# FINDING OF EMERGENCY

**Readoption of Emergency Regulations
California Assessment of Student Performance and Progress (CAASPP)**

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

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

### Necessity for Readoption for Emergency Regulations

The proposed amendments to *California Code of Regulations*, Title 5 (5 *CCR*), Sections 850, 851, 854.1, 854.2, 854.3, 854.4, 859, 862, and 863 must be adopted on an emergency basis in order to proceed in a timely manner with the 2018–19 administration of the California Assessment of Student Performance and Progress (CAASPP) tests pursuant to the requirements of *Education Code* (*EC*)Section 60640. The purpose of the proposed amendments is to ensure the correct, efficient, and standardized administration of the CAASPP online assessments according to required Smarter Balanced Assessment Consortium (Consortium), state, and federal guidelines and to maintain accuracy, reliability, and validity of measures and the timely reporting of the test results, in so doing, prevent harm to the public peace, health, safety, and general welfare of pupils.

Allowing the emergency regulations to expire prior to the adoption of these amendments through the regular rulemaking process when not all of the testing, scoring and reporting of the CAASPP results has yet been completed, will jeopardize the reliability and validity of the results, causing further harm to the general welfare. All of the circumstances justifying the initial adoption of the emergency regulations remain unchanged and 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 CAASPP emergency regulations effective January 31, 2019 is incorporated by reference herein, as though fully set forth in this document.

### Showing of Substantial Progress

The California Department of Education (CDE) brought the emergency regulations to the SBE for approval at its January 2019 meeting. The regular rulemaking package was also presented to the SBE for approval at the January 2019 meeting. Commencement for permanent regulations rulemaking was approved by the SBE at this meeting, which included all of the emergency regulations, and a comment period held between January 26 and March 11, 2019. However, the last day to post documents to the SBE website regarding SBE agenda items for the March meeting was March 3, 2019, pursuant to the Bagley-Keene Open Meeting Act (act). Since this date occurred prior to the end date of the public comment period, the CDE is unable to meet the provisions of the act. Hence, the CDE has no choice but to bring the regular rulemaking package back before the SBE at its May meeting for approval.

During its review, OAL provided guidance and subsequently, the CDE amended the originally proposed regulations. CDE also changed the regulations based on the suggestion of the single written comment received.

CDE requested the SBE to approve the modified proposed regulations and approve a 15-day public comment period. After the 15-day public comment period, CDE will need at least a week before the modified proposed regulations can be submitted to the OAL and the OAL has 30 working days to review and approve the file. Also, there may be changes to the regulations resulting from the 15-day public comment period that may require an additional public comment period. Since the emergency regulations expire on July 31, 2019, and the permanent rulemaking at the earliest can only be made effective at the end of July, despite the SBE’s efforts to make substantial progress in the regular rulemaking process, these emergency regulations must be readopted if there is not to be a lapse in their effect in case of any unforeseen issues resulting from OAL’s review or an additional public comment period. Any possible delay is due to the fact that the SBE meets only every other month and/or another public comment period may be necessary, and not due to the lack of diligence or progress with respect to the regular rulemaking process.

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

| **Action\*** | **Completion Date or Estimated Completion Date** |
| --- | --- |
| SBE approves agenda items for the adoption of the emergency regulations and the commencement of the permanent rulemaking process | January 9, 2019 |
| 5-business day pre-notice of the proposed emergency regulations for readoption | January 14–18, 2019 |
| 10-calendar day review by OAL | January 22–31, 2019 |
| 45-day public comment period for permanent regulations | January 26, 2019–March 11, 2019 |
| Emergency regulations became effective | January 31, 2019 |
| CAASPP regulations public hearing | March 11, 2019 |
| SBE approves a 15-day comment period for permanent regulations | May 8–9, 2019 |
| 15-day comment period for permanent regulations  | May 10-25, 2019 |
| Submit rulemaking to OAL if a second 15-day comment period is not necessary | June 4, 2019  |
| OAL approval—Regulations effective  | Approximately July 17, 2019 |

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