

California Department of Education

Executive Office

SBE-003 (REV. 11/2017)

ofab-sed-sep22item01

# California State Board of Education September Agenda Item #05

## Subject

Extended School Year - Adopt Proposed *California Code of Regulations,* Title 5, Section 3043.

## Type of Action

Action, Information, Consent

## Summary of the Issue(s)

It is proposed that subsection (g) of Title 5 of the *California Code of Regulations* (5 *CCR*), Section 3043 be deleted to clarify that local educational agencies (LEAs) should consider the least restrictive environment (LRE) in making determinations related to the extended school year (ESY) program. It is proposed that subsection (g) of 5 *CCR* Section 3043 be deleted for clarity. It is also proposed that subsection (i) of 5 *CCR* Section 3043 be deleted because it has no meaning except in relation to subsection (g), which is proposed to be deleted. These proposed amendments have been made available to the public for comment and are now presented to the State Board of Education (SBE) for approval.

## Recommendation

The California Department of Education (CDE) recommends the State Board of Education take the following actions:

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

## Brief History of Key Issues

The Individuals with Disabilities Education Act (IDEA) as amended, mandates the provision of a free and appropriate education (FAPE) at no cost to parents, to eligible children with exceptional needs, with the intention to meet the unique needs of the child. Title 34 of the *Code of Federal Regulations* (34 *C.F.R.*), Section 300.106 extends this mandate to ESY services if a child's individualized education program (IEP) team determines, on an individual basis, in accordance with 34 *C.F.R.* sections 300.320 through 300.324, that the services are necessary for the provision of FAPE to the child.

5 *CCR* Section 3043 describes the obligation of LEAs (including special education local plan areas, or county offices of education providing special education and related services and receiving federal funding for the same) to provide ESY services for each individual with exceptional needs who requires special education and related services in excess of the regular academic year. Subsection (g) of Section 3043 states that “if during the regular academic year an individual’s IEP specifies integration in the regular classroom, a public education agency is not required to meet that component of the IEP if no regular summer school programs are being offered by that agency.” Recently concerns have been raised that this regulation could be interpreted, incorrectly, to operate so as to preclude consideration of a LRE in ESY determinations. It is recommended that subsection (g) be deleted for clarity.

Also, it is recommended that subsection (i) of 5 *CCR*, Section 3043 be deleted. Subsection (i) states, “This section [subsection (g)] shall not apply to schools which are operating a continuous school program pursuant to Chapter 5 (commencing with Section 37600) of Part 22, Division 3, Title 2, of the Education Code.” Subsection (i) has meaning only in relation to subsection (g), and not in relation to the rest of Section 3043. Because subsection (g) is being deleted, subsection (i) should be deleted as well.

Furthermore, it is recommended that *Education Code* Section 37600 be deleted from the “Reference” section in the NOTE because it is reference only for subsection (i), which is being deleted. Finally, it is recommended that *Education Code* Section 41976.5 be deleted from the “Reference” section in the NOTE because it was repealed by Statutes 2021, Chapter 666, Section 32 (Assem. Bill No. 486), effective January 1, 2022.

These amendments to 5 *CCR,* Section 3043, have undergone the requirements under the Administrative Procedures Act pursuant to Government Code Section 11340 et seq. As such, the public was noticed for a 45-day public comment period starting on April 15, 2022, through May 31, 2022. In addition, a public hearing was held via Zoom videoconference on May 31, 2022. During this public comment period, the CDE received three comments, which are included as Attachment 3. No changes to the regulations resulted from these comments. Therefore, the CDE requests that the SBE adopt the proposed amendments to 5 *CCR* Section 3043.

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

In 1988, Section 3043 of 5 *CCR* was adopted by the SBE, pursuant to its general rulemaking authority.

In 2014, the SBE approved amendments to 5 *CCR* Section 3043 to include: citing a reference to 34 *C.F.R*., section 300.106; updating terminology to be consistent with modern references to people with disabilities; using frequently used acronyms in reference to special education in California; removing the maximum number of instructional days for ESY for apportionment of average daily attendance for consistency with federal and state law; adding a statement of inapplicability to schools operating a continuous school program; and renumbering and re-lettering accordingly. These amendments became applicable on July 1, 2014.

At its January 2022 meeting, the SBE approved the commencement of rulemaking for amendments to 5 *CCR* Section 3043.

## Fiscal Analysis

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

## Attachment(s)

Attachment 1: Final Statement of Reasons (3 pages)

Attachment 2: Proposed Regulations (2 pages)

Attachment 3: Public Comments (10)

Attachment 4: Economic and Fiscal Impact Statement (STD. 399)