# Initial Statement of Reasons

Attendance Policies in the California State Preschool Program

## Introduction

The California Department of Education (CDE) has administered subsidized early education services since the Child Care and Development Services Act (Act) was established in 1980, chapter 2 of part 6 of the Education Code (EC), starting at section 8200 et seq. The intent of the Act is that qualified subsidized early education services be provided to children and families meeting the eligibility criteria established under the Act. This became known as the Early Education Act in 2021.

The Senate Bill (SB) 98, the education omnibus budget trailer bill of 2020, transferred the following childcare programs from the CDE to the California Department of Social Services (CDSS) beginning July 1, 2021: (1) Alternative payment programs (CAPP); (2) Migrant alternative payment programs (CMAP); (3) CalWORKs Stage 2 (C2AP); (4) CalWORKs Stage 3 (C3AP); (5) General child care and development programs (CCTR); (6) Migrant child care and development programs (CMIG); and (7) Childcare and development services for children with severe disabilities (CHAN). The effect of this transfer separated California State Preschool Program (CSPP) from all other childcare and early education programs leaving CDE to administer CSPP, a program which provides subsidized preschool services in centers and family childcare homes.

In 2021, the CDE promulgated new Title 5 regulations, starting at section 17700. As part of these new regulations, CDE established a policy on “abandonment of care” to align with the federal requirements of other childcare programs that CDE administered, despite the fact that the CSPP contains no federal dollars and is not required to follow federal requirements.

When the CDE administered the CSPP and all other childcare programs, the regulations promulgated for CSPP would often be in alignment with the federal requirements for other childcare programs to ensure families could seamlessly transition from a federally supported childcare program into the CSPP once they were age eligible and CDE wanted to continue such practice.

However, due to the COVID-19 pandemic, CSPP contracts have been fiscally held harmless for all program years that the abandonment of care policy has been in effect. This means that the regulations that require children’s attendance in the program to qualify the contractors to be paid proportionally have not been applicable; therefore, there has not been a fiscal impact for contractors due to the abandonment of care policy as there would have been previously. While the regulations on abandonment of care met the federal requirements for childcare programs, under current law, they will create negative fiscal consequences that will impact CSPP contractors beginning in the 2025-26 fiscal year. The CDE understands that the field is not happy about these negative fiscal consequences which will occur once attendance impacts a contractor’s reimbursement again. If the attendance policies are not corrected due to the ending of the fiscal hold harmless for CSPP contracts, contractors will face fiscal consequences. Therefore, CDE is promulgating new attendance policies which will encourage the attendance of children in CSPP while avoiding negative fiscal penalties for the contractors.

## Problem Agency Intends to Address

These proposed regulations will remove the policy on abandonment of care which will create unintended fiscal consequences for contractors beginning in the 2025-26 fiscal year. These proposed regulations replace the abandonment of care policy with a wholistic attendance policy for CSPP to ensure families have flexibility for attendance, without creating a negative financial impact for CSPP contractors. Further, the CDE has conducted a complete review of the current attendance and absence policies and has proposed regulations that are in line with most of the contractors’ policies across the state to ensure absences are categorized the same and policies are applied consistently across the state.

## Benefits Anticipated from Regulatory Action

The proposed regulations will have specific benefits, including ensuring contractors are appropriately compensated for their work and providing appropriate clarity and statewide consistency on the attendance policies for children attending CSPP, and ensuring more efficient administration of the CSPP.

## Specific Purpose of Each Section – Gov. Code Section 11346.2(b)(1)

The specific purpose of each adoption or amendment, and the rationale for the determination that each adoption or amendment is reasonably necessary to carry out the purpose of which it is proposed, together with a description of the public problem, administrative requirement, or other condition or circumstance that each adoption or amendment is intended to address, is as follows:

General changes were made to the proposed regulations to include grammatical edits, and renumbering and/or re-lettering to reflect deletions or additions.

**Section 17819. Verification of Excused Absences and Unexcused Absences; Policies.**

This section's title was amended to include unexcused absences because its content has been amended to include policies on unexcused absences.

**Proposed Section 17819(a)** is added to include all statutory grounds set forth in EC section 8205(c), which sets forth acceptable reasons for excused absences, and to add additional specificity and clarity to ensure that contractors can find all information about what constitutes an excused absence in the CSPP in one place. The types of potential absences outlined in this section align with the statutory requirements of what constitutes an excused absence pursuant to EC sections 8205(c) and 8489.1(c)(3). For example, proposed subsections (a)(1) and (2), specify that medical, dental, and mental health appointments for parents and children are to be considered instances of “illness” to ensure contractors have consistency in what constitutes child and parent illness across the state. Although not specifically enumerated in EC section 8205(c), proposed subsections (a)(7) and (8) are necessary to add excused absences to ensure compliance with state and federal laws which require accommodations to be made for religious reasons and for children with disabilities. Proposed subsection (a)(9) is also necessary to include to ensure that the days required by law for providing constitutional due process during any period of appeal that result in a child’s absence were deemed as excused absences because it is a statutory requirement that contractors allow for due process and EC section 8489.1(c)(1) does not allow for children to attend in some instances, which would result in their disenrollment due to excessive unexcused absences. This section is necessary to ensure that all absences covered by EC section 8205(c) or by other state and federal laws are set forth in one section and that policies related to excused absences are applied consistently across the state for all families.

**Section 17819(b)** is renumbered from subsection (a) to subsection (b) and amended to remove “as defined in Education Code Section 8205” and modify the first sentence because subsection (a) is added above to explain what constitutes an excused absence. This is necessary to clarify all instances in which an absence would be excused as related to the necessity for contractor verification. This section is also amended at subsection (d) to add an alternative method of verification of an absence to make verifying an absence easier on both the contractor and the parent.

**Previous section 17819(c)** is deleted because contractors are no longer able to determine their own attendance policies. This is necessary to ensure that contractors are not developing their own policies and are instead following the statewide requirements in these regulations.

**Proposed section 17819(d)** is added to detail what constitutes a family emergency since contractors will no longer be creating their own policies. Subsection (d)(1) is added because if the child does not have adequate transportation, they will be unable to attend the CSPP and therefore should be excused from attending that day. Proposed subsection (d)(2) is added because court dates are scheduled by the court, and therefore the absence is not in their control. Proposed subsection (d)(3) is added to accommodate elements of moving that may have unavoidable scheduling conflicts with CSPP time. Proposed subsection (d)(4) is added to cover medical emergencies of a sibling that may impact the child’s ability to attend the CSPP. Proposed subsection (d)(5) is added to include circumstances out of the parent’s control that cause the child or parent to be elsewhere. Proposed subsection (d)(6) is added to cover instances including, but not limited to, a broken water pipe, a broken water heater, or electricity being turned off impacting the parent’s ability to get the child to the CSPP. Proposed subsection (d)(7) is added to accommodate weather conditions that inhibit the child from attending the CSPP. Proposed subsection (d)(8) is added to include other family crises not previously mentioned, while ensuring consistency in what constitutes a family crisis across the state. This is necessary to ensure fairness to families and that absences deemed a family emergency are applied consistently across the state for all families.

**Previous section 17819(d)** is deleted as the changes to the other sections make this regulation no longer applicable. This deletion is necessary to ensure there is no confusion about which regulations apply to CSPP contractors.

**Proposed Section 17819(e)** is created to specify what circumstances constitute “best interest” days pursuant to EC section 8205(c) as contractors will no longer be creating their own attendance policies but will be following statewide policies. Proposed subsection (e)(1) is added to include quality time with the parents or family on vacation that may cause the child to be absent. Proposed subsection (e)(2) is added to respect the child’s need to rest. Proposed subsection (e)(3) is added in case the child wants to attend a field trip with their sibling, or they are unable to be picked up from the CSPP due to parents attending the field trip. Proposed subsection (e)(4) is added to allow time to visit with family members, which is important for children. Proposed subsection (e)(5) is added to allow for quality time spent bonding with the child’s own family. Proposed subsection (e)(6) is added to cover any other activity not previously mentioned that the parent feels would be in the best interest of the child to be absent from the CSPP to participate in as parents are in the best position to make such decisions on behalf of the child. These additions are necessary to ensure that absences considered “in the best interest of the child” are applied consistently by contractors across the state for all families. Note that the number of “best interest days” permitted has always been limited to ensure that families do not abuse the allowances made and to ensure consistent attendance by their child in the program so their child’s growth and education is not negatively impacted.

**Proposed section 17819(f)** is amended to include the number of best interest days allowed for each child in the family. This provides additional clarity for contractors when a child is included in more than one family, the best interest days will be calculated separately. Subsection (g)(1) is amended to specify that the 10 best interest days currently allowed pertains to children enrolled in programs operating fewer than 220 days. Proposed subsection (g)(2) is added to increase the number of best interest days to 20 days for children enrolled in programs operating 220 days or more. This is necessary to recognize that families utilizing the program throughout the year would naturally have more absences than families only utilizing the program part of the year, thus ensuring that families have a proportionate number of best interest days in relation to the part-year or full-year nature of the program their child is enrolled in.

**Section 17819(g)** added “experiencing homelessness” to those families permitted unlimited absences to allow more flexibility in the number of absences for children experiencing homelessness. This is necessary to account for specific challenges that this population faces that would increase the number of absences a child in this category has.

**Proposed section 17819(h)** is added to set a limit of 10 unexcused absences per contract period. This is necessary to ensure that families consistently bring their child to preschool and that the number of unexcused absences allowed by contractors is consistent across the state. Formerly contractors were allowed to set their own attendance policies, which created confusion and inconsistency.

**Proposed section 17819(i)** is added to clarify that when a child is included in more than one family, all excused and unexcused absences will be calculated separately. This is necessary to ensure that when parents are separated and certified separately that the actions of one parent do not impact the other parent’s ability to access preschool services.

**Proposed section 17819(j)** is added torequire that parents be informed of the absence policies no later than upon enrollment. This is necessary to make sure that CSPP is the right fit for the family and that the family cannot claim ignorance regarding the expectations with respect to attendance.

**Previous section 17819.5 Abandonment of Care**

This section is deleted as this policy will create the unintended consequence of contractors not being able to earn all of their contract due to excessive unexcused absences by children which result in unpaid days. This policy allowed families to have an unlimited number of unexcused absences and severely limited the options for contractors to disenroll families with excessive unexcused absences. Contractors are reimbursed based on the lesser of the contract amount, CSPP expenses and attendance in the CSPP; therefore, contractors would not be paid for unexcused absences, and this policy could result in their inability to “earn” their contract and continue providing CSPP services.

**Proposed Section 17819.5 Unexcused Absence Procedures**

**Proposed Section 17819.5(a)** is added to require the contractor to have communication procedures in place with parents as unexcused absences are accrued. This is necessary to ensure contractors across the state are consistently making various efforts to strategize with families regarding their child’s attendance and improve individual attendance.

**Proposed Section 17819.5(b)** is added to outline the documentation contractors must keep in the family data file regarding communication efforts outlined in the section above. This is necessary to ensure that contractors are making such efforts, since such documentation can be reviewed during contract monitoring reviews, and that the policy regarding communication documentation is consistent across the state.

**Proposed Section 17819.5(c)** is added to outline the specific number of accrued absences that may occur before the contractor must reach out to parents. This is necessary to ensure contractors are regularly communicating with parents about potential termination as a result of continued unexcused absences and ensures consistent application across thestate.

**Proposed Section 17819.5(d)** is added to clarify that the written information sent to the parent in proposed section (c) may be made through electronic means.

**Proposed Section 17819.5(e)** is added to clarify that absences are only accrued when a child is absent for the full day. This is necessary to ensure a child is not marked absent for partial day attendance and that this is applied consistently across the state.

## Economic Impact Assessment Per Gov. Code Section 11346.3(b)

### Purpose:

The proposed regulations are to provide CSPP contractors with clear direction to ensure implementation of the CSPP and application of these regulations are consistent throughout the state.

### Creation or Elimination of Jobs within the State of California:

There is no evidence that the proposed regulations will either create or eliminate jobs within California. These proposed regulations are designed to provide clear and consistent guidance for contractors operating a CSPP. These activities are being performed by existing staff and local quality partners already completing them. Therefore, no jobs in California will be created or eliminated.

### Creation of New or Elimination of Existing Businesses within the State of California:

There is no evidence that the proposed regulations will either create or eliminate businesses within California. These proposed regulations are designed to provide clear and consistent guidance for contractors operating a CSPP. Since these regulations only impact contractors operating CSPPs, no businesses in California will be created or eliminated.

### Expansion of Businesses or Elimination of Businesses Currently Doing Business within the State of California:

There is no evidence that the proposed regulations will either expand or eliminate businesses within California. These proposed regulations are designed to provide guidance for current CSPP contractors. Since these regulations only impact current CSPP contractors, no businesses in California will be expanded or eliminated.

### Benefits of the Regulations to the Health and Welfare of California Residents, Worker Safety, and the State’s Environment – Gov. Code Section 11346.1(b)(1): These proposed regulations will benefit children and families in California with consistent attendance requirements in California State Preschool Programs throughout the State.

These proposed regulations will have no adverse effect nor benefit on worker safety or the State’s environment.

### Reasonable Alternatives that Would Lessen the Impact on Small Businesses – Gov. Code Section 11346.2(b)(4)(B):

The SSPI has not identified any alternatives that would lessen any adverse impact on small business.

### Evidence Relied Upon to Support the Initial Determination that the Regulations Will Not Have a Significant Adverse Economic Impact on Business – Gov. Code Section 11346.2(b)(5):

The proposed regulations would not have a significant adverse economic impact on any business because they apply only to California State Preschool Program contractors and do not change their current practices in any significant way.

## Incorporated by Reference

No documents are to be incorporated by reference.

## Other Required Showings

### Studies, Reports or Documents Relied Upon – Gov. Code. Section 11346.2(b)(3):

The SSPI did not rely upon any technical, theoretical, or empirical studies, reports, or documents in proposing the adoption, amendment, or repeal of these regulations.

### Reasonable Alternatives Considered or Agency’s Reasons for Rejecting Those Alternatives – Gov. Code Section 11346.2(b)(4)(A):

No other alternatives were presented to or considered by the SSPI.

### Analysis of Whether the Regulations are an Efficient and Effective Means of Implementing the Law in the Least Burdensome Manner – Gov. Code Section 11346.3(e):

The proposed regulations have been determined to be the most efficient and effective means of implementing the law in the least burdensome manner.

### Determination of Inconsistent/Incompatible Existing Regulations – Gov. Code Section 11346.5(a)(3)(D):

An evaluation of the proposed regulations has determined they are not inconsistent/incompatible with existing regulations, pursuant to Government Code section 11346.5(a)(3)(D).

2025-01-22 [California Department of Education]