**CALIFORNIA DEPARTMENT OF EDUCATION**

TONY THURMOND

STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

# NOTICE OF PROPOSED RULEMAKING

## AMENDMENT TO CALIFORNIA CODE OF REGULATIONS, TITLE 5, REGARDING ELIGIBILITY AND PRIORITY IN THE CALIFORNIA STATE PRESCHOOL PROGRAM

Notice published December 15, 2023

**NOTICE IS HEREBY GIVEN** that the State Superintendent of Public Instruction (SSPI) proposes to adopt the regulations described below after considering all comments, objections, or recommendations regarding the proposed action.

The SSPI invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations at the scheduled hearing or during the written comment period.

### PUBLIC HEARING

The California Department of Education (CDE) staff, on behalf of the SSPI, will hold a virtual public hearing at 9:00 a.m. on January 30, 2024.

Any interested person may participate in the virtual public hearing via a videoconference in Zoom by logging in per the following instructions:

* Click the following link or paste the link into the browser to join the meeting and enter the passcode:

[https://us02web.zoom.us/j/83223181040](https://us02web.zoom.us/j/83223181040%22%20%5Co%20%22Join%20Virtual%20Public%20Meeting)

Meeting ID: 832 2318 1040

Passcode: 264192

* To connect with audio only and no video, call one of the following telephone numbers and enter the meeting ID and passcode:

+1 669 900 6833 US (San Jose)
+1 213 338 8477 US (Los Angeles)

Meeting ID: 832 2318 1040

Passcode: 264192

 Persons intending to attend the Zoom meeting may check their computers by:

* Clicking on the test link: <https://zoom.us/test>
* For any issues regarding connecting with Zoom, go to <https://support.zoom.us/hc/en-us> for assistance.

At the hearing, any person may present statements or arguments, orally or in writing, relevant to the proposed action described in the Informative Digest. The SSPI requests, but does not require, that persons who make oral comments at the public hearing also submit a written summary of their statements. No oral statements will be accepted subsequent to this public hearing.

### REASONABLE ACCOMMODATION FOR ANY INDIVIDUAL WITH A DISABILITY

Pursuant to the *Rehabilitation Act of 1973,* the *Americans with Disabilities Act of 1990,* and the *Unruh Civil Rights Act,* any individual with a disability who requires reasonable accommodation to attend or participate in a public hearing on proposed regulations, may request assistance by contacting Amira Elmallah, Early Education Division, 1430 N Street, Suite 3410, Sacramento, CA, 95814 or by telephone at 916-445-7349. It is recommended that assistance be requested at least two weeks prior to the hearing.

### WRITTEN COMMENT PERIOD

Any interested person, or their authorized representative, may submit written comments relevant to the proposed regulatory action to:

Lorie Adame, Regulations Coordinator

Administrative Support and Regulations Adoption Unit

California Department of Education

1430 N Street, Suite 5319

Sacramento, CA 95814

Comments may also be submitted by facsimile (FAX) at 916-322-2549 or by email to regcomments@cde.ca.gov.

Comments must be received by the Regulations Coordinator prior to or on January 30, 2024. All written comments received by CDE staff during the public comment period are subject to disclosure under the Public Records Act.

### AUTHORITY AND REFERENCE

Authority: sections 8207, 8208, 8213.5, 8217, 8231, 8242, and 8247, Education Code.

References: sections 8202, 8203, 8205, 8207, 8208, 8210, 8211, 8213, 8213.5, 8217, 8224, 8231, 8232, 8242, 8244, 8245, 8247, 8249, 8252, 8253, 8314, 8332, 48000, 56026, 56040, and 56443, Education Code; Sections 16500.5 and 16506, Welfare and Institutions Code; and 45 Code of Federal Regulations Part 130.

### INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

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 California State Preschool Program (CSPP) as established by EC section 8207, provides three- and four-year-old children with a developmentally appropriate program designed to facilitate their transition to kindergarten. This program includes education, development, health services, social service, nutritional service, parent education and participation, evaluation, and staff development.

On June 30, 2022, the Governor signed the fiscal year 2022–23 Budget Trailer Bill for the Early Education Act, AB 210, which amended ECsections 8205, 8208, 8210, 8211, 8213, and 8244 to change contractor requirements regarding non-countable income, the income threshold for eligibility, eligibility categories, priority for services and serving children with disabilities in the CSPP.

On September 27, 2022, the Governor signed AB 185 (Statutes of 2022, Chapter 571), which amended ECsections 8208, 8210, and 8211 to provide additional clarification on contractor requirements regarding eligibility, priority for services, and serving children with disabilities in CSPP.

AB 210 amended ECsections 8210 and 8211, which made the following changes for CSPP programs effective July 1, 2022:

* All families enrolled, or beginning services, on or after July 1, 2022, shall receive 24 months of eligibility as described in the directive below.
* The income eligibility threshold has been increased from 85 percent of the State Median Income (SMI) to 100 percent of the SMI.
* Three- and four-year-old children are eligible for CSPP services if the child has exceptional needs, as defined in the EC section 8205.
	+ Only the children in the family who are children with exceptional needs may be enrolled under this eligibility criteria. Any other child in the family without exceptional needs may be enrolled pursuant to any of the other eligibility criteria.
	+ NOTE: Children with exceptional needs are also known as children with disabilities. The language in this MB refers to children with exceptional needs to align with the statutory definition in EC. However, to align more closely with special education law and programs, the CDE encourages contractors to describe these children as children with disabilities at the local level in implementation.
* CSPP priorities for services have been added for children with exceptional needs, Transitional Kindergarten (TK) and kindergarten (K) age children enrolling in extended learning and care in part-day CSPP, and children from families with incomes that are no more than 15 percent above the income threshold in full-day CSPP.
* The following types of income shall not be included as income for purposes of determining eligibility for CSPP pursuant to EC section 8213:
	+ Payments made on behalf of a child pursuant to Section 11460, 11461.3, 11461.36, or 11461.4 of the *Welfare and Institutions Code* (*WIC*).
	+ Guaranteed income payments received by an individual. “Guaranteed income payments” mean unconditional, recurring, regular cash payments, whether publicly or privately funded, that are intended to support the basic needs of eligible recipients, including, but not limited to, payments provided through pilot programs and projects receiving funding from the California Guaranteed Income Pilot Program (Chapter 16 (commencing with Section 18997) of Part 6 of Division 9 of *WIC*).

AB 185 amended ECsections 8210 and 8211, which made the following changes for CSPP programs effective September 27, 2022:

* CSPP Neighborhood School eligibility, pursuant to EC section 8217, whereby a state preschool site within the attendance boundary of a public elementary school, except a charter or magnet school, where at least 80 percent of enrolled pupils are eligible for free or reduced-priced meals (FRPM), may enroll children that live within the attendance area, is now open for three-year-old children as well as four-year-old children.
* Families with incomes that are up to 15 percent over the income threshold are now eligible for full-day CSPP. No more than 10 percent of the total contract may be children enrolled under this provision. These families are still required to have a need for services.

AB 210 and AB 185 authorized the State Superintendent of Public Instruction (SSPI) to provide guidance and instruction to implement EC sections 8208, 8210 and 8211 through a Management Bulletin (MB) on or before December 1, 2022, pending initiation of the regulatory process, which must occur no later than December 31, 2023. The CDE released guidance on these topics in MB 23-01 and MB 23-02.

On September 30, 2022, the Governor signed SB 1047 (Stats. 2022, ch. 923) and AB 321 (Stats. 2022, ch. 903), which changed priorities for enrollment and eligibility beyond the changes in AB 185. As a result, the following changes took effect January 1, 2023:

* Children from families in which the primary home language is a language other than English, when two or more families have the same income rank on the Income Ranking Table will be prioritized for services.
* Families who have a member of its household who is certified to receive benefits from Medi-Cal, CalFresh, the California Food Assistance Program, the California Special Supplemental Nutrition Program for Women, Infants, and Children, the federal Food Distribution Program on Indian Reservations, Head Start, Early Head Start, or any other designated means-tested government program, as determined by the department, will have categorical eligibility as of January 1, 2023. At this time, the CDE has designated The California Work Opportunity and Responsibility to Kids (CalWORKs) as an additional means-tested government program. Children eligible for services pursuant to this subparagraph shall be prioritized by the income declared on the application for the means-tested government program.

SB 1047 authorized the State Superintendent of Public Instruction (SSPI) to provide guidance and instruction to implement EC section 8213.5 through issuance of guidance of other written directives. The CDE released guidance on these topics in MB 23-01.

On July 10, 2023, the Governor signed SB No. 116 (Stats. 2023, ch.41) which, among other things, eliminated the third priority for services that gave four-year-old children enrolled in a state-funded transitional kindergarten program priority over three-year-old children and revised the remaining priorities accordingly.

On September 13, 2023, the Governor signed SB 140 (Stats. 2023, ch. 193) and SB 141 (Stats. 2023, ch. 194), which among other things, delineated part-time preschool services as fewer than 25 hours per week and full-time services as 25 hours or more per week for reimbursement purposes and amended the priority language in EC sections 8210 and 8211, changing the reference from children from families whose primary language is a language other than English to dual language learners.

#### **Policy Statement Overview**

The objective of these proposed regulations includes fulfilling the Legislature’s directives in AB 210, AB 185, SB 1047, AB 321, SB 140, SB 141, and SB 116 to amend requirements pertaining to eligibility, priority, serving children with disabilities, and non-countable income for purposes of CSPP eligibility for. These proposed regulations will align the regulations to current law ensuring more efficient administration of the CSPP.

#### **Anticipated Benefits of the Proposed Regulation**

The benefit of enacting the proposed regulations will align the Title 5 regulations with the statutory changes from AB 210 (Stats. 2022, ch. 62), AB 185 (Stats. 2022, ch. 571), and SB 1047 (Stats. 2022, ch. 923) on eligibility, priority and serving children with disabilities in the California State Preschool Program. This regulation package will further clarify the differences in which regulations are applicable for full-day and part-day CSPP. These regulations will achieve clarity, consistency, and efficient administration of the CSPP for contractors.

#### **Evaluation of Inconsistency/Incompatibility with Existing State Regulations**

An evaluation of the proposed regulations has determined they are not inconsistent/incompatible with existing regulations, pursuant to Government section 11346.5(a)(3)(D). After conducting a review of any regulations that would relate to or affect this area of law, the SSPI has concluded that these are the only regulations that concern the Eligibility and Priority for the California State Preschool Program.

### DISCLOSURES REGARDING THE PROPOSED ACTION/ FISCAL IMPACT

The SSPI has made the following initial determinations:

Other statutory requirements: There are no other matters as are prescribed by statute applicable to the specific state agency or to any specific regulations or class of regulations.

Mandate on local agencies and school districts: None

Costs to any local agencies or school districts for which reimbursement would be required pursuant to Part 7 (commencing with section 17500) of division 4 of the Government Code: None

Cost or savings to any state agency: None

Other non-discretionary costs or savings imposed on local agencies, including local educational agencies: None

Costs or savings in federal funding to the state: None

Effect on housing costs: None

Significant, statewide adverse economic impact directly affecting business including the ability of California businesses to compete with businesses in other states: None

Cost impacts on a representative private person or business: The SSPI is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Report required: The proposed regulations do not require a report to be made.

Effect on small businesses: The proposed regulations would not have an effect on any small business because they are only relevant to California State Preschool Programs contracted through the CDE.

### results of the Economic Impact Analysis/ASSESSMENT

**Benefits of the Regulations to the Health and Welfare of California Residents, Worker Safety, and the State’s Environment – Gov. Code Section 11346.5(a)(10):**

The SSPI concludes that it is unlikely that these proposed regulations will: 1) create or eliminate jobs within California; 2) create new businesses or eliminate existing businesses within California; or 3) affect the expansion of businesses currently doing business within California.

Benefits of the Proposed Action: The proposed regulations will benefit children and families in California as they take advantage of high-quality early education programs guided by these proposed regulations. The proposed regulations are not expected to affect worker safety or the state’s environment.

### CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5(a)(13), the SSPI must determine that no reasonable alternative it considered or that has otherwise been identified and brought to the attention of the SSPI, would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

The SSPI invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations during the written comment period.

### CONTACT PERSONS

Inquiries concerning the content of these proposed regulations should be directed to:

Danielle Davis, Child Development Consultant

Early Education Division

California Department of Education

1430 N Street, Suite 3410

Sacramento, CA 95814

Telephone: 916-322-4883

Email: ddavis@cde.ca.gov

Inquiries concerning the regulatory process may be directed to Lorie Adame, Regulations Coordinator, or the backup contact person, Gerri White, Regulations Analyst. The Regulations Coordinator and the Regulations Analyst may be reached by email at regulations@cde.ca.gov or by telephone at 916-319-0860.

### AVAILABILITY OF INITIAL STATEMENT OF REASONS, TEXT OF PROPOSED REGULATIONS AND INFORMATION

As of the date this notice is published in the Notice Register, the rulemaking file consists of this Notice, the proposed text of the regulations, the Initial Statement of Reasons (ISOR) and Fiscal and Economic Impact Statement (STD. 399). These documents upon which the proposed action is based may be obtained upon request from the Regulations Coordinator. In addition, this Notice, the text of the proposed regulations and the ISOR may also be viewed on CDE’s website at <http://www.cde.ca.gov/re/lr/rr/>.

### AVAILABILITY OF CHANGED OR MODIFIED TEXT

Following the public hearing and considering all timely and relevant comments received, the SSPI may adopt the proposed regulations substantially as described in this Notice

or may modify the proposed regulations if the modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified regulation will be available to the public for at least 15 days prior to its adoption from the Regulations Coordinator and will be mailed to those persons who submit written comments related to this regulation, or who provide oral testimony at the public hearing, or who have requested notification of any changes to the proposed regulations. The CDE will accept written comments on the modified regulations for 15 days after the date on which they are made available.

### AVAILABILITY AND LOCATION OF THE FINAL STATEMENT OF REASONS AND RULEMAKING FILE

You may obtain a copy of the Final Statement of Reasons, once it has been finalized, by making a written request to the Regulations Coordinator.

All the information upon which the proposed regulations are based is contained in the rulemaking file which is available for public inspection by contacting the Regulations Coordinator.

### AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulations with modifications highlighted, as well as the Final Statement of Reasons, when completed, and modified text, if any, can be accessed via the CDE’s website at <http://www.cde.ca.gov/re/lr/rr/>.

12-04-23 [California Department of Education]