

INITIAL STATEMENT OF REASONS
Mental Health Services for Students with Disabilities

INTRODUCTION

The proposed action will bring the subject regulations into alignment with current statutes that were affected by the passage of Assembly Bill (AB) 114, which became effective on June 30, 2011. The Legislature passed AB 114 (Chapter 43, Statutes of 2011), it was signed by the Governor on June 30, 2011, and it became effective immediately. AB 114 enacted sweeping changes to the way students with disabilities become eligible for and receive mental health-related special education services in California by repealing several sections of state law governing referral and assessment processes, thereby reverting to federal law concerning how such processes are to be implemented. While a substantial number of required changes have previously been achieved through filings under the process established in California Code of Regulations (CCR), Title 1, Section 100, the Office of Administrative Law (OAL) determined that the amendments proposed herein did not meet the Section 100 eligibility criteria. These proposed amendments will bring the regulations fully into conformance with current federal and state law.

These regulations support the state's effort to meet the requirements of the Individuals with Disabilities Education Act (see e.g., 20 U.S.C. Section 1412(a)) and the California Education Code (see e.g., Sections 56000(d) and (e)) relating to special education for students with disabilities.

PROBLEM AGENCY INTENDS TO ADDRESS

Due to changes in federal law (reauthorization of the Individuals with Disabilities Education Act in 2004, and subsequent federal regulations in 2006) and state law (AB 114, Chapter 43, Statutes of 2011) current state regulations related to these statutes are no longer aligned with current statutes. The proposed amendments to CCR, Title 2, Sections 60000, 60010, 60510, 60550, and 60560 will address this misalignment.

BENEFITS ANTICIPATED FROM REGULATORY ACTION

Clarifying these regulations and making them consistent with current law will have specific benefits. The lack of alignment between the regulations and enabling statutes creates confusion concerning the applicability of both the affected statutes and regulations. The proposed amendments will provide appropriate clarity concerning the authority and responsibility of entities involved in the provision of special education and related services to students with disabilities, elucidating the lawful process for determining students' needs and designating appropriate services to ensure that students have access to the educational benefit to which they are entitled.

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

The specific purpose of each amendment and the rationale for the determination that each amendment is reasonably necessary to carry out the purpose for which it is

proposed, together with a description of the public problem, administrative requirement, or other condition or circumstance that each amendment is intended to address, is as follows:

Section 60000 is amended to address the now inaccurate designation of the State Departments of Mental Health and Social Services as agencies to which these regulations apply. Pursuant to AB 114, these departments are no longer directly responsible for the provision of mental health services identified on Individualized Education Programs (IEPs) for students with disabilities. AB 114 included the amendment of Government Code Sections 7572 and 7582, and the repeal of Government Code Sections 7576, 7576.2, 7576.3, 7576.5, effectively eliminating prior responsibilities of these departments in the delivery of such services. The amendments also change an agency reference from “Department of Health Services” to the current title “Department of Health Care Services”. (See Government Code Section 12803(a).)

Section 60010(b) is amended to correct an inaccurate reference to a related federal regulation. This part of the Code of Federal Regulations (C.F.R.) was substantially amended in 2006 when it was updated in response to the reauthorization of the Individuals with Disabilities Education Act (IDEA). Title 34 C.F.R. Section 300.344, related to composition of IEP teams, was renumbered as 34 C.F.R. Section 300.321 when the C.F.R. was amended in 2006. See 71 Federal Register (FR) 46788 (August 14, 2006). Given that the amendment to the referenced C.F.R. section was limited to renumbering, and the language itself was essentially unchanged, the change does not materially alter any requirement, right, responsibility, condition, prescription or other regulatory element of any CCR provision.

Subsection (b) is also amended to correct an inaccurate “paragraph” number, as referenced under Education Code Section 56341 – paragraph (1) has been updated to paragraph (4). The referenced paragraph has actually been paragraph (4) since the statute was added by Statutes 2001, chapter 405 (SB 1105), § 2. This change is limited to renumbering and, therefore, does not affect the substance of the CCR provision.

Section 60010(c) is amended to correct inaccurate references to related federal regulations. This part of the C.F.R. was substantially amended in 2006 when it was updated in response to the reauthorization of the IDEA. 34 C.F.R. Sections 300.530 through 300.534 addressed evaluations, eligibility, determinations, IEPs, and educational placement at the time the current related California regulations were developed, but these sections were substantially altered by federal regulatory action in 2006. Title 34 C.F.R. Sections 300.300 – 300.311 are now the federal regulations that address evaluations, eligibility, determinations, IEPs, and educational placement. These sections were revised as follows based on the reauthorization of IDEA from the 1999 version to the 2006 version:

- Content of 34 C.F.R. Sections 300.530 and 300.531 is now addressed in 34 C.F.R. Sections 300.301 and 300.302.
- Content of 34 C.F.R. Section 300.532 is now addressed in 34 C.F.R. Section 300.304.

- Content of 34 C.F.R. Section 300.533 is now addressed in 34 C.F.R. Section 300.305.

- Content of 34 C.F.R. Section 300.534 is now addressed in 34 C.F.R. Section 300.306.

See 71 FR 46784-46786 (August 14, 2006).

With the exception of Education Code Section 56337 and 34 C.F.R. Sections 300.307-311, which reflect IDEA's new assessment process for Specific Learning Disability, the amendments to the referenced C.F.R. sections were limited to renumbering, and the language itself was essentially unchanged, the changes do not materially alter any requirement, right, responsibility, condition, prescription or other regulatory element of any CCR provision.

Section 60010(e) is amended to correct inaccurate references to related federal regulations. This part of the C.F.R. was substantially amended in 2006 when it was updated in response to the reauthorization of the IDEA. 34 C.F.R. Section 300.560, et seq., provided regulations on confidentiality and access to records when the current California regulations were developed. The federal regulation related to Confidentiality of Records is now in 34 C.F.R. Section 300.610. See 71 FR 46802 (August 14, 2006). Also, the reference to 17 C.C.R. Section 2890 is proposed for removal because that regulation was repealed per Section 100, Title 1, CCR on March 9, 1990. See California Registry Notice 90, No. 13. C.F.R. Section 99.30 replaces an incorrect citation to the applicable federal regulation. 34 C.F.R. replaces "45" C.F.R. which was an incorrect federal regulation citation.

Given that the amendment to the referenced C.F.R. section was limited to renumbering, and the language itself was essentially unchanged, the change does not materially alter any requirement, right, responsibility, condition, prescription or other regulatory element of any CCR provision.

Section 60010(i) is amended to correct inaccurate references to related federal regulations. This part of the C.F.R. was substantially amended in 2006 when it was updated in response to the reauthorization of the IDEA. 34 C.F.R. Sections 300.340 (Definitions related to IEPs); 300.343 (IEP meetings); 300.344 (IEP team composition); 300.345 (parent participation); 300.346 (development, review and revision of IEP); 300.347 (content of IEPs); 300.348 (agency responsibilities for transition services); and 300.349 (private school placements by public agencies) were substantially revised in 2006. The related sections in current federal regulations are 34 C.F.R. Sections 300.320 (definition of an IEP); 300.321 (composition of IEP team); 300.322 (parent participation); 300.323 (when IEPs must be in effect); 300.324 (development, review and revision of the IEP); 300.325 (private school placements by public agencies); 300.327 (educational placements); and 300.328 (alternate means of meeting participation). See 71 FR 46787-46791 (August 14, 2006). While some titles differ and some new language was added in the 2006 revision, the prior and current sections of the C.F.R. noted herein compose the prior and current federal regulations concerning the IEP development process, which are the sections of federal law to which this section of California law was to refer. Similarly, 34 C.F.R. Section 300.347 (content of IEP) was revised in 2006. The current federal regulation that addresses requirements for IEP

contents is 34 C.F.R. Section 300.320. See 71 FR 46787 (August 14, 2006). Given that these C.F.R. sections establish current federal requirements for the IEP, these references appropriately maintain the intention of Section 60010(i), to reference federal requirements for IEP development in California's definition of an IEP. Therefore, these changes do not materially alter any requirement, right, responsibility, condition, prescription or other regulatory element of any CCR provision.

Section 60010(l) is amended to correct an inaccurate reference to the California Education Code. Education Code Section 56220, addressing interagency agreements among state agencies, was repealed. The current section addressing this subject is Education Code Section 56195.7(d). Given that the amendment to the referenced Education Code section was limited to renumbering, and the language itself was essentially unchanged, the change does not materially alter any requirement, right, responsibility, condition, prescription or other regulatory element of any CCR provision.

Section 60010(m) is amended to correct an inaccurate reference to California law resulting from amendments to that section enacted by AB 114. (See AB 114, 2011-12 Regular Session, Amended Version dated 6-9-2011 for the revision that converted subdivision (d) to subdivision (c).) Given that the amendment to the referenced section was limited to renumbering, and the language itself was essentially unchanged, the change does not materially alter any requirement, right, responsibility, condition, prescription or other regulatory element of any CCR provision.

Sections 60010(q), (s), and (t) are amended to correct inaccurate references to federal statutes or regulations due to a renumbering of subdivisions made when the United States Code (U.S.C.) was revised in 2004, and the C.F.R. was substantially amended in 2006, both as a result of the 2004 reauthorization of the IDEA:

- 60010(q) refers to the federal definition of "pupil" or "pupil with a disability" in 34 C.F.R. Section 300.7. Due to the amendments of 2006, that definition appears in 34 C.F.R. Section 300.8. See 71 FR 46756 (August 14, 2006). Section 60010(q) also refers to the definitions of "special education" and "related services" in Sections 1401(22) and 1401(25) of the U.S.C., Title 20. Due to amendments made in 2004, those definitions are now in Sections 1401(26) and 1401(29). See Public Law 108-446, December 3, 2004. In addition, the language "including those with mental retardation or autism" has been deleted because mental retardation and autism are expressed in the reference to Section 300.8 of 34 C.F.R.
- 60010(s) refers to the federal definition of "Related services" in Section 1401(22) of the U.S.C., Title 20. Due to amendments made in 2004, that definition is now in Section 1401(26). See Public Law 108-446, December 3, 2004.
- 60010(t) refers to the federal definition of "Special education" in 34 C.F.R. Section 300.26. Due to the amendments of 2006, that definition now appears in 34 C.F.R. Section 300.39. See 71 FR 46761 (August 14, 2006).

Given that the amendments to the referenced C.F.R. sections and U.S.C sections were limited to renumbering, and the language itself was essentially unchanged, these

changes do not materially alter any requirement, right, responsibility, condition, prescription or other regulatory element of any CCR provision.

Section 60010(u) is amended to correct an inaccurate reference to California law. Education Code Sections 56200 through 56218 addressed the special education local plan at the time the current regulations were developed. These Education Code sections were amended in 1997 and 1998 (AB 602, Chapter 854, Statutes of 1997 and AB 598, Chapter 89, Statutes of 1998), and as a result, the sections that address the special education local plan are now Education Code Sections 56205 through 56213. Given that the amendments to the referenced Education Code sections were limited to renumbering, and the language itself was essentially unchanged, the changes do not materially alter any requirement, right, responsibility, condition, prescription or other regulatory element of any CCR provision.

Section 60010(v) is amended to correct an inaccurate reference to California law. Education Code Section 56200 addressed parameters for establishing the governance structure of a special education local plan area (SELPA) at the time the current regulations were developed. Section 56200 was repealed effective January 1, 2004, by the terms of Education Code Section 56202, which was repealed by its own terms on that date. Substantial portions of Section 56200 were also addressed in Education Code Section 56205, including compliance assurances, description of services to be provided, description of governance and administration of the plan, copies of joint powers agreements, an annual budget plan, review and adoption of the plan, and monitoring placement in nonpublic, nonsectarian schools. Given that Section 56200 no longer exists and that the governance structure for the SELPA that had been addressed in Section 56200 is now addressed in Section 56205, the appropriate Education Code reference to be included in Section 60010(v) is now Education Code Section 56205. See Stats. 2005, c. 653 (AB 1662), § 14, effective October 7, 2005.

Section 60510(a) is amended to address a reference to CCR, Title 2, Section 60025, which was recently repealed due to the repeal of its authorizing statute. Section 60025 was referenced because it contained a list of facilities to which the requirement provided in Section 60510(a) pertains. The proposed amendment omits the reference to Section 60025 and replaces it with the actual list of facilities that had been identified therein to maintain clarity concerning the circumstances under which this section applies. However, the list of facilities in Section 60025 had included “certified, license pending home.” That type of facility is excluded from the proposed list in Section 60510(a) because a “certified, license-pending home” does not constitute a community care facility pursuant to Health and Safety Code Section 1502. Additionally, the “certified, license-pending home” was excluded to avoid any confusion related to the concepts of a “certified family home” and a “foster family home.” A certified family home is exempt from licensure by the California Department of Social Services (CDSS), but is certified by a foster family agency. A foster family home and a foster family agency are subject to licensure by CDSS. Lastly, a “certified, license pending home” was excluded because when a pupil with a disability is a foster child, the term inaccurately implies that such a child could be placed in a certified family home that is pending licensure.

Proposed section 60510(b) is added to include the requirement to provide information to the SELPA director within 10 days of placement in one of the facilities designated in Section 60510(a). This requirement is relocated from subsection (a) to this new subsection (b) to accommodate the additional language under subsections (a)(1) through (8). Consequently, Section 60510(b) is proposed to be re-designated as Section 60510(c). This proposed restructuring of Section 60510 is intended to provide greater clarity of the section's contents.

Section 60550(e) is amended to address improper references to agencies potentially involved in due process hearings. Given that AB 114 removed the structure created under Chapter 26.5, Division 7, Title 1 of the Government Code, it relieved the responsibilities of community mental health agencies in the delivery of mental health services for students with disabilities. Consequently, there are no longer "applicable laws relevant to" community mental health agencies that would need to be addressed in the due process hearings discussed in this section. The reference to "State Department of Health Services" is being corrected to "State Department of Health Care Services" to reflect that agency's current name. Also, the reference to Article 2 of the Health and Safety Code is proposed for correction to Article 5, which is the article in which the referenced section, 123825, is located.

Section 60560 addresses an inappropriate reference to Community Mental Health Services agencies concerning compliance complaints related to the provision of mental health services for students with disabilities. Given that AB 114 removed the structure created under Chapter 26.5, Division 7, Title 1 of the Government Code, it relieved the responsibilities of community mental health agencies in the delivery of mental health services for students with disabilities. Consequently, it is inappropriate to include these agencies among the parties about which failure to comply with related regulations could be alleged.

ECONOMIC IMPACT ANALYSIS PER GOVERNMENT CODE SECTION 11346.3(b)

Purpose:

The proposed action will bring the subject regulations into alignment with current statutes that were affected by the passage of (AB 114, which became effective on June 30, 2011. AB 114 enacted sweeping changes to the way students with disabilities become eligible for and receive mental health-related special education services in California by repealing several sections of state law governing referral and assessment processes, thereby reverting to federal law concerning how such processes are to be implemented. These proposed amendments will bring the regulations fully into conformance with current federal and state law.

Creation or Elimination of Jobs Within the State of California:

Adoption of these regulations would not result in the creation or elimination of jobs within the state because the proposed changes to the state's system for delivering services to students with disabilities does not reduce students' entitlement for services, or the responsibility of the state to ensure that those services are provided.

Creation of New or Elimination of Existing Businesses Within the State of California:

Adoption of these regulations is expected to have no net effect on the increase or decrease of businesses in the state because individuals and entities that have provided services to students with disabilities continue to be eligible to deliver these services. While contractual participants and relationships may change as a result of the restructuring pursuant to AB 114, the need for these services is not expected to change, hence the opportunity to conduct business in this field is not anticipated to be reduced or expanded significantly.

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

Adoption of these regulations is expected to have no net effect on the expansion or elimination of businesses in the state because individuals and entities that have provided services to students with disabilities continue to be eligible to deliver these services.

Benefits of the Regulations to the Health and Welfare of California Residents, Worker Safety, and the State's Environment:

Clarifying these regulations and making them consistent with current law will have specific benefits. The lack of alignment between the regulations and enabling statutes creates confusion concerning the applicability of both the affected statutes and regulations. The proposed amendments will provide appropriate clarity concerning the authority and responsibility of entities involved in the provision of special education and related services to students with disabilities, elucidating the lawful process for determining students' needs and designating appropriate services to ensure that students have access to the educational benefit to which they are entitled. It has been determined that the proposed regulations will not affect worker safety or the state's environment.

OTHER REQUIRED SHOWINGS – GOV. CODE 11346.2(b)(2)-(4)

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

The State Superintendent of Public Instruction (SSPI), Department of Health Care Services (DHCS) and the Department of Social Services (DSS) did not rely upon any technical, theoretical or empirical studies, reports, or documents in proposing the adoption of this regulation.

Reasonable Alternatives Considered or Agency's Reasons for Rejecting Those Alternatives – Government Code Section 11346.2(b)(5)(A):

The SSPI, DHCS and DSS must determine that no reasonable alternative they considered or that has otherwise been identified and brought to their attention, would be

more effective in carrying out the purpose for which the action is proposed, or 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.

Reasonable Alternatives that Would Lessen the Impact on Small Businesses – Government Code Section 11346.2(b)(5)(B):

The SSPI, DHCS and DSS have 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)(6):

The proposed regulations would not have a significant economic impact on any business because they do not reduce or expand the opportunities for qualified businesses in this field to pursue contracts with the public agencies responsible for providing the services to which these regulations pertain.

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 regulations have been determined to be the most efficient and effective means of implementing the law in the least burdensome manner.