

LAST MINUTE MEMORANDUM

DATE: March 9, 2004

TO: MEMBERS, STATE BOARD OF EDUCATION

FROM: Sue Stickel, Deputy Superintendent
Curriculum and Instruction Branch

RE: Item No. 32

SUBJECT: Vision Testing: Proposed Amendments to *California Code of Regulations, Title 5, Education, Division 1, Chapter 2, Subchapter 3, Article 4*

In accordance with the Administrative Procedure Act (APA) and at the direction of the State Board of Education, proposed regulations for vision testing were made available for a 45-day public comment period, which ended at 5 p.m. on March 8, 2004. A public hearing was then held on March 9, 2004. Based on comments received, technical amendments are now proposed for the State Board's consideration. These technical amendments are indicated in bold text that has either **double underlines** (additions) or ~~double strikeouts~~ (deletions); please see Attachment 3, pages 3-4. The technical amendments, among other things, make reference to "a functional vision test" for students whose age or special needs make the customary assessment instrument (an optotype test) unsatisfactory. In some cases, the comments received did not justify amendments to the proposed regulations, as explained in the attached summary of written comments.

Attachment 4, Economic and Fiscal Impact Analysis, is included here because it was listed as an attachment in the original SBE item but was inadvertently omitted.

It is our understanding that the CDE Legal Division and the Chief Counsel of the State Board have agreed that the amendments presented in this memorandum are sufficiently technical that circulation for a supplemental 15-day public notice period is not necessary under the APA. Therefore, the CDE recommends that the State Board approve the proposed regulations with the technical amendments presented herein and direct staff to complete the rulemaking file and submit it to the Office of Administrative Law.

[Attachment 1](#): Summary of Written Comments Received (2 Pages)

[Attachment 2](#): Report on Public Hearing (1 Page)

[Attachment 3](#): Proposed Amendments to the *California Code of Regulations* (4 Pages)

Attachment 4: Economic and Fiscal Impact Analysis (5 Pages) (This attachment is not available for Web viewing. A printed copy is available for viewing in the State Board office.)

Vision Testing Regulations Summary of Written Comments Received

As of March 8, 2004, 5:00 p.m., we received 140 separate written comments from nearly 100 individuals concerning the proposed vision testing regulations. Among the comments received:

- Approximately 80 expressed concern that reference to the document *A Guide for Vision Testing in California Public Schools* had been eliminated from the proposed regulations. Response: Prior to the State Board's January 2004 meeting, it was determined that the incorporation by reference of "guidelines" in regulations is no longer an acceptable practice. Therefore, eliminating the existing reference to *A Guide for Vision Testing in California Public Schools* merely brought these regulations into line with current standards for regulations. The CDE has statutory authority (subject to certain conditions and limitations) to issue guidelines that are exemplary and not mandatory (under *Education Code* Section 33308.5). Once these regulations are in place, the CDE will consider development and issuance of guidelines related to vision testing.
- Approximately 20 expressed concern that the proposed regulations did not address functional vision testing. Response: Technical amendments are presented to include a reference to use of "a functional vision test" where that type of assessment instrument is appropriate.
- Seven requested clarification of or expressed concern over qualifications for performing vision testing. Response: The proposed regulations reflect the specifications of statute as regards qualifications. Amending the proposed regulations to address this concern would place the regulations at odds with the statute. (Please see *Education Code* Section 49452.)
- One pointed out a discrepancy between the proposed regulations and a policy statement issued by the American Academy of Pediatrics and the American Academy of Ophthalmology. Response: Technical amendments are presented to address this concern.

The foregoing and other substantive comments regarding the proposed regulations are summarized below, by section.

General Comments:

Four people suggested that the term vision "testing" should instead be vision "screening." Response: The existing regulations are inconsistent in the use of the terms "testing" and "screening." The proposed regulations make changes that bring this body of regulations into consistency with the statutory use of these terms. No change is recommended. (Please see *Education Code* Section 49452.)

Section 591

Four writers expressed their belief that public health nurses are qualified to perform vision testing in schools. Response: Qualifications for performing vision testing are

currently in statute. The proposed regulations are consistent with statute. (Please see *Education Code* Section 49452.) No change is recommended.

One writer stated that a six-hour training is inadequate and does not equate to a one-unit semester course in vision testing. Response: The proposed regulations have not changed the training requirement already in statute. It should be noted that increasing the training requirement would result in an increased cost to districts.

One writer expressed concern that while individuals could possibly be trained in six hours, they would not necessarily have the background to interpret the information. This writer also believes that as currently worded, the regulations would encourage districts to "take the easy way out by hiring outsiders to do the screening." Response: The proposed regulations have not changed the training requirement already in statute. As stated above, increasing the training requirement would result in an increased cost to districts. The performing of vision tests by individuals not employed by a school district is allowed by statute under certain conditions.

Section 594(a)

Eighty writers stated that the vision regulations should include CDE's revision and issuance of a document with guidelines for vision testing. They stated that the guidelines are the standards nurses refer to and utilize when screening students. They also commented that without guidelines nurses run the risk of not screening students correctly, which in turn affects not only students' health, but also their academic performance. Response: The incorporation by reference of guidelines in regulations is no longer appropriate legal practice. Subject to certain conditions and limitations, the CDE has authority to issue exemplary, non-mandatory guidelines under *Education Code* Section 33308.5. Once these regulations are in place, the development of guidelines relating to vision testing will be considered.

Twenty writers commented that when a child is unable to adequately perform the visual acuity test, the nurse would need to perform a functional vision test. They stated that by limiting the testing to an optotype test, a potentially significant portion of the school population might be excluded. Response: Technical amendments are presented to address this concern.

One writer stated that there is a discrepancy concerning referral criteria for vision screening between a policy statement issued by the American Academy of Pediatrics and American Academy of Ophthalmology and the proposed vision regulations.

Response: Technical amendments are presented to address this concern.

Section 594(b)

Five writers questioned if the reevaluation of a child who fails the initial vision acuity test can be performed by the same person who administered the original test. Response: This issue is already sufficiently addressed in the regulations. Individuals authorized to do reevaluations are listed in Section 591(a).

REPORT ON PUBLIC HEARING CONDUCTED BY STAFF

DATE: March 9, 2004
TO: Members, State Board of Education
FROM: Caroline Roberts, Administrator, School Health Connections and Healthy Start

SUBJECT: Vision Testing: Proposed Amendments to <i>California Code of Regulations, Title 5, Education, Division 1, Chapter 2, Subchapter 3, Article 4</i>

Background

At the January 2004 meeting, the State Board initiated the permanent rulemaking process regarding vision testing. The State Board directed that the public hearing for this rulemaking process be conducted by staff in accordance with subdivision (b) of Section 18460 of Title 5 of the *California Code of Regulations*.

Report on Public Hearing

Consistent with the requirements of the Administrative Procedure Act, the public hearing regarding the proposed regulations was scheduled for Tuesday, March 9, 2004, at the California Department of Education, 1430 N Street, Room 1101, Sacramento, California, beginning at 12:30 p.m. An audiotape of the public hearing was made, and Maryanna Rickner will provide a copy of the audiotape to any State Board member so desiring.

The public hearing was called to order at 12:30 p.m. on the prescribed date. A brief welcoming and introductory statement was given. In the course of that statement, the individual presiding noted that a technical error had been made in the Notice of Proposed Rulemaking, published January 23, 2004. At the top of the document, the heading reads "Title 5. Education; California Superintendent of Public Instruction; Notice of Proposed Rulemaking." The words "California Superintendent of Public Instruction" should be replaced with "California State Board of Education," correctly indicating that these are State Board regulations rather than Superintendent's regulations.

This will be appropriately handled as a notation in the Final Statement of Reasons instead of as an amendment to the Informative Digest.

No members of the public were present, so the hearing was temporarily recessed. Thirty minutes later, no members of the public had arrived. The public hearing was adjourned at 1 p.m.

1 **Title 5. EDUCATION**

2 **Division 1. State Department of Education**

3 **Chapter 2. Pupils**

4 **Subchapter 3. Health and Safety of Pupils**

5 **ARTICLE 4. VISION SCREENING-TESTING**

6
7 *Amend Sections 590 – 596 to read:*

8 **§590. Duly Authorized Agency-Defined.**

9 “A ~~duly authorized agency,~~” as used in Pursuant to Education Code Section 49452,
10 ~~means a county superintendent of schools may contract with an agency duly authorized to~~
11 ~~provide vision tests, which includes~~ a city or county health department, a local health
12 district, or the State Department of ~~Public-Health~~ Services.

13 NOTE: Authority cited for Article 4: Section 33031 and 49452, Education Code. Issuing
14 agency: Superintendent of Public Instruction. Reference: Section 49452, Education Code.

15 **§591. Employees Authorized to Give Tests.**

16 ~~(a) An employee of the governing board a school district or of the a county~~
17 ~~superintendent of schools who may be required or permitted~~ authorized to give vision tests
18 pursuant to Education Code Section 49452 ~~to pupils enrolled in the district and may be~~
19 ~~designated a “duly qualified supervisor of health” within the meaning of that section if the~~
20 ~~employee is one of the following:~~

21 ~~(a) A physician, ophthalmologist, optometrist, or nurse who holds both:~~
22 ~~(1) A certificate of registration from the appropriate California board or agency.~~
23 ~~(2) A health and development credential, or a standard designated service credential with a~~
24 ~~specialization in health.~~

25 (1) A physician and surgeon or osteopath employed pursuant to Education Code
26 Section 44873.

27 (2) A school nurse employed pursuant to Education Code Section 44877.

28 (3) An optometrist employed pursuant to Education Code Section 44878.

29 ~~Such an employee is a “qualified supervisor of health” as used in this article and in~~
30 ~~Education Code Section 49452.~~

31 (b) Any other certificated employee of the school district or of the county superintendent
32 of schools ~~who holds a teaching credential issued by the State Board and who has filed~~

1 ~~with the employing school district or county superintendent of schools, as the case may be,~~
2 may be authorized to give vision tests pursuant to Education Code Section 49452 if the
3 employee has one of the following documents:

4 (1) A statement from a qualified supervisor of health that the employee has satisfactorily
5 completed an acceptable course of in-service training in techniques and procedures in
6 vision ~~screening~~ testing of at least six clock hours given by the qualified supervisor of
7 health making the statement and that the employee is qualified to administer vision tests to
8 pupils.

9 (2) A transcript from an accredited college or university evidencing that the employee
10 has successfully completed an acceptable course in vision ~~screening~~ testing of at least one
11 semester unit.

12 NOTE: Authority cited: Section 33031, Education Code. Reference: Sections 44873,
13 44877, 44878, and 49452, Education Code.

14 **§592. Acceptable Courses in Vision ScreeningTesting.**

15 An acceptable course in vision ~~screening~~ testing is one that provides the following:

- 16 (a) Basic knowledge of the structure, normal development, and function of the eye and
17 common anomalies of vision and factors influencing visual performance.
- 18 (b) Basic knowledge of signs and symptoms suggesting eye difficulty.
- 19 (c) Techniques and procedures in administering ~~Snellen-optotype~~ and color vision tests.
20 Such techniques and procedures shall include training in the following:
- 21 (1) Establishing tests rapport with pupils.
- 22 (2) Seating of pupil and placing of equipment.
- 23 (3) Providing adequate lighting conditions for the testing situation.
- 24 (4) Recording test results.
- 25 (5) Referring pupils in need of follow-up.
- 26 (d) Practice in administering ~~Snellen-optotype~~ and color vision tests under the
27 supervision of a duly qualified supervisor of health.

28 NOTE: Authority cited: Section 33031, Education Code. Reference: Section 49452,
29 Education Code.

30 **§593. Responsibility as to Eligibility.**

1 Each school district and county superintendent of schools shall determine and be
2 responsible for the eligibility of personnel employed or permitted by the district or county
3 superintendent of schools to administer eye screening vision tests or to conduct inservice
4 training programs in techniques and procedures in administering such tests.

5 NOTE: Authority cited: Section 33031, Education Code. Reference: Section 49452.

6 **§594. Examination Test of Visual Acuity.**

7 (a) ~~The following definitions shall apply to terms used in test of visual acuity~~
8 administered pursuant to Education Code Sections 49452 and 49455. ~~The examination of~~
9 visual acuity shall mean a test for visual acuity at the far point. This shall be conducted by
10 means of the Snellen Test an optotype test. Conduct of the test and the testing
11 environment shall conform to procedures and settings as described in guidelines the most
12 recent edition of "A Guide for Vision Testing in California Public Schools." issued by the
13 California Department of Education. Consistent with the requirements of Education Code
14 Section 33308.5, the California Department of Education may prepare and periodically
15 update program guidelines relating to vision testing. Test failure for the initial vision visual
16 acuity test shall be defined as follows:

17 (a₁) For children under six years of age: ~~Vision~~ Visual acuity of 20/50 or worse. The
18 designation 20/50 or worse indicates the inability to identify accurately the majority of
19 letters or symbols on the ~~40~~ 20-foot line of the test chart at a distance of ~~20~~ 10 feet.

20 (b₂) For children six years of age or older: Visual acuity of 20/40 or worse. This means
21 the inability to identify the majority of letters or symbols on ~~30~~ 15-foot line of the chart at a
22 distance of 10 feet.

23 (e₃) For all children: A difference of visual acuity between the two eyes of two lines or
24 more on the Snellen Chart optotype chart. ~~This means, for example, visual acuity of~~
25 ~~20/20 in one eye and 20/40 in the other or 20/30 in one eye and 20/50 in the other.~~

26 **(b) For pupils who, because of age or special needs are not able to be tested with**
27 **an optotype test, other types of vision testing, such as a functional vision test, may**
28 **be utilized, using procedures and criteria of failure as described by the**
29 **manufacturer.**

30 **(bc) If a pupil fails a visual acuity vision test that is conducted by an employee**
31 **authorized to give vision tests pursuant to subdivision (b) of Section 591, Following failure**

1 ~~of the initial vision acuity screening test~~, a reevaluation shall be accomplished conducted
2 ~~prior to referral for definitive professional evaluation~~ a report being made to the pupil's
3 parent or guardian. This reevaluation shall be ~~done by persons~~ conducted by an employee
4 authorized to give vision tests pursuant to subdivision ~~as per Section 591(a) of this Article~~
5 Section 591.

6 ~~(ed)~~ If a pupil fails a ~~visual acuity~~ **vision** test conducted by an employee authorized to
7 give vision tests pursuant to subdivision (a) of Section 591, a report shall be made to the
8 pupil's parent or guardian as required by Education Code Section 49456.

9 NOTE: Authority cited: Section 33031, Education Code. Reference: Sections 3308.5,
10 49452, 49455, and 49456, Education Code.

11 **§595. Examination-Appraisal of Color Vision.**

12 The ~~examination-appraisal~~ of color vision ~~as used in~~ male pupils pursuant to Education
13 Code Sections 49452 and 49455 shall mean a test employing pseudoisochromatic plates.
14 Procedures and criteria of failure as described by the manufacturer shall be used.

15 NOTE: Authority cited: Section 33031, Education Code. Reference: Sections 49452 and
16 49455, Education Code.

17 **§596. Gross External Observation of the Children's Eyes, Visual Performance and**
18 **Perception.**

19 Gross external observation of the children's eyes, visual performance and perception,
20 ~~as used in~~ pursuant to Education Code Sections 49452 and 49455, shall mean continuous
21 observation by teachers of the appearance, behavior and complaints of pupils that might
22 indicate vision problems. Also, periodic investigation where pupils' school performance
23 begins to give evidence that existence of the problem might be caused by a visual difficulty.
24 Such an evaluation shall be done in consultation with the school nurse.

25 NOTE: Authority cited: Section 33031, Education Code. Reference: Sections 49452 and
26 49455, Education Code.