CALIFORNIA TONY THURMOND

DEPARTMENT OF STATE SUPERINTENDENT OF PUBLIC

EDUCATION INSTRUCTION

October 4, 2021

# 15-DAY NOTICE OF MODIFICATIONS TO TEXT OF PROPOSED

**REGULATIONS REGARDING CALIFORNIA STATE PRESCHOOL PROGRAM**

Pursuant to the requirements of Government Code section 11346.8(c), and California Code of Regulations, title 1, section 44, the State Superintendent of Public Instruction (SSPI) is providing notice of changes made to the above-referenced proposed regulation text which was the subject of a regulatory hearing on February 1, 2021.

## Changes to the text:

General changes were made to the regulations to include grammatical edits, and renumbering and/or re-lettering to reflect deletions or additions. Terminology changes were made throughout these regulations to align with recent updates to statutory changes in the Education Code pursuant to Assembly Bill (AB) 131 (Chapter 116, Statutes of 2021). These terminology changes include replacing “early learning and care” with “preschool” or “early childhood” where appropriate and replacing “children with disabilities” with “children with exceptional needs.” Additionally, due to the recent renumbering of applicable Education Codes due to passage of AB 131, prompted by the transition of certain child care and development programs from the California Department of Education to the California Department of Social Services as of July 1, 2021, citations to the Education Code have been updated or removed as appropriate.

### After the 45-day comment period, the following changes were made to the proposed text of the regulations and sent out for a 15-day comment period:

#### Section 17700. Definitions

**Section 17700(l)** is amended to reference Education Code section 8205 for the definition of “California state preschool program” to align with changes to the Education Code made pursuant to AB 131.

**Section 17700(q)** is amended to replace the word “subsidized” with “CSPP.” This clarifies that the intention is to specify the difference between CSPP children and other children using subsidized services that are not CSPP services. This clarification is necessary due to the transition of state subsidized childcare programs to the California Department of Social Services.

**Section 17700(ab)** is amended to provide a definition of “preschool services.” This definition is necessary as the term is used throughout these regulations to describe services provided through the California state preschool program.

**Section 17700(ah)** is amended to align with changes made to Education Code section 8252, which gives CDSS a role in developing the family fee schedule. This is necessary to ensure the information in these regulations is accurate and in alignment with current statute.

**Section 17700(aq)** is amended to replace “subsidized” with “CSPP” to clarify that net reimbursable program costs are specific to services provided to CSPP children and do not include children from other subsidized childcare programs administered by the California Department of Social Services. This is necessary to clarify due to the transition of subsidized childcare programs to the California Department of Social Services.

**Section 17700(ar)** is amended to remove subsection (2), as there are no longer other program types administered by the California Department of Education (CDE) and specified in Education Code section 8208(i); therefore, this provision is unnecessary and confusing. This change is necessary due to the transition of subsidized childcare programs to the California Department of Social Services.

**Section 17700(bf)** is amended to align with the recently adopted 12-month eligibility regulations, specifically 5 CCR section 18078(v). This change clarifies that a self-certification of income can also be used when a parent does not have income from employment or has income from sources other than employment. This is necessary to provide clarity of what should be used as documentation when the parent does not have income from employment.

#### Section 17709. Program Self-Evaluation Process

**Section 17709(b)(1)** is amended to align the terminology changes with section 17794. This change is necessary to ensure contractors know what the self-evaluation is based on.

#### Section 17712. Quality Rating Improvement System

**Section 17712(a)** is amended to change the implementation date to 2026. This change in date is necessary due to the COVID-19 pandemic and limitations that local Quality Counts California Consortia’s are experiencing due to the inability to enter early childhood programs to provide ratings at this time. Further, “program” was added to clarify that the initial rating is a program level rating rather than a classroom level rating. This clarification was necessary to address a comment received during the 45-day public comment period.

#### Section 17717. Teacher Qualifications

**Section 17717(a)** is amended to change “early learning and care” to “childcare and development” to align with the terminology used by the Commission on Teacher Credentialing (CTC). It is necessary to align the terminology because the CTC is the entity that issues child development permits; therefore, it is crucial to use the same terminology to ensure the authority that the permit provides the teacher is aligned with the CDE requirements.

**Section 17717(b)** is amended to change “early learning and care” to “childcare and development” to align with the terminology used by the Commission on Teacher Credentialing (CTC). It is necessary to align the terminology because the CTC is the entity that issues child development permits; therefore, it is crucial to use the same terminology to ensure the authority that the permit provides the teacher is aligned with the CDE requirements.

#### Section 17718. Site Supervisor Qualifications

**Section 17718(a)** is amended to change “early learning and care” to “childcare and development” to align with the terminology used by the CTC. It is necessary to align the terminology because the CTC is the entity that issues child development permits; therefore, it is crucial to use the same terminology to ensure the authority that the permit provides the site supervisor is aligned with the CDE requirements.

#### Section 17720. Program Director Qualifications

**Section 17720(a)** is amended to change “early learning and care” to “childcare and development” to align with the terminology used by the CTC. It is necessary to align the terminology because the CTC is the entity that issues child development permits; therefore, it is crucial to use the same terminology to ensure the authority that the permit provides the program director is aligned with the CDE requirements.

#### Section 17721. Waiver of Qualifications for Program Director; Conditions

**Section 17721(a)(1)** is amended to change “early learning and care” to “childcare and development” to align with the terminology used by the CTC. It is necessary to align the terminology because the CTC is the entity that issues child development permits; therefore, it is crucial to use the same terminology to ensure the authority that the permit provides the program director is aligned with the CDE requirements.

#### Section 17725. Award of Contract

**Section 17725(c**) is amended to add language to clarify that contract awards are not final until a contract is executed. This is necessary to ensure that contractors do not prematurely rely upon an award of funding to their detriment.

**Section 17746(d)(3)** is amended to delete “or need for services” and corresponding Education Code citations. This is necessary as this section pertains to part-day services only and there is no “need” required for families to be able to access part-day services.

#### Section 17748. Enrollment Priorities for Head Start Collaborative

**Section 17748** is amended to add reference to federal regulations. This is necessary because the Head Start program is a federal program.

#### Section 17749. Age Limitations

**Section 17749(c)** is amended to specify that kindergarten-age eligible children receiving full-day CSPP services may only receive preschool services until September 30. This specification is necessary to ensure that children across the state are eligible to receive preschool services through the same time period before entrance into kindergarten.

#### Section 17757. Application for Services: Contents

**Section 17757(i)** was deleted as it was superfluous; there is not additional information or data required to be collected pursuant to title 45 of the Code of Federal Regulations at this time.

#### Section 17762. Documentation of Income Eligibility; Income and Family Fees

**Section 17762(a)(1)(B)** is amended to change the word “independent” to “independently drafted” to ensure these regulations are grammatically correct.

**Section 17762(a)(3)(A)** is amended to change the word “independent” to “independently drafted” to ensure these regulations are grammatically correct.

#### Section 17763. Documentation of Need for Full-Day CSPP: In General

**Section 17763(b)(3)(C)** is amended to add “services from.” This is necessary to ensure these regulations are grammatically correct.

#### Section 17794. Contract Monitoring

**Section 17794(a)(2)** is amended to change the term “compliance review” to “on-site compliance review”. This change is necessary to ensure clarity between an on-site compliance review and the contract monitoring process.

**Section 17794(a)(1)** is amended to more specifically define that the contract monitoring review is a process of supports provided to contractors to ensure contract compliance rather than a specific instrument. This change is necessary to ensure there is clarity for the field about what the contract monitoring review process is.

**Section 17794(b)** is added to provide that contractors must cooperate with requests for information made by the CDE during the CMR process. This is necessary so that the CDE can ensure contractors are being held accountable with all contractual program requirements.

**Section 17794(c) is** amended to update the on-site monitoring protocol from every three years to every four years. Further, this regulation specifies that a contractor will be monitored more frequently if the following situations apply: (1) when a contractor has a new (provisional) contract, (2) when a contractor has a contract that has been found to be fiscally or programmatically non-compliant (conditional), (3) when a contractor has health and safety violations from Community Care Licensing, or (4) when there are whistleblower complaints on a contract. These changes are necessary to ensure the CDE can implement a well-rounded contract review process that provides more support to those contractors that have additional factors making their contracts potentially risky for the state to administer.

**Section 17794(d)** is amended to specify that the “reviews” consist of the CMR and on-site compliance reviews. This is necessary for clarity.

#### Section 17805. Specific Items of Reimbursable Costs

**Section 17805(a)** is amended to replace “annual contract” with “expansion”. This change is necessary to ensure these regulations align with the applicable statutory language in EC section 8255.

#### Section 17819. Verification of Excused Absence: Policies

**Section 17819(a)** is amended to clarify where to find the definition of an excused absence within Education Code section 8205. This is necessary to ensure that contractors can find the definition of excused absences.

**Former Section 17819(d)** is deleted to remove the provision that allows contractors to determine their own attendance policies and is replaced by proposed section 17819(d). This change is necessary to ensure these regulations are in alignment with the recently adopted 12-month eligibility regulations, which allow contractors to discontinue services for excessive absences only in instances of abandonment of care.

**Proposed Section 17819(d)** is added to include a provision that clarifies families should not be disenrolled for excessive absences except in instances where the family has abandoned care. This change is necessary to ensure these regulations are in alignment with the recently adopted 12-month eligibility regulations, which allow contractors to discontinue services for excessive absences only in instances of abandonment of care and does not allow for contractors to have agency specific policies on unexplained absences. The CDE decided that a policy which would allow a family to be disenrolled for excessive absences when the family is still partially participating in preschool services would be inconsistent with the intent of 12-month eligibility and therefore must not be allowed.

#### Proposed Section 17819.5. Abandonment of Care

**Proposed Section 17819.5(a)** is added to include a definition of “provider,” which includes anyone who provides early learning and care services to children. This addition is necessary to ensure state preschool contractors and family child care home providers are clear that this provision applies to them. This additional clarity is needed because the term “provider” does not typically apply to state preschool contractors; however, it does in this case.

**Proposed Section 17819.5(b)** is added to require providers to notify contractors when families have been absent from care without communication for seven consecutive days. This is necessary because contractors are typically not aware of a family’s lack of communication and unexplained absences until the attendance records are turned in by the provider at the end of the month, which would be too late for the contractor to begin attempting to contact families to reengage them in the program. This regulation ensures that contractors have ample time to attempt to contact the family before they are disenrolled on the basis of abandonment of care.

**Proposed Section 17819.5(c)** is added to require contractors to attempt to contact families that have not been in communication with the provider or contractor. This provision requires contractors to attempt to communicate with the family through a variety of communication methods, and to keep documentation of such attempts in the family data file. Due to the significant consequences of being disenrolled for abandonment of care, it is necessary to ensure that contractors use a variety of communication methods to reach the parent, as parents may change emails, phone numbers, or even move to new locations without communicating new contact information to the contractor. By requiring the contractor to reach out in writing at least once, it ensures that there will be strong evidence of the communication attempt in the event that the family is disenrolled and wishes to appeal the decision.

**Proposed Section 17819.5(d)** is added to require contractors to disenroll families after a total of 30 consecutive days without communication to the provider or the contractor. Including a statewide abandonment of care policy in these regulations is necessary to ensure equity across the state to disenroll families that are no longer using preschool services during their 12-month eligibility.

#### Proposed Section 17821. Attendance and Expenditure Reports

**Section 17821(b)** is amended to add the California Department of Social Services (CDSS). This is necessary as Section 86 of SB 98 (Statutes of 2020) transferred the Child and Adult Care Food Programs, formerly administered by CDE, to CDSS

#### Section 17822. Report Data

**Section 17822(a)** is amended to include “for purposes of determining reimbursement” as an additional reason why a contractor would be required to submit data as requested by the CDE. This addition is necessary, in light of the statutory changes to implement rate reform in the 2021-22 state budget, to ensure the CDE is able to collect accurate and necessary data from contractors to determine how to implement rate reform.

#### Section 17823. Audits and Auditors

**Section 17823(c)** is amended to replace “contract period” with “contractor’s fiscal year”. The change is necessary to ensure consistency between statute and regulations.

If you have any comments regarding the proposed changes that are the topic of this

15-Day Notice, the SSPI will accept written comments between October 4, 2021 and October 19, 2021, inclusive. All written comments must be submitted to the Regulations Coordinator via facsimile at 916-322-2549; email at regcomments@cde.ca.gov or mailed and received at the following address prior or on October 19, 2021 and addressed to:

Lorie Adame, Regulations Coordinator

Legal, Audits and Compliance Branch

Administrative Supports and Regulations Adoption Unit

California Department of Education

1430 N Street, Suite 5319

Sacramento, CA 95814

All written comments received prior to or on October 19, 2021, which pertain to the indicated changes will be reviewed and responded to by CDE staff as part of the compilation of the rulemaking file. Written comments received by the CDE staff during the public comment period are subject to viewing under the Public Records Act.

**Please note:** Any written comments are to be restricted to the recent modifications as show in the enclosed language. The SSPI is not required to respond to comments received in response to this notice on other aspects of the proposed regulations.

09-14-2021 [California Department of Education]