

California Department of Education

Executive Office

SBE-003 (REV. 11/2017)

imab-adad-sep24item02

# California State Board of EducationSeptember 2024 AgendaItem #06

## Subject

California Assessment of Student Performance and Progress Regulations—Adopt Proposed Amendments to the *California Code of Regulations*, Title 5, Section 855.

## Type of Action

Action, Information, Consent

## Summary of the Issue(s)

As the California Department of Education (CDE) pursues changes to the state regulations to adjust the state testing window for the California Assessment of Student Performance and Progress (CAASPP) so that all tests can be scored and reported by October 15 each year, per California *Education Code* (*EC*)Section 60641, the CDE seeks approval of the proposed amendments to *California Code of Regulations*, Title 5 (5 *CCR*), Section 855.

## Recommendation

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

* Approve the Final Statement of Reasons (FSOR)
* 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 OAL during its review of the rulemaking file.

## 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 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 is 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 (SB) 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 has recommended 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.

In March 2024, 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” 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.

A 45-day public comment period was held from April 5–May 21, 2024, and a public hearing was held on May 21, 2024. Eight individuals attended the public hearing, and no comments were submitted.

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

In July 2024, the SBE approved the Finding of Emergency and Readoption of Emergency Regulations for the proposed amendments (<https://www.cde.ca.gov/re/lr/rr/caaspp2024.asp>).

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

In July 2022, the SBE approved the commencement of a 15-day public comment period for additional proposed revisions to the CAASPP and ELPAC regulations to provide additional clarity to the testing field (<https://www.cde.ca.gov/be/ag/ag/yr22/documents/jul22item07.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, 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 (as appropriate)

An Economic and Fiscal Impact Statement is provided as Attachment 3.

## Attachment(s)

* Attachment 1: Final Statement of Reasons (2 pages)
* Attachment 2: Final Permanent Regulations (2 pages)
* Attachment 3: Economic and Fiscal Impact Statement (STD. 399) (5 pages)

**FINAL STATEMENT OF REASONS**

CALIFORNIA ASSESSMENT OF STUDENT PERFORMANCE AND PROGRESS REGULATIONS

**UPDATE OF INITIAL STATEMENT OF REASONS**

**EMERGENCY RULEMAKING**

**Initial Adoption**

On behalf of the State Board of Education (SBE) and pursuant to Government Code section 11346.1(a)(2), these proposed regulations were pre-noticed by the California Department of Education (CDE) on March 13, 2024, through March 20, 2024, inclusive. These regulations were filed with the Office of Administrative Law (OAL) as emergency regulations on March 21, 2024, and were approved on April 2, 2024, with an expiration date of September 30, 2024.

**First Readoption**

On July 10, 2024, the SBE approved the readoption of these emergency regulations. Pursuant to Government Code section 11346.1(a)(2), these proposed regulations were pre-noticed by the CDE on September 4, 2024, through September 10, 2024, inclusive. These regulations were filed with the OAL as readopted emergency regulations on September 11, 2024, and were approved by OAL on September 21, 2024. These approved readopted emergency regulations were effective on September 27, 2024, with an expiration date of December 22, 2024.

**PERMANENT RULEMAKING**

The original proposed text was made available for public comment for at least 45 days from April 5 through May 21, 2024. No comments were received during the

45-day comment period.

A public hearing was held via videoconference on May 21, 2024, at 9:00 a.m.Eight individuals attended the public hearing, and no oral comments were received at the public hearing.

**SUMMARY AND RESPONSE TO COMMENTS RECEIVED DURING THE INITIAL NOTICE PERIOD OF APRIL 5 THROUGH MAY 21, 2024**

No written comments were received during the initial notice period of April 5 through May 21, 2024.

**ALTERNATIVES DETERMINATION**

The State Board of Education has determined that no alternative would be more effective in carrying out the purpose for which the regulation is proposed or would be as effective and less burdensome to affected private persons than the proposed regulation or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provisions of law.

The non-adoption of these changes is not a suitable alternative because it would jeopardize the CDE’s ability to report aggregate results by October 15 every year, as mandated by Education Code section 60641.

**LOCAL MANDATE DETERMINATION**

The proposed regulations do not impose any mandate on local agencies or school districts.

July 18, 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~~2023–2024 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]