# Addendum to the Finding of Emergency

## Physical Fitness Test

Upon review, the California Department of Education (CDE) determined that further explanations to the Finding of Emergency and non-substantive changes to the text of the regulations were warranted as described below.

### SUPPLEMENT TO THE FINDING OF EMERGENCY:

Based on Senate Bill No. 179, chapter 852 (Stats. 2017), relating to a nonbinary option for identification of persons, the CDE’s California Longitudinal Pupil Achievement Data System (CALPADS) addressed and then began to accommodate the option of a nonbinary gender student code for the 2019-2020 academic year. On April 22, 2020, in response to the COVID-19 pandemic, Executive Order N-56-20, Section 13, waived the administration of the Physical Fitness Test (PFT) for the 2019-2020 school year. Later that year, Senate Bill No. 820 (Stats. 2020) not only provided for the study and report about the PFT to be submitted to the Legislature in November 2022 (that was described in the initial Finding of Emergency (FOE)), it also suspended the PFT for the 2020-2021 school year because of the ongoing COVID-19 pandemic (Sen. Bill No. 820, Stats. 2020, ch. 110, § 68(a)). On June 30, 2021, Senate Bill No. 98 (Stats. 2020) expired of its own terms, ending the authorization for distance learning and returning students to in-person instruction (Educ. Code, § 43511(b)). Thereafter, while continuing to participate in the ongoing Senate Bill No. 820 study about the PFT and to monitor the ongoing pandemic, the CDE pursued a legislative extension of the PFT suspension for the 2021-2022 school year, pending submission of the Senate Bill No. 820 report on the PFT in November 2022. However, the CDE was ultimately unsuccessful in this request. Once it was clear that administration of the PFT for spring 2022 was expected to go forward (with a testing window beginning in February 2022), the CDE began developing a regulatory solution including both emergency regulations for the spring 2022 administration of the PFT and potentially permanent regulations.

Also, while the FOE stated that “the lack of HFZ [Healthy Fitness Zone] performance standards will eliminate all students’ ability to satisfy the criteria for the exemption from physical education in EC section 51241(b)(1),” it must be clarified that there remains the possibility that a local educational agency with the consent of a pupil could grant an exemption from physical education under that permissive section in a specific set of circumstances. That is, a student could volunteer (or a local educational agency could collect from a willing student) the student’s height and weight and, together with the raw scores from the aerobic capacity subtest, do the necessary computation to determine whether the student met the HFZ standard for that subtest. Then, if the student passed that subtest, and it was determined that the student’s raw scores also met the HFZ standard for the remaining four subtests, a student could apply for and be granted the exemption in Education Code section 51241(b) if the local education agency chose to exercise that option. Although this regulatory action thus does not completely eliminate the potential equity issues that have been identified, it is not expected that many local education agencies will offer or many students will seek exemptions under Education Code section 51241(b)(1) following the spring 2022 administration of the PFT. Therefore, this regulatory action takes a substantial step towards reducing inequities and maintaining students’ mental and physical health.

### NONSUBSTANTIVE CHANGES TO THE TEXT OF THE REGULATIONS:

General changes were made to the regulations to include grammatical edits.

Section 1040(h) was amended to correct the citation to Education Code section 56365.

Section 1040 NOTE: Reference was amended to add Education Code section 60800, which was inadvertently not listed.

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