# FINAL STATEMENT OF REASONS

Extended School Year

## UPDATE OF INITIAL STATEMENT OF REASONS

The original proposed text was made available for public comment for at least 45 days from April 15, 2022, through May 31, 2022. Three individuals/organizations provided written comments during the 45-day comment period.

A public hearing was held at 8:30 a.m. on May 31, 2022, at the California Department of Education (CDE) via the Zoom virtual meeting platform*.* No public comment was offered at the hearing.

## **SUMMARY AND RESPONSE TO COMMENTS RECEIVED DURING THE INITIAL NOTICE PERIOD OF APRIL 15, 2022, THROUGH MAY 31, 2022.**

### **Doug Collins, Interim Superintendent, Merced City School District**

Comment: Section 3043(g) is not confusing and should not be deleted. The proposed deletion will cause confusion and lead LEAs to believe that regular education summer classes will need to be created for the sole purpose of providing mainstreaming opportunities during Extended School Year (ESY) for any students who have mainstreaming required in their IEP. This will thus create unnecessary costs.

Reject: Federal and state law provide that the IEP team for each individual student determines whether ESY services are necessary 34 *C.F.R.* 300.106(a)(2); *Ed. Code*, § 56345(b)(3). The IDEA has a provision known as “least restrictive environment,” or LRE, which states: “To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not disabled, and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.” 20 U.S.C. 1412(a)(5)(A). Toward that end, a Special Educational Local Plan Area in California must make a “continuum” of placements available, including regular classes, special classes, and other options. 34 *C.F.R.* 300.115(b)(1); *Ed Code*, §§ 56360-56361.

While ESY services too must be provided in the LRE, it is important to recognize that ESY services are provided during summer months when, as a practical matter, the full continuum of placements may not be available. While school attendance is mandatory during the regular academic year for students ages six to eighteen (*Ed. Code*, § 48200), school attendance is not mandatory during the summer. Nothing in federal or state law mandates that an LEA offers an optional “regular education” summer school program to all of its students. Nevertheless, currently LEAs may offer various regular education summer school programs for various student populations through various funding sources (examples may include Title I, enrichment, credit recovery for graduation, COVID-related learning loss, or others).

Existing federal and state law require that LEAs consider the LRE concept in relation to ESY, although LEA's overall offerings look different in the summer. Importantly, an LEA does not necessarily implement any student's traditional school year IEP during ESY, but rather the IEP team creates within the IEP an ESY program for the student that may be different from the traditional school year IEP. For this reason, the phrase in Section 3043(g) stating that if the LEA does not offer any regular education summer school programs, the LEA "is not required to meet that [regular education] component of the [traditional school year] IEP,” may be confusing. The deletion of Section 3043(g) enhances clarity because the existing federal and state law described above are sufficient to address ESY without subsection (g), and, rather than clarify and implement existing law, subsection (g) may be confusing the field.

### **Andria Seo, Senior Attorney at Disability Rights California; William S. Koski, Professor of Law at Stanford Law School and Director, Youth & Education Law Project (for affiliation purposes only); Mayra Lira, Supervising Senior Staff Attorney at Public Counsel; Denise Stile Marshall, M.S., Chief Executive Officer at Council of Parent Attorneys and Advocates, Inc.; David German at Vanaman German LLP and Learning Rights Law Center; National Center for Youth Law**

### **Disability Rights Education & Defense Fund; Maureen Graves and Roberta Savage at California Association for Parent-Child Advocacy**

Comment: The commenters support the proposed deletion of Section 3043(g). They also support the plan to provide additional guidance to the field, but request that this be accomplished through a legal advisory rather than through a “Frequently Asked Questions” document.

Reject: No response required. The comment as to the format of future communications to the field does not address the proposed regulatory change.

### **Jennifer Rowe Gonzalez, Legal Counsel, Office of Fresno County Superintendent of Schools**

Comment: Federal law does not require that ESY be provided in the LRE, or that students have access to typically developing peers in ESY. If CDE alters Section 3043(g) and requires LRE and access to typically developing peers during ESY, LEAs will be placed in an impossible situation because they do not always have access to typically developing peers in the summer and do not necessarily have access to the same facilities on integrated campuses during the summer. Parents will then demand non-school access to typically developing peers, access that will have to be funded by LEAs. Removing subsection (g) will significantly increase the cost of ESY as well as litigation related to ESY. It will also increase the time and personnel necessary for monitoring and compliance of ESY from CDE.

Additionally, Section 3043(i) should not be deleted. It is not related to subsection (g), but rather exempts year-found schools from the requirement to offer ESY.

Reject: Federal and state law provide that the IEP team for each individual student determines whether ESY services are necessary 34 *C.F.R.* 300.106(a)(2); *Ed. Code*, § 56345(b)(3). The IDEA has a provision known as “least restrictive environment,” or LRE, which states: “To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not disabled, and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.” 20 U.S.C. 1412(a)(5)(A). Toward that end, a Special Educational Local Plan Area in California must make a “continuum” of placements available, including regular classes, special classes, and other options. 34 *C.F.R.* 300.115(b)(1); *Ed Code*, §§ 56360-56361.

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Existing federal and state law require that LEAs consider the LRE concept in relation to ESY, although LEA's overall offerings look different in the summer. Importantly, an LEA does not necessarily implement any student's traditional school year IEP during ESY, but rather the IEP team creates within the IEP an ESY program for the student that may be different from the traditional school year IEP. For this reason, the phrase in Section 3043(g) stating that if the LEA does not offer any regular education summer school programs, the LEA "is not required to meet that [regular education] component of the [traditional school year] IEP,” may be confusing. The deletion of Section 3043(g) enhances clarity because the existing federal and state law described above are sufficient to address ESY without subsection (g), and, rather than clarify and implement existing law, subsection (g) may be confusing the field.

Section 3043(i) is deleted because it has meaning only in relation to subsection (g), and not in relation to the rest of Section 3043. Nothing in federal or state law exempts year-round schools from the requirement to offer ESY. Because subsection (g) is being deleted, subsection (i) should be deleted as well.

08-02-2022 [California Department of Education]