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Attachment 1

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**CA DEPARTMENT OF EDUCATION**

**TOM TORLAKSON**

State Superintendent of Public Instruction

**CA BOARD OF EDUCATION**

**MICHAEL W. KIRST**

President

# NOTICE OF PROPOSED RULEMAKING

## AMENDMENT TO CALIFORNIA CODE OF REGULATIONS, TITLE 5, REGARDINGVISION TESTING

Notice published January 25, 2019

**NOTICE IS HEREBY GIVEN** that the State Board of Education (SBE) proposes to adopt the regulations described below after considering all comments, objections, or recommendations regarding the proposed action.

The SBE invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations at the scheduled hearing or during the written comment period.

### PUBLIC HEARING

California Department of Education (CDE) staff, on behalf of the SBE, will hold a public hearing at 1:30 p.m. on March 11, 2019, at 1430 N Street, Room 1103, Sacramento, California. The room is wheelchair accessible. At the hearing, any person may present statements or arguments, orally or in writing, relevant to the proposed action described in the Informative Digest. The SBE requests, but does not require, that persons who make oral comments at the public hearing also submit a written summary of their statements. No oral statements will be accepted subsequent to this public hearing.

### REASONABLE ACCOMMODATION FOR ANY INDIVIDUAL WITH A DISABILITY

Pursuant to the *Rehabilitation Act of 1973,* the *Americans with Disabilities Act of 1990,* and the *Unruh Civil Rights Act,* any individual with a disability who requires reasonable accommodation to attend or participate in a public hearing on proposed regulations, may request assistance by contacting Daniela Torres, Coordinated School Health and Safety Office, 1430 N Street, Suite 4309, Sacramento, CA, 95814-5901; telephone,

916-319-0284. It is recommended that assistance be requested at least two weeks prior to the hearing.

### WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to:

Patricia Alverson, Regulations Coordinator

Administrative Support and Regulations Adoption Unit

California Department of Education

1430 N Street, Room 5319

Sacramento, CA 95814

Comments may also be submitted by facsimile (FAX) at 916-319-0155 or by email to regcomments@cde.ca.gov.

Comments must be received by the Regulations Coordinator prior to 5:00 p.m. on March 11, 2019. All written comments received by CDE staff during the public comment period are subject to disclosure under the Public Records Act.

### AVAILABILITY OF CHANGED OR MODIFIED TEXT

Following the public hearing and considering all timely and relevant comments received, the SBE may adopt the proposed regulations substantially as described in this Notice

or may modify the proposed regulations if the modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified regulation will be available for 15 days prior to its adoption from the Regulations Coordinator and will be mailed to those persons who submit written comments related to this regulation, or who provide oral testimony at the public hearing, or who have requested notification of any changes to the proposed regulations.

### AUTHORITY AND REFERENCE

Authority: Sections 33031, Education Code.

References: Sections 3308.5, 44873, 44877, 44878, 49452, 49455, and 49456, Education Code.

### INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Previous law required, upon first enrollment in a California school district of a child at a California elementary school, and at least every third year thereafter until the child has completed the 8th grade, the child’s vision to be appraised by the school nurse or other authorized person, as specified.

The chaptering of Assembly Bill 1840 (Chapter 803, Statutes of 2014) and Senate Bill 1172 (Chapter 925, Statutes of 2014) resulted in changes to *EC* Section 49455. These changes authorize a pupil’s vision to be appraised by using an eye chart or any scientifically validated photoscreening test. The changes further require photoscreening tests to be performed, under an agreement with, or the supervision of, an optometrist or ophthalmologist, by the school nurse or a trained individual who meets requirements established by the CDE.

Amendments to 5 *CCR* sections 590, 591, 594, and 596 and the proposed Section 597are necessary to provide the specificity that is not included in statute, which will enable the CDE and school districts to implement the provisions of *EC* Section 49455.

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

The benefit of enacting the proposed regulations will be to provide direction and specificity that school districts can follow for purposes of complying with the provisions of *EC* Section 49455 related to vision appraisals that will lead to increased visual acuity of students and their ability to achieve at a greater level in the classroom.

#### *Determination of Inconsistency/Incompatibility With Existing State Regulations*

An evaluation of the proposed regulations have determined they are not inconsistent/incompatible with existing regulations, pursuant to Government Section 11346.5(a)(3)(D).

### DISCLOSURES REGARDING THE PROPOSED ACTION/ FISCAL IMPACT

The SBE has made the following initial determinations:

*Other statutory requirements*: There are no other matters as are prescribed by statute applicable to the specific state agency or to any specific regulations or class of regulations.

*Mandate on local agencies and school districts*: The SBE is not aware of any fiscal mandates that local agencies and school districts would necessarily incur in reasonable compliance with the proposed action.

*Costs to any local agencies or school districts for which reimbursement would be required pursuant to Part 7 (commencing with section 17500) of division 4 of the Government Code*: The SBE is not aware of any cost impacts that a local agency or school district would necessarily incur in reasonable compliance with the proposed action.

*Cost or savings to any state agency*: The SBE is not aware of any cost or savings impact that any state agency would necessarily incur in reasonable compliance with the proposed action.

*Other non-discretionary costs or savings imposed on local agencies, including local educational agencies*: The SBE is not aware of any non-discretionary costs or savings impact that any local agencies, including local education agencies, would necessarily incur in reasonable compliance with the proposed action.

*Costs or savings in federal funding to the State*: The SBE is not aware of any cost or savings in federal funding that may impact or would necessarily incur in reasonable compliance with the proposed action.

*Effect on housing costs*: The SBE is not aware of any effect on housing costs that would necessarily incur in reasonable compliance with the proposed action.

*Significant, statewide adverse economic impact directly affecting business including the ability of California businesses to compete with businesses in other states*: The SBE is not aware of any significant, statewide adverse economic impact directly affecting business including the ability of California businesses to compete with businesses in other states as a result of reasonable compliance with the proposed action.

*Cost impacts on a representative private person or businesses*: The SBE is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

*Report required*: The proposed regulations do not require a report to be made.

*Effect on small businesses*: The SBE is not aware of any effects or cost impacts that a small business would necessarily incur in reasonable compliance with the proposed action.

### results of the Economic Impact Analysis

The SBE concludes that it is unlikely that these proposed regulations will: 1) create or eliminate jobs within California; 2) create new businesses or eliminate existing businesses within California; or 3) affect the expansion of businesses currently doing business within California.

Benefits of the Proposed Action: The benefit of enacting the proposed regulations is to provide direction and specificity that school districts can follow for purposes of complying with the provisions of EC Section 49455 related to vision appraisals.

### CONSIDERATION OF ALTERNATIVES

The SBE must determine that no reasonable alternative it considered or that has otherwise been identified and brought to the attention of the SBE, would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

### CONTACT PERSONS

Inquiries concerning the content of these proposed regulations should be directed to:

Daniela Torres, School Health Education Consultant

Educator Excellence and Equity Division

California Department of Education

1430 N Street, Suite 4309

Sacramento, CA 95814-5901

Telephone: 916-319-0284

Email: dtorres@cde.ca.gov

Inquiries concerning the regulatory process may be directed to the Patricia Alverson, Regulations Coordinator, or the backup contact person, Hillary Wirick, Regulations Analyst, at 916-319-0860.

### AVAILABILITY OF INITIAL STATEMENT OF REASONS, TEXT OF PROPOSED REGULATIONS AND INFORMATION

The SBE has prepared an Initial Statement of Reasons for the proposed regulations. This document and the text of the proposed regulations may also be viewed and downloaded from the CDE’s website at [*http://www.cde.ca.gov/re/lr/rr/*](http://www.cde.ca.gov/re/lr/rr/). All of the information upon which the proposed action is based may be obtained upon request from the Regulations Coordinator.

### AVAILABILITY AND LOCATION OF THE FINAL STATEMENT OF REASONS AND RULEMAKING FILE

You may obtain a copy of the Final Statement of Reasons, once it has been finalized, by making a written request to the Regulations Coordinator.

All the information upon which the proposed regulations are based is contained in the rulemaking file which is available for public inspection by contacting the Regulations Coordinator.

11-07-2018 [California Department of Education]