of the ~~CDE~~ California Department of Education (CDE).

 (b) The fee waiver for individuals who are under age 25 and are certified ~~verified~~ to be a homeless youth by a homeless services provider, or a foster youth as defined in Education Code section 48412 shall include only fees for services related to test administration. The fee waiver shall not include fees for services or documents required to verify the need for testing accommodations, test preparation, or other services not related to test administration.

NOTE: Authority cited: Section 48412, Education Code. Reference: Section 48412, Education Code.

**§ 11525. Homeless Certification.**

 (a) To be eligible for a fee waiver, at the time of registration for a test administration, a homeless youth must submit all standard required registration materials to the contractor including documentation required for all testing accommodations that the individual may need and an original completed ~~Homeless Certification Form.~~ certification.

 (b) ~~Only the Homeless Certification Form~~ The CDE-developed certification form may be used to certify that the registrant is homeless. ~~The Homeless Certification Form~~ Certification must include all of the following information:

 (1) The full legal name of the registrant;

 (2) The date of birth of the registrant;

 (3) The signature of the registrant affirming, under penalty of perjury, a statement that he or she is homeless and under 25 years of age;

 (4) The printed name of the homeless services provider;

 (5) The title of the homeless services provider;

 (6) The business address, phone number, and e-mail address of the homeless services provider;

 (7) The signature of the homeless services provider affirming, under penalty of perjury, a statement that he or she is an authorized homeless services provider and that the registrant is homeless as defined in Education Code section 48412;

 (8) The date that the ~~Homeless Certification Form~~ certification is completed by the homeless services provider; and

 (9) The date the ~~Homeless Certification Form~~ certification expires.

 (c) ~~The Homeless Certification Form~~ Certification is valid for a period of one year from the certification date and may be renewed annually until the certified homeless youth reaches 25 years of age. If the certified homeless youth reaches 25 years of age within one year from the certification date, the ~~Homeless Certification Form~~ certification will be valid only until one day before the certified homeless youth reaches 25 years of age.

 (d) The homeless services provider or the provider's agency shall retain a copy of all ~~Homeless Certification Forms~~ certification(s) issued to ~~certified~~ certify homeless youth(s) until each certified homeless youth reaches 28 years of age. The homeless services provider or the provider's agency shall make copies of ~~Homeless Certification Forms~~ certification(s) available to the CDE upon request.

 (e) The contractor shall retain all original ~~Homeless Certification Forms~~ certification(s) issued to ~~certified~~ certify homeless youth(s) until each homeless youth reaches 28 years of age. The contractor shall make original ~~Homeless Certification Forms~~ certification(s) available to the CDE within 10 business days upon request.

 (f) No fees shall be charged to homeless youths seeking certification of their status.

NOTE: Authority cited: Sections 33031 and 48412, Education Code. Reference: Sections 48410 and 48412, Education Code.

**§ 11526. Foster Youth Certification.**

(a) To be eligible for a fee waiver, at the time of registration for a test administration, a foster youth must submit all standard required registration materials to the contractor including documentation required for all testing accommodations that the individual may need and certification of their foster youth status. This certification may be provided by the county or California Department of Social Services.

(b) Eligibility for the fee waiver is valid until the certified foster youth reaches 25 years of age.

 (c) The contractor shall retain all original certification(s) issued to foster youth(s) until each foster youth reaches 28 years of age. The contractor shall make original certification documentation available to the CDE within 10 business days upon request.

(d) No fees shall be charged to foster youths seeking certification of their status.

 (e) For purposes of this Article, “Foster Youth” means either current or former foster youth as defined by Education Code section 48412(h).

NOTE: Authority cited: Section 48412, Education Code. Reference: Section 48412, Education Code.

07-21-17 [California Department of Education]

# Attachment 3: Notice of Proposed Emergency Action

February 1, 2018

**NOTICE OF PROPOSED EMERGENCY ACTION**

California High School Proficiency Examination

Readoption of Emergency Regulations, Title 5, Sections 11520, 11524, 11525, and 11526

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

**SUBMISSION OF COMMENTS**

*GC* 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 *GC* Section 11349.6.

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

Please reference submitted comments as regarding “California High School Proficiency Examination” addressed to:

**Reference Attorney**

Office of Administrative Law

300 Capitol Mall, Suite 1250

Sacramento, CA 95818

staff@oal.ca.gov

Fax: 916-323-6826

**Patricia Alverson, Reg Coordinator**

California Department of Education

Administrative Support and Regulations Adoption

1430 N Street, Suite 5319

Sacramento, CA 95814

regcomments@cde.ca.gov

Fax: 916-319-0155

For the status of the SBE submittal to the OAL for review and the end of the five-day written submittal period, please consult the Web site of the OAL at http://www.oal.ca.gov under the heading “Emergency Regulations.”