

California Department of Education

Executive Office

SBE-003 (REV. 11/2017)

imab-adad-jul24item03

# California State Board of Education July 2024 Agenda Item #07

## Subject

California Assessment of Student Performance and Progress Regulations—Approve the Finding of Emergency and Readoption of Emergency Regulations for Proposed Amendments to the *California Code of Regulations*, Title 5, Section 855.

## Type of Action

Action, Information, Consent

## Summary of the Issue(s)

The California Department of Education (CDE) is submitting a request for readoption of the amended regulations to adjust the state testing window for the California Assessment of Student Performance and Progress (CAASPP) so that statewide summative assessment results can be publicly available on or before October 15 each year, per California *Education Code* (*EC*) Section 60641.

## Recommendation

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

* Approve the Finding of Emergency
* Readopt the proposed Emergency Regulations
* Direct the CDE to circulate the required Notice of Proposed Emergency Action, and then submit the Emergency Regulations to the Office of Administrative Law (OAL) for approval
* 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 regulations

## Brief History of Key Issues

The CAASPP system includes the following assessments: the Smarter Balanced Summative Assessments for English language arts/literacy (ELA) and mathematics; the California Science Test; the California Alternate Assessments (CAAs) for ELA, Mathematics, and Science; as well as the California Spanish Assessment. CAASPP results are one piece of data used by schools and local educational agencies (LEAs) to improve teaching and learning in California. In addition, each of the CAASPP assessments are developed, administered, and reported in accordance with state and federal requirements.

All CAASPP assessments are administered within a CAASPP LEA testing window designated by each LEA within the larger CAASPP state testing window. Per the California Code of Regulations, Title 5 (5 *CCR*), Section 855, the LEA testing window may begin on the day in which 66 percent of the school's or track's annual instructional days have been completed, but no earlier than the start of the state testing window, and testing may continue up to and including the last day of instruction for the regular school's or track's annual calendar, but no later than the end of the state testing window.

The state testing window for all CAASPP assessments—with the exception of the CAA for Science—begins no earlier than the second Tuesday in January of each year. The state testing window for the CAA for Science begins on a date in September as determined by the CDE so that each of the CAA for Science performance tasks can be embedded within the instruction relevant to each performance task. Currently, per 5*CCR* Section 855, the state testing window for all CAASPP assessments ends each year on July 15, or on the weekday following July 15 if July 15 was not a weekday.

Following the end of the CAASPP state testing window, the CDE’s testing contractor, ETS, moves all tests that have not been completed to the post-administration processes of scoring and reporting. Prior to the public release of all aggregate results to the Test Results for California’s Assessments website at [https://caaspp-elpac.ets.org](https://caaspp-elpac.ets.org/), ETS and the CDE conduct a series of quality control processes to ensure that all individual and aggregate data reported is correct prior to release.

In September 2023, Governor Newsom signed Senate Bill 293, which amends *EC* Section 60641 to require the CDE to make statewide summative CAASPP results publicly available on or before October 15 each year. In order for the CDE and ETS to have sufficient time to complete all necessary post-administration processes prior to the public release of results on or before October 15, the CDE finds it necessary that the CAASPP state testing window close no later than June 30 each year. The CDE and ETS have reviewed data from prior years’ test administration and have confirmed that only a few LEAs have selected testing windows that end in July and no tests have been administered in the time between June 30 and July 15 in prior years, so this change will have little to no effect on LEAs’ administration of assessments.

During its March 2024 meeting, the SBE approved the commencement of rulemaking for the following amendments to 5 *CCR* Section 855 to meet the reporting requirements established in *EC* Section 60641:

* Proposed amendment to subsection 855(a) of “2023–24” and deletion of  
  “2015–16” to make clear that the available testing windows described in the subsections to follow are implemented beginning with the 2023–24 administration.
* Proposed amendment to subsections 855(a)(1) and 855(a)(2) of “June 30” and deletion of “July 15” in four instances to make clear that the available testing windows for all CAASPP assessments shall conclude no later than June 30 of each year.
* Proposed amendment to subsections 855(a)(1) and 855(a)(2) of “or the weekday preceding the 30th” and deletion of “or the weekday following the 15th” to make clear that the available testing windows for all CAASPP assessments shall conclude on the weekday preceding June 30 if June 30 is not on a weekday.

In March 2024, the SBE approved emergency regulations so that the 2023–24 CAASPP state testing window could be amended, and all results could be reported by the mandated October 15 deadline. However, the approved emergency regulations, which are currently in effect, will expire in September 2024, prior to when the permanent regulations become effective. Allowing the emergency regulations to expire prior to the adoption of the amendments through the regular rulemaking process will cause the current regulations to revert to the language that existed prior to March 2024. For this reason, the CDE recommends that the SBE approve the readoption of the emergency regulations.

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

In March 2024, the SBE approved the commencement of the rulemaking process to amend the CAASPP and ELPAC regulations. (<https://www.cde.ca.gov/be/ag/ag/yr24/documents/mar24item06.docx>).

In July 2022, the SBE approved commencement of a 15-day public comment period for additional proposed revisions to the CAASPP and English Language Proficiency Assessments for California (ELPAC) regulations to provide additional clarity to the testing field (<https://www.cde.ca.gov/be/ag/ag/yr22/documents/jul22item06.docx>).

In January 2022, the SBE approved the commencement of the rulemaking process to amend the CAASPP and ELPAC regulations (<https://www.cde.ca.gov/be/ag/ag/yr22/documents/jan22item06.docx>).

In March 2021, the CDE updated the SBE on LEAs challenges in administrating the summative assessments within the current testing windows for the CAASPP and the ELPAC outlined in 5 *CCR,* sections 855 and 11518, respectively due to issues related to the COVID-19 pandemic. The CDE sought approval from the SBE to allow the CDE to put into place emergency regulations that would extend these testing windows and bring some relief to LEAs (<https://www.cde.ca.gov/be/ag/ag/yr21/documents/mar21item05.docx>) (<https://www.cde.ca.gov/be/ag/ag/yr21/mar21item05a4.asp>).

In May 2019, the SBE approved the commencement of a 15-day public comment period for proposed amendments and the readoption of the Finding of Emergency and proposed emergency regulations for the CAASPP (<https://www.cde.ca.gov/be/ag/ag/yr19/documents/may19item05.docx>) (<https://www.cde.ca.gov/be/ag/ag/yr19/documents/may19item06.docx>).

In January 2019, the SBE approved the Finding of Emergency and proposed emergency regulations and the commencement of rulemaking for amendments to the CAASPP regulations (<https://www.cde.ca.gov/be/ag/ag/yr19/documents/jan19item15.docx>) (<https://www.cde.ca.gov/be/ag/ag/yr19/documents/jan19item16.docx>).

In March 2016, the SBE approved changes to the proposed permanent regulations and directed that the amended regulations be circulated for a 15-day public comment period, March 10–25, 2016, and assuming no relevant comments to the proposed changes were received, directed the CDE to deem the proposed permanent regulations adopted. (No relevant comments were received, and the revised permanent regulations were approved by the OAL on May 16, 2016.) (<http://www.cde.ca.gov/be/ag/ag/yr16/documents/mar16item04.doc>).

In November 2015, the SBE adopted the proposed amendments to the CAASPP regulations as emergency regulations. The emergency regulations were approved by the OAL and became effective on November 23, 2015. In addition, the SBE approved the commencement of the regular rulemaking process for permanent amendments to the CAASPP regulations (<http://www.cde.ca.gov/be/ag/ag/yr15/documents/nov15item05-revised.doc>) (<http://www.cde.ca.gov/be/ag/ag/yr15/documents/nov15item06-revised.doc>).

In July 2014, the SBE readopted the emergency regulations for CAASPP. The emergency readoption rulemaking file was submitted to the OAL on July 16, 2014. The readoption of the emergency regulations was approved by the OAL on July 23, 2014. In addition, the SBE adopted the permanent rulemaking file at its July 2014 meeting. The rulemaking file was submitted to the OAL on July 16, 2014, and permanent regulations for CAASPP were approved and became effective on August 27, 2014 (<http://www.cde.ca.gov/be/ag/ag/yr14/documents/jul14item08.doc>) (<http://www.cde.ca.gov/be/ag/ag/yr14/documents/jul14item09.doc>).

In January 2014, the SBE, for the first time, adopted proposed emergency regulations for CAASPP. The emergency regulations were approved by the OAL and became effective on February 3, 2014. In addition, the SBE approved the commencement of the regular rulemaking process for the permanent regulations (<http://www.cde.ca.gov/be/ag/ag/yr14/documents/jan14item05.doc>) (<http://www.cde.ca.gov/be/ag/ag/yr14/documents/jan14item06.doc>).

## Fiscal Analysis

An Economic and Fiscal Impact Statement is provided as Attachment 5.

## Attachment(s)

* Attachment 1: Finding of Emergency (4 pages)
* Attachment 2: Addendum to Finding of Emergency (2 pages)
* Attachment 3: Emergency Regulations (2 pages)
* Attachment 4: Notice of Proposed Emergency Action (2 pages)
* Attachment 5: Economic and Fiscal Impact Statement (STD. 399) (5 pages)

**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 regulations, Title 5 of the California Code of Regulations (5 CCR), section 855, must be adopted, on an emergency basis, in order for the California Department of Education (CDE) to make statewide summative CAASPP results publicly available on or before October 15 in accordance with Education Code (EC) section60641. The purpose of the proposed amendments is to ensure the timely reporting of assessment results according to required state and federal guidelines and, in so doing, prevent harm to the general welfare of pupils.

A delay in the release of the CAASPP results will precipitate a delay in the ability of local educational agencies (LEAs) to incorporate key data in integral instructional and programmatic decisions for the coming school year. This would cause serious harm to the welfare of students and LEAs by adversely affecting the timely delivery of services to students and the LEAs’ ability to set effective academic goals.

One example of this is reclassification of English Learners (ELs). Reclassification is the process whereby a student is reclassified from EL status to Fluent English Proficient (RFEP) status. Reclassification can take place at any time during the academic year, immediately upon the student meeting all the criteria for RFEP status. Each LEA establishes a locally approved reclassification process in order to determine when students are eligible for RFEP status changes due to meeting each of the four criteria listed in EC section 313(f).

Specifically, criterion 4 of the reclassification criteria requires a comparison of the performance of the pupil in basic skills against an empirically established range of performance in basic skills based upon the performance of English proficient pupils of the same age, which demonstrates whether the pupil is sufficiently proficient in English to participate effectively in a curriculum designed for pupils of the same age whose native language is English. Smarter Balanced Assessment Consortium English language arts scores, LEA benchmarks, or other assessments identified by the LEA that measures progress in English language arts can be used to meet the requirements for Criterion 4.

Timely reclassification allows students (especially in middle and high school) to be placed in core content courses and electives prior to the school year, which would provide more course options for these students’ schedules. Furthermore, moving the release of results earlier in the year will minimize the number of EL students that have their instruction disrupted in the fall when they are removed from their English Language Development courses part way into the term and into mainstream classrooms.

Delayed results also impact the ability of LEAs to engage in the actions needed to create their Local Control and Accountability Plan (LCAP). The LCAP is intended as a comprehensive planning tool to support student outcomes and is an important component of the Local Control Funding Formula. Educators, in consultation with students and families, examine data on student performance to improve academic achievement, increase college/career readiness, and support English learners and students with disabilities. Lack of timely CAASPP results will negatively impact an LEA’s ability to use that data to set academic goals.

Following the passage of Senate Bill (SB) No. 293 in September 2023, the CDE began working with its testing contractor, ETS, to determine the bill’s impact on the CDE’s schedule of deliverables related to results reporting for the CAASPP on the Test Results for California’s Assessment website.

Once it was confirmed that a change to the end date of the state testing window would help ensure that all aggregate results could be publicly reported on or before October 15, the CDE began the rulemaking process. In order to accommodate sufficient time for each level of review, revision, and approval, the development and review timeline for these rulemaking documents began in November so that they could be placed on the SBE’s March meeting agenda. The necessary review timeline could not have been accomplished between the time the bill was chaptered in late September and the posting date for the January SBE meeting, and it was determined that March was the earliest date at which the CDE could bring the proposed changes to the SBE for review and approval. This timeline also confirmed that there would be a need for emergency rulemaking so that the proposed changes would go into effect for the 2023–2024 administration, as requirements set forth in SB 293 mandate that all 2023–2024 CAASPP results be reported on or before October 15, 2024.

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 undermine the CDE’s guidance to LEAs and jeopardize the reliability and validity of the results, causing further harm to the general welfare of students. 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 April 2, 2024, is incorporated by reference herein, as though fully set forth in this document.

**Showing of Substantial Progress**

The CDE brought the emergency regulations to the SBE for approval at its March 2024 meeting.

During this meeting, the SBE also approved the rulemaking package for the permanent regulations including commencement of the 45-day public comment period from April 5 through May 21, 2024.

| **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 | March 6, 2024 |
| 5-business day pre-notice of the proposed emergency regulations for readoption | March 13 – 21, 2024 |
| 10-calendar day review by OAL | March 21 – April 2, 2024 |
| 45-day public comment period for permanent regulations | April 5 – May 21, 2024 |
| Emergency regulations effective | April 2 – September 30, 2024 |
| CAASPP permanent regulations public hearing | May 21, 2024 |
| July SBE Meeting   * Emergency regulations readoption agendized * Final Statement of Reasons for permanent regulations presented to SBE | July 10 – 11, 2024 |
| 15-day comment period for permanent regulations | September 16 – October 1, 2024 |
| Submit rulemaking to OAL if a second 15-day comment period is not necessary | August 2024 |
| OAL approval—Regulations effective\* | September 2024 |

\*In the event that a 15-day comment period is necessary, these dates will change, and the readoption will accommodate the effectiveness of the regulations.

**Addendum To Finding of Emergency**

California Assessment of Student Performance and Progress

**Update To Finding of Emergency**

A delay in the release of the California Assessment of Student Performance and Progress (CAASPP) results will precipitate a delay in the ability of local educational agencies (LEAs) to incorporate key data in integral instructional and programmatic decisions for the coming year. This would cause serious harm to the welfare of students and LEAs by adversely affecting the timely delivery of services to students and the LEAs’ ability to set effective academic goals.

One example of this is reclassification of English learners (ELs). Reclassification is the process whereby a student is reclassified from EL status to Fluent English Proficient (RFEP) status. Reclassification can take place at any time during the academic year, immediately upon the student meeting all the criteria. Each LEA establishes a locally approved reclassification process in order to determine when students are eligible for RFEP status changes due to meeting each of the four criteria listed in California Education Code (EC) Section 313 (f).

Criterion 4 of the reclassification criteria requires a comparison of the performance of the pupil in basic skills against an empirically established range of performance in basic skills based upon the performance of English proficient pupils of the same age, which demonstrates whether the pupil is sufficiently proficient in English to participate effectively in a curriculum designed for pupils of the same age whose native language is English. Smarter Balanced Assessment Consortium English language arts scores, LEA benchmarks, or other assessments identified by the LEA that measures progress in English language arts can be used to meet the requirements for Criterion 4.

Timely reclassification allows students (especially in middle and high school) to be placed in core content courses and electives prior to the school year, which would provide more course options for these students’ schedules. Furthermore, moving the release of results earlier in the year will minimize the number of EL students that have their instruction disrupted in the fall when they are removed from their English Language Development courses part way into the term and into mainstream classrooms.

Delayed results also impact the ability of LEAs to engage in the actions needed to create their Local Control and Accountability Plan (LCAP). The LCAP is intended as a comprehensive planning tool to support student outcomes and is an important component of the Local Control Funding Formula (LCFF). Educators, in consultation with students and families, examine data on student performance to improve academic achievement, increase college/career readiness, and support English learners and students with disabilities. Lack of timely CAASPP results will negatively impact an LEA’s ability to use that data to set academic goals.

Following the passage of Senate Bill (SB) 293 in September 2023, the California Department of Education (CDE) began working with its testing contractor, ETS, to determine the bill’s impact on the CDE’s schedule of deliverables related to results reporting for the CAASPP on the Test Results for California’s Assessment website.

Once it was confirmed that a change to the end date of the state testing window would help ensure that all aggregate results could be publicly reported on or before October 15, the CDE began the rulemaking process. In order to accommodate sufficient time for each level of review, revision, and approval, the development and review timeline for these rulemaking documents began in November so that they could be placed on the SBE’s March meeting agenda. The necessary review timeline could not have been accomplished between the time the bill was chaptered in late September and the posting date for the January SBE meeting, and it was determined that March was the earliest date at which the CDE could bring the proposed changes to the SBE for review and approval. This timeline also confirmed that there would be a need for emergency rulemaking so that the proposed changes would go into effect for the 2023–24 administration, as requirements set forth in SB 293 mandate that all 2023–24 CAASPP results be reported on or before October 15, 2024.

4-03-2024, 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 2. Pupils  
Subchapter 3.75. California Assessment of Student Performance and Progress (CAASPP)**

**Article 2. Achievement Tests and Any Primary Language Assessment**

**§ 855. Available Testing Window and Selected Testing Period(s).**

(a) Beginning in the ~~2015-16~~2023–24 school year, the CAASPP operational achievement tests pursuant to Education Code section 60640(b) shall be administered to each pupil at some time during the following available testing windows:

(1) Unless otherwise stated in these regulations, the available testing window shall begin on the day in which 66 percent of the school's or track's annual instructional days have been completed, but no earlier than the second Tuesday in January of each year, and testing may continue up to and including the last day of instruction for the regular school's or track's annual calendar, but in no case later than June 30 ~~July 15 or the next weekday following the15th~~  or the weekday preceding the 30th if the 30th ~~15th~~ is not a weekday.

(2) The CAA for science shall be administered annually beginning on a date in September as determined by the CDE through the last day of instruction for the regular school's or track's annual calendar, but in no case later than June 30 ~~July 15 or the next weekday following the 15th~~  or the weekday preceding the 30th if the 30th ~~15th~~ is not a weekday.

(b) An LEA may designate one selected testing period for each school or track within the available testing window set forth in subdivision (a) above, subject to the following conditions:

(1) If a school has multiple tracks, a selected testing period may be designated for each track. (i.e., a year-round school with three tracks may select three different selected testing periods);

(2) An LEA shall not exceed 6 selected testing periods within the available testing window;

(3) A selected testing period shall be no fewer than 25 consecutive instructional days; and

(4) An LEA may extend a selected testing period up to an additional 10 consecutive instructional days if still within the available testing window set forth in subdivision (a) above.

(c) If an LEA does not designate a selected testing period for a school or track, then the available testing window, pursuant to subdivisions (a)(1) and (2) above, shall be the selected testing period for that school or track.

NOTE: Authority cited: Sections 33031, 60605 and 60640, Education Code. Reference: Sections 60605, 60640, 60641 and 60642.5, Education Code.

09-15-2023 [California Department of Education]

**CALIFORNIA DEPARTMENT OF EDUCATION**

TONY THURMOND

State Superintendent of Public Instruction

**CALIFORNIA STATE BOARD OF**

**EDUCATION**

LINDA DARLING-HAMMOND

President

**NOTICE OF PROPOSED EMERGENCY ACTION**

**CALIFORNIA ASSESSMENT OF STUDENT PERFORMANCE AND PROGRESS (CAASPP)**

Readoption of Emergency Regulations, California Code of Regulations,

Title 5, Section 855

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 “California Assessment of Student Performance and Progress” addressed to:

Reference Attorney

Lorie Adame, Regulations Coordinator

Office of Administrative Law

300 Capitol Mall, Suite 1250

Sacramento, CA 95814

Email: [staff@oal.ca.gov](mailto:staff@oal.ca.gov)

Fax: 916-323-6826

California Department of Education

1430 N Street, Suite 5319

Sacramento, CA 95814

[regcomments@cde.ca.gov](mailto:regcomments@cde.ca.gov)

916-322-2549

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 web site of the OAL at [www.oal.ca.gov](http://www.oal.ca.gov/) under the heading “Emergency Regulations.”

04-15-2024 [California Department of Education]