

California Department of Education

Executive Office

SBE-003 (REV. 11/2017)

pptb-adad-nov18item05

# California State Board of EducationNovember 2018 AgendaItem #14

## Subject

English Language Proficiency Assessments for California: Adoption of Amendments to the *California Code of Regulations*, Title 5, Sections 11517.6, 11518, 11518.15, 11518.20, 11518.25, 11518.30, 11518.35, 11518.40, 11518.45, 11518.50, 11518.70, 11518.75, and 11519.5.

## Type of Action

Action, Information

## Summary of the Issue(s)

The California Department of Education (CDE) is submitting proposed amendments to regulations for the English Language Proficiency Assessments for California (ELPAC) for adoption by the State Board of Education (SBE). These proposed amendments were made as a result of feedback from both the field test and the first administration of the operational summative assessment. This update to the current regulations includes language from federal regulations, clarification to procedures for local educational agencies (LEAs), addition of testing accessibility resources, clarification to procedures for LEA ELPAC coordinators and site ELPAC coordinators, addition of information to the ELPAC Test Security Agreement, and reduction to restrictions regarding apportionment.

On July 11, 2018, the SBE approved commencement of the standard rulemaking process to make amendments to *California Code of Regulations,* Title 5, sections 11517.6, 11518, 11518.15, 11518.20, 11518.25, 11518.30, 11518.35, 11518.40, 11518.45, 11518.50, 11518.70, 11518.75, and 11519.5. Part of this process involved a 45-day public comment period from July 27, 2018, through September 10, 2018, inclusive. No public comments were received during this public comment period nor during the public hearing held on September 10, 2018. The CDE has determined that no changes are required and recommends that the proposed regulations be adopted by the SBE.

## Recommendation

The CDE is recommending that the SBE take the following actions:

* Approve the Final Statement of Reasons.
* Adopt the proposed amended regulations.
* Direct the CDE to submit the rulemaking file to the Office of Administrative Law (OAL) for approval.
* Authorize the CDE to take any necessary ministerial action to respond to any direction or concern expressed by the OAL during its review of the rulemaking file.

## Brief History of Key Issues

In May 2016, the SBE approved the commencement of the rulemaking process for the ELPAC, which involved a 45-day public comment period. Based on comments submitted during that 45-day period, the CDE presented responses and proposed changes to the SBE in November 2016. The SBE approved a 15-day public comment period for those proposed changes. No public comments were submitted during that 15-day period; therefore, the CDE submitted the rulemaking package to the OAL for approval. The OAL expressed concerns regarding the necessity and clarity standards of the proposed ELPAC regulations. Subsequently, the CDE withdrew the regulation package in order to address the OAL’s concerns.

In March 2017, the CDE submitted changes to the proposed regulations to the SBE, based on feedback from the OAL, to the proposed regulations. The SBE approved a second 15-day public comment period. No public comments were submitted. The CDE resubmitted the rulemaking package to the OAL for approval. The ELPAC regulations were approved on June 5, 2017, and became operational on October 1, 2017.

The summative assessment began operational administration on February 1, 2018. The initial assessment began operational administration starting July 1, 2018. To provide LEAs with the most current and clear regulations on the operational administration of both the initial and summative assessments, it is necessary to amend the current regulations.

In July 2018, the SBE approved the commencement of the rulemaking process for the ELPAC. There were no public comments submitted during 45-day public comment period nor at the public hearing held on September 10, 2018. As a result, the CDE is not proposing any further substantive changes than those proposed in July 2018, as specified in the bulleted list below. Five nonsubstantive changes are proposed pursuant to OAL’s request.

Specifically, the substantive amendments to the ELPAC regulations include the following:

* Change in the list order of the domains (listening, speaking, reading, and writing) throughout the regulations to align with the order most commonly used in communications with the LEAs
* Deletion of language in Section 11517.6 regarding notification to the Legislature
* Amendment to proposed Section 11518(h) for creating consistency of test examiner roles in ELPAC administration
* Proposed definitions in subsections 11518(r) and (s) for two new positions for individuals participating in the initial assessment scoring and reporting
* Cleanup of language throughout regulations based on the definition in proposed subsection 11518(ah) for consistent use of the terms, “test book” and “answer book”
* Provision of clarifying language in subsection 11518.15(b) to LEAs regarding notification to parents of test results
* Revisions in subsections 11518.25(a) and (b) to provide clarification in language for pupils with disabilities
* Addition of language allowing a disability exemption in subsection 11518.25(c) and (c)(1), which is presented in the Every Student Succeeds Act (ESSA)
* Amendments to Section 11518.30 to conform to regulations in ESSA (34 *Code of Federal Regulations* Part 200.6(h)(4)) by specifying that the individual education program team determines whether students with significant cognitive disabilities are locally administered an alternative assessment
* Amendments to sections 11518.35(b), (c), and (d)toreflect consistent language of “provide” as is currently written in Section 11518.35(a)
* Addition of universal tools in proposed subsections 11518.35(a)(5) and (a)(6) to support students marking in the test book as a testing-taking strategy
* Clarification to designated support in subsection 11518.35(b)(4) regarding repeating test directions
* Deletion of accommodation in former subsection 11518.35(c)(2) based on changes in test development
* Addition of accommodations in proposed subsections 11518.35(c)(2), (c)(3), and (c)(4) to support the recorded audio administration for English learners with individualized education programs or Section 504 plans
* Revision to accommodation in subsection 11518.35(c)(9) to include American Sign Language as a mode of communication
* Revision to accommodation in subsection 11518.35(c)(13) based on changes in test development
* Addition of language in subsection 11518.40(b)(4) for the LEA ELPAC coordinator responsibility of ELPAC Test Security Affidavit retention
* Addition of language in subsection 11518.40(b)(17) to establish consistency of LEA ELPAC coordinators’ responsibility for test materials
* Addition of language in subsection 11518.40(b)(18) to provide guidance that the LEA ELPAC coordinator may certify the apportionment information report and is directed to do so by the LEA superintendent
* Addition of language in subsection 11518.45(b)(5) and (b)(6)for Site ELPAC coordinator responsibility of ELPAC Test Security Affidavit retention
* Revision to subsection 11518.50(c)(5) clarifying LEA ELPAC coordinator responsibility of test materials
* Based on proposed definitions in 11518(r) and (s), addition of roles to the test security affidavit in subsection 11518.50(d)
* Addition of subsection 11518.75(b)(11) for new information collected based on disability exemption added in subsection 11518.25(c)
* Revisions throughout subsection 11519.5 reducing restrictions for completing apportionment for LEAs
* Addition of subsection 11519.5(a)(2)(A) clarifying that only the first answer book per student received by the contractor for scoring will be eligible for apportionment

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

In July 2018, the SBE approved the adoption of the ELPAC emergency regulations and the commencement of regular rulemaking process

(<https://www.cde.ca.gov/be/ag/ag/yr18/documents/jul18item04.docx>)

(<https://www.cde.ca.gov/be/ag/ag/yr18/jul18item04a4.asp>)

(<https://www.cde.ca.gov/be/ag/ag/yr18/documents/jul18item05.docx>)

(<https://www.cde.ca.gov/be/ag/ag/yr18/jul18item05a4.asp>).

In June 2018, an Information Memorandum was presented to the SBE to provide an update on the ELPAC

(<https://www.cde.ca.gov/be/pn/im/documents/memo-pptb-adad-jun18item02.docx>)

(<https://www.cde.ca.gov/be/pn/im/documents/memo-pptb-adad-jun18item02a01.pdf>).

In May 2018, the SBE approved the ELPAC initial assessment preliminary threshold scores and composite weights (<https://www.cde.ca.gov/be/ag/ag/yr18/documents/may18item04.docx>).

In April 2018, an Information Memorandum was presented to the SBE to give preliminary information on the operational ELPAC initial assessment threshold scores (<https://www.cde.ca.gov/be/pn/im/documents/memo-pptb-adad-apr18item01.docx>).

In March 2018, the SBE approved the revised ELPAC initial assessment blueprints (<https://www.cde.ca.gov/be/ag/ag/yr18/documents/mar18item09.docx>).

In February 2018, an Information Memorandum was provided to the SBE to give an update on the ELPAC initial assessment standard setting process and provide a preliminary review of the revisions to the initial assessment blueprints (<https://www.cde.ca.gov/be/pn/im/documents/memo-pptb-adad-feb18item01.docx>).

In January 2018, the SBE approved general performance level descriptors (PLDs) for the ELPAC initial assessment (<https://www.cde.ca.gov/be/ag/ag/yr18/documents/jan18item09.docx>).

In December 2017, an Information Memorandum was provided to the SBE, giving an update on the development of the ELPAC, including a detailed timeline (<https://www.cde.ca.gov/be/pn/im/documents/memo-pptb-adad-dec17item03.docx>).

In November 2017, the SBE approved the operational ELPAC summative assessment threshold scores, composite weights, and LEA apportionment rates (<https://www.cde.ca.gov/be/ag/ag/yr17/documents/nov17item08.doc>).

In October 2017, an Information Memorandum was provided to the SBE on the standard setting and domain weighting processes (<https://www.cde.ca.gov/be/pn/im/documents/memo-pptb-adad-oct17item01.doc>).

In September 2017, the SBE approved revisions to the ELPAC summative assessment blueprints, the revised general PLDs, and the reporting hierarchy of the ELPAC initial and summative assessments score reports (<https://www.cde.ca.gov/be/ag/ag/yr17/documents/sep17item18.doc>).

In June 2017, an Information Memorandum was provided to the SBE with a study regarding the ELPAC’s potential transition to a computer-based assessment (<https://www.cde.ca.gov/be/pn/im/documents/memo-asb-adad-jun17item04.doc>).

In March 2017, the SBE approved the commencement of a second 15-day public comment period for the proposed ELPAC regulations (<https://www.cde.ca.gov/be/ag/ag/yr17/documents/mar17item20.doc>).

In December 2016, an Information Memorandum was provided to the SBE on the plan for the sample field tests of the ELPAC (<https://www.cde.ca.gov/be/pn/im/documents/memo-dsib-adad-dec16item02.doc>).

In November 2016, the SBE approved the commencement of a 15-day public comment period for the proposed ELPAC regulations (<https://www.cde.ca.gov/be/ag/ag/yr16/documents/nov16item07.doc>).

In May 2016, the SBE approved the commencement of the rulemaking process for the proposed ELPAC regulations (<https://www.cde.ca.gov/be/ag/ag/yr16/documents/may16item01.doc>).

## Fiscal Analysis (as appropriate)

An Economic and Fiscal Impact Statement is provided as Attachment 3.

## Attachment(s)

* Attachment 1: Final Statement of Reasons (1 page)
* Attachment 2: Proposed Regulations (22 pages)
* Attachment 3: Economic and Fiscal Impact Statement (STD. 399) (6 pages)

# Attachment 1

**FINAL STATEMENT OF REASONS**

English Language Proficiency Assessments for California (ELPAC)

UPDATE OF INITIAL STATEMENT OF REASONS

The original proposed text was made available for public comment for at least 45 days from July 27, 2018 through September 10, 2018. There were no comments submitted during the 45-day comment period.

A public hearing was held at 1:30 p.m. on September 10, 2018, at the California Department of Education (CDE)*.* One person attended but did not provide any comments.

**In its review of the emergency regulations related to this rulemaking file, the following nonsubstantive changes were requested by the Office of Administrative Law and are indicated by “bold underline” for additions and “~~bold strikeout~~” for deletions:**

**Subsection 11518(ae)** was deleted and added as **Subsection** **11518(h)** within the same section. The wording and content of the definition did not change.

**Sections 11518.25 and 11518.30** are amended to delete the word “Part” and replace it with “Section” in the authority citation.

**Section 11518.50(d)** is amended to consistently use the plural form of the roles listed in that section.

**ALTERNATIVES DETERMINATION**

The SBE has determined that no alternative would be more effective in carrying out the purpose for which the regulation is proposed or would be as effective and less burdensome to affected private persons than the proposed regulation or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provisions of law.

**LOCAL MANDATE DETERMINATION**

The proposed regulations do not impose any mandate on local agencies or school districts.

# Attachment 2

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~~.

Grammatical and formatting edits made since the notice for this rulemaking file was published are indicated by “**bold underline**” for additions and “**~~bold strikeout~~**” for deletions. The content of the regulations remain unchanged.

## **Title 5. EDUCATIONDivision 1. California Department of EducationChapter 11. Special Program**s

## Subchapter 7.6 English Language Proficiency Assessments for California (ELPAC)

### Article 1. General

#### **§ 11517.6. Operation.**

Subchapter 7.6, “English Language Proficiency Assessments for California (ELPAC),” applies to the initial and summative assessments required by Education Code sections 313 and 60810, which are referred to as the ELPAC. ~~This subchapter shall become operative on the date the Superintendent of Public Instruction reports to the policy committees of the Legislature pursuant to Education Code section 60810(h)(2) that the assessments are ready for administration.~~

NOTE: Authority cited: Section 33031, Education Code. Reference: Sections 313 and 60810, Education Code.

#### **§ 11518. Definitions.**

The following definitions apply to the ELPAC:

 (a) “Accommodations” means resources documented in a pupil's individualized education program (IEP) or Section 504 Plan that an eligible pupil regularly uses in the classroom for instruction and/or assessment(s) and that are 1) either utilized in the assessment environment or 2) consist of changes in procedures or materials that increase equitable access to the assessment. Accommodations may not fundamentally alter the comparability of test scores.

 (b) “Administration” means an eligible pupil's attempt to take any part of the ELPAC initial or summative assessment.

 (c) “Alternate assessment” is an alternate means, identified in an eligible pupil's IEP ~~or Section 504 Plan~~, to measure English language proficiency.

 (d) “Annual summative assessment window” begins on February 1 and ends on May 31 of each school year.

 (e) “Designated supports” are resources that an eligible pupil regularly uses in the classroom for instruction and/or assessment(s) and that are available for use by any pupil for whom a need has been indicated, prior to assessment administration, by an educator or a team of educators (with parent/guardian and pupil input, as appropriate) or specified in the pupil's IEP or Section 504 Plan.

 (f) “Domain” means listening, ~~reading,~~ speaking, reading, or writing, as described in Education Code section 60810.

 (g) “ELPAC initial assessment criterion” means a performance-level cut score on the initial assessment that is at or above the State Board of Education (SBE)-approved definition of English language proficient.

 (h~~ae~~) “ELPAC ~~T~~test examiner” means an employee or contractor of an LEA or NPS who signs the ELPAC Test Security Affidavit, who is proficient in English and has complete command of pronunciation, intonation, and fluency, and who certifies that he or she has completed training in administration of the ELPAC.

 (i~~h~~) “ELPAC trainer” means an employee or contractor of a local educational agency (LEA) or nonpublic school (NPS) responsible for the annual training of ELPAC test examiners.

 (j~~i~~) “Excessive materials” means the difference between the total number of paper tests scored and 90 percent of the paper tests ordered annually by the LEA.

 (k~~j~~) “Grade” means the grade in which a pupil is enrolled at the time of testing, or if enrolled in an ungraded program, the grade to which the LEA assigns the pupil for assessment purposes.

 (*l*~~k~~) “Initial assessment” means the ELPAC assessment that is locally scored and is used to determine the English language proficiency of eligible pupils, as specified in section 11518(~~v~~y) or section 11518.20.

 (m*~~l~~*) “Initial assessment window” begins on July 1 and ends on June 30 of each school year.

 (n~~m~~) “Initial California enrollment” means the first day on which a pupil is in attendance in a California public school.

 (o~~n~~) “Local educational agency (LEA)” means an elementary, high school, and unified school district, county office of education, any charter school that for assessment purposes does not elect to be part of the school district or county office of education that granted the charter, and any charter school chartered by the SBE.

 (p~~o~~) “LEA ELPAC coordinator” means an employee of an LEA who is designated by the LEA superintendent to oversee the administration of the ELPAC assessments.

 (q~~p~~) “LEA superintendent” for purposes of these regulations includes an administrator of a charter school that is an LEA as defined by subdivision (~~n~~o).

 (r) “Local scoring tool (LST) correspondence administrator” means an employee of an LEA who enters pupils’ initial assessment scores into the local scoring tool from the score sheet in the answer book and has the authority to generate reports of pupils’ aggregate and individual scores at the LEA level.

 (s) “LST data entry staff” means an employee of an LEA who enters pupils’ initial assessment scores into the local scoring tool from the score sheet in the answer book and has the authority to print individual pupil score reports at the site level.

 (t~~q~~) “Nonpublic schools (NPS)” means nonpublic, nonsectarian schools as described in Education Code section 56034.

 (u~~r~~) “Personally identifiable information” includes a pupil's name and/or any other direct personal identifiers, and indirect identifiers, such as the pupil's address and personal characteristics, and other information that makes a pupil's identity traceable through the use of a single or multiple data source(s), including publicly available information.

 (v~~s~~) “Primary or native language” means the language used by a pupil, as identified in accordance with the survey conducted pursuant to section 11518.5(a).

 (w~~t~~) “Proctor” means an employee or contractor of an LEA or NPS who signs the ELPAC Test Security Affidavit and completes training designed to prepare him or her to assist the test examiner in the administration of the ELPAC.

 (x~~u~~) “Pupil” refers to a student enrolled in a California public school or NPS.

 (y~~v~~) “Pupil eligible for the initial assessment” means: (1) a pupil whose primary or native language is a language other than English as determined by the survey conducted pursuant to section 11518.5(a), or who is identified for administration of the initial ELPAC assessment pursuant to section 11518.20(a); (2) who has not previously been classified as an English learner (EL) by a California public school; and (3) who has no record of results from an administration of the California English Language Development Test, or the ELPAC initial or summative assessment.

 (z~~w~~) “Pupil eligible for the summative assessment” means a pupil who is classified as EL in accordance with these regulations.

 (aa~~x~~) “Pupil with a disability” means a pupil who has an IEP in accordance with Education Code section 56345 or a Section 504 Plan in accordance with the provisions of Section 504 of the Rehabilitation Act of 1973 (20 U.S.C. section 794).

 (ab~~y~~) “Record of results” includes:

 (1) Pupil test results on the initial and/or summative assessment; and

 (2) Parent or guardian notification letter of pupil results.

 (ac~~z~~) “Resource” refers to a universal tool, designated support, accommodation, or an unlisted resource approved pursuant to section 11518.35. Resources (including approved unlisted resources) do not change the construct of the assessment.

 (ad~~a~~) “Scribe” means an employee or contractor of an LEA or NPS which is responsible to implement a pupil's IEP, who signs an ELPAC Test Security Affidavit, and completes training to transcribe a pupil's responses to the format required by the ELPAC assessment(s). A parent, guardian, or sibling of a pupil is not eligible to be that pupil's scribe.

 (ae~~b~~) “Site ELPAC coordinator” means an employee of an LEA designated by the LEA, or a person designated by an NPS, to oversee the administration of ELPAC assessments for each test site.

 (af~~c~~) “Summative assessment” means the annual administration of the ELPAC assessment to identify a pupil's level of English language proficiency and assess a pupil's progression in acquiring skills of listening, ~~reading,~~ speaking, reading, and writing.

 (ag~~d~~) “Test contractor” means the contractor responsible for the development and administration of the ELPAC pursuant to Education Code section 60810.

 **~~(ae) “ELPAC Ttest examiner” means an employee or contractor of an LEA or NPS who signs the ELPAC Test Security Affidavit, who is proficient in English and has complete command of pronunciation, intonation, and fluency, and who certifies that he or she has completed training in administration of the ELPAC.~~**

(ah~~f~~) “Test materials” include, but are not limited to, administration manuals, administrative materials, test books, practice tests, scratch paper, answer books, ~~and~~ ~~test answer documents,~~ answer keys, scoring rubrics, and any of the materials developed and provided by the test contractor.

 (ai~~g~~) “Universal tools” means resources available to all pupils who are administered the ELPAC assessments.

 (aj~~h~~) “Unlisted resource” means an instructional support that a pupil regularly uses in daily instruction and/or assessment that has not been previously identified as a universal tool, designated support, or accommodation.

NOTE: Authority cited: Section 33031, Education Code. Reference: Sections 306, 313 and 60810, Education Code.

### Article 2. Administration for Pupils Other than Pupils with a Disability

#### **§ 11518.15. Summative Assessment.**

 (a) An LEA shall administer the ELPAC summative assessment to all eligible pupils during the annual summative assessment window.

 (b) The LEA shall notify each pupil's parent or guardian of the pupil's test contractor-scored summative assessment results within 30 calendar days following receipt of the test results from the test contractor. If the test results are received from the test contractor after the last day of instruction for the school year, the LEA shall notify each pupil’s parent or guardian of the pupil’s results within 15 working days of the start of the next school year.

NOTE: Authority cited: Section 33031, Education Code. Reference: Sections 306, 313, 60810 and 60900, Education Code; and 20 U.S.C. Sections 6311, 6312, 6823, 6825 and 6826.

#### **§ 11518.20. Correction of Classification Errors.**

 (a) If a pupil is classified as EO pursuant to section 11518.5(b), but the LEA has an indication that the pupil's primary or native language is not English and the pupil is unable to perform ordinary classroom work in English, the LEA may collect and review evidence as described in subdivisions (d)(3) and (d)(4). Based upon this review, the LEA shall determine whether the pupil shall be administered the initial assessment in order to determine the pupil's classification. At least 10 calendar days prior to administration of the initial assessment, the LEA shall notify the pupil's parent or guardian in writing that the pupil will be assessed. If the LEA administers the initial assessment and if the pupil does not meet the ELPAC initial assessment criterion for proficiency, the LEA shall classify the pupil as EL. The LEA shall notify the pupil's parent or guardian in writing of the results of its review, including the evidence that led to the determination and the results of the initial assessment, as applicable, within 14 calendar days of its determination. The pupil's parent or guardian shall be entitled to request that the LEA review its determination following the procedure described in subdivision (c).

 (b) If an LEA administers an initial or summative assessment to a pupil who is not eligible for the assessment as set forth in section 11518(~~v~~y) or (~~w~~z), the pupil's classification shall remain unchanged regardless of the assessment results, and the LEA shall not maintain any such results as a pupil record, including in CALPADS.

 (c) Following the administration of the initial assessment to a pupil, but before the administration of the summative assessment to that pupil, upon request from the pupil's parent or guardian or a certificated employee of the LEA, an LEA shall collect and review evidence, as described in subdivision (d), about the pupil's English language proficiency. Based upon its review of the evidence, the LEA shall determine whether the pupil's classification should remain unchanged or be changed. The LEA shall notify the pupil's parent or guardian in writing of the results of the review within 14 calendar days of its determination. This review shall occur only once over the course of the pupil's enrollment in the California public school system.

 (d) Evidence about the English language proficiency of a pupil for purposes of subdivision (c) shall include:

 (1) The results of the survey administered pursuant to section 11518.5(a);

 (2) The results of the assessment of the pupil's proficiency in English, using an objective assessment instrument, including, but not limited to, the initial assessment;

 (3) Parent or guardian opinion and consultation results; and

 (4) Evidence of the pupil's performance in the LEA's adopted course of study, including courses as described in Education Code sections 51210 (for pupils in grades 1 to 6) and 51220 (for pupils in grades 7 to 12) and English language development, as applicable, obtained from the pupil's classroom teacher and other certificated staff with direct responsibility for teacher or placement decisions.

 (e) During the time evidence is being collected and reviewed, the pupil shall retain his or her original classification.

NOTE: Authority cited: Section 33031, Education Code. Reference: Sections 306, 313, 60810 and 60900, Education Code; and 20 U.S.C. Sections 6311, 6312, 6821, 6823, 6825, 6826 and 7801.

### Article 3. Administration, Pupils with Disabilities

#### **§ 11518.25. Pupils with Disabilities.**

 (a) Except as otherwise provided in this Article, all provisions of Article 2 shall apply to pupils with disabilities.

 (b) When administering an initial or summative assessment to a pupil with a disability, the LEA shall provide the designated supports and the accommodations specified in section 11518.35 in accordance with the pupil's IEP or Section 504 Plan.

 (c) When a pupil’s IEP or Section 504 Plan specifies that the pupil has a disability that precludes assessment such that there are no appropriate accommodations for assessment in one or more of the listening, speaking, reading, and writing domains, the pupil shall be assessed in the remaining domains in which it is possible to assess the pupil.

 (1) A pupil may be assigned an overall score only if assessed in both oral and written language. To be considered assessed in oral language, the student must have been assessed in either listening or speaking. To be considered assessed in written language, the student must have been assessed in either reading or writing.

NOTE: Authority cited: Section 33031, Education Code. Reference: Sections 306, 313, 37200, 60810 and 60900, Education Code; ~~and~~ 20 U.S.C. Sections 1412, 6311, 6312, 6821, 6823, 6825 and 6826; and 34 Code of Federal Regulations **~~Part~~** Section 200.6(h)(4).

#### **§ 11518.30. Local Alternate English Language Proficiency Assessments.**

When a pupil’s IEP team determines that the pupil has a significant cognitive disability such that the ~~A~~ pupil ~~with a disability who~~ is unable to participate in the initial or summative assessment, or a section of either test, even with resources, the pupil shall be assessed using a locally administered ~~an~~ alternate assessment(s) for English language proficiency, as specified in the pupil's IEP ~~or Section 504 Plan~~.

Note: Authority cited: Section 33031, Education Code. Reference: Sections 306, 313 and 60810, Education Code; ~~and~~ 20 U.S.C. Sections 1412, 6311, 6821, 6823, 6825 and 6826; and 34 Code of Federal Regulations **~~Part~~** Section 200.6(h)(5).

### Article 4. ~~Elpac~~ELPAC Resources

#### **§ 11518.35. Use of Universal Tools, Designated Supports, and Accommodations.**

 (a) An LEA may provide all pupils with one or more of the following universal tools on the ELPAC for any of the domains of listening, ~~reading,~~ speaking, reading, and writing:

 (1) Breaks, including testing over more than one day, between the test contractor-identified test sections;

 (2) Scratch paper;

 (3) Oral clarification of test directions by the test examiner in English;

 (4) Sufficient time to complete the test~~.~~;

 (5) Pupil use of highlighter(s) in the test book for grades two through twelve; and

 (6) Pupil use of marking in the test book for grades three through twelve (non-highlighter).

 (b) An LEA shall ~~permit~~provide eligible pupils one or more of the following designated supports on the ELPAC for the domains of listening, ~~reading,~~ speaking, reading, and writing, only as described below, if specified in the pupil's IEP or Section 504 Plan, or for which need is indicated as described in section 11518(e):

 (1) Color overlay;

 (2) Covered overlay, masks, or other means to maintain visual attention to the test consistent with the test contractor's test directions;

 (3) Magnification;

 (4) Audio or oral presentation of test directions in English, which may be repeated as requested by the pupil;

 (5) Adjustments to setting, including most beneficial time of day, special lighting or acoustics, special or adaptive furniture, audio amplification equipment; and testing the pupil in a separate room provided that the pupil is directly supervised by an employee of the school district or nonpublic school who has signed the ELPAC Test Security Affidavit;

 (6) Noise buffers (e.g., individual carrel or study enclosure, or noise-cancelling headphones);

 (7) Manually Coded English or American Sign Language (ASL) to present test directions for administration (does not apply to test questions).

 (c) An LEA shall ~~permit~~provide eligible pupils with a disability with the following accommodations on the ELPAC ~~to take the ELPAC~~ for the domains of listening, ~~reading,~~ speaking, reading, and writing, only as described below, ~~with the following accommodations~~ if specified in the pupil's IEP or Section 504 Plan:

 (1) Braille test materials provided by the test contractor;

 ~~(2) Audio or oral presentation of test questions for the writing section in English;~~

(2) Pause or replay the audio during the administration of test questions for the listening domain;

(3) For test questions that assess the listening domain using streamed audio, the use of written scripts by the test examiner for pupils for whom streamed audio is not accessible;

(4) Pause or replay the audio during the administration of test questions for the speaking domain that ask the pupil to summarize an academic presentation;

 (5~~3~~) For test questions that assess the domains of listening, reading, or writing, transfer of pupil responses marked in the test book~~let~~ to the answer ~~document~~ book by a scribe who has signed an ELPAC Test Security Affidavit;

 (6~~4~~) Responses dictated to a scribe for selected response items, including multiple-choice items;

 (7~~5~~) For test questions that assess the domain of writing, dictation by the pupil of responses, including all spelling and language conventions, to a scribe, audio recorder, or speech-to-text converter;

 (8~~6~~) For test questions that assess the domain of writing, use of word processing software with the spell and grammar check tools turned off;

 (9~~7~~) For test questions that assess the domains of listening, speaking, and writing, presentation of, and responses to, test questions using Manually Coded English or ASL. Pupil responses must be transcribed into the answer book by the ELPAC test examiner or scribe;

 (10~~8~~) Large print versions reformatted from regular print version;

 (11~~9~~) Test questions enlarged through electronic means;

 (12~~10~~) Supervised breaks within a section of the test;

 (13~~11~~) For test questions that assess the domains of listening, speaking, and writing, use of an assistive device that does not interfere with the independent work of the pupil. Pupil responses must be transcribed into the answer book by the ELPAC test examiner or scribe; and

 (14~~12~~) Testing at home or in the hospital by a test examiner.

 (d) An LEA may submit a request to the CDE on behalf of a pupil with a disability, prior to administering an initial or summative assessment, to obtain approval to ~~use~~provide an unlisted resource. Requests must include:

 (1) LEA name and school name;

 (2) LEA ELPAC coordinator name, phone number, and e-mail address; and

 (3) A description of the unlisted resource being requested for an ELPAC domain.

NOTE: Authority cited: Section 33031, Education Code. Reference: Sections 306, 313 and 60810, Education Code; and 20 U.S.C. Sections 1412, 6311, 6312, 6821, 6823, 6825 and 6826.

### Article 5. LEA Responsibilities

#### **§ 11518.40. LEA ELPAC Coordinator.**

 (a) No later than April 1 of each year, each LEA superintendent shall designate an LEA ELPAC coordinator for the following school year. An LEA superintendent shall notify the test contractor of the identity and contact information for the LEA ELPAC coordinator. The LEA ELPAC coordinator shall be available throughout the school year and shall serve as the LEA representative and the liaison between the LEA and the CDE and the LEA and test contractor for all matters related to the ELPAC. Should the LEA ELPAC coordinator be unavailable for any matter related to the ELPAC, the LEA superintendent or his or her designee shall serve in the place of the LEA ELPAC coordinator.

 (b) The LEA ELPAC coordinator shall complete all duties in accordance with instructions from the test contractor. The LEA ELPAC coordinator's responsibilities include, but are not limited to:

 (1) Determining LEA and individual school test material needs in conjunction with the test contractor.

 (2) Ordering materials only for those test examiners who certify they are trained to administer the ELPAC.

 (3) Ensuring delivery, acquisition, and distribution of test materials to individual schools and sites.

 (4) Maintaining security over the test materials and personally identifiable information using the procedure set forth in section 11518.50. The LEA ELPAC coordinator shall sign the ELPAC Test Security Agreement and the ELPAC Test Security Affidavit, as set forth in section 11518.50, and annually submit a copy of both to the test contractor prior to receipt of test materials. The LEA shall retain all ELPAC Test Security Agreements and ELPAC Test Security Affidavits ~~from~~for each ~~school~~ site ELPAC coordinator at the LEA office for no less than 12 months from the date the materials were signed.

 (5) Conducting an inventory of test materials immediately upon receipt from the test contractor.

 (6) Following completion of the inventory, ensuring that the test materials are retained in a secure, locked location, in the secure boxes in which they were received from the test contractor, until the time they are delivered to the test sites.

 (7) Training site ELPAC coordinators annually to oversee test administration and security at each test site.

 (8) Ensuring that all ELPAC test examiners and all other personnel involved in the direct administration and scoring of the initial and summative assessments are trained annually, in accordance with instructions from the test contractor.

 (9) Assisting the test contractor with the resolution of any discrepancies in pupil test information and/or test materials including, but not limited to, pre-identification files and all errors or discrepancies in pupil-level data files, required to comply with section 11518.45.

 (10) Overseeing the collection of all pupil demographic data in accordance with section 11518.75.

 (11) Responding to correspondence and inquiries from the test contractor and the CDE in a timely manner.

 (12) Overseeing the administration of the ELPAC to eligible pupils.

 (13) Immediately notifying the test contractor of any security breaches or testing irregularities that occur in the LEA before, during, or after the administration of the ELPAC in accordance with instructions from the test contractor.

 (14) Ensuring all test materials are received from school test sites in sufficient time to satisfy the requirements of subdivision (b)(16).

 (15) Ensuring all test materials received from school test sites have been placed in a secure location upon receipt of those test materials.

 (16) Ensuring all test materials to be scored by the test contractor are inventoried, packaged, and labeled in accordance with instructions from the test contractor. Test materials shall be returned to the test contractor at the time and in the manner specified by the test contractor.

 (17) Overseeing the collection and return, or collection and secure destruction, of all test materials that do not require scoring by the test contractor, in accordance with the directions of and time periods specified by the test contractor. Test materials that were administered to pupils who are not eligible for the assessment as set forth in section 11518(~~v~~y) or (~~w~~z) shall also be securely destroyed or returned, in accordance with the directions specified by the test contractor.

 (18) Upon receiving summary reports and files from the test contractor, reviewing the files and reports for completeness and accuracy and notifying the test contractor and the CDE of any errors, discrepancies, or incomplete information as directed by the test contractor. The LEA coordinator shall certify the accuracy of the apportionment information report of the initial and summative assessments administered during the prior fiscal year if designated to do so by the LEA superintendent.

NOTE: Authority cited: Section 33031, Education Code. Reference: Sections 306, 313 and 60810, Education Code; and 20 U.S.C. Sections 1412, 6311, 6312, 6821, 6823, 6825 and 6826.

#### **§ 11518.45. Site ELPAC Coordinator.**

 (a) Annually, each LEA superintendent, or his or her designee, and NPS shall designate a site ELPAC coordinator for each test site. The site ELPAC coordinator, or the site principal or his or her designee, shall be available to the LEA ELPAC coordinator for the purpose of resolving any discrepancies, inconsistencies in test materials or reports, and/or other issues that arise as a result of the annual administration of the ELPAC at the site.

 (b) The site ELPAC coordinator shall complete all duties in accordance with instructions from the test contractor. The site ELPAC coordinator's responsibilities include, but are not limited to, all of the following:

 (1) Determining site test material needs and communicating the site needs to the LEA ELPAC coordinator.

 (2) Arranging for test administration at the site.

 (3) Annually completing the ELPAC Test Security Agreement and ELPAC Test Security Affidavit prior to the receipt of test materials.

 (4) Providing test materials only to those persons who have been trained to administer the ELPAC, have executed ELPAC Test Security Affidavits, and who are administering the ELPAC.

 (5) Overseeing test security requirements, including the collection ~~and delivery~~ of all completed ELPAC Test Security Affidavits ~~forms to the LEA office~~ from the test examiners and other site personnel involved with testing.

 (6) ~~Submitting~~Securely storing signed ELPAC Test Security Affidavits ~~to the LEA ELPAC coordinator to be retained~~ , other than the site ELPAC coordinator affidavit, on the school site for no less than 12 months from the date the materials were signed. The site ELPAC coordinator’s ELPAC Test Security Affidavit shall be stored as specified in section 11518.40(b)(4).

 (7) Maintaining security over the test materials and test data as required by section 11518.50.

 (8) Overseeing the acquisition of test materials from the LEA ELPAC coordinator and the distribution of test materials to the test examiner(s) on the date of testing in accordance with instructions from the test contractor.

 (9) Overseeing the administration of the ELPAC to eligible pupils at the test site.

 (10) Immediately notifying the LEA ELPAC coordinator of any security breaches or testing irregularities that occur before, during, or after the administration of the ELPAC that violate the terms of the ELPAC Test Security Affidavit in section 11518.50, in accordance with instructions from the test contractor.

 (11) Collecting and returning all testing materials to the LEA ELPAC coordinator after testing has concluded, in accordance with instructions from the test contractor.

 (12) Assisting the LEA ELPAC coordinator and the test contractor in the resolution of any discrepancies between the numbers of tests received from the LEA ELPAC coordinator and the number of tests collected and returned to the LEA ELPAC coordinator after testing has concluded.

 (13) Overseeing the collection and accuracy of all pupil demographic data required by section 11518.75.

Note: Authority cited: Section 33031, Education Code. Reference: Sections 306, 313 and 60810, Education Code; and 20 U.S.C. Sections 1412, 6311, 6312, 6821, 6823, 6825 and 6826.

#### **§ 11518.50. ELPAC Test Security Agreement and ELPAC Test Security Affidavit.**

(a) Access to the test materials is limited to eligible pupils being administered the ELPAC and individuals directly responsible for administration of an ELPAC test who have signed the ELPAC Test Security Agreement and ELPAC Test Security Affidavit, as applicable.

 (b) All LEA ELPAC coordinators and site ELPAC coordinators shall annually sign the ELPAC Test Security Agreement set forth in subdivision (c) before receiving any ELPAC test materials.

 (c) The ELPAC Test Security Agreement shall be as follows:

ELPAC TEST SECURITY AGREEMENT

I acknowledge by my signature on this form that the English Language Proficiency Assessments for California (ELPAC) initial and summative assessments pursuant to Education Code section 60810 are secure tests and agree to each of the following conditions to ensure test security:

 (1) I will take all necessary precautions to safeguard the security of the test and test materials, including limiting access to only those individuals in the local educational agency (LEA) who have responsibilities for the administration of the ELPAC.

 (2) I shall have all persons who have access to the test(s) and test materials for the purpose of administration read and sign the ELPAC Test Security Affidavit.

 (3) Except during the administration of the tests, I will keep the test materials in a securely locked room which can be accessed only with a key or key card and, when possible, in a locked storage cabinet within that room.

 (4) As a site ELPAC coordinator, I will collect and return all test materials to the LEA ELPAC coordinator.

 (5) As an LEA ELPAC coordinator, I will securely destroy or return all test materials ~~that do not require scoring by the test contractor~~, in accordance with the directions of and time periods specified by the test contractor.

 (6) I will deliver test materials only to those persons who have executed ELPAC Test Security Affidavits.

By signing my name to this document, I am assuring that I have completely read and will abide by the above conditions.

Signed: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Print Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

LEA: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 (d) Test examiners, proctors, scribes, LEA ELPAC coordinators, site ELPAC coordinators, ELPAC trainers, LST correspondence **~~administrator~~** **administrators**, LST data entry staff, and any person having access for the purpose of administering the test(s) shall sign the ELPAC Test Security Affidavit set forth in subdivision (e) before receiving any test materials.

 (e) The ELPAC Test Security Affidavit shall be as follows:

ELPAC TEST SECURITYAFFIDAVIT

I acknowledge that I will have access to one or more of the English Language Proficiency Assessments for California (ELPAC) initial and summative assessments pursuant to Education Code section 60810, for the purpose of administering the test(s) to eligible pupils. I understand that these materials are highly secure and may be under copyright restrictions, and it is my responsibility to protect their security as follows:

 (1) I will not divulge the contents of the test materials to any other person through verbal, written, or any other means of communication. This includes, but is not limited to, sharing or posting test content via the Internet or by e-mail without the express prior written permission of the California Department of Education (CDE) and test contractor.

 (2) I will not copy or take a photo of any part of the test materials. This includes, but is not limited to, photocopying (including enlarging) and recording without the express prior written permission from the CDE and test contractor.

 (3) I will keep all test materials secure prior to and following the distribution of the test(s).

 (4) I will permit eligible pupils access to test materials only during testing periods. I will permit only eligible pupils who are testing, and individuals participating in the test administration who have signed an ELPAC Test Security Affidavit, to be in the room when and where the ELPAC assessments are being administered.

 (5) I will not allow any pupils to use any electronic devices that allow them to access outside information, communicate with any other pupils, or photograph or copy test content. This includes, but is not limited to, cell phones, personal digital assistants, tablets, laptops, cameras, and electronic translation devices.

 (6) When acting as a test examiner, I will: (a) collect and account for all test materials following each testing session; (b) not permit any pupils to remove any test materials by any means from the room(s) where testing takes place; and (c) count all test books and answer ~~documents~~ books before allowing any pupil to leave the testing room.

 (7) I will not review any test questions, passages, or other test items with any pupils or any other person at any time, including before, during, or following testing. I understand that this includes any discussion between local educational agency (LEA) staff for training or professional development, whether it be in a one-on-one or in a staff meeting setting.

 (8) I will not, for any test, develop scoring keys, review any pupil responses, or prepare answer ~~documents~~ books. I understand that this includes coaching pupils or providing any other type of assistance to any pupils that may affect their responses. This includes, but is not limited to, both verbal cues and nonverbal cues that may indicate correct or incorrect answers, or completing or changing any pupils' answers.

 (9) I will return all test materials to the designated site ELPAC coordinator in accordance with his or her instructions.

 (10) When acting as a test examiner or proctor, I will actively supervise all pupils throughout the testing session to ensure that they are working on the correct test section or part, marking their answers in the correct section of their answer ~~documents~~ books, following instructions, and are accessing only authorized materials (non-embedded universal tools, designated supports, or accommodations) for the test being administered.

 (11) I will administer the ELPAC in accordance with the directions for test administration and test administration manuals prepared by the test contractor, or any additional guidance provided by the test contractor. I understand that the unauthorized copying, sharing, or reusing of any test book (test books may be appropriately reused in accordance with the test contractor's terms and conditions), test question, or answer ~~document~~ book by any means is prohibited. This includes, but is not limited to, photocopying, recording, e-mailing, messaging (instant, text, or multimedia messaging service, or digital application), using a camera/camera phone, and/or sharing or posting test content via the Internet without the express prior written permission from the CDE and test contractor.

 (12) I have been trained to carry out my responsibilities in the administration of the ELPAC.

By signing my name to this document, I assure that I have completely read this affidavit and will abide by the above requirements and have received all training necessary for the administration of the ELPAC.

Signed: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Print Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Position: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

School: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

LEA: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 (f) To maintain the security of the ELPAC, all LEA ELPAC coordinators and site ELPAC coordinators shall immediately, within 24 hours, notify the test contractor of any security breaches or testing irregularities occurring before, during, and/or after any ELPAC test administration(s).

NOTE: Authority cited: Section 33031, Education Code. Reference: Sections 306, 313 and 60810, Education Code; and 20 U.S.C. Sections 1412, 6311, 6312, 6821 and 6823.

#### **§ 11518.70. Excessive Material Orders.**

 (a) For both the initial and summative assessments, each LEA is responsible for the cost of excessive materials ordered annually by the LEA.

 (1) In no event shall the cost to the LEA for excessive materials exceed the amount per test book~~let~~ and accompanying material that is paid to the test contractor by the CDE as part of the contract with the test contractor for the applicable year.

 (b) An LEA shall not be responsible for the cost of test materials lost through no fault of the LEA.

 (c) An LEA shall reimburse the test contractor within 60 calendar days of the LEA's receipt of the test contractor's notice of excessive materials charges.

NOTE: Authority cited: Section 33031, Education Code. Reference: Sections 313 and 60810, Education Code; and 20 U.S.C. Sections 6311, 6312, 6821 and 6823.

#### **§ 11518.75. Data Elements for Test Registration, Analysis of Pupil Proficiency, and State and Federal Reporting.**

 (a) In order to assess all eligible pupils pursuant to Education Code section 60810 and meet state and federal accountability and reporting obligations, each LEA shall provide any and all program and demographic pupil data requested by the CDE for inclusion in CALPADS.

 (b) In addition to the demographic and program data required to be reported in subdivision (a) above, each LEA shall report to the test contractor the following information, as applicable:

 (1) Pupil's full name;

 (2) Pupil's date of birth;

 (3) County-District-School code;

 (4) Date testing completed;

 (5) Pupil's grade level at time of test administration;

 (6) Pupil's gender;

 (7) Pupil's most recent prior CELDT or ELPAC scale scores;

 (8) Pupil's grade level from the most recent prior CELDT or ELPAC administration;

 (9) Pupil's use of accommodation(s);

 (10) Pupil's use of alternate assessment(s); ~~and~~

 (11) Pupil’s exemption from assessment in one or more of the domains of listening, speaking, reading or writing, as set forth in section 11518.25(c); and

 (12~~11~~) Pupil's Statewide Student Identifier.

NOTE: Authority cited: Section 33031, Education Code. Reference: Sections 313, 60810 and 60812, Education Code; and 20 U.S.C. Sections 1412, 6311, 6312, 6821, 6823, 6825, 6826, 6841 and 6843.

### Article 6. Apportionment

#### **§ 11519.5. Apportionment Information Report.**

 (a) Annually, the CDE shall make available electronically to each LEA an apportionment information report which shall include the following information provided to the test contractor for those tests administered during the previous fiscal year (July 1 through June 30):

 (1) Initial assessment: The number of eligible pupils assessed on the ELPAC initial assessment within the initial assessment window as indicated by the number of answer ~~documents~~ books scored by the LEA and entered into the local scoring tool for each administration.

 (2) Summative assessment: The number of eligible pupils assessed on the ELPAC summative assessment within the annual summative assessment window as indicated by the number of answer ~~documents~~ books submitted to and scored by the test contractor for each administration.

 (A) If multiple answer books for an individual pupil are submitted to the test contractor, only the LEA that submitted the answer book with the earliest date testing completed will be eligible for apportionment.

 (b) The CDE shall ~~distribute~~make available electronically an ~~the~~ apportionment information report~~s~~ to each LEA~~s no later than December 1~~ annually.

 (c) To be eligible for an apportionment payment for the ELPAC, LEAs shall annually meet the following conditions:

 (1) The LEA shall have returned to the contractor and/or locally destroyed in a secure manner all secure test materials, and

 (2) The LEA superintendent shall have certified the accuracy of the apportionment information report for the administration of the initial and summative assessments during the prior fiscal year (July 1 through June 30), which is ~~either:~~

transmitted electronically in a manner prescribed by the test contractor.

 ~~(A) Postmarked or transmitted electronically in a manner prescribed by the test contractor and/or the CDE by March 1 of the subsequent fiscal year, or~~

 ~~(B) If postmarked or transmitted in any manner after March 1 of the subsequent fiscal year, the apportionment information report shall be accompanied by a waiver request as provided by Education Code section 33050.~~

NOTE: Authority cited: Section 33031, Education Code. Reference: Sections 313 and 60810, Education Code.

08-27-18 [California Department of Education]