

**State of California
Office of Administrative Law**

In re:
Board of Education

Regulatory Action:

Title 05, California Code of Regulations

Amend sections: 11517.6, 11518, 11518.15,
11518.20, 11518.25,
11518.30, 11518.35,
11518.40, 11518.45,
11518.50, 11518.70,
11518.75, 11519.5

**NOTICE OF APPROVAL OF EMERGENCY
REGULATORY ACTION**

**Government Code Sections 11346.1 and
11349.6**

OAL Matter Number: 2018-0724-02E

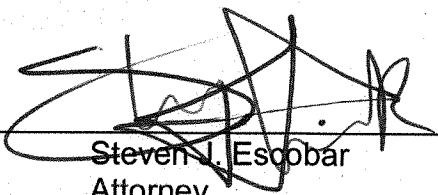
OAL Matter Type: Emergency (E)

This emergency rulemaking by the State Board of Education amends definitions and requirements, as well as responsibilities and guidelines for the administration, accessibility resources, test security, reporting, and apportionment related to the English Language Proficiency Assessments for California.

OAL approves this emergency regulatory action pursuant to sections 11346.1 and 11349.6 of the Government Code.

This emergency regulatory action is effective on 8/3/2018 and will expire on 1/31/2019. The Certificate of Compliance for this action is due no later than 1/30/2019.

Date: August 3, 2018



Steven J. Escobar
Attorney

Original: Tom Torlakson, State
Superintendent
Copy: Hillary Wirick

For: Debra M. Cornez
Director

EMERGENCY

STATE OF CALIFORNIA--OFFICE OF ADMINISTRATIVE LAW

NOTICE PUBLICATION/REGULATIONS SUBMISSION

(See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-2013)

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-	REGULATORY ACTION NUMBER	EMERGENCY NUMBER 2018-0724-02E
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2018 JUL 24 A 11:07
OFFICE OF
ADMINISTRATIVE LAW

ENDORSED - FILED

In the office of the Secretary of State
of the State of California

AUG 03 2018

1:41 pm

NOTICE

REGULATIONS

AGENCY WITH RULEMAKING AUTHORITY
State Board of Education

AGENCY FILE NUMBER (if any)

A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE		TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other		4. AGENCY CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)
OAL USE ONLY	ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn		NOTICE REGISTER NUMBER	PUBLICATION DATE

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) English Language Proficiency Assessments for CA	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)
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2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)	SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)	ADOPT
		AMEND
		REPEAL
TITLE(S)	5	11517.6, 11518, 11518.15, 11518.20, 11518.25, 11518.30, 11518.35, 11518.40, 11518.45, 11518.50, 11518.70, see attached

3. TYPE OF FILING			
<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346)	<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.	<input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h))	<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
<input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4)	<input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	<input type="checkbox"/> File & Print	<input type="checkbox"/> Print Only
<input checked="" type="checkbox"/> Emergency (Gov. Code, §11346.1(b))		<input type="checkbox"/> Other (Specify)	

per agency request
JL 8/3/2018

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)

Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a))

Effective on filing with Secretary of State

§100 Changes Without Regulatory Effect

Effective other (Specify)

6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY

Department of Finance (Form STD. 399) (SAM §6660)

Fair Political Practices Commission

State Fire Marshal

Other (Specify)

7. CONTACT PERSON Hillary Wirick, Regulations Analyst	TELEPHONE NUMBER 916-319-0860	FAX NUMBER (Optional) (916) 319-0155	E-MAIL ADDRESS (Optional) hwirick@cde.ca.gov
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8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE <i>Amy Bisson Holloway</i>	DATE 7/9/18
TYPED NAME AND TITLE OF SIGNATORY Amy Bisson Holloway, General Counsel	

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

AUG 03 2018

Office of Administrative Law

Attachment to Notice Publication/Regulation Submission

B2. Amend sections: 11518.75, 11519.5

1 The State Board of Education has illustrated changes to the original text in the following
2 manner: text added is underlined; text deleted is displayed in ~~strikeout~~.

3

4

Title 5. EDUCATION

5

Division 1. California Department of Education

6

Chapter 11. Special Programs

7

Subchapter 7.6 English Language Proficiency Assessments for California

8

(ELPAC)

9

Article 1. General

§ 11517.6. Operation.

11 Subchapter 7.6, "English Language Proficiency Assessments for California (ELPAC),"
12 applies to the initial and summative assessments required by Education Code sections
13 313 and 60810, which are referred to as the ELPAC. ~~This subchapter shall become~~
14 ~~operative on the date the Superintendent of Public Instruction reports to the policy~~
15 ~~committees of the Legislature pursuant to Education Code section 60810(h)(2) that the~~
16 ~~assessments are ready for administration.~~

17 NOTE: Authority cited: Section 33031, Education Code. Reference: Sections 313 and
18 60810, Education Code.

19

§ 11518. Definitions.

21 The following definitions apply to the ELPAC:

22 (a) "Accommodations" means resources documented in a pupil's individualized
23 education program (IEP) or Section 504 Plan that an eligible pupil regularly uses in the
24 classroom for instruction and/or assessment(s) and that are 1) either utilized in the
25 assessment environment or 2) consist of changes in procedures or materials that
26 increase equitable access to the assessment. Accommodations may not fundamentally
27 alter the comparability of test scores.

28 (b) "Administration" means an eligible pupil's attempt to take any part of the
29 ELPAC initial or summative assessment.

1 (c) "Alternate assessment" is an alternate means, identified in an eligible pupil's
2 IEP or ~~Section 504 Plan~~, to measure English language proficiency.

3 (d) "Annual summative assessment window" begins on February 1 and ends on
4 May 31 of each school year.

5 (e) "Designated supports" are resources that an eligible pupil regularly uses in
6 the classroom for instruction and/or assessment(s) and that are available for use by
7 any pupil for whom a need has been indicated, prior to assessment administration, by
8 an educator or a team of educators (with parent/guardian and pupil input, as
9 appropriate) or specified in the pupil's IEP or Section 504 Plan.

10 (f) "Domain" means listening, ~~reading~~, speaking, reading, or writing, as
11 described in Education Code section 60810.

12 (g) "ELPAC initial assessment criterion" means a performance-level cut score on
13 the initial assessment that is at or above the State Board of Education (SBE)-approved
14 definition of English language proficient.

15 (h) "ELPAC test examiner" means an employee or contractor of an LEA or NPS
16 who signs the ELPAC Test Security Affidavit, who is proficient in English and has
17 complete command of pronunciation, intonation, and fluency, and who certifies that he
18 or she has completed training in administration of the ELPAC.

19 (ih) "ELPAC trainer" means an employee or contractor of a local educational
20 agency (LEA) or nonpublic school (NPS) responsible for the annual training of ELPAC
21 test examiners.

22 (ij) "Excessive materials" means the difference between the total number of
23 paper tests scored and 90 percent of the paper tests ordered annually by the LEA.

24 (kj) "Grade" means the grade in which a pupil is enrolled at the time of testing, or
25 if enrolled in an ungraded program, the grade to which the LEA assigns the pupil for
26 assessment purposes.

27 (lk) "Initial assessment" means the ELPAC assessment that is locally scored and
28 is used to determine the English language proficiency of eligible pupils, as specified in
29 section 11518(vy) or section 11518.20.

30 (mf) "Initial assessment window" begins on July 1 and ends on June 30 of each
31 school year.

1 (nm) "Initial California enrollment" means the first day on which a pupil is in
2 attendance in a California public school.

3 (on) "Local educational agency (LEA)" means an elementary, high school, and
4 unified school district, county office of education, any charter school that for
5 assessment purposes does not elect to be part of the school district or county office of
6 education that granted the charter, and any charter school chartered by the SBE.

7 (pe) "LEA ELPAC coordinator" means an employee of an LEA who is designated
8 by the LEA superintendent to oversee the administration of the ELPAC assessments.

9 (gp) "LEA superintendent" for purposes of these regulations includes an
10 administrator of a charter school that is an LEA as defined by subdivision (no).

11 (r) "Local scoring tool (LST) correspondence administrator" means an employee
12 of an LEA who enters pupils' initial assessment scores into the local scoring tool from
13 the score sheet in the answer book and has the authority to generate reports of pupils'
14 aggregate and individual scores at the LEA level.

15 (s) "LST data entry staff" means an employee of an LEA who enters pupils' initial
16 assessment scores into the local scoring tool from the score sheet in the answer book
17 and has the authority to print individual pupil score reports at the site level.

18 (tq) "Nonpublic schools (NPS)" means nonpublic, nonsectarian schools as
19 described in Education Code section 56034.

20 (ur) "Personally identifiable information" includes a pupil's name and/or any other
21 direct personal identifiers, and indirect identifiers, such as the pupil's address and
22 personal characteristics, and other information that makes a pupil's identity traceable
23 through the use of a single or multiple data source(s), including publicly available
24 information.

25 (vs) "Primary or native language" means the language used by a pupil, as
26 identified in accordance with the survey conducted pursuant to section 11518.5(a).

27 (wt) "Proctor" means an employee or contractor of an LEA or NPS who signs the
28 ELPAC Test Security Affidavit and completes training designed to prepare him or her to
29 assist the test examiner in the administration of the ELPAC.

30 (xu) "Pupil" refers to a student enrolled in a California public school or NPS.

31 (yv) "Pupil eligible for the initial assessment" means: (1) a pupil whose primary
32 or native language is a language other than English as determined by the survey

1 conducted pursuant to section 11518.5(a), or who is identified for administration of the
2 initial ELPAC assessment pursuant to section 11518.20(a); (2) who has not previously
3 been classified as an English learner (EL) by a California public school; and (3) who
4 has no record of results from an administration of the California English Language
5 Development Test, or the ELPAC initial or summative assessment.

6 (zw) "Pupil eligible for the summative assessment" means a pupil who is
7 classified as EL in accordance with these regulations.

8 (aax) "Pupil with a disability" means a pupil who has an IEP in accordance with
9 Education Code section 56345 or a Section 504 Plan in accordance with the provisions
10 of Section 504 of the Rehabilitation Act of 1973 (20 U.S.C. section 794).

11 (aby) "Record of results" includes:

12 (1) Pupil test results on the initial and/or summative assessment; and

13 (2) Parent or guardian notification letter of pupil results.

14 (acz) "Resource" refers to a universal tool, designated support, accommodation,
15 or an unlisted resource approved pursuant to section 11518.35. Resources (including
16 approved unlisted resources) do not change the construct of the assessment.

17 (ada) "Scribe" means an employee or contractor of an LEA or NPS which is
18 responsible to implement a pupil's IEP, who signs an ELPAC Test Security Affidavit,
19 and completes training to transcribe a pupil's responses to the format required by the
20 ELPAC assessment(s). A parent, guardian, or sibling of a pupil is not eligible to be that
21 pupil's scribe.

22 (aeb) "Site ELPAC coordinator" means an employee of an LEA designated by
23 the LEA, or a person designated by an NPS, to oversee the administration of ELPAC
24 assessments for each test site.

25 (afe) "Summative assessment" means the annual administration of the ELPAC
26 assessment to identify a pupil's level of English language proficiency and assess a
27 pupil's progression in acquiring skills of listening, reading, speaking, reading, and
28 writing.

29 (agd) "Test contractor" means the contractor responsible for the development
30 and administration of the ELPAC pursuant to Education Code section 60810.

31 (ae) "Test examiner" means an employee or contractor of an LEA or NPS who
32 signs the ELPAC Test Security Affidavit, who is proficient in English and has complete

1 command of pronunciation, intonation, and fluency, and who certifies that he or she has
2 completed training in administration of the ELPAC.

3 (ahf) "Test materials" include, but are not limited to, administration manuals,
4 administrative materials, test books, practice tests, scratch paper, answer books, and
5 test answer documents, answer keys, scoring rubrics, and any of the materials
6 developed and provided by the test contractor.

7 (aig) "Universal tools" means resources available to all pupils who are
8 administered the ELPAC assessments.

9 (ajh) "Unlisted resource" means an instructional support that a pupil regularly
10 uses in daily instruction and/or assessment that has not been previously identified as a
11 universal tool, designated support, or accommodation.

12 NOTE: Authority cited: Section 33031, Education Code. Reference: Sections 306, 313
13 and 60810, Education Code.

14

15 **Article 2. Administration for Pupils Other than Pupils with a Disability**

16 **§ 11518.15. Summative Assessment.**

17 (a) An LEA shall administer the ELPAC summative assessment to all eligible
18 pupils during the annual summative assessment window.

19 (b) The LEA shall notify each pupil's parent or guardian of the pupil's test
20 contractor-scored summative assessment results within 30 calendar days following
21 receipt of the test results from the test contractor. If the test results are received from
22 the test contractor after the last day of instruction for the school year, the LEA shall
23 notify each pupil's parent or guardian of the pupil's results within 15 working days of the
24 start of the next school year.

25 NOTE: Authority cited: Section 33031, Education Code. Reference: Sections 306, 313,
26 60810 and 60900, Education Code; and 20 U.S.C. Sections 6311, 6312, 6823, 6825
27 and 6826.

28

1 **§ 11518.20. Correction of Classification Errors.**

2 (a) If a pupil is classified as EO pursuant to section 11518.5(b), but the LEA has
3 an indication that the pupil's primary or native language is not English and the pupil is
4 unable to perform ordinary classroom work in English, the LEA may collect and review
5 evidence as described in subdivisions (d)(3) and (d)(4). Based upon this review, the
6 LEA shall determine whether the pupil shall be administered the initial assessment in
7 order to determine the pupil's classification. At least 10 calendar days prior to
8 administration of the initial assessment, the LEA shall notify the pupil's parent or
9 guardian in writing that the pupil will be assessed. If the LEA administers the initial
10 assessment and if the pupil does not meet the ELPAC initial assessment criterion for
11 proficiency, the LEA shall classify the pupil as EL. The LEA shall notify the pupil's
12 parent or guardian in writing of the results of its review, including the evidence that led
13 to the determination and the results of the initial assessment, as applicable, within 14
14 calendar days of its determination. The pupil's parent or guardian shall be entitled to
15 request that the LEA review its determination following the procedure described in
16 subdivision (c).

17 (b) If an LEA administers an initial or summative assessment to a pupil who is
18 not eligible for the assessment as set forth in section 11518(vy) or (wz), the pupil's
19 classification shall remain unchanged regardless of the assessment results, and the
20 LEA shall not maintain any such results as a pupil record, including in CALPADS.

21 (c) Following the administration of the initial assessment to a pupil, but before
22 the administration of the summative assessment to that pupil, upon request from the
23 pupil's parent or guardian or a certificated employee of the LEA, an LEA shall collect
24 and review evidence, as described in subdivision (d), about the pupil's English
25 language proficiency. Based upon its review of the evidence, the LEA shall determine
26 whether the pupil's classification should remain unchanged or be changed. The LEA
27 shall notify the pupil's parent or guardian in writing of the results of the review within 14
28 calendar days of its determination. This review shall occur only once over the course of
29 the pupil's enrollment in the California public school system.

30 (d) Evidence about the English language proficiency of a pupil for purposes of
31 subdivision (c) shall include:

- 1 (1) The results of the survey administered pursuant to section 11518.5(a);
2 (2) The results of the assessment of the pupil's proficiency in English, using an
3 objective assessment instrument, including, but not limited to, the initial assessment;
4 (3) Parent or guardian opinion and consultation results; and
5 (4) Evidence of the pupil's performance in the LEA's adopted course of study,
6 including courses as described in Education Code sections 51210 (for pupils in grades
7 1 to 6) and 51220 (for pupils in grades 7 to 12) and English language development, as
8 applicable, obtained from the pupil's classroom teacher and other certificated staff with
9 direct responsibility for teacher or placement decisions.

10 (e) During the time evidence is being collected and reviewed, the pupil shall
11 retain his or her original classification.

12 NOTE: Authority cited: Section 33031, Education Code. Reference: Sections 306, 313,
13 60810 and 60900, Education Code; and 20 U.S.C. Sections 6311, 6312, 6821, 6823,
14 6825, 6826 and 7801.

15

16 **Article 3. Administration, Pupils with Disabilities**

17 **§ 11518.25. Pupils with Disabilities.**

18 (a) Except as otherwise provided in this Article, all provisions of Article 2 shall
19 apply to pupils with disabilities.

20 (b) When administering an initial or summative assessment to a pupil with a
21 disability, the LEA shall provide the designated supports and the accommodations
22 specified in section 11518.35 in accordance with the pupil's IEP or Section 504 Plan.

23 (c) When a pupil's IEP or Section 504 Plan specifies that the pupil has a
24 disability that precludes assessment such that there are no appropriate
25 accommodations for assessment in one or more of the listening, speaking, reading,
26 and writing domains, the pupil shall be assessed in the remaining domains in which it is
27 possible to assess the pupil.

28 (1) A pupil may be assigned an overall score only if assessed in both oral and
29 written language. To be considered assessed in oral language, the student must have
30 been assessed in either listening or speaking. To be considered assessed in written
31 language, the student must have been assessed in either reading or writing.

1 NOTE: Authority cited: Section 33031, Education Code. Reference: Sections 306, 313,
2 37200, 60810 and 60900, Education Code; and 20 U.S.C. Sections 1412, 6311, 6312,
3 6821, 6823, 6825 and 6826; and 34 Code of Federal Regulations Section 200.6(h)(4).

4
5 **§ 11518.30. Local Alternate English Language Proficiency Assessments.**

6 When a pupil's IEP team determines that the pupil has a significant cognitive disability
7 such that the A-pupil with a disability who is unable to participate in the initial or
8 summative assessment, or a section of either test, even with resources, the pupil shall
9 be assessed using a locally administered an-alternate assessment(s) for English
10 language proficiency, as specified in the pupil's IEP or Section 504 Plan.

11 Note: Authority cited: Section 33031, Education Code. Reference: Sections 306, 313
12 and 60810, Education Code; and 20 U.S.C. Sections 1412, 6311, 6821, 6823, 6825
13 and 6826; and 34 Code of Federal Regulations Section 200.6(h)(5).

14
15 **Article 4. ELPAC Resources**

16 **§ 11518.35. Use of Universal Tools, Designated Supports, and Accommodations.**

17 (a) An LEA may provide all pupils with one or more of the following universal
18 tools on the ELPAC for any of the domains of listening, ~~reading~~, speaking, reading, and
19 writing:

20 (1) Breaks, including testing over more than one day, between the test
21 contractor-identified test sections;

22 (2) Scratch paper;

23 (3) Oral clarification of test directions by the test examiner in English;

24 (4) Sufficient time to complete the test;

25 (5) Pupil use of highlighter(s) in the test book for grades two through twelve; and

26 (6) Pupil use of marking in the test book for grades three through twelve (non-
27 highlighter).

28 (b) An LEA shall ~~permit~~provide eligible pupils one or more of the following
29 designated supports on the ELPAC for the domains of listening, ~~reading~~, speaking,

1 reading, and writing, only as described below, if specified in the pupil's IEP or Section
2 504 Plan, or for which need is indicated as described in section 11518(e):

3 (1) Color overlay;

4 (2) Covered overlay, masks, or other means to maintain visual attention to the
5 test consistent with the test contractor's test directions;

6 (3) Magnification;

7 (4) Audio or oral presentation of test directions in English, which may be
8 repeated as requested by the pupil;

9 (5) Adjustments to setting, including most beneficial time of day, special lighting
10 or acoustics, special or adaptive furniture, audio amplification equipment; and testing
11 the pupil in a separate room provided that the pupil is directly supervised by an
12 employee of the school district or nonpublic school who has signed the ELPAC Test
13 Security Affidavit;

14 (6) Noise buffers (e.g., individual carrel or study enclosure, or noise-cancelling
15 headphones);

16 (7) Manually Coded English or American Sign Language (ASL) to present test
17 directions for administration (does not apply to test questions).

18 (c) An LEA shall ~~permit~~provide eligible pupils with a disability with the following
19 accommodations on the ELPAC to take the ELPAC for the domains of listening,
20 reading, speaking, reading, and writing, only as described below, with the following
21 accommodations if specified in the pupil's IEP or Section 504 Plan:

22 (1) Braille test materials provided by the test contractor;

23 ~~(2) Audio or oral presentation of test questions for the writing section in English;~~

24 (2) Pause or replay the audio during the administration of test questions for the
25 listening domain;

26 (3) For test questions that assess the listening domain using streamed audio,
27 the use of written scripts by the test examiner for pupils for whom streamed audio is not
28 accessible;

29 (4) Pause or replay the audio during the administration of test questions for the
30 speaking domain that ask the pupil to summarize an academic presentation;

1 (53) For test questions that assess the domains of listening, reading, or writing,
2 transfer of pupil responses marked in the test booklet to the answer document book by
3 a scribe who has signed an ELPAC Test Security Affidavit;

4 (64) Responses dictated to a scribe for selected response items, including
5 multiple-choice items;

6 (75) For test questions that assess the domain of writing, dictation by the pupil of
7 responses, including all spelling and language conventions, to a scribe, audio recorder,
8 or speech-to-text converter;

9 (86) For test questions that assess the domain of writing, use of word processing
10 software with the spell and grammar check tools turned off;

11 (97) For test questions that assess the domains of listening, speaking, and
12 writing, presentation of, and responses to, test questions using Manually Coded
13 English or ASL. Pupil responses must be transcribed into the answer book by the
14 ELPAC test examiner or scribe;

15 (108) Large print versions reformatted from regular print version;

16 (119) Test questions enlarged through electronic means;

17 (1240) Supervised breaks within a section of the test;

18 (1344) For test questions that assess the domains of listening, speaking, and
19 writing, use of an assistive device that does not interfere with the independent work of
20 the pupil. Pupil responses must be transcribed into the answer book by the ELPAC test
21 examiner or scribe; and:

22 (1412) Testing at home or in the hospital by a test examiner.

23 (d) An LEA may submit a request to the CDE on behalf of a pupil with a
24 disability, prior to administering an initial or summative assessment, to obtain approval
25 to use/provide an unlisted resource. Requests must include:

- 26 (1) LEA name and school name;
- 27 (2) LEA ELPAC coordinator name, phone number, and e-mail address; and
- 28 (3) A description of the unlisted resource being requested for an ELPAC domain.

29 NOTE: Authority cited: Section 33031, Education Code. Reference: Sections 306, 313
30 and 60810, Education Code; and 20 U.S.C. Sections 1412, 6311, 6312, 6821, 6823,
31 6825 and 6826.

32

1 **Article 5. LEA Responsibilities**

2 **§ 11518.40. LEA ELPAC Coordinator.**

3 (a) No later than April 1 of each year, each LEA superintendent shall designate
4 an LEA ELPAC coordinator for the following school year. An LEA superintendent shall
5 notify the test contractor of the identity and contact information for the LEA ELPAC
6 coordinator. The LEA ELPAC coordinator shall be available throughout the school year
7 and shall serve as the LEA representative and the liaison between the LEA and the
8 CDE and the LEA and test contractor for all matters related to the ELPAC. Should the
9 LEA ELPAC coordinator be unavailable for any matter related to the ELPAC, the LEA
10 superintendent or his or her designee shall serve in the place of the LEA ELPAC
11 coordinator.

12 (b) The LEA ELPAC coordinator shall complete all duties in accordance with
13 instructions from the test contractor. The LEA ELPAC coordinator's responsibilities
14 include, but are not limited to:

15 (1) Determining LEA and individual school test material needs in conjunction
16 with the test contractor.

17 (2) Ordering materials only for those test examiners who certify they are trained
18 to administer the ELPAC.

19 (3) Ensuring delivery, acquisition, and distribution of test materials to individual
20 schools and sites.

21 (4) Maintaining security over the test materials and personally identifiable
22 information using the procedure set forth in section 11518.50. The LEA ELPAC
23 coordinator shall sign the ELPAC Test Security Agreement and the ELPAC Test
24 Security Affidavit, as set forth in section 11518.50, and annually submit a copy of both
25 to the test contractor prior to receipt of test materials. The LEA shall retain all ELPAC
26 Test Security Agreements and ELPAC Test Security Affidavits ~~from~~for each school site
27 ELPAC coordinator at the LEA office for no less than 12 months from the date the
28 materials were signed.

29 (5) Conducting an inventory of test materials immediately upon receipt from the
30 test contractor.

1 (6) Following completion of the inventory, ensuring that the test materials are
2 retained in a secure, locked location, in the secure boxes in which they were received
3 from the test contractor, until the time they are delivered to the test sites.

4 (7) Training site ELPAC coordinators annually to oversee test administration and
5 security at each test site.

6 (8) Ensuring that all ELPAC test examiners and all other personnel involved in
7 the direct administration and scoring of the initial and summative assessments are
8 trained annually, in accordance with instructions from the test contractor.

9 (9) Assisting the test contractor with the resolution of any discrepancies in pupil
10 test information and/or test materials including, but not limited to, pre-identification files
11 and all errors or discrepancies in pupil-level data files, required to comply with section
12 11518.45.

13 (10) Overseeing the collection of all pupil demographic data in accordance with
14 section 11518.75.

15 (11) Responding to correspondence and inquiries from the test contractor and
16 the CDE in a timely manner.

17 (12) Overseeing the administration of the ELPAC to eligible pupils.

18 (13) Immediately notifying the test contractor of any security breaches or testing
19 irregularities that occur in the LEA before, during, or after the administration of the
20 ELPAC in accordance with instructions from the test contractor.

21 (14) Ensuring all test materials are received from school test sites in sufficient
22 time to satisfy the requirements of subdivision (b)(16).

23 (15) Ensuring all test materials received from school test sites have been placed
24 in a secure location upon receipt of those test materials.

25 (16) Ensuring all test materials to be scored by the test contractor are
26 inventoried, packaged, and labeled in accordance with instructions from the test
27 contractor. Test materials shall be returned to the test contractor at the time and in the
28 manner specified by the test contractor.

29 (17) Overseeing the collection and return, or collection and secure destruction,
30 of all test materials that do not require scoring by the test contractor, in accordance with
31 the directions of and time periods specified by the test contractor. Test materials that
32 were administered to pupils who are not eligible for the assessment as set forth in

1 section 11518(vy) or (wz) shall also be securely destroyed or returned, in accordance
2 with the directions specified by the test contractor.

3 (18) Upon receiving summary reports and files from the test contractor,
4 reviewing the files and reports for completeness and accuracy and notifying the test
5 contractor and the CDE of any errors, discrepancies, or incomplete information as
6 directed by the test contractor. The LEA coordinator shall certify the accuracy of the
7 apportionment information report of the initial and summative assessments
8 administered during the prior fiscal year if designated to do so by the LEA
9 superintendent.

10 NOTE: Authority cited: Section 33031, Education Code. Reference: Sections 306, 313
11 and 60810, Education Code; and 20 U.S.C. Sections 1412, 6311, 6312, 6821, 6823,
12 6825 and 6826.

13

14 **§ 11518.45. Site ELPAC Coordinator.**

15 (a) Annually, each LEA superintendent, or his or her designee, and NPS shall
16 designate a site ELPAC coordinator for each test site. The site ELPAC coordinator, or
17 the site principal or his or her designee, shall be available to the LEA ELPAC
18 coordinator for the purpose of resolving any discrepancies, inconsistencies in test
19 materials or reports, and/or other issues that arise as a result of the annual
20 administration of the ELPAC at the site.

21 (b) The site ELPAC coordinator shall complete all duties in accordance with
22 instructions from the test contractor. The site ELPAC coordinator's responsibilities
23 include, but are not limited to, all of the following:

24 (1) Determining site test material needs and communicating the site needs to the
25 LEA ELPAC coordinator.

26 (2) Arranging for test administration at the site.

27 (3) Annually completing the ELPAC Test Security Agreement and ELPAC Test
28 Security Affidavit prior to the receipt of test materials.

29 (4) Providing test materials only to those persons who have been trained to
30 administer the ELPAC, have executed ELPAC Test Security Affidavits, and who are
31 administering the ELPAC.

1 (5) Overseeing test security requirements, including the collection and delivery
2 of all completed ELPAC Test Security Affidavits ~~forms to the LEA office~~ from the test
3 examiners and other site personnel involved with testing.

4 (6) ~~Submitting~~ Securely storing signed ELPAC Test Security Affidavits ~~to the LEA~~
5 ~~ELPAC coordinator to be retained~~, other than the site ELPAC coordinator affidavit, on
6 the school site for no less than 12 months from the date the materials were signed. The
7 site ELPAC coordinator's ELPAC Test Security Affidavit shall be stored as specified in
8 section 11518.40(b)(4).

9 (7) Maintaining security over the test materials and test data as required by
10 section 11518.50.

11 (8) Overseeing the acquisition of test materials from the LEA ELPAC coordinator
12 and the distribution of test materials to the test examiner(s) on the date of testing in
13 accordance with instructions from the test contractor.

14 (9) Overseeing the administration of the ELPAC to eligible pupils at the test site.

15 (10) Immediately notifying the LEA ELPAC coordinator of any security breaches
16 or testing irregularities that occur before, during, or after the administration of the
17 ELPAC that violate the terms of the ELPAC Test Security Affidavit in section 11518.50,
18 in accordance with instructions from the test contractor.

19 (11) Collecting and returning all testing materials to the LEA ELPAC coordinator
20 after testing has concluded, in accordance with instructions from the test contractor.

21 (12) Assisting the LEA ELPAC coordinator and the test contractor in the
22 resolution of any discrepancies between the numbers of tests received from the LEA
23 ELPAC coordinator and the number of tests collected and returned to the LEA ELPAC
24 coordinator after testing has concluded.

25 (13) Overseeing the collection and accuracy of all pupil demographic data
26 required by section 11518.75.

27 Note: Authority cited: Section 33031, Education Code. Reference: Sections 306, 313
28 and 60810, Education Code; and 20 U.S.C. Sections 1412, 6311, 6312, 6821, 6823,
29 6825 and 6826.

30

1 **§ 11518.50. ELPAC Test Security Agreement and ELPAC Test Security Affidavit.**

2 (a) Access to the test materials is limited to eligible pupils being administered the
3 ELPAC and individuals directly responsible for administration of an ELPAC test who
4 have signed the ELPAC Test Security Agreement and ELPAC Test Security Affidavit,
5 as applicable.

6 (b) All LEA ELPAC coordinators and site ELPAC coordinators shall annually sign
7 the ELPAC Test Security Agreement set forth in subdivision (c) before receiving any
8 ELPAC test materials.

9 (c) The ELPAC Test Security Agreement shall be as follows:

10 **ELPAC TEST SECURITY AGREEMENT**

11 I acknowledge by my signature on this form that the English Language Proficiency
12 Assessments for California (ELPAC) initial and summative assessments pursuant to
13 Education Code section 60810 are secure tests and agree to each of the following
14 conditions to ensure test security:

15 (1) I will take all necessary precautions to safeguard the security of the test and
16 test materials, including limiting access to only those individuals in the local educational
17 agency (LEA) who have responsibilities for the administration of the ELPAC.

18 (2) I shall have all persons who have access to the test(s) and test materials for
19 the purpose of administration read and sign the ELPAC Test Security Affidavit.

20 (3) Except during the administration of the tests, I will keep the test materials in a
21 securely locked room which can be accessed only with a key or key card and, when
22 possible, in a locked storage cabinet within that room.

23 (4) As a site ELPAC coordinator, I will collect and return all test materials to the
24 LEA ELPAC coordinator.

25 (5) As an LEA ELPAC coordinator, I will securely destroy or return all test
26 materials ~~that do not require scoring by the test contractor~~, in accordance with the
27 directions of and time periods specified by the test contractor.

28 (6) I will deliver test materials only to those persons who have executed ELPAC
29 Test Security Affidavits.

30 By signing my name to this document, I am assuring that I have completely read and
31 will abide by the above conditions.

1 Signed: _____
2 Print Name: _____
3 Title: _____
4 LEA: _____
5 Date: _____

6 (d) Test examiners, proctors, scribes, LEA ELPAC coordinators, site ELPAC
7 coordinators, ELPAC trainers, LST correspondence administrators, LST data entry
8 staff, and any person having access for the purpose of administering the test(s) shall
9 sign the ELPAC Test Security Affidavit set forth in subdivision (e) before receiving any
10 test materials.

11 (e) The ELPAC Test Security Affidavit shall be as follows:

12 ELPAC TEST SECURITYAFFIDAVIT

13 I acknowledge that I will have access to one or more of the English Language
14 Proficiency Assessments for California (ELPAC) initial and summative assessments
15 pursuant to Education Code section 60810, for the purpose of administering the test(s)
16 to eligible pupils. I understand that these materials are highly secure and may be under
17 copyright restrictions, and it is my responsibility to protect their security as follows:

18 (1) I will not divulge the contents of the test materials to any other person
19 through verbal, written, or any other means of communication. This includes, but is not
20 limited to, sharing or posting test content via the Internet or by e-mail without the
21 express prior written permission of the California Department of Education (CDE) and
22 test contractor.

23 (2) I will not copy or take a photo of any part of the test materials. This includes,
24 but is not limited to, photocopying (including enlarging) and recording without the
25 express prior written permission from the CDE and test contractor.

26 (3) I will keep all test materials secure prior to and following the distribution of
27 the test(s).

28 (4) I will permit eligible pupils access to test materials only during testing
29 periods. I will permit only eligible pupils who are testing, and individuals participating in
30 the test administration who have signed an ELPAC Test Security Affidavit, to be in the
31 room when and where the ELPAC assessments are being administered.

1 (5) I will not allow any pupils to use any electronic devices that allow them to
2 access outside information, communicate with any other pupils, or photograph or copy
3 test content. This includes, but is not limited to, cell phones, personal digital assistants,
4 tablets, laptops, cameras, and electronic translation devices.

5 (6) When acting as a test examiner, I will: (a) collect and account for all test
6 materials following each testing session; (b) not permit any pupils to remove any test
7 materials by any means from the room(s) where testing takes place; and (c) count all
8 test books and answer documents books before allowing any pupil to leave the testing
9 room.

10 (7) I will not review any test questions, passages, or other test items with any
11 pupils or any other person at any time, including before, during, or following testing. I
12 understand that this includes any discussion between local educational agency (LEA)
13 staff for training or professional development, whether it be in a one-on-one or in a staff
14 meeting setting.

15 (8) I will not, for any test, develop scoring keys, review any pupil responses, or
16 prepare answer documents books. I understand that this includes coaching pupils or
17 providing any other type of assistance to any pupils that may affect their responses.
18 This includes, but is not limited to, both verbal cues and nonverbal cues that may
19 indicate correct or incorrect answers, or completing or changing any pupils' answers.

20 (9) I will return all test materials to the designated site ELPAC coordinator in
21 accordance with his or her instructions.

22 (10) When acting as a test examiner or proctor, I will actively supervise all pupils
23 throughout the testing session to ensure that they are working on the correct test
24 section or part, marking their answers in the correct section of their answer documents
25 books, following instructions, and are accessing only authorized materials (non-
26 embedded universal tools, designated supports, or accommodations) for the test being
27 administered.

28 (11) I will administer the ELPAC in accordance with the directions for test
29 administration and test administration manuals prepared by the test contractor, or any
30 additional guidance provided by the test contractor. I understand that the unauthorized
31 copying, sharing, or reusing of any test book (test books may be appropriately reused
32 in accordance with the test contractor's terms and conditions), test question, or answer

1 document book by any means is prohibited. This includes, but is not limited to,
2 photocopying, recording, e-mailing, messaging (instant, text, or multimedia messaging
3 service, or digital application), using a camera/camera phone, and/or sharing or posting
4 test content via the Internet without the express prior written permission from the CDE
5 and test contractor.

6 (12) I have been trained to carry out my responsibilities in the administration of
7 the ELPAC.

8 By signing my name to this document, I assure that I have completely read this affidavit
9 and will abide by the above requirements and have received all training necessary for
10 the administration of the ELPAC.

11 Signed: _____

12 Print Name: _____

13 Position: _____

14 School: _____

15 LEA: _____

16 Date: _____

17 (f) To maintain the security of the ELPAC, all LEA ELPAC coordinators and site
18 ELPAC coordinators shall immediately, within 24 hours, notify the test contractor of any
19 security breaches or testing irregularities occurring before, during, and/or after any
20 ELPAC test administration(s).

21 NOTE: Authority cited: Section 33031, Education Code. Reference: Sections 306, 313
22 and 60810, Education Code; and 20 U.S.C. Sections 1412, 6311, 6312, 6821 and
23 6823.

24

25 **§ 11518.70. Excessive Material Orders.**

26 (a) For both the initial and summative assessments, each LEA is responsible for
27 the cost of excessive materials ordered annually by the LEA.

28 (1) In no event shall the cost to the LEA for excessive materials exceed the
29 amount per test booklet and accompanying material that is paid to the test contractor
30 by the CDE as part of the contract with the test contractor for the applicable year.

1 (b) An LEA shall not be responsible for the cost of test materials lost through no
2 fault of the LEA.

3 (c) An LEA shall reimburse the test contractor within 60 calendar days of the
4 LEA's receipt of the test contractor's notice of excessive materials charges.

5 NOTE: Authority cited: Section 33031, Education Code. Reference: Sections 313 and
6 60810, Education Code; and 20 U.S.C. Sections 6311, 6312, 6821 and 6823.

7
8 **§ 11518.75. Data Elements for Test Registration, Analysis of Pupil Proficiency,**
9 **and State and Federal Reporting.**

10 (a) In order to assess all eligible pupils pursuant to Education Code section
11 60810 and meet state and federal accountability and reporting obligations, each LEA
12 shall provide any and all program and demographic pupil data requested by the CDE
13 for inclusion in CALPADS.

14 (b) In addition to the demographic and program data required to be reported in
15 subdivision (a) above, each LEA shall report to the test contractor the following
16 information, as applicable:

- 17 (1) Pupil's full name;
- 18 (2) Pupil's date of birth;
- 19 (3) County-District-School code;
- 20 (4) Date testing completed;
- 21 (5) Pupil's grade level at time of test administration;
- 22 (6) Pupil's gender;
- 23 (7) Pupil's most recent prior CELDT or ELPAC scale scores;
- 24 (8) Pupil's grade level from the most recent prior CELDT or ELPAC
25 administration;
- 26 (9) Pupil's use of accommodation(s);
- 27 (10) Pupil's use of alternate assessment(s); and
- 28 (11) Pupil's exemption from assessment in one or more of the domains of
29 listening, speaking, reading or writing, as set forth in section 11518.25(c); and
30 (1214) Pupil's Statewide Student Identifier.

1 NOTE: Authority cited: Section 33031, Education Code. Reference: Sections 313,
2 60810 and 60812, Education Code; and 20 U.S.C. Sections 1412, 6311, 6312, 6821,
3 6823, 6825, 6826, 6841 and 6843.

4 5 **Article 6. Apportionment**

6 **§ 11519.5. Apportionment Information Report.**

7 (a) Annually, the CDE shall make available electronically to each LEA an
8 apportionment information report which shall include the following information provided
9 to the test contractor for those tests administered during the previous fiscal year (July 1
10 through June 30):

11 (1) Initial assessment: The number of eligible pupils assessed on the ELPAC
12 initial assessment within the initial assessment window as indicated by the number of
13 answer ~~documents~~ books scored by the LEA and entered into the local scoring tool for
14 each administration.

15 (2) Summative assessment: The number of eligible pupils assessed on the
16 ELPAC summative assessment within the annual summative assessment window as
17 indicated by the number of answer ~~documents~~ books submitted to and scored by the
18 test contractor for each administration.

19 (A) If multiple answer books for an individual pupil are submitted to the test
20 contractor, only the LEA that submitted the answer book with the earliest date testing
21 completed will be eligible for apportionment.

22 (b) The CDE shall ~~distributemake~~ make available electronically an the apportionment
23 information reports to each LEAs no later than December 1 annually.

24 (c) To be eligible for an apportionment payment for the ELPAC, LEAs shall
25 annually meet the following conditions:

26 (1) The LEA shall have returned to the contractor and/or locally destroyed in a
27 secure manner all secure test materials, and

28 (2) The LEA superintendent shall have certified the accuracy of the
29 apportionment information report for the administration of the initial and summative
30 assessments during the prior fiscal year (July 1 through June 30), which is ~~either:~~
31 transmitted electronically in a manner prescribed by the test contractor.

1 (A) ~~Postmarked or transmitted electronically in a manner prescribed by the test~~
2 ~~contractor and/or the CDE by March 1 of the subsequent fiscal year, or~~

3 (B) ~~If postmarked or transmitted in any manner after March 1 of the subsequent~~
4 ~~fiscal year, the apportionment information report shall be accompanied by a waiver~~
5 ~~request as provided by Education Code section 33050.~~

6 NOTE: Authority cited: Section 33031, Education Code. Reference: Sections 313 and
7 60810, Education Code.

8

9 08-03-2018 [California Department of Education]