

**State of California
Office of Administrative Law**

**In re:
Board of Education**

Regulatory Action:

Title 05, California Code of Regulations

Adopt sections:

Amend sections: 851, 853.5, 853.7, 855, 856

Repeal sections:

**NOTICE OF APPROVAL OF EMERGENCY
REGULATORY ACTION**

**Government Code Sections 11346.1 and
11349.6**

OAL Matter Number: 2017-0124-01

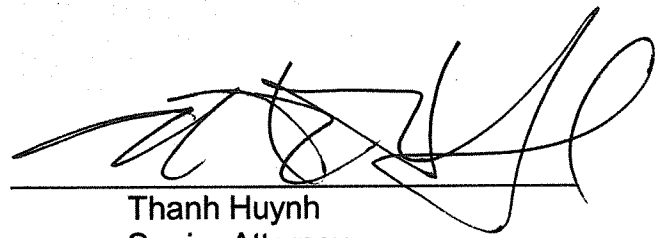
OAL Matter Type: Emergency (E)

In this emergency regulatory action, the Board amends various sections in Title 5 of the California Code of Regulations. The amendments modify regulations governing the California Assessment of Student Performance and Progress (CAASPP) examination to align state standards with standardized testing guidelines of the Smarter Balanced Assessment Consortium.

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 2/2/2017 and will expire on 8/2/2017. The Certificate of Compliance for this action is due no later than 8/1/2017.

Date: February 2, 2017



**Thanh Huynh
Senior Attorney**

**For: Debra M. Cornez
Director**

**Original: Tom Torlakson
Copy: Hillary Wirick**

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 2017-0124-01E
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For use by Office of Administrative Law (OAL) only

2017 JAN 24 A 10:31

OFFICE OF ADMINISTRATIVE LAW

ENDORSED - FILED
in the office of the Secretary of State
of the State of California

FEB -2 2017
1:49 pm

NOTICE	REGULATIONS	AGENCY WITH RULEMAKING AUTHORITY State Board of Education	AGENCY FILE NUMBER (if any)
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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) California Assessment of Student Performance and Progress	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)
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 851, 853.5, 853.7, 855, 856
TITLE(S) 5	REPEAL

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 §511346.2-11347.3 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) _____	

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)

<input type="checkbox"/> Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a))	<input checked="" type="checkbox"/> Effective on filing with Secretary of State	<input type="checkbox"/> §100 Changes Without Regulatory Effect	<input type="checkbox"/> Effective other (Specify) _____
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6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY

<input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660)	<input type="checkbox"/> Fair Political Practices Commission	<input type="checkbox"/> State Fire Marshal
<input type="checkbox"/> Other (Specify) _____		

7. CONTACT PERSON Hillary Wirick, Reg 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 	DATE 1/23/17
TYPED NAME AND TITLE OF SIGNATORY Amy Bisson Holloway, General Counsel	

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

FEB 02 2017

Office of Administrative Law

- 1 • The State Board of Education has illustrated changes to the original text in the
2 following manner: text originally proposed to be added is underlined; text proposed
3 to be deleted is displayed in ~~strikeout~~.
4

5 **Title 5. EDUCATION**

6 **Division 1. California Department of Education**

7 **Chapter 2. Pupils**

8 **Subchapter 3.75. California Assessment of Student Performance and Progress**

9 **(CAASPP)**

10 **Article 2. Achievement Tests and Any Primary Language Test**

11 **§ 851. Pupil Testing**

12 (a) With the exception of pupils exempt pursuant to section 852, LEAs shall
13 administer the achievement tests, and may administer the primary language test, to
14 each eligible pupil as defined in section 851.5 who is enrolled in an LEA during the
15 school's or track's selected testing period (excluding any extension period pursuant to
16 section 855(b)(4)).

17 (b) The testing conducted shall be consistent with the pupil's grade of enrollment as
18 noted in CALPADS on the first day that the pupil started testing in any component of
19 the summative test. Testing shall be conducted within ~~of~~ the school's or track's
20 available testing window pursuant to section 855.

21 (c) No later than start of the 2014-2015 school year, for the purposes of the
22 CAASPP assessment system, a charter school which is not an LEA as defined in
23 Education Code section 60603(o) shall test with, dependent on, the LEA that granted
24 the charter or was designated the oversight agency by the State Board of Education
25 (SBE).

26 (d) LEAs shall make arrangements for the testing of all eligible pupils in alternative
27 education programs or programs conducted off campus, including, but not limited to,
28 non-classroom based programs, continuation schools, independent study, community
29 day schools, county community schools, juvenile court schools, or NPSs.

30 (e) No test may be administered in a home or hospital except by a test administrator
31 or test examiner. No test shall be administered to a pupil by the parent, guardian, or
32 sibling of that pupil. This subdivision does not prevent classroom aides from assisting in
33 the administration of the test under the supervision of a test administrator or test

1 examiner, provided that the classroom aide does not assist his or her own child, and
2 that the classroom aide signs a CAASPP Test Security Affidavit.
3 Note: Authority cited: Sections 33031, 60605 and 60640, Education Code. Reference:
4 Sections 47651, 48645.1, 60603, 60605 and 60640, Education Code.

5

6 **§ 853.5. Use of Universal Tools, Designated Supports, and Accommodations**

7 (a) All pupils shall be permitted the following embedded universal tools on the
8 CAASPP achievement tests for ELA (including the components of reading, writing, and
9 listening) and mathematics as specified below:

- 10 (1) breaks for reading, writing, listening, and mathematics;
- 11 (2) calculator for specific mathematics items only in grades 6 through 8 and 11;
- 12 (3) digital notepad for reading, writing, listening, and mathematics;
- 13 (4) English dictionary for writing (ELA-performance task - full write not short
14 paragraph responses);
- 15 (5) English glossary for reading, writing, listening, and mathematics;
- 16 (6) expandable passages for reading, writing, listening, and mathematics;
- 17 (7) global notes for writing (ELA-performance task - full write not short paragraph
18 responses);
- 19 (8) highlighter for reading, writing, listening, and mathematics;
- 20 (9) keyboard navigation for reading, writing, listening, and mathematics;
- 21 (10) mark for review for reading, writing, listening, and mathematics;
- 22 (11) mathematics tools (i.e., embedded ruler and embedded protractor) for specific
23 mathematics items;
- 24 (12) spell check for specific writing items;
- 25 (13) strikethrough for reading, writing, listening, and mathematics;
- 26 (14) writing tools for specific pupil generated responses; or
- 27 (15) zoom for reading, writing, listening, and mathematics.

28 (b) All pupils shall be permitted the following non-embedded universal tools on the
29 CAASPP tests for ELA (including the components of reading, writing, and listening),
30 mathematics, science, and primary language as specified below:

- 31 (1) breaks;
- 32 (2) English dictionary for ELA performance task - full write not short paragraph
33 responses;

- 1 (3) scratch paper;
- 2 (4) thesaurus for ELA performance task - full write not short paragraph responses;
- 3 (5) color overlay for science and primary language test;
- 4 (c) All pupils shall be permitted the following embedded designated supports when
- 5 determined for use by an educator or a team of educators (with parent/guardian and
- 6 pupil input as appropriate) or specified in the pupil's IEP or Section 504 Plan on the
- 7 CAASPP achievement tests for ELA (including the components of reading, writing, and
- 8 listening) and mathematics as specified below:
 - 9 (1) color contrast for reading, writing, listening, and mathematics;
 - 10 (2) masking for reading, writing, listening, and mathematics;
 - 11 (3) text-to-speech for writing, listening, mathematics, and reading items but not
 - 12 reading passages;
 - 13 (4) translations (glossary) for mathematics;
 - 14 (5) Spanish translations (stacked) and translated test directions for mathematics; or
 - 15 (6) turn off any universal tool for reading, writing, listening, and mathematics.
- 16 (d) All pupils shall be permitted the following non-embedded designated supports
- 17 when determined for use by an educator or a team of educators (with parent/guardian
- 18 and pupil input as appropriate) or specified in the pupil's IEP or Section 504 Plan on the
- 19 CAASPP achievement tests for ELA (including the components of reading, writing, and
- 20 listening), mathematics, science, and primary language as specified below:
 - 21 (1) translated directions for ELA, mathematics, science and primary language test;
 - 22 (2) bilingual dictionary for writing;
 - 23 (3) access to translation glossaries/word lists for science and primary language test;
 - 24 (4) color contrast for reading, writing, listening, and mathematics;
 - 25 (5) color overlay for reading, writing, listening, and mathematics;
 - 26 (6) magnification;
 - 27 (7) read aloud for writing, listening, mathematics, and reading items but not reading
 - 28 passages;
 - 29 (8) scribe for reading, listening, and mathematics;
 - 30 (9) separate setting including most beneficial time of day, special lighting or
 - 31 acoustics, and/or special or adaptive furniture;
 - 32 (10) translations (glossary) for mathematics (only consortium-provided glossaries
 - 33 for paper-pencil tests);

1 (11) noise buffers (e.g., individual carrel or study enclosure, or noise-cancelling
2 headphones);

3 (12) translations (glossary) for science and primary language test; or

4 (13) read aloud for Spanish stacked translation in mathematics.

5 (14) simplified test directions for ELA and mathematics.

6 (e) The following embedded accommodations shall be provided on the CAASPP
7 achievement tests for ELA (including the components of reading, writing, and listening)
8 and mathematics when specified in a pupil's IEP or Section 504 Plan: (1) American Sign
9 Language for listening and mathematics;

10 (1) American Sign Language for listening and mathematics;

11 (2) braille for reading, writing, listening, and mathematics;

12 (3) closed captioning for listening;

13 (4) text-to-speech for reading passages; or

14 (5) streamlining for reading, writing, listening, and mathematics.

15 (f) The following non-embedded accommodations shall be provided on the CAASPP
16 achievement tests for ELA (including the components of reading, writing, and listening),
17 mathematics, science, and primary language when specified in a pupil's IEP or Section
18 504 Plan:

19 (1) read aloud;

20 (2) American Sign Language for science;

21 (3) braille for paper-pencil tests;

22 (4) abacus for mathematics and science;

23 (5) alternate response options for reading, writing, listening, and mathematics;

24 (6) calculator for calculator-allowed mathematics items only in grades 6 through 8,
25 and 11;

26 (7) multiplication table for mathematics beginning in grade 4;

27 (8) print on demand for reading, writing, listening, and mathematics;.

28 (9) read aloud for reading passages;

29 (10) scribe for writing, science, and primary language test;

30 (11) speech-to-text; or

31 (12) large-print version of a paper-pencil test.

32 (13) 100s number table for mathematics beginning in grade 4.

1 (g) If a consortium (in which California is a participant) amends or approves of a
2 universal tool(s), designated support(s), and/or accommodation(s) not listed in
3 subdivisions (a) through (f), the CDE shall approve its use.

4 Note: Authority cited: Sections 33031, 60605 and 60640, Education Code. Reference:
5 Sections 60605 and 60640, Education Code; and 34 C.F.R. Sections 200.1 and
6 300.160(b).

7
8 **§ 853.7. Use of Designated Supports for English Learners.**

9 a) An EL shall be permitted the following embedded designated supports, when
10 determined for use by an educator or a team of educators (with parent/guardian and
11 pupil input as appropriate) or specified in the pupil's IEP or Section 504 Plan on the
12 CAASPP achievement tests for ELA (including the components of reading, writing, and
13 listening) and mathematics as specified below:

14 (1) color contrast for reading, writing, listening, and mathematics;

15 (2) masking for reading, writing, listening, and mathematics;

16 (3) text-to-speech for writing, listening, mathematics and reading items, but not
17 passages;

18 (4) translations (glossary) for mathematics;

19 (5) Spanish translations (stacked) and translated test directions for mathematics; or

20 (6) turn off any universal tool for reading, writing, listening, and mathematics.

21 (b) An EL shall be permitted the following non-embedded designated supports when
22 determined for use by an educator or a team of educators (with parent/guardian and
23 pupil input as appropriate) or specified in the pupil's IEP or Section 504 Plan on the
24 CAASPP achievement tests for ELA (including the components of reading, writing, and
25 listening), mathematics, science, and primary language as specified below:

26 (1) translated test directions for ELA mathematics, science and primary language
27 test;

28 (2) bilingual dictionary for writing;

29 (3) access to translation glossaries/word lists for science and primary language test;

30 (4) color contrast for reading, writing, listening, and mathematics;

31 (5) color overlay for reading, writing, listening, and mathematics;

32 (6) magnification;

1 (7) read aloud for writing, listening, mathematics, and reading items but not reading
2 passages;

3 (8) scribe for reading, listening, and mathematics;

4 (9) separate setting including most beneficial time of day, special lighting or
5 acoustics, and/or special or adaptive furniture;

6 (10) translations (glossary) for mathematics (only consortium-provided glossaries
7 for paper-pencil tests);

8 (11) noise buffers (e.g., individual carrel or study enclosure, or noise-cancelling
9 headphones);

10 (12) translations (glossary) for science and primary language test; or

11 (13) read aloud for Spanish stacked translation in mathematics.

12 (14) simplified test directions for ELA and mathematics.

13 (c) If a consortium (in which California is a participant) amends or approves of a
14 designated support(s) not listed in subdivisions (a) and/or (b), the CDE shall approve its
15 use.

16 Note: Sections 33031, 60605 and 60640, Education Code. Reference: Sections 306,
17 60605 and 60640, Education Code; and 34 C.F.R. Section 200.2.

18
19 **§ 855. Available Testing Window and Selected Testing Period(s).**

20 (a) Beginning in the 2015-16 school year, the CAASPP achievement tests pursuant
21 to Education Code section 60640(b) shall be administered to each pupil at some time
22 during the following available testing windows:

23 (1) Unless otherwise stated in these regulations, the available testing window shall
24 begin on the day in which 66 percent of the school's or track's annual instructional days
25 have been completed, but no earlier than the second Tuesday in January of each year,
26 and testing may continue up to and including the last day of instruction for the regular
27 school's or track's annual calendar, but in no case later than July 15 or the next
28 weekday following the 15th.

29 (2) The CST Science, CMA Science, and CAPA Science in grades 5, 8, and 10
30 shall be administered to each pupil during an available testing window of 25
31 instructional days that includes 12 instructional days before and after completion of 85
32 percent of the school's or track's annual instructional days. If an LEA elects to
33 administer the primary language test, it shall do so during the same available window.

1 (3) The CAA for 2015-16 school year shall be administered during the available
2 testing window of April 11 through June 17, 2016. Beginning in the 2016-17 school
3 year, the CAA shall be administered to each eligible pupil during the available testing
4 windows set forth in subdivisions (a)(1) and (2) above.

5 (b) An LEA may designate one selected testing period for each school or track
6 within the available testing window set forth in subdivision (a) above, subject to the
7 following conditions:

8 (1) If a school has multiple tracks, a selected testing period may be designated for
9 each track. (i.e., a year-round school with three tracks may select three different
10 selected testing periods);

11 (2) An LEA shall not exceed 6 selected testing periods within the available testing
12 window;

13 (3) A selected testing period shall be no fewer than 25 consecutive instructional
14 days; and

15 (4) An LEA may extend a selected testing period up to an additional 10 consecutive
16 instructional days if still within the available testing window set forth in subdivision (a)
17 above.

18 (c) If an LEA does not designate a selected testing period for a school or track, then
19 the available testing window, pursuant to subdivisions (a)(1) and (2) above, shall be the
20 selected testing period for that school or track.

21 (d) The CDE, with the approval of the SBE President or designee, may require
22 LEAs to more fully utilize the testing window and may also limit the usage of the interim
23 assessments in instances where the CDE determines that it is necessary to do so to
24 ensure that the capacity of the California K-12 High Speed Network (K12HSN) is not
25 exceeded.

26 Note: Authority cited: Sections 33031, 60605 and 60640, Education Code. Reference:
27 Sections 60605, 60640, 60641 and 60642.5, Education Code.

28
29 **~~§ 856. Sales and Use Tax. [Repealed]~~**

30 Note: Authority cited: Sections 33031 and 60605(g) and (h), Education Code.

31 Reference: Section 60640, Education Code; and Sections 6051 et seq. and 6201 et
32 seq., Revenue and Tax Code.

1 **§ 856. Justification for Exceeding Cap on Use of Alternate Assessments**

2 (a) On or before a date to be specified by the State Superintendent of Public
3 Instruction, an LEA shall notify the CDE in writing if in any CAASPP achievement test
4 administration it intends to test more than one percent of the total number of pupils who
5 are assessed in a particular grade in a particular subject using an alternate assessment
6 aligned with alternate achievement standards. The following information shall be
7 included in such notice:

8 (1) The county, district, and school (CDS) code(s), name(s), and representative
9 contact information for the LEA; and

10 (2) Justification as to why the LEA needs to exceed the one percent cap on the use
11 of an alternate assessment.

12 NOTE: Authority cited: Sections 33031, 60605 and 60640, Education Code. Reference:
13 Section 60640, Education Code; and 20 U.S.C. Section 6311(b)(2)(D)(ii)(II).