

NOTICE OF PROPOSED RULEMAKING

**AMENDMENT TO CALIFORNIA CODE OF REGULATIONS, TITLE 5, REGARDING
LICENSING EXEMPTION FOR LEAs OPERATING CSPP**

Notice published October 4, 2019

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

California Department of Education (CDE) staff, on behalf of the SSPI, will hold a public hearing at 8:30 a.m. on November 18, 2019, at 1430 N Street, Room 1103, Sacramento, California. The room is wheelchair accessible. 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 Danielle Sisneros, Early Learning and Care Division, 1430 N Street, Suite 3410, Sacramento, CA, 95814; telephone, 916-322-4883. It is recommended that assistance be requested at least two weeks prior to the hearing.

WRITTEN COMMENT PERIOD

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

Patricia Alverson, Regulations Coordinator
Administrative Support and Regulations Adoption Unit
California Department of Education
1430 N Street, Room 5319
Sacramento, CA 95814

Comments may also be submitted by facsimile (FAX) at 916-319-0155 or by email to regcomments@cde.ca.gov.

Comments must be received by the Regulations Coordinator prior to or on November 18, 2019. All written comments received by CDE staff during the public comment period are subject to disclosure under the Public Records Act.

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 all modified regulations will be available for 15 days prior to its adoption from the Regulations Coordinator and will be mailed to those persons who submit written comments related to the regulations, or who provide oral testimony at the public hearing, or who have requested notification of any changes to the proposed regulations.

AUTHORITY AND REFERENCE

Authority: Sections 8261 and 17002, Education Code; Section 1596.7925, Health & Safety Code.

References: Sections 8208 and 17002, Education Code; and Sections 1596.792 and 1596.7925, Health and Safety Code.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The California Department of Education (CDE) has administered subsidized early learning and care services for children from infancy to 13 years of age and their parents since the Child Care and Development Services Act (Act) was established in 1980, chapter 2 of part 6 of the Education Code, starting at section 8200 et seq. The intent of the Act is that qualified subsidized early learning and care services be provided to children and families meeting the eligibility criteria established under the Act. The California State Preschool Program (CSPP) as established by Education Code section 8235, 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. Pursuant to Health and Safety Code (H&SC) section 1596.792, child care and preschool programs are required to be licensed pursuant to title 22 of the California Code of Regulations (22 CCR), unless specifically exempted from such requirements.

Assembly Bill No. 99 (AB 99; Stats. 2017, ch. 15) authorized CSPP operated in a LEA facility to be exempt from 22 CCR licensing requirements if the facility met all the following requirements:

1. Field Act compliance, as specified in article 3 (commencing with section 17280) and article 6 (commencing with section 17365) of chapter 3 of part 10.5 of division 1 of title 1 of, and article 7 (commencing with section 81130) of chapter 1 of part 49 of division 7 of title 3 of the Education Code.
2. The LEA facility is constructed consistent with California Building Standards Code pursuant to title 24 of the California Code of Regulations (24 CCR).
3. The LEA facility meets the requirements for kindergarten classrooms in accordance with chapter 13 (commencing with section 14000) of division 1 of title 5 of the California Code of Regulations (5 CCR), and
4. The program meets all other requirements of CSPPs pursuant to chapter 19 (commencing with section 17906) of division 1 of 5 CCR.

In accordance with AB 99, the Legislative Analyst Office (LAO) convened a stakeholder workgroup to identify and make recommendations on any health and safety requirements currently required under 22 CCR, but not included in 5 CCR, the Field Act, 24 CCR, the California Plumbing Code, the Education Code, or the H&SC, including but not limited to, all of the following:

1. Adequate outdoor shade structures
2. Access to age and developmentally appropriate bathroom and drinking water facilities
3. Appropriate process for parent notification and resolution of code and regulation violations

In accordance with AB 99, the LAO report on the stakeholder process and recommendations were published in the 2018-19 Budget: Proposition 98 Education Analysis, dated February 7, 2018.

Assembly Bill No. 1808 (AB 1808; Stats. 2018, ch. 32) codified the stakeholders' recommendations as follows:

1. Added H&SC section 1596.7925 requiring CDE to adopt new health and safety regulations under 5 CCR. These regulations apply to a CSPP operated in a LEA facility exempt from 22 CCR licensing requirements in accordance with subdivision (o) of H&SC section 1596.7925.
2. The regulations shall require those programs to have all of the following:
 - Outdoor shade that is safe and in good repair.
 - Drinking water that is accessible and readily available throughout the day.
 - Safe and sanitary restroom facilities with one toilet and handwashing fixture for every 15 children.
 - Restroom facilities that are only available for preschoolers and kindergartners

- Visual supervision of children at all times.
- Indoor and outdoor space that is properly contained or fenced and provides sufficient space for the number of children using the space at any given time. Playground equipment must be safe, in good repair, and age appropriate.

In accordance with AB 1808, the CDE issued emergency regulations that became effective July 1, 2019, and will expire on December 31, 2019.

ANTICIPATED BENEFITS OF THE PROPOSED REGULATION

The benefits anticipated by the proposed regulations are the assurance of the continued health and safety of young children enrolled in these programs in the absence of licensure by California Department of Social Services' Community Care Licensing Division so that preschool children are not subject solely to health and safety standards applicable to LEAs, typically intended for an older age group. These regulations are specifically appropriate for a preschool environment operating in a larger environment of a school site in the K-12 system.

DETERMINATION 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 for any regulations that would relate to or affect this area, the SSPI has concluded that these are the only regulations that concern the Licensing Exemption for LEAs Operating CSPP in California.

DISCLOSURES REGARDING THE PROPOSED ACTION/ FISCAL IMPACT

The SSPI has made the following initial determinations:

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 businesses: 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 the contractors of subsidized programs contracted through the CDE.

RESULTS OF THE ECONOMIC IMPACT ANALYSIS

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 state preschool programs throughout the State. For additional benefit analysis, please see “Anticipated Benefits of the Proposed Regulation” found under the Informative Digest/Policy Statement Overview.

CONSIDERATION OF ALTERNATIVES

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.

CONTACT PERSONS

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

Guadalupe Romo-Zendejas, Administrator
Early Learning and Care Division
California Department of Education
1430 N Street, Room 3410
Sacramento, CA 95814

Telephone: 916-445-7349
Email: GRomozen@cde.ca.gov

Inquiries concerning the regulatory process may be directed to Patricia Alverson, Regulations Coordinator or the backup contact person, Hillary Wirick, Regulations Analyst, at 916-319-0860.

INITIAL STATEMENT OF REASONS AND INFORMATION

The SSPI has prepared an Initial Statement of Reasons for the proposed regulations and has available all the information upon which the proposal is based.

TEXT OF PROPOSED REGULATION AND CORRESPONDING DOCUMENTS

Copies of the exact language of the proposed regulations, the Initial Statement of Reasons, and all of the information upon which the proposal is based, may be obtained upon request from the Regulations Coordinator. These documents may also be viewed and downloaded from the CDE's website at <http://www.cde.ca.gov/re/lr/rr/>.

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

The SSPI has prepared an Initial Statement of Reasons for the proposed regulations. This document and the text of the proposed regulations may also be viewed and downloaded from the CDE's website at <http://www.cde.ca.gov/re/lr/rr/>. All of the information upon which the proposed action is based may be obtained upon request from the Regulations Coordinator.

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.

09-19-2019 [California Department of Education]