

California Department of Education

Executive Office

SBE-003 (REV. 11/2017)

imb-adad-nov19item05

# California State Board of EducationNovember 2019 AgendaItem #12

## Subject

English Language Proficiency Assessments for California: Readoption of the Finding of Emergency and Proposed Emergency Regulations for Amendments to the *California Code of Regulations*, Title 5, Sections 11518, 11518.5, 11518.15, 11518.20, 11518.25, 11518.30, 11518.35, 11518.37, 11518.40, 11518.45, 11518.50, 11518.75, and 11518.77.

## Type of Action

Action, Information

## Summary of the Issues

The California Department of Education (CDE) has begun work for the transition of the paper-based English Language Proficiency Assessments for California (ELPAC) to the same online delivery system as the California Assessment of Student Performance and Progress (CAASPP) program. Enactment of Assembly Bill 1808 (Chapter 32, subsection (64) and Section 141) provides the statutory authority and basis for this transition to an online test delivery system. Section 141 specifically provides that the computer-based ELPAC will use the same test delivery system as CAASPP. This transition is in alignment with the contract that the State Board of Education (SBE) approved in November 2018. This shift to an online administration platform introduces new terms, substantially expands embedded and non-embedded universal tools, designated supports and accommodations, allows for quicker electronic score reporting for grades three through twelve, and provides a statewide streamlined process for the completion and retention of test security affidavits and agreements. Based on these changes, amendments to the current ELPAC regulations are necessary.

On July 10, 2019, the SBE approved the commencement of the regular rulemaking process and adopted emergency regulations to make amendments to *California Code of Regulations,* Title 5, sections 11518, 11518.5, 11518.15, 11518.20, 11518.25, 11518.30, 11518.35, 11518.37, 11518.40, 11518.45, 11518.50, 11518.75, and 11518.77. The adoption of the emergency regulations, which expire on January 29, 2020, was necessary so that the amendments were in effect for the start of the 2019-20 school year.

The regular rulemaking process involved a 45-day public comment period from July 26, 2019, through September 9, 2019. No public comments were received during this public comment period nor during the public hearing held on September 9, 2019. However, in its review of proposed amended regulations, the Office of Administrative Law (OAL) requested substantive changes to sections 11518.5(d), 11518.15(b), and 11518.77(a), which require a 15-day public comment period. In further review, the CDE made a substantive change section 11518(aj)(1) to provide the correct citation for determination of students with the most significant cognitive disabilities within the Individuals for Disabilities Education Act. The readoption of the emergency regulations is necessary to prevent a possible lapse between the expiration of the emergency regulations and the effective date of the permanent regulations. In the interim, the CDE is making substantial progress in finalizing the permanent regulations. The finding of emergency and showing of substantial progress are presented in the attached Finding of Emergency (Attachment 1). The proposed changes to the ELPAC regulations are noted in the attached Notice of Proposed Emergency Action (Attachment 2) and the proposed emergency regulations (Attachment 3).

## Recommendation

The CDE recommends the SBE take the following actions:

* Approve the Finding of Emergency.
* Readopt the proposed emergency regulation amendments.
* Direct the CDE to circulate the required Notice of Proposed Emergency Action, and then resubmit the emergency regulations 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 Finding of Emergency and proposed emergency regulation amendments.

## Brief History of Key Issues

In May 2016, the SBE approved the commencement of the rulemaking process for the ELPAC. The OAL expressed concerns regarding the necessity and clarity of the proposed ELPAC regulations. Subsequently, the CDE withdrew the regulation package in order to address the OAL’s concerns. In March 2017, based on feedback from the OAL, the CDE resubmitted to the SBE changes to the proposed regulations. The ELPAC regulations were approved on June 5, 2017, and became operational on October 1, 2017.

The summative ELPAC became operational on February 1, 2018, and the initial ELPAC became operational July 1, 2018. Based on feedback regarding the first operational summative ELPAC, the SBE approved emergency regulations as well as the commencement of the rulemaking process for amendments to the ELPAC regulations in July 2018. In November 2018, the SBE re-adopted the emergency regulations, and adopted the permanent regulations. The OAL approved the regulations on December 31, 2018.

In July 2019, the SBE approved the commencement of the rulemaking process and adopted emergency regulations for the ELPAC. These changes increased continuity in the terms used across multiple assessment programs, expanded accessibility resources as a result of the online administration of ELPAC, aligned these regulations with CAASPP regulations, and provided electronic efficiencies for local educational agencies. For the regular rulemaking process, the amended regulations were subject to a 45-day public comment period and a public hearing, which was held on September 9, 2019. No written or oral comments were received during the 45-day public comment period or hearing.

The 15-day public comment period is required for the permanent regulations because the OAL requested that the use of “and/or,” in three instances, be changed. These substantive changes occur in sections 11518.5(d), 11518.15(b), and 11518.77(a). The CDE made a substantive change in section 11518(aj)(1) to provide the correct citation for determination of students with the most significant cognitive disabilities within the Individuals for Disabilities Education Act. Other nonsubstantive changes were made to address minor grammatical and formatting issues.

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

At its July 2019 meeting, the SBE approved the commencement of rulemaking and adopted emergency regulations for the ELPAC

<https://www.cde.ca.gov/be/ag/ag/yr19/documents/jul19item03.docx>

<https://www.cde.ca.gov/be/ag/ag/yr19/documents/jul19item07.docx>.

At its November 2018 meeting, the CDE provided the SBE with updates on CAASPP System activities, requested approval of the proposed contract amendment for the CAASPP contract with ETS to include the integration of the ELPAC, and requested approval of the proposed contract amendment to the University of California, Santa Cruz (UCSC) interagency agreement to provide an educator reporting system (<https://www.cde.ca.gov/be/ag/ag/yr18/documents/nov18item08.docx>)

(<https://www.cde.ca.gov/be/ag/ag/yr18/documents/nov18item08a1.pdf>)

(<https://www.cde.ca.gov/be/ag/ag/yr18/documents/nov18item08a2.pdf>)

(<https://www.cde.ca.gov/be/ag/ag/yr18/documents/nov18item08a3.pdf>)

(<https://www.cde.ca.gov/be/ag/ag/yr18/documents/nov18item08a4.xlsx>)

(<https://www.cde.ca.gov/be/ag/ag/yr18/documents/nov18item08a5.pdf>)

(<https://www.cde.ca.gov/be/ag/ag/yr18/documents/nov18item08a6.xlsx>).

At its November 2018 meeting, the SBE approved the permanent rulemaking of ELPAC regulations to be sent to the OAL for approval and approved the readoption of the emergency ELPAC regulations (<https://www.cde.ca.gov/be/ag/ag/yr18/documents/nov18item14.docx>) (<https://www.cde.ca.gov/be/ag/ag/yr18/documents/nov18item13.docx>).

At its October 2018 meeting, the CDE provided the SBE with an Information Memorandum that provided an update on the SSR for 2018–19 and beyond (<https://www.cde.ca.gov/be/pn/im/documents/memo-pptb-adad-oct18item01.docx>).

At its September 2018 meeting, the CDE provided the SBE with updates on the CAASPP System, including a presentation on the electronic reporting pilot (<https://www.cde.ca.gov/be/ag/ag/yr18/documents/sep18item03.docx>).

At its July 2018 meeting, the SBE approved the commencement of the rulemaking process for proposed amendments to the ELPAC regulations and adopted the emergency regulations for ELPAC

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

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

At its June 2018 meeting, 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>).

At its March 2017 meeting, 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>).

At its November 2016 meeting, 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>).

At its May 2016 meeting, 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

An Economic and Fiscal Impact Statement is provided as Attachment 4.

## Attachment(s)

* Attachment 1: Finding of Emergency (3 pages)
* Attachment 2: Notice of Proposed Emergency Action (2 pages)
* Attachment 3: Proposed Emergency Regulations (29 pages)
* Attachment 4: Economic and Fiscal Impact Statement (STD. 399) (6 pages)

**FINDING OF EMERGENCY**

**Readoption of Emergency Regulations
English Language Proficiency Assessments of California (ELPAC)**

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 11518, 11518.5, 11518.15, 11518.20, 11518.25, 11518.30, 11518.35, 11518.37, 11518.40, 11518.45, 11518.50, 11518.75, and 11518.77 must be readopted on an emergency basis in order to proceed in a timely manner with the 2019–20 administration of the initial and summative English Language Proficiency Assessments for California (ELPAC) pursuant to the requirements of Education Codesection 60810. The purpose of the proposed amendments is to ensure the correct, efficient, and standardized administration of the initial and summative ELPAC according to required state and federal guidelines and to maintain accuracy, reliability, validity, and fairness of measures and 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 on January 29, 2020, prior to the adoption of these amendments through the regular rulemaking process when not all of the testing, scoring and reporting of the ELPAC 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 ELPAC emergency regulations effective August 1, 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 July 2019 meeting. At this meeting, commencement for permanent regulations rulemaking was also approved by the SBE at this meeting.

The 45-day comment period for the permanent regulations was held between July 27 and September 9, 2019. During this time, and based on feedback from OAL, the CDE determined that substantive changes were necessary to be made to the permanent regulations that required them to be distributed for a 15-day public comment period. Since this public comment period required approval from the SBE, the soonest the CDE was able to bring the regular rulemaking package to the SBE was the November 2019 meeting because, pursuant to the Bagley-Keene Open Meeting Act (act), the last day to post documents to the SBE website regarding SBE agenda items for the September meeting was August 25, 2019 (act). Since the August 25, 2019 date occurred prior to the end date of the public comment period, the CDE was unable to meet the provisions of the act for the September SBE meeting.

Additionally, OAL reviewed and provided guidance on the proposed amendments to the regulations. The CDE amended the originally proposed regulations based upon feedback from OAL. At the November 2019 SBE meeting, the SBE was asked to approve the modified proposed regulations and a 15-day public comment period. After approval of the 15-day public comment period, the CDE will need at least a week before the modified proposed regulations will be submitted to OAL. If there are changes to the regulations resulting from feedback received during the 15-day public comment period, an additional public comment period may be required. Since the emergency regulations expire on January 29, 2020, and the permanent rulemaking at the earliest can only be made effective at the end of January 2020, despite the SBE’s efforts to make substantial progress in the regular rulemaking process, these emergency regulations must be readopted to avoid a lapse in their effect in case there is additional feedback from OAL’s review or public comment, or a scheduling issue is due to the fact that the SBE only meets bi-monthly.

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 approved agenda items for the adoption of the emergency regulations and the commencement of the permanent rulemaking process | July 10, 2019 |
| 5-business day pre-notice of the proposed emergency regulations for adoption | July 12, 2019 |
| 10-calendar day review by OAL | July 22, 2019 |
| 45-day public comment period for permanent regulations | July 27–September 9, 2019 |
| Emergency regulations became effective | August 1, 2019 |
| ELPAC regulations public hearing | September 9, 2019 |
| SBE approves a 15-day comment period for permanent regulations | November 6, 2019 |
| 15-day comment period for permanent regulations | November 12–November 27, 2019 |
| Submit rulemaking to OAL if a second 15-day comment period is not necessary | December 6, 2019 |
| OAL approval—Regulations effective | January 29, 2020 |

In addition to the determination in the Finding of Emergency, regarding the local educational agencies, no mandate on local agencies or school districts is being imposed.

### Evaluation of Inconsistency

The SBE performed a search of existing regulations and concluded that the proposed regulations are not inconsistent or incompatible with existing regulations.

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

**CA DEPARTMENT OF EDUCATION**

**TONY THURMOND**

State Superintendent of Public Instruction

**CA BOARD OF EDUCATION**

**LINDA DARLING-HAMMOND**

President

January 2, 2020

# NOTICE OF PROPOSED EMERGENCY ACTION

ENGLISH LANGUAGE PROFICIENCY FOR CALIFORNIA (ELPAC)

Readoption of Emergency Regulations, Title 5, Sections 11518, 11518.5, 11518.15, 11518.20, 11518.25, 11518.30, 11518.35, 11518.37, 11518.40, 11518.45, 11518.50, 11518.75, and 11518.77

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

## SUBMISSION OF COMMENTS

Government Code 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 Government Code section 11349.6.

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

Please reference submitted comments as regarding “ELPAC” addressed to:

 Reference Attorney

Patricia Alverson, Regulations Coordinator

 Office of Administrative Law

 300 Capitol Mall, Suite 1250

 Sacramento, CA 95814

Email: staff@oal.ca.gov

Fax: 916-323-6826

California Department of Education

1430 N Street, Suite 5319

Sacramento, CA 95814

regcomments@cde.ca.gov

916-319-0155

For the status of the action submitted by the SBE to the OAL for review, and the end of the five-day written comment period, please consult the website of the OAL at [www.oal.ca.gov](http://www.oal.ca.gov/) under the heading “Emergency Regulations.”

09-10-2019 [California Department of Education]

* 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 7.6. English Language Proficiency Assessments for California (ELPAC)**

## Article 1. General

### § 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” or “Alternate ELPAC,” when operational, is an alternate means, identified in ~~an~~ the IEPs for eligible ~~pupil's~~ pupils with the most significant cognitive disabilities ~~IEP~~, to measure English language proficiency.

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

 (e) “Assessment management system” means the test operations management system that is a set of web applications that manage the registration of pupils for tests, machine or hand scoring of test items, integration of item scores into an overall test score, and delivery of scores to the data warehouse.

 (f) “Assessment technology platform” means the underlying computer systems on which ELPAC applications run. It is comprised of two components, the assessment management system and the test delivery system.

 (g) “Data warehouse” means a comprehensive storehouse of test registrations and results and a system to generate reports on, or extracts of, that data.

 (h) “Designated interface assistant” is an employee of a local educational agency (LEA), trained as an ELPAC test examiner who is available to assist pupils who need assistance with response entry into the online test delivery system; this is a non-embedded designated support.

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

 (~~g~~k) “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~~*l*) “ELPAC test examiner” ~~means~~ is an employee or contractor of an local educational agency (LEA) or nonpublic school (NPS) who ~~signs the~~ has electronically agreed to an 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~~ completion of training in the administration of the ELPAC.

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

 (n) “Embedded” means a resource, whether a universal tool, designated support, or accommodation, that is part of the test delivery system for the computer-based ELPAC.

 (o) “Expandable passages” and “expandable items” are embedded accessibility resources that allow the passage or item to take up a larger portion of the computer screen.

 (~~j~~p) “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~~q) “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~~r) “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(~~y~~ag) or section 11518.20.

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

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

 (u) “Instructional supports” are all supports, including those supports documented in a pupil’s IEP or Section 504 Plan, that may be used in daily instruction and for assessment(s), including language and physical supports.

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

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

 (~~r~~y) “Local scoring tool (LST) correspondence administrator” ~~means~~is 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~~z) “LST data entry staff” ~~means~~is 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.

 (aa) “Non-embedded” means a resource, whether a universal tool, designated support, or accommodation, that may be provided by the LEA and is not part of the test delivery system for the computer-based ELPAC.

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

 (~~u~~ac) “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~~ad) “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~~ae) “Proctor” ~~means~~is an employee or contractor of an LEA or NPS who ~~signs the~~ electronically agrees to an ELPAC Test Security Affidavit and completes training designed to prepare ~~him or her~~ the employee to assist the test examiner in the administration of the ELPAC.

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

 (~~y~~ag) “Pupil eligible for the initial assessment” ~~means~~is: (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~~ah) “Pupil eligible for the summative assessment” ~~means~~is a pupil who is classified as EL in accordance with these regulations.

 (~~aa~~ai) “Pupil with a disability” ~~means~~is 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 (2~~0~~9 U.S.C. section 794).

 (aj) “Pupils with the most significant cognitive disabilities” are pupils with a disability or disabilities, as defined under title 20 United States Code section 1401(3), that significantly impact(s) cognitive functioning and adaptive behavior and who require extensive, direct individualized instruction and substantial supports to achieve measurement on academic standards, provided that:

 (1) The identification of a pupil as having a particular disability as defined in Individuals with Disabilities Education Act, title 20 United States Code section 1401(3), et seq., shall not determine whether or not a pupil is a “pupil with the most significant cognitive disabilities;” and

 (2) A “pupil with the most significant cognitive disabilities” must not be identified as such based solely on the pupil’s previous low academic achievement or the pupil’s previous need for accommodations to participate in general statewide or local assessments.

 (3) For purposes of this definition, “adaptive behavior” means behavior essential for someone to live independently and to function safely across three domains of daily life skills: conceptual (e.g., language, functional academics, self-direction, money management, and time concepts); social (e.g., interpersonal skills, responsibility, self-esteem, wariness/naïveté, follow rules, etiquette, and social problem solving); and practical (e.g., activities of daily living, occupational skills, safety, healthcare, and travel).

 (~~ab~~ak) “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.

 (al) “Registration system” means the mechanism that provides administrators with the tools to manage users and pupils participating in the computer-based ELPAC. The system uses a role-specific design to restrict access to certain tasks based on the user’s designated role as well as to manage pupils’ default test settings, designated supports, and accommodations.

 (~~ac~~am) “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~~an) “Scribe” ~~means~~is an employee or contractor of an LEA or NPS which is responsible to implement a pupil's IEP, who ~~signs~~ electronically agrees to 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~~ao) “Site ELPAC coordinator” ~~means~~is 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.

 (ap) “Streamlining” means a designated support on a computer-based assessment that provides an alternate display of an item, stacked into instructions, stimuli, and response choices.

 (~~af~~aq) “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, speaking, reading, and writing.

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

 (as) “Test delivery system” consists of the electronic systems used to display test items, accept and store item responses, score items, and restrict access to outside sources. The test delivery system includes technology required to administer computer-based tests.

 (at) “Test administration manual (TAM)” means the instructions provided by the ELPAC contractor for the purpose of training and administering the respective ELPAC tests that must be adhered to in order to ensure the security of valid and reliable tests and the reporting of accurate results.

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

 (av) “Test navigation assistant” is an ELPAC test examiner who is trained to assist pupil(s) with test navigation; this is a non-embedded universal tool.

 (aw) “Translator” is a person who has been assigned to translate the test directions into the pupil’s primary language defined in section 11518(ad), who electronically agrees to an ELPAC Test Security Affidavit, as identified in section 11518.50, and who has received training specifically designed for preparation to assist the test examiner in the administration of the assessments pursuant to Education Code section 60810. A pupil’s parent, guardian, or sibling is not eligible to be the pupil’s translator. A translator must be:

 (1) an employee of an LEA; or

 (2) an employee of the NPS; or

 (3) a person supervised by an employee of an LEA or an employee of the NPS.

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

 (~~aj~~ay) “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, 56034, 56345, and 60810, Education Code; 20 U.S.C. Section 1401; 29 U.S.C. Section 794; and 34 Code of Federal Regulations Section 200.6.

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

### § 11518.5. Initial Assessment.

 (a) At or before the time of a pupil's initial California enrollment, an LEA shall conduct, in writing, a parent or guardian survey to identify whether the primary or native language of their pupil is a language other than English.

 (b) If a parent or guardian survey response indicates English as the pupil's primary or native language, the pupil shall be classified English Only (EO).

 (c) If a parent or guardian survey response indicates a primary or native language other than English, and the LEA determines the pupil is eligible for the initial assessment, the LEA shall promptly notify the parent or guardian in writing, prior to the administration of the assessment that the LEA will administer the ELPAC initial assessment to the pupil in accordance with subdivision (~~d~~e).

 (d) The initial assessment, pursuant to Education Code section 60810, shall be administered, scored, transmitted, and returned by LEAs in accordance with the corresponding TAMs or other instructions provided by the contractor or the California Department of Education (CDE) for administering, scoring, transmitting, and returning the tests, unless specifically provided otherwise in this subchapter, including instructions for administering the test with universal tools, designated supports, accommodations, unlisted resources or instructional supports, where appropriate, as specified in section 11518.35. The procedures shall include, but are not limited to, those designed to ensure the uniform and standardized administration, the scoring of the tests to pupils, the security and integrity of the test content and test items, and the timely provision of all required pupil and school level information.

 (~~d~~e) The LEA shall administer the initial assessment, locally produce the official score for the initial assessment in accordance with the directions of the test contractor, and notify the parent or guardian, in writing, of the results of the ELPAC initial assessment within 30 calendar days after the pupil's date of initial California enrollment, or, if administered prior to the pupil's initial date of California enrollment, up to 60 calendar days prior to such enrollment, but not before July 1 of the school year of the pupil's initial enrollment. The notice shall include whether or not the pupil met the ELPAC initial assessment criterion for proficiency and the LEA's contact information for use if the pupil's parent or guardian has questions or concerns regarding the pupil's classification.

 (~~e~~f) If the pupil does not meet the ELPAC initial assessment criterion for proficiency, the LEA shall classify the pupil as EL.

 (~~f~~g) If the pupil meets the ELPAC initial assessment criterion for proficiency, the LEA shall classify the pupil as Initial Fluent English Proficient (IFEP).

 (~~g~~h) A pupil shall be administered the initial assessment only once over the course of the pupil's enrollment in the California public school system, as verified by the LEA through a review of the California Longitudinal Pupil Achievement Data System (CALPADS) data prior to administering the initial assessment to a pupil.

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.

### § 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 summative assessment, pursuant to Education Code section 60810, shall be administered, scored, transmitted, and returned by LEAs in accordance with the corresponding TAMs or other instructions provided by the contractor or the CDE for administering, scoring, transmitting, and returning the tests, unless specifically provided otherwise in this subchapter, including instructions for administering the test with universal tools, designated supports, accommodations, unlisted resources or instructional supports, where appropriate, as specified in section 11518.35. The procedures shall include, but are not limited to, those designed to ensure the uniform and standardized administration, the scoring of the tests to pupils, the security and integrity of the test content and test items, and the timely provision of all required pupil and school level information.

 (~~b~~c) 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(~~y~~ag) or (~~z~~ah), 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, 51210, 51220, 60810**~~,~~** and 60900, Education Code; and 20 U.S.C. Sections 6311, 6312, 6821, 6823, 6825, 6826**~~,~~** and 7801.

## Article 3. Administration, Pupils with ~~a~~ 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.

 (d) Once the Alternate ELPAC referenced in section 11518.30(b), (c), and (d) is operative, if the pupil's IEP team determines that the pupil has a significant cognitive disability and is eligible for the Alternate ELPAC, section 11518.25(c) will not apply.

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

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

 (a) When a pupil's IEP team determines that the pupil has a significant cognitive disability such that the pupil 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 alternate assessment(s) for English language proficiency, as specified in the pupil's IEP.

 (b) Subsection (a) will cease to apply once the Alternate ELPAC is operational, at which time subsections (c), (d), (e), and (f) will be in effect.

 (c) When a pupil's IEP team determines that a pupil has a significant cognitive disability such that the pupil 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 the statewide alternate assessment(s), initial or summative, for English language proficiency, as specified in the pupil's IEP.

 (d) Administration of the alternate assessment to eligible pupils shall be one-on-one (test examiner to pupil).

 (e) Depending upon the pupil’s disability or needs, the alternate assessment may or may not include the pupil’s independent use of the testing interface.

 (f) With the exception of inappropriate test practices listed in the TAM, eligible pupils may have instructional supports, including physical supports, in addition to resources documented in the pupil’s IEP.

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

## Article 4. 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 embedded universal tools, delivered through the online ELPAC test delivery system, for any of the domains of listening, speaking, reading, and writing:

 (1) Breaks between the contractor-identified test sections, including administering separate test sections on separate days;

 (2) Digital notepad;

 (3) Expandable items;

 (4) Expandable passages;

 (5) Highlighter;

 (6) Keyboard navigation;

 (7) Liner reader;

 (8) Mark for review;

 (9) Strikethrough;

 (10) Writing tools; and

 (11) Zoom.

 (~~a~~b) An LEA may provide all pupils with one or more of the following non-embedded universal tools on the ELPAC for any of the domains of listening, 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~~4) Pupil use of highlighter(s) in the test book for grades two through twelve; ~~and~~

 (~~6~~5) Pupil use of marking in the test book for grades three through twelve (non-highlighter).

 (6) Line reader;

 (7) Mark for review;

 (8) Strikethrough; and

 (9) Test navigation assistant.

 (c) An LEA shall provide eligible pupils one or more of the following embedded designated supports, delivered through the online ELPAC test delivery system, for the domains of listening, 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(i):

 (1) Color contrast;

 (2) Masking;

 (3) Mouse pointer;

 (4) Noise buffers;

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

 (6) Pause or replay the audio during the administration of test stimuli and questions for the speaking domain;

 (7) Print on demand;

 (8) Streamline; and

 (9) Turn off any universal tool(s).

 (~~b~~d) An LEA shall provide eligible pupils one or more of the following non-embedded designated supports on the ELPAC for the domains of listening, 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~~i):

 (1) Amplification;

 (2) Color contrast;

 (~~1~~3) Color overlay;

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

 (4) Designated interface assistant;

 (~~3~~5) Magnification;

 (6) Masking;

 (7) Medical supports;

 ~~(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~~8) Noise buffers (e.g., individual carrel or study enclosure, or noise-cancelling headphones);

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

 (10) Pause or replay the audio during the administration of test stimuli and questions for the speaking domain;

 (11) Read aloud items for writing domain;

 (12) Separate setting (e.g., most beneficial time, special lighting or acoustics, adaptive furniture);

 (13) Simplified test directions;

 (14) Translated test directions; and

 (~~7~~15) Manually Coded English or American Sign Language (ASL) to present test directions for administration (does not apply to test questions).

 (e) An LEA shall provide eligible pupils one or more of the following embedded accommodations, delivered through the online ELPAC test delivery system, for the domains of listening, speaking, reading, and writing, only as described below, if specified in the pupil's IEP or Section 504 Plan:

 (1) American Sign Language (ASL) or Manually Coded English for test questions that assess the domains of listening, speaking, and writing, presentation of, and responses to, test questions. Pupil responses must be transcribed into the test delivery system by the ELPAC test examiner or scribe;

 (2) Audio transcript (includes braille transcript);

 (3) Braille (embossed and refreshable);

 (4) Closed captioning; and

 (5) Text to speech for test directions (in English) in all domains as well as for the listening, speaking, and writing stimuli and test items.

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

 (1) Alternate response options (paper-based and computer-based administration);

 (2) American Sign Language (ASL) or Manually Coded English for test questions that assess the domains of listening, speaking, and writing, as well as for presentation of and responses to, test questions via contractor provided videos. Pupil responses must be transcribed into the answer book by the ELPAC test examiner or scribe;

 (3) ~~For test questions that assess the listening domain using streamed audio, the~~ ~~u~~Use of audio transcript(s)/written script(s) by the test examiner, for the listening domain using streamed audio, for pupils for whom streamed audio is not accessible;

 (4) Braille (embossed for paper-pencil test);

 (~~1~~5) Braille test materials provided by the test contractor;

 (~~10~~6) Large print versions reformatted from regular print version;

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

 ~~(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~~7) For test questions that assess the domains of listening, reading, or writing, transfer of pupil responses marked in the test book to the answer book by a scribe who has ~~signed~~ electronically agreed to an ELPAC Test Security Affidavit;

 (~~6~~8) Responses dictated to a scribe for selected response items, including multiple-choice items;

 (~~7~~9) Speech-to-text ~~Ff~~or 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~~10) For test questions that assess the domain of writing, use of word processing software with the spell and grammar check tools turned off;

 ~~(9) 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;~~

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

 (~~12~~11) Supervised breaks within a section of the test;

 (~~13~~12) 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~~13) 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 provide an unlisted resource. Requests must include:~~

 ~~(1) LEA name and school name;~~

 ~~(2) LEA ELPAC coordinator name, phone number, and e-mail email 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.

### § 11518.37. Unlisted Resources.

 (a) An LEA may submit, on behalf of a pupil who has an IEP or Section 504 Plan, a request through the assessment management system to the CDE, prior to the administration of the ELPAC or the Alternate ELPAC, to allow the use and approval of an unlisted resource. The LEA ELPAC coordinator or the site ELPAC coordinator shall make the request on behalf of the LEA ten business days prior to the pupil’s first day of ELPAC testing. The CDE shall respond to the request within four business days from the date of the electronic transmission. Transmissions must include:

(1) LEA name and county/district/school code;

(2) School/test site and school code;

(3) LEA ELPAC coordinator name, phone number, and email address;

(4) Site ELPAC coordinator name, phone number, and email address;

 (5) Statewide Student Identifier(s) for the pupil(s) for which the unlisted resource(s) is/are being requested;

(6) ELPAC test and grade;

 (7) If the pupil has an IEP, include the primary disability code and/or designated Section 504 Plan; and

 (8) Description of the unlisted resource being requested.

 (b) The LEA must annually request approval by the CDE for the use of an unlisted resource by a pupil.

 (c) The use of an unlisted resource by a pupil will not be allowed if the CDE determines its use threatens the security of the test.

 (d) In addition to determining whether the unlisted resource may be used, the CDE will determine whether the unlisted resource changes the construct being measured by the ELPAC.

 (1) If the CDE determines the unlisted resource changes the construct being measured, the unlisted resource will not be approved by the CDE but may still be used by the pupil; although, it will affect the pupil’s overall score and that pupil will receive an individual score report.

 (2) If CDE determines the unlisted resource does not change the construct being measured, the unlisted resource will be approved. A pupil using an approved unlisted resource will receive an individual score report.

 (e) The following non-embedded unlisted resources have already been determined to change the construct being measured on the ELPAC and therefore are not approved for use during ELPAC testing:

 (1) bilingual dictionary;

 (2) English dictionary;

 (3) signed exact English;

 (4) thesaurus;

 (5) translations of test items and questions; and

 (6) translated word lists.

NOTE: Authority cited: Sections 313, 33031**~~,~~** and 60810, Education Code. Reference: Section 60640, Education Code; 20 U.S.C. Section 1412; and 34 Code of Federal Regulations Sections 200.1, 200.6 and 300.160.

## 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 and the Alternate 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 annually 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 electronically agree to ~~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 for each 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 and Alternate 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(~~y~~ag) or (~~z~~ah) 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; and 34 Code of Federal Regulations Section 200.6.

### § 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 and the Alternate ELPAC at the site.

 (b) The site ELPAC coordinator shall annually 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,~~ Electronically agreeing to ~~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 of all completed~~ electronic agreements to ELPAC Test Security Affidavits from all~~the~~ test examiners and other site personnel involved with testing.

 ~~(6) Securely storing signed ELPAC Test Security Affidavits, 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~~6) Maintaining security over the test materials and test data as required by section 11518.50.

 (~~8~~7) 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~~8) Overseeing the administration of the ELPAC and the Alternate ELPAC to eligible pupils at the test site.

 (~~10~~9) 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~~10) Collecting and returning all testing materials to the LEA ELPAC coordinator after testing has concluded, in accordance with instructions from the test contractor.

 (~~12~~11) 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~~12) 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; and 34 Code of Federal Regulations Section 200.6.

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### § 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~~ electronically agreed to the ELPAC Test Security Agreement and ELPAC Test Security Affidavit, as applicable.

 (b) Annually, and before receiving any ELPAC test materials, ~~A~~all LEA ELPAC coordinators and site ELPAC coordinators shall ~~annually~~ ~~sign~~ electronically agree to 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~~ through my electronic agreement on this form, that the English Language Proficiency Assessments for California (ELPAC) and Alternate 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~~ electronically agree to 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, 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~~Through my electronic agreement on 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 administrators, LST data entry staff, test navigation assistants, designated interface assistants, and any person having access to the assessment technology platform for the purpose of administering the test(s) shall ~~sign~~ electronically agree to 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 SECURITY AFFIDAVIT

I acknowledge that I will have access to one or more of the English Language Proficiency Assessments for California (ELPAC) and Alternate 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~~ email 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~~ electronically agreed to 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 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 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 books, following instructions, and are accessing only authorized materials (embedded and 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 book by any means is prohibited. This includes, but is not limited to, photocopying, recording, ~~e-mailing~~emailing, 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~~Through my electronic agreement on 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 and the Alternate 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; and 34 Code of Federal Regulations Section 200.6.

### § 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 designated support(s);

 (10) Pupil’s use of unlisted resource(s);

 (~~9~~11) Pupil's use of accommodation(s);

 (~~10~~12) Pupil's use of alternate assessment(s);

 (~~11~~13) 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~~14) Pupil's Statewide Student Identifier.

 (c) The LEA shall ensure that CALPADS data elements are up-to-date and accurate prior to LEA registration and throughout the testing window. The CDE shall provide LEAs reasonable notification prior to extracting pupil demographic and program data from CALPADS for purposes of test registration, individual pupil reports and reports aggregated to the LEA, and state and federal accountability reporting.

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.

### § 11518.77. Appeals.

 (a) An appeal is a process where an LEA ELPAC coordinator or site ELPAC coordinator requests that the CDE take one of the actions specified in subdivisions (b) (1)–(4) due to an event that occurred during the online test administration of the test to a pupil.

 (b) The following appeals may be requested by the LEA ELPAC coordinator and/or site ELPAC coordinator:

 (1) test reopened;

 (2) test reset;

 (3) test restore; or

 (4) grace period extension.

 (c) The LEA ELPAC coordinator and/or site ELPAC coordinator must submit an appeal to address a test security breach or testing irregularity as defined in the TAMs.

 (d) All appeals will be reviewed by the CDE and the CDE has authority to approve or deny the appeal. The CDE will evaluate whether an appeal has an effect on the integrity, validity, test security, and/or interpretation of the test results.

Note: Authority cited: Sections 306, 313, 33031**~~,~~** and 60810, Education Code. Reference: Sections 313 and 60810, Education Code.

09-18-19 [California Department of Education]