# INITIAL STATEMENT OF REASONS

Extended School Year

## INTRODUCTION

The Individuals with Disabilities Education Act (IDEA), as amended, mandates the provision of Free and Appropriate Public Education (FAPE) at no cost to parents, to eligible children with exceptional needs, with the intention to meet the unique needs of the child. Title 34 of the Code of Federal Regulations (34 C.F.R.) section 300.106 extends this mandate to extended school year (ESY) services if a child's individualized education program (IEP) team determines, on an individual basis, in accordance with 34 C.F.R. sections 300.320 through 300.324, that the services are necessary for the provision of FAPE to the child. Title 5 of the California Code of Regulations (5 CCR), section 3043 was adopted by the State Board of Education (SBE) in 1988, pursuant to its general rulemaking authority. This section describes the obligation of local educational agencies (LEAs), Special Education Local Plan Areas (SELPAs), or county offices of education providing special education and related services and receiving federal funding for the same to provide ESY services for each individual with exceptional needs who requires special education and related services in excess of the regular academic year. Subsection (g) of section 3043 states that “If during the regular academic year an individual's IEP specifies integration in the regular classroom, a public education agency is not required to meet that component of the IEP if no regular summer school programs are being offered by that agency.” Recently concerns have been raised that this regulation could be interpreted, incorrectly, to operate so as to preclude consideration of least restrictive environment in ESY determinations. As explained below, it is recommended that subsection (g) be deleted for clarity. It is also recommended that subsection (i) be deleted because it has no meaning except in relation to subsection (g).

## PROBLEM AGENCY INTENDS TO ADDRESS

All students eligible under the IDEA, title 20 United States Code section 1400 et seq., are entitled to a FAPE. The IDEA regulations address the possibility that some students with IEPs will require services beyond the regular academic year, i.e., ESY services. The regulations state:

Each public agency must ensure that extended school year services are available as necessary to provide FAPE

34 C.F.R. 300.106(a)(1).

While all students eligible under the IDEA are entitled to services during the regular academic year, not all students with IEPs will require ESY services in order to receive a FAPE. Federal and state law provide that the IEP team for each individual student determines whether ESY services are necessary (34 C.F.R. 300.106(a)(2); Ed. Code, § 56345(b)(3)). The federal ESY regulation does not specify how the IEP team should make the determination of “necessity.” California has adopted a regulation setting forth criteria for how the IEP team should make that determination for each individual student (5 CCR § 3043). The state regulation states that the IEP team should consider whether interruption of a student’s programming during the summer may cause regression, when coupled with a student’s limited recoupment capacity.

The IDEA has a provision known as “least restrictive environment,” or LRE, which states:

To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not disabled, and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. 20 U.S.C. 1412(a)(5)(A).

Toward that end, a SELPA in California must make a “continuum” of placements available, including regular classes, special classes, and other options (34 C.F.R. 300.115(b)(1); Ed. Code, §§ 56360-56361).

While ESY services too must be provided in the LRE, it is important to recognize that ESY services are provided during summer months when, as a practical matter, the full continuum of placements may not be available. While school attendance is mandatory during the regular academic year for students ages 6 to 18 (Ed. Code, § 48200), school attendance is not mandatory during the summer. Nothing in federal or state law mandates that an LEA offers an optional “regular education” summer school program to all of its students. Nevertheless, currently LEAs may offer various regular education summer school programs for various student populations through various funding sources (examples may include Title I, enrichment, credit recovery for graduation, COVID-related learning loss, or others).

California's ESY regulation states:

If during the regular academic year an individual's IEP specifies integration in the regular classroom, a public education agency is not required to meet that component of the IEP if no regular summer school programs are being offered by that agency.

5 CCR, §3043(g).

Existing federal and state law require that LEAs consider the LRE concept in relation to ESY, although an LEA's overall offerings look different in the summer. However, recently concerns have been raised that this regulation could be interpreted, incorrectly, to operate so as to preclude consideration of LRE in ESY determinations. Part of the confusion may be that an LEA does not necessarily implement any student's traditional school year IEP during ESY, but rather creates within the IEP an ESY program for the student that may be different from the traditional school year IEP. For this reason, the phrase in 5 CCR section 3043 (g) stating that if the LEA does not offer any regular education summer school programs, the LEA "is not required to meet that [regular education] component of the [traditional school year] IEP,” may be confusing. The California Department of Education is planning to prepare and issue Frequently Asked Questions to address concerns related to ESY, including consideration of the LRE concept in relation to ESY.

It is recommended that 5 CCR section 3043(g) be deleted for clarity. The existing federal and state law are sufficient to address ESY without subsection (g), and, rather than clarify and implement existing law, subsection (g) may be confusing the field. Also, it is recommended that subsection (i) of 5 CCR, section 3043 be deleted. Subsection (i) states, “This section [subsection (g)] shall not apply to schools which are operating a continuous school program pursuant to Chapter 5 (commencing with Section 37600) of Part 22, Division 3, Title 2, of the Education Code.” Subsection (i) has meaning only in relation to subsection (g), and not in relation to the rest of section 3043. Because subsection (g) is being deleted, subsection (i) should be deleted as well.

Furthermore, it is recommended that Education Code section 37600 be deleted from the “Reference” section in the NOTE because it is reference only for subsection (i), which is being deleted. Finally, it is recommended that Education Code section 41976.5 be deleted from the “Reference” section in the NOTE because it was repealed by Statutes 2021, chapter 666, section 32 (Assem. Bill No. 486), effective January 1, 2022.

## BENEFITS ANTICIPATED FROM REGULATORY ACTION

This action will clarify, consistent with existing federal and state law, that decisions as to what constitutes FAPE in the LRE for individual students during ESY should be made based on individual student needs. Further regulation to implement the applicable federal and state ESY provisions is unnecessary and deletion of such regulation, i.e., 5 CCR section 3043(g) and related section 3043(i), is expected to minimize confusion over its application in relation to existing law.

## SPECIFIC PURPOSE OF EACH SECTION – GOV. CODE SECTION 11346.2(b)(1)

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

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:

## SECTION 3043

**Section 3043(g)** is deleted to clarify, consistent with existing federal and state law, that decisions as to what constitutes FAPE in the LRE for individual students during ESY should be made based on individual student needs. Further regulation to implement the applicable federal and state ESY provisions is unnecessary and deletion of such regulation, 5 CCR section 3043(g), is proposed to minimize confusion over its application in relation to existing law.

**Section 3043(i)** is deleted because this subsection has meaning in relation only to subsection (g), which is being deleted as described above, and not to the remainder of section 3043.

**NOTE: Reference** is amended to delete Education Code sections 37600 and 41976.5. Education Code section 37600 is reference only for subsection (i), which is being deleted. Education Code section 41976 was repealed by Statutes 2021, chapter 666, section 32 (Assem. Bill No. 486), effective January 1, 2022.

## Economic Impact ASSESSMENT PER GOV. CODE SECTION 11346.3(b)

### Purpose:

The proposed change in the regulation is to avoid confusion over the provision of FAPE during ESY for students with disabilities requiring mainstreaming during ESY as determined by the IEP team, in the unique circumstance when no regular summer school programming is offered by the public agency.

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

There is no evidence that the proposed regulations would either create or eliminate jobs within the State of California.

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

There is no evidence that the proposed regulations would either create or eliminate existing businesses within the State of California.

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

There is no evidence that the proposed regulations would either expand or eliminate businesses currently doing business within the State of California.

### 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):

The proposed amendment to 5 CCR section 3043, deleting subsection (g) and related subsection (i), benefits the health and welfare of California residents by removing a perceived barrier to the provision of FAPE to students as required under the IDEA.

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 SBE 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 amendment to the regulation would not have a significant adverse economic impact on any business because the deletion of 5 CCR section 3043 subsection (g) and related subsection (i) does not change or modify existing law requiring the provision of FAPE in the LRE or the provision of an ESY program as determined by the student’s IEP by a public agency receiving federal funding under the IDEA.

## OTHER REQUIRED SHOWINGS

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

The SBE 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 SBE.

### 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).

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