# FINAL STATEMENT OF REASONS

California State Preschool Program

## UPDATE OF INITIAL STATEMENT OF REASONS

The original proposed text was made available for public comment for at least 45 days from December 18, 2020, through February 1, 2021. Five individuals provided comments during the 45-day comment period.

A public hearing was held at 8:30 a.m. on February 1, 2021, via Zoom videoconferencing*.* Sixty-five persons attended via videoconferencing. No oral comments were provided during the public hearing.

### SUMMARY AND RESPONSE TO COMMENTS RECEIVED DURING THE INITIAL NOTICE PERIOD OF DECEMBER 18, 2020 THROUGH FEBRUARY 1, 2021.

The California Department of Education (CDE) received five written emails, and no oral comments from the public hearing. The comments and responses are set forth in the attached chart.

**Letter #1**: Shannan Watkins - Early Development Services

**Letter #2**: Keesha Woods - LACOE Head Start and Early Learning Division

**Letter #3**: Kathy McKibben - Stanislaus County Office of Education

**Letter #4**: Matilda Soria - Office of Fresno County Superintendent of Schools

**Letter #5**: Heather Haubrich - Parent, Member of the Early Childhood Education Workforce, Administrator of some CDE funded programs

***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*** ***October 4, 2021 through October 19, 2021, inclusive.***

#### General Changes:

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 (Stats. 2021, ch. 116). 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 CDE to the California Department of Social Services (CDSS) as of July 1, 2021, citations to the Education Code have been updated or removed as appropriate. The section numbers and subsection letters are indicated as they were presented in this 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 California State Preschool Program (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 CDSS.

**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 CDSS. 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 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 CDSS.

**Section 17700(bf)** is amended to align with the recently adopted 12-month eligibility regulations, specifically title 5 of the California Code of Regulations (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 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 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.

**Proposed Section 17725(c**) is added 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)** is 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)** and **(a)(3)(A** are 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)(1), formerly 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)(2), formerly Section 17794(a)(1),** is amended to change the term “compliance review” to “on-site compliance review” and to delete the reference to determining compliance with applicable laws and regulations as it is addressed now in subsection (a)(1). These changes are necessary to ensure clarity between an on-site compliance review and the contract monitoring process.

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

**Section 17794(c), formerly Section 17794(b),** isamended 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(c)** is deleted in its entirety. This subsection is no longer necessary as subsection (a) describes the provisions of the contract monitoring review process.

**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 Education Code 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 “or the California Department of Social Services.” This is necessary as section 86 of Senate Bill No. 98 (Stats. 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.

### COMMENTS RECEIVED DURING THE 15-DAY NOTICE PERIOD WHILE THE PROPOSED REGULATION TEXT WAS AVAILABLE TO THE PUBLIC

The modified text was made available to the public from October 4, 2021 through

October 19, 2021. The CDE received comments from 2 individuals. The comments and responses are set forth in the attached chart.

Letter #1 - Nancy Wyatt, California Family Child Care Network

Letter #2 - Camille Maben, First 5 California

***After the 15-day comment period, the following changes were made to the proposed text of the regulations and sent out for a second 15-day comment period*** ***December 15, 2021 through December 30, 2021.***

#### General Changes:

General changes were made to the regulations to include grammatical edits, and renumbering and/or re-lettering to reflect deletions or additions or to list list the definitions in alphabetical order. Additionally, references to the “Early Learning and Care Division” have been changed to “Early Education Division” due to a name change of the division at the CDE. Similarly, references to the “State Department of Personnel Administration” have been updated to “California Department of Human Resources” to ensure CDE is citing the correct state department name.

##### Section 17700. Definitions.

**Section 17700(v)** is amended to incorporate by reference the specific Desired Results Developmental Profiles (DRDP) that may be used for children in CSPP and provide the website where all versions (or views) of the DRDP are available to the public. Further, the language “issued by the department” has been removed as this document is now issued by the CDSS as a result of the transition of childcare programs to CDSS. This amendment is necessary to ensure contractors are clear which documents are acceptable to use to record the child’s developmental profile.

**Section 17700(aa)** is amended to remove “‘early childhood programs’ as” to make the definition grammatically correct and remove the redundancy of the language.

**Section 17700(ac), formerly Section 17700(ad)** is amended to incorporate by reference the specific Early Childhood Environment Rating Scale document that is required to be used by CSPP contractors. This amendment is necessary to ensure contractors are clear which document is required for use.

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**Section 17700(aj), formerly Section 17700(ak)** is amended to align the definition of “indirect cost” with the definition used in the Uniform Guidance as required by the Code of Federal Regulations, title 2. This amendment is necessary to ensure clarity in definitions for all funding sources is consistent for contractors.

##### Section 17711. Environment Rating Scales.

**Section 17711(a)** is amended to align the requirement with the instrument specified in the section 17700(ac). This is necessary to ensure consistency through the regulations and that contractors are clear on the required instrument.

**Section 17711(b)** is amended to align the scoring requirements 5 CCR section 18281 that currently applies to CSPP contractors. This amendment is necessary to ensure contractors are clear on the required minimum average score required on the Environment Rating Scale.

##### Section 17712. Quality Rating Improvement System.

**Section 17712** is deleted because this funding is not guaranteed through the timeline in which this regulation is set to be effective. This deletion is necessary because the CDE cannot guarantee that CSPP contractors would be able to fully implement this requirement without an increase in state funding due to the delays in rating as a result of the COVID-19 pandemic.

##### Section 17714. Commingling of Age Categories.

**Section 17714(a)** is amended to add “and (e)” to clarify that the provisions in section 17714 do not apply to CSPPs that are operated through family childcare homes. This addition is necessary to ensure clarity for those providers operating family childcare homes as the allowances in section 17714 cannot be applied to family childcare homes due to their licensing requirements.

##### Section 17731. Expulsion or Unenrollment of a Child due to Behavior.

**Section 17731(b)(4)(B)** is amended to remove “Quality Counts California coaches for parents” due to public comments received during the first 15-day public comment period that Quality Counts California does not have coaches for parents. This change is necessary to ensure that the CDE is only referencing community resources that are available to families.

##### Section 17749. Age Limitations.

**Section 17749(c)** is amended to delete the reference to “five-year-old” children and add, “Except as provided for in Education Code section 48000(l)” to clarify that some kindergarten age-eligible children may receive CSPP services if they meet the requirements of Education Code section 48000(l). These changes are necessary to align with the change in law from AB No. 167, Statutes of 2021, chapter 252, section 21, which was effective September 23, 2021.

##### Section 17828. Administrative Review of Changes in Contract Status.

Section 17828(e) is amended to remove “not make any changes to the” contract status and replace it with “reverse the proposed change in” contract status. This change is necessary to align this subsection (e) with section 17828, subsection (h), which more appropriately sets forth the actions that a review panel would reasonably make with respect to a proposed action, which would be to either uphold the action, modify the action or reverse the action altogether.

### COMMENTS RECEIVED DURING THE SECOND 15-DAY NOTICE PERIOD WHILE THE PROPOSED REGULATION TEXT WAS AVAILABLE TO THE PUBLIC

The modified text was made available to the public from December 15, 2021 through

December 30, 2021. The CDE received comments from one individual. The comments and responses are set forth in the attached chart. No changes were made as a result of these comments.

Letter #1 – Eric Sonnenfeld– Tulare County Office of Education

### NONSUBSTANTIVE CHANGES AND ADDITIONAL EXPLANATION AFTER THE SECOND 15-DAY PUBLIC COMMENT PERIOD

After the second 15-day public comment period, the CDE determined that the following nonsubstantive changes and additional information should be included in this rulemaking file. In addition, general changes were made to the regulations to include grammatical and technical edits, and renumbering and/or re-lettering to reflect deletions or additions. Terminology changes to replace “children with disabilities” with “children with exceptional needs.” were made throughout these regulations to align with recent updates to statutory changes in the Education Code pursuant to AB 131 (Stats. 2021, ch. 116).

##### Section 17700. Definitions.

Section 17700(v) is amended to indicate the specific versions of the Desired Results Developmental Profiles that contractors must use, as appropriate.

Section 17700(as) provides the definition for “parent survey.” Contractors use the survey as part of their program self-evaluation each year; it is not something that is returned to CDE. The parent survey helps the contractor to complete the program self-evaluation and asks how the program helps parents support their child's learning/development and meets the family's needs. Previously, CDE required the use of a specific parent survey form. These regulations do not dictate the specific use of a particular survey form and instead provide for the contractor to develop their own unique parent survey. The CDE believes that allowing contractors to develop their own parent survey, instead of dictating the contents of the survey, will give contractors an opportunity to get more meaningful survey responses from the parents in their programs, since each program's parent population can differ and the needs of the community can differ as well.

##### Section 17702. Developmental Profile.

Section 17002 NOTE section is amended to include Education Code section 8203.5 as a reference to ensure that the proper sections of statute that require the use of the developmental profile are captured in the reference notes.

##### Section 17716. Volunteers for Part-Day CSPP.

Section 17716(b) is intended to provide that not more than one of the adults needed per 24 children to meet adult-child ratios can be a volunteer.

##### Section 17717. Teacher Qualifications.

Section 17717 Includes a listing of all permits that authorize “service in the care, development, and instruction of children in a childcare and development program.” This includes permits currently being issued by CTC, which include the Child Development Master Teacher Permit and the Child Development Teacher Permit, as well as permits that were previously issued for this purpose by the CTC such as the Regular Children’s Center Instructional Permit, the Limited Children’s Center Instructional Permit and the Emergency Children’s Center Instructional Permit. Pursuant to Education Code section 8305, any permit previously issued by the CTC to meet these requirements that are still valid, can be used to meet this requirement. The addition of the listing of the specific permits is necessary to assist contractors to have all information relevant to acceptable permits in one location.

##### Section 17718. Site Supervisor Qualifications.

Section 17718(a) includes all permits that "authorize supervision of a childcare and development program operating on a single site" per the CTC. This includes permits currently being issued by the CTC (Child Development Site Supervisor Permit), as well as permits that were previously issued for this purpose by the CTC (Children’s Center Supervision Permit). Pursuant to Education Code section 8305, any permit previously issued by the CTC Credentialing to meet these requirements that are still valid, can be used to meet this requirement.

Section 17718(c) was modified to align with the requirements in Education Code 8205(t)(2)(b).

##### Section 17720. Program Director Qualifications.

Section 17720(a) includes all permits that "authorize supervision of a childcare and development program operating on multiple sites" per the CTC. This includes permits currently being issued by the CTC (Child Development Program Director Permit), as well as permits that were previously issued for this purpose by the CTC (Children’s Center Supervision Permit). Pursuant to Education Code section 8305, any permit previously issued by the CTC to meet these requirements that are still valid, can be used to meet this requirement.

Section 17720(c) is deleted to align with the requirements for program director pursuant to Education Code section 8298.

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

Section 17721(a)(1) is amended to include a citation to section 10381.5 of the Welfare and Institutions Code in order to properly cite the statutes that govern childcare and development programs that provide services to severely disabled children.

##### Section 17727. Minimum Hours and Days of Operation for Part-Day CSPP.

Section 17727 Is amended to change “lower minimum day” to “a lower number of days” for operation for grammatical accuracy. Further, the CDE believes additional information is necessary to support why CDE chose to include the parameter of “up to three hours and 59 minutes per day” when prior regulation applicable to part-day programs at 5 CCR section 18213 provided that contractors operate a minimum of three and a half hours a day. Three hours and fifty-nine minutes was selected due to reimbursement requirements applicable to CSPP in Education Code. Part-day programs (programs under 4 hours) are reimbursed at a different rate than full-day programs. This can be seen in the time-based adjustment factors in Education Code section 8245 and the different reimbursement rates depending upon hours of service in Education Code section 8242(a). In addition, in previous years, prior to July 2021, former Education Code section 8266.2 provided: "For part-day California State Preschool programs serving children for less than four hours per day, the reimbursement rate shall be established in the annual budget act." Thus, CDE has determined it is necessary to set forth three hours and 59 minutes as the minimum number of hours part-day programs must operate.

##### Section 17728. Minimum Hours and Days of Operation for Full-Day CSPP.

Section 17728 The CDE believes additional explanation is necessary for why CDE chose to include the language pertaining to the minimum number of hours necessary for a full-day program to operate as, “...for the number of operational hours reasonably necessary to meet the preschool needs of the families in the community.” Education Code does not provide for a minimum and there was no regulation previously dictating the minimum number of hours needed for a full-day program to operate. This language was selected as contractors are required to demonstrate in their request for application for funding and thereafter in their annual continued funding application that their hours of operation are supported by their local planning council’s need assessment. Education Code section 8263 specifically requires the State Superintendent of Public Instruction (SSPI) to prioritize funding for CSPP based on priorities identified by the local planning council or other high-quality data resources available to the department in order to progress toward achieving access to full-day, full-year preschool services for all income eligible four-year-old children. So, while the CDE did not want to mandate a specific minimum number of hours for a full-day program, it did want to ensure that contractors use the local planning council and other data resources to at least operate the minimum number of hours necessary based on the needs of the community as reflected in the information required to be gathered.

##### Section 17731. Expulsion or Unenrollment of a Child due to Behavior.

Section 17731(a) is amended to change the word “described” to “authorized” in order to align with Education Code section 8222.

Section 17731(b)(4)(A) added additional language that does not appear in Education Code section 8222 pertaining to specific screening tools. While subsections (b)(4)(A) through (b)(4)(C) are steps that can be taken as specified in Education Code section 8222, subsection (b)(4)(A) was added to be helpful to contractors by including specific well-known screening tools by name so the contractor would be aware of them.

Section 17731(b)(4)(D) was not included in Education Code section 8222 but was added to the regulations as another suggested step that a contractor might want to take to help support the child’s continued placement in the program since the results of the developmental profile of a child can provide important insight into the child.

##### Section 17734. Family Fee Assessment: Explanation to Families.

Section 17734(I) is amended to state that the contractors shall use the “certified schedule,” rather than the “total monthly certified need” to ensure terminology is consistent throughout these regulations. Further, the CDE has included the current practice of calculating family fees using the monthly 130-hour as the cutoff between part-time and full-time family fees. This policy was originally implemented, pursuant to AB 86 (Stats. 2013), and can be seen in CDE Management Bulletins (e.g. MB 18-07). The policy to use less than 130 hours, or 130 hours or more for determining the family fee was in alignment with the determination of part-time or full-time schedules for families using alternative payment programs, pursuant to 5 CCR 18075. Because this has been a long-time practice for determining part-time and full-time family fees the CDE did not want to change the policy, but rather wanted to ensure the policy was codified in regulation and therefore, it was added to these regulations.

Section 17734 NOTE section is amended to add Education Code section 8247 as an authority to ensure the correct statutory section authorizing the SSPI to develop regulations concerning the hours of enrollment for children in the CSPP.

##### Section 17735. Exceptions to Family Fee Assessment.

Section 17735(c) provides that contractors shall not collect a family fee for families with an income level below the first entry on the family fee schedule and sets forth how this regulation aligns with both Education Code section 8252(b) (which requires that all families be assessed a family fee) and Education Code section 8253 (which exempts three populations from having family fees assessed but does not include the population set forth in section 17735(c)). Section 17735(c) does not contradict these Education Code sections because there is a distinction between the obligation of the contractor to assess a family fee, which must be done for families included in section 17735(c), and assessing a family fee but not collecting it because the fee assessed is zero. While the subsections set forth in section 17735(a), (b) and (d) are included because those populations are statutorily exempted from assessment *and* thus from thecollection of family fees pursuant to Education Code section 8253, section 17735(c) is included for other reasons: namely because the family fee schedule does not and has never prescribed a dollar amount for families whose income level in relation to family size is less than the first entry in the schedule (see former section 18110(e)). These families must be “assessed” a family fee but that fee will be zero if the income and family documentation support an income level that does not appear yet on the schedule because it is too low.

##### Section 17744. Waiting List; Displacement

Section 17744(b) is amended to delete the current priority for displacement because the order of priority is actually codified in Education Code sections 8210 and 8211 and the regulation must align to statute.

##### Section 17745. Residency Requirements.

Section 17745(b) requires families experiencing homelessness to submit a declaration that they reside in California which differs from the previous requirement in former section 18107(b) of a declaration that states the family's “intent” to reside in California. This change addresses poor wording in the previous regulation as it is important to ensure that families presently reside in California, rather than just “intend” to reside in California when receiving state funded preschool.

##### Section 17746. Enrollment Priorities for Part-Day California State Preschool Program.

Section 17746(a) is amended to align the language with the statutory language for priorities in Education Code section 8210(a)(1). This is necessary to ensure the terms are all consistent throughout these regulations and statute.

Section 17746(b)(1) includes an additional prioritization of eligible children who were enrolled in CSPP as a three-year-old. While this prioritization is evidenced in existing regulations at section 18131(b), and included in current CSPP implementation guidance, the CDE provides additional explanation as to why this regulation is consistent with Education Code section 8210, even though not expressly included in that Education Code. The prioritization is continued to be included in these regulations because Education Code section, namely section 8209(c), demonstrates the Legislative desire to give children that have been enrolled in a program preference over those children that have not been enrolled by providing that “Notwithstanding any other law,” in order to promote “continuity of care” children already receiving services may, in effect, skip over any wait lists and directly transfer into programs in certain situations. In addition, Education Code section 8210 expressly gives CDE the power in subsection (c) to deviate from the priorities laid out in Education Code section 8210 at its discretion. These sections, coupled with a 30-plus year history of regulation section 18131(b) allowing priority to be given to returning part-day children over new children to the program, lend support to the proposition that CDE’s regulation is reconcilable with Education Code section 8210.

Former Section 17746(f) is deleted because the content of subsection (f) was repetitive of the content in subsection (e).

Section 17746 NOTE section is amended to include Education Code sections 8209 as an Education Code reference.

##### Section 17747. Enrollment Priorities for Full-Day California State Preschool Program.

Section 17747(a) is amended to include a written referral form a legal, medical or social service agency to align with the statutory language in Education Code section 8211(a)(1). This is necessary to ensure the terms are all consistent throughout these regulations and statute.

Former Section 17747(f) is deleted because the content of subsection (f) was repetitive of the content in subsection (e).

Section 17747 NOTE section is amended to include Education Code section 8208 as a reference because this section of statute lays out eligibility and need for services, which is directly tied to the priorities for CSPP.

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

**Section 17748(a)(2)** outlines how a CSPP/Head Start collaborative program must enroll families in conjunction with the priorities for CSPP. The first priority is children receiving child protective services (CPS) or at-risk because this is a top priority for the state to ensure the neediest children get access to care and to align with first priorities in Education Code sections 8210 and 8211. Second (section 17748(a)(2)) and fourth (section17748 (a)(4)) priorities for eligible 4-year old children and 3-year old children with the lowest income ranking according to the most recent income ranking schedule adopted by the SSPI are consistent with the priorities and requirement to use the income ranking table as required in Education Code sections 8210 and 8211. Third priority (section 17748(a)(3)) and fifth priority (section 17748 (a)(5)) are in alignment with current 5 CCR section 18131.1 that allows contractors to enroll children who meet Head Start priorities and are eligible for CSPP after CPS/at-risk children are enrolled. Within section 17748, CDE has explicitly prioritized 4 year- olds over 3 year-olds to ensure alignment with the intent of the Legislature. In addition, the requirement to prioritize 4 year-olds over 3 year-olds is not new and is part of current regulation (5 CCR section 18131). Furthermore, Education Code section 8207 grants the SSPI authority to write regulations on priorities and Education Code sections 8210(c) and 8211(c) authorize the SSPI to allow agencies to waive strict statutory priority order in order to serve specific populations, demonstrating the Legislature’s understanding of the need for the SSPI to use this authority in some instances to ensure specific populations can be served. Therefore, CDE has determined that the priority order listed in section 17748 for Head Start collaborative programs is necessary to ensure federally-funded Head Start programs can continue to collaborate with CSPP and provide services to eligible children. Without these flexibilities in priority order for Head Start collaborative programs, the state would not be able to contract with Head Start programs.

Sections 17748(a)(3) and (a)(5) are amended to correct the 45 Code of Federal Regulation citation from part 1305 to part 1302 due to an inadvertent error.

##### Section 17749. Age Limitations.

Section 17749(c) is amended to delete the language “Except as provided for in Education Code section 48000(l)” as it was superfluous and confusing to include. It is also amended to clarify that children can no longer be served in CSPP once they enter kindergarten by clarifying that the child may receive services “until the child’s first day of kindergarten, or September 30, whichever comes first.” September 30 was chosen as a date as the kindergarten academic year would have begun by then and including such a date is necessary to ensure that CSPP is not used as a replacement for kindergarten, and that only age-eligible children are being served in CSPP.

##### Section 17754. Certified Schedule for CSPP Full-Day Families with No Established Need.

Section 17754 (a) is amended to remove the citation to Education Code section 8208(a)(4) because that statutory section is specific to part-day CSPP, and this regulation section is specific to full-day CSPP. It is also amended to clarify that subsection (b) stands alone and applies, notwithstanding subsection (a).

##### Section 17782. Notice of Action, Application for Services.

Section 17782(c) is amended to remove “make all” as it is unnecessary to include.

##### Section 17783. Notice of Action, Recipient of Services.

Section 17783(d) is amended to rephrase the deadlines by which the Notice of Action Recipient of Services must be served, so that the language is clearer and easier for contractors to understand- no substance has changed. The CDE further provides the following explanation as to why these specific deadlines were included. The intent was to continue the tradition of giving families 14 days’ notice prior to the effective date of an action and include in the regulations the requirement to provide additional days on top of the 14 days if the action is served by mail or other means, as necessary to comply with requirements in the California Code of Civil Procedure.

##### Section 17794. Contract Monitoring.

Section 17794 requires the CDE to monitor contractors at least once every four years, or as resources permit. This monitoring schedule has changed from the previous requirement to monitor “every three years and as resources permit.” This change is necessary to ensure CDE is able to meet the monitoring requirements as CDE was not able to review contracts every three years previously due to lack of sufficient staffing. The use of the word “or” in these regulations connotes that it could either be once every four years or it could be as resources permit, as sometimes the CDE’s resources are insufficient to even monitor every four years. The use of the word “and” in current regulations was unclear and did not give the CDE sufficient flexibility that it needs as resources and staffing are outside of CDE’s control due to budgetary limitations.

##### Section 17802. Required Subcontract Provisions.

Section 17802(m) is amended to correct an incorrect citation.

##### Section 17822. Report Data.

Section 17822 Note section is amended to delete the reference to Civil Code section 1798.24 because it was determined to be unnecessary and unrelated to the regulation.

##### Section 17825. Delinquent Audits; One-Time Extension; Unsubmitted Audits.

Section 17825(c) provides that claims for reimbursement shall not be paid if the contractor fails to produce or submit an acceptable audit within one year of the due date. This is necessary to include in the regulations as section 17820 provides that claims for reimbursement shall not be paid unless there are documents to support the claims and further provides that the contractor has the burden of supporting claims for reimbursement. Without an audit to verify documentation submitted in support of reimbursement, there is no support for any claims to be paid to the contractor.

##### Section 17830. Conditional Status Addendum.

Section 17830(a)(4) provides that failure to make required corrections “may” result in termination of the contract or not offer of continued funding even though the prior regulation on this topic provided that such failure “will” result in termination of the contract or no offer of continued funding. The reason for this change was that CDE needed discretion to determine when termination or non-renewal of the contract is necessary. There may be a situation when a contractor has not made every single required correction, and has legitimate reasons for not making all required corrections, and the CDE might want to have the right to continue their contract. CDE should have such discretion.

### DOCUMENTS INCORPORATED BY REFERENCE

Pursuant to title 1 of the California Code of Regulations section 20, the following documents are hereby incorporated by reference:

* DRDP (2015) Preschool Comprehensive View (rev. 6/24/2019)
* DRDP (2015) Preschool Fundamental View (rev. 6/24/2019)
* DRDP (2015) Preschool Essential View (rev. 6/24/2019)
* DRDP-K (2015) Comprehensive View (rev. 2015)
* DRDP-K (2015) Fundamental View (rev. 2018)
* DRDP-K (2015) Essential View (rev.2018)
* Early Childhood Environment Rating Scale, Revised Edition, 1998
* Family Day Care Rating Scale, 1989

The CDE determined that it would be impractical to publish these documents in 5 CCR due to their size. In addition, these documents were available to the public upon request to the CDE.

### ALTERNATIVES DETERMINATION

The State Superintendent of Public Instruction 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.

All alternatives were in the form of public comments and the consideration of these alternatives are presented in the attached response charts. No other alternatives have been brought to the CDE’s attention and given the underlying statutory requirements, the CDE has been unable to come up with any reasonable alternatives.

The nonadoption of these changes is not a suitable alternative because clear guidance is needed in order to administer the California State Preschool Program.

### LOCAL MANDATE DETERMINATION

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

06-30-22 [California Department of Education]