

Last Minute Memorandum

To: STATE BOARD MEMBERS **Date:** September 9, 2003

From: Geno Flores, Deputy Superintendent, Assessment and Accountability Branch

Re: ITEM #8

Subject: **REVISED** – STANDARDIZED TESTING AND REPORTING: APPROVE COMMENCEMENT OF THE RULEMAKING PROCESS FOR AMENDMENTS TO TITLE 5

Please insert the following:

Attachment 4: [Economic Impact Statement for STAR Program \(Pages 1-4\)](#)
Attachment 5: [Economic and Fiscal Impact Analysis for STAR Program \(Pages 1-6\)](#)
Attachment 6: [Title 5. Education Subchapter 3.75. Standardized Testing and Reporting Program Regulations \(Pages 1-7\)](#)

This memorandum accompanies Attachments 4, 5 and 6, *State Board Notice of Proposed Rulemaking – Disclosures regarding the proposed action*. This attachment provides revisions to Attachments 2 and 3 received in the original State Board of Education mailing. This also serves as a revision to the previously provided Last Minute Memorandum.

ECONOMIC AND FISCAL IMPACT STATEMENT (REGULATIONS AND ORDERS)

See SAM Sections 6600 - 6680 for Instructions and Code Citations

DEPARTMENT NAME	CONTACT PERSON	TELEPHONE NUMBER
DESCRIPTIVE TITLE FROM NOTICE REGISTER OR FORM 400		NOTICE FILE NUMBER Z

ECONOMIC IMPACT STATEMENT

A. ESTIMATED PRIVATE SECTOR COST IMPACTS (Include calculations and assumptions in the rulemaking record.)

1. Check the appropriate box(es) below to indicate whether this regulation:

- a. Impacts businesses and/or employees
- b. Impacts small businesses
- c. Impacts jobs or occupations
- d. Impacts California competitiveness
- e. Imposes reporting requirements
- f. Imposes prescriptive instead of performance standards
- g. Impacts individuals
- h. None of the above (Explain below. Complete the Fiscal Impact Statement as appropriate.)

h. (cont.) _____

(If any box in Items 1 a through g is checked, complete this Economic Impact Statement.)

2. Enter the total number of businesses impacted: _____ Describe the types of businesses (Include nonprofits): _____

Enter the number or percentage of total businesses impacted that are small businesses: _____

3. Enter the number of businesses that will be created: _____ eliminated: _____

Explain: _____

4. Indicate the geographic extent of impacts: Statewide Local or regional (list areas): _____

5. Enter the number of jobs created: _____ or eliminated: _____ Describe the types of jobs or occupations impacted: _____

6. Will the regulation affect the ability of California businesses to compete with other states by making it more costly to produce goods or services here?

Yes No If yes, explain briefly: _____

B. ESTIMATED COSTS (Include calculations and assumptions in the rulemaking record.)

1. What are the total statewide dollar costs that businesses and individuals may incur to comply with this regulation over its lifetime? \$ _____

a. Initial costs for a small business: \$ _____ Annual ongoing costs: \$ _____ Years: _____

b. Initial costs for a typical business: \$ _____ Annual ongoing costs: \$ _____ Years: _____

c. Initial costs for an individual: \$ _____ Annual ongoing costs: \$ _____ Years: _____

d. Describe other economic costs that may occur: _____

ECONOMIC AND FISCAL IMPACT STATEMENT cont. (STD. 399, Rev. 2-98)

2. If multiple industries are impacted, enter the share of total costs for each industry: _____

3. If the regulation imposes reporting requirements, enter the annual costs a typical business may incur to comply with these requirements. (Include the dollar costs to do programming, record keeping, reporting, and other paperwork, whether or not the paperwork must be submitted.): \$ _____

4. Will this regulation directly impact housing costs? Yes No If yes, enter the annual dollar cost per housing unit: \$ _____ and the number of units: _____

5. Are there comparable Federal regulations? Yes No Explain the need for State regulation given the existence or absence of Federal regulations: _____

Enter any additional costs to businesses and/or individuals that may be due to State - Federal differences: \$ _____

C. ESTIMATED BENEFITS (Estimation of the dollar value of benefits is not specifically required by rulemaking law, but encouraged.)

1. Briefly summarize the benefits that may result from this regulation and who will benefit: _____

2. Are the benefits the result of: specific statutory requirements, or goals developed by the agency based on broad statutory authority?
Explain: _____

3. What are the total statewide benefits from this regulation over its lifetime? \$ _____

D. ALTERNATIVES TO THE REGULATION (Include calculations and assumptions in the rulemaking record. Estimation of the dollar value of benefits is not specifically required by rulemaking law, but encouraged.)

1. List alternatives considered and describe them below. If no alternatives were considered, explain why not: _____

2. Summarize the total statewide costs and benefits from this regulation and each alternative considered:

Regulation:	Benefit: \$ _____	Cost: \$ _____
Alternative 1:	Benefit: \$ _____	Cost: \$ _____
Alternative 2:	Benefit: \$ _____	Cost: \$ _____

3. Briefly discuss any quantification issues that are relevant to a comparison of estimated costs and benefits for this regulation or alternatives: _____

4. Rulemaking law requires agencies to consider performance standards as an alternative, if a regulation mandates the use of specific technologies or equipment, or prescribes specific actions or procedures. Were performance standards considered to lower compliance costs? Yes No

Explain: _____

E. MAJOR REGULATIONS (Include calculations and assumptions in the rulemaking record.)
Cal/EPA boards, offices and departments are subject to the following additional requirements per Health and Safety Code section 57005.

ECONOMIC AND FISCAL IMPACT STATEMENT cont. (STD. 399, Rev. 2-98)

1. Will the estimated costs of this regulation to California business enterprises exceed \$10 million ? Yes No (If No, skip the rest of this section)

2. Briefly describe each equally as effective alternative, or combination of alternatives, for which a cost-effectiveness analysis was performed:

Alternative 1: _____

Alternative 2: _____

3. For the regulation, and each alternative just described, enter the estimated total cost and overall cost-effectiveness ratio:

Regulation: \$ _____ Cost-effectiveness ratio: _____

Alternative 1: \$ _____ Cost-effectiveness ratio: _____

Alternative 2: \$ _____ Cost-effectiveness ratio: _____

FISCAL IMPACT STATEMENT

A. FISCAL EFFECT ON LOCAL GOVERNMENT (Indicate appropriate boxes 1 through 6 and attach calculations and assumptions of fiscal impact for the current year and two subsequent Fiscal Years)

1. Additional expenditures of approximately \$ _____ in the current State Fiscal Year which are reimbursable by the State pursuant to Section 6 of Article XIII B of the California Constitution and Sections 17500 et seq. of the Government Code. Funding for this reimbursement:

a. is provided in (Item _____, Budget Act of _____) or (Chapter _____, Statutes of _____)

b. will be requested in the _____ Governor's Budget for appropriation in Budget Act of _____
(FISCAL YEAR)

2. Additional expenditures of approximately \$ _____ in the current State Fiscal Year which are not reimbursable by the State pursuant to Section 6 of Article XIII B of the California Constitution and Sections 17500 et seq. of the Government Code because this regulation:

a. implements the Federal mandate contained in _____

b. implements the court mandate set forth by the _____
court in the case of _____ vs. _____

c. implements a mandate of the people of this State expressed in their approval of Proposition No. _____ at the _____
election; (DATE)

d. is issued only in response to a specific request from the _____
_____, which is/are the only local entity(s) affected;

e. will be fully financed from the _____ authorized by Section
(FEES, REVENUE, ETC.)
_____ of the _____ Code;

f. provides for savings to each affected unit of local government which will, at a minimum, offset any additional costs to each such unit.

3. Savings of approximately \$ _____ annually.

4. No additional costs or savings because this regulation makes only technical, non-substantive or clarifying changes to current law and regulations.

ECONOMIC AND FISCAL IMPACT STATEMENT *cont.* (STD. 399, Rev. 2-98)

- 5. No fiscal impact exists because this regulation does not affect any local entity or program.
- 6. Other.

B. FISCAL EFFECT ON STATE GOVERNMENT *(Indicate appropriate boxes 1 through 4 and attach calculations and assumptions of fiscal impact for the current year and two subsequent Fiscal Years.)*

- 1. Additional expenditures of approximately \$ _____ in the current State Fiscal Year. It is anticipated that State agencies will:
 - a. be able to absorb these additional costs within their existing budgets and resources.
 - b. request an increase in the currently authorized budget level for the _____ fiscal year.
- 2. Savings of approximately \$ _____ in the current State Fiscal Year.
- 3. No fiscal impact exists because this regulation does not affect any State agency or program.
- 4. Other.

C. FISCAL EFFECT ON FEDERAL FUNDING OF STATE PROGRAMS *(Indicate appropriate boxes 1 through 4 and attach calculations and assumptions of fiscal impact for the current year and two subsequent Fiscal Years.)*

- 1. Additional expenditures of approximately \$ _____ in the current State Fiscal Year.
- 2. Savings of approximately \$ _____ in the current State Fiscal Year.
- 3. No fiscal impact exists because this regulation does not affect any federally funded State agency or program.
- 4. Other.

SIGNATURE	TITLE	DATE
		
AGENCY SECRETARY ¹		
APPROVAL/CONCURRENCE 	PROGRAM BUDGET MANAGER	
DEPARTMENT OF FINANCE ²		
APPROVAL/CONCURRENCE 		

1. *The signature attests that the agency has completed the STD. 399 according to the instructions in SAM sections 6600-6680, and understands the impacts of the proposed rulemaking. State boards, offices, or departments not under an Agency Secretary must have the form signed by the highest ranking official in the organization.*
2. *Finance approval and signature is required when SAM sections 6600-6670 require completion of the Fiscal Impact Statement in the STD. 399.*

**Economic and Fiscal Impact Analysis
Proposed Amendments of Title 5, CCR, Regulations
Relating to the Standardized Testing and Reporting Program (STAR)**

The Fiscal Policy Office has reviewed for economic and fiscal impact the proposed regulatory language (version 09/10/03) amending Sections 850, 852, 853, and 859, and adding Sections 853.5, of Article 1, of Subchapter 3.75, of Chapter 2, of Division 1, of Title 5, of the California Code of Regulations, relating to the Standardized Testing and Reporting Program (STAR).

What would the proposed regulations do?

According to program staff the proposed new and amended regulations:

- Modify the definitions used for the program to conform to changes made in the materials and terms used in the program and add additional terms that require definitions.
- Modify Pupil Exemptions to conform to new legislation.
- Enhance security for the program by specifying who may administer the tests.
- Incorporate State Board of Education policy for out-of-level testing.
- Clarify testing variations, accommodations, and modifications that may be used on the tests, and which students may use those adaptations..
- Add language to the STAR Test Security Agreement to enhance the security of the tests used in the Program.

Do the proposed regulations impose a local cost mandate?

Yes. The proposed amended regulations would create a new program or higher level of service in an existing program, thereby creating a local mandate, however since the mandates are required by a Federal mandate, contained in Public Law 107-110 "No Child Left Behind Act of 2001," the mandates are not reimbursable in accordance with Section 6, Article XIII B, of the California Constitution.

Public Law 107-110- January 8, 2002 "No Child Left Behind Act of 2001" (NCLB), Title I, Section 1001 states, "The purpose of this title is to ensure that all children have a fair, equal and significant opportunity to obtain a high-quality education and reach, at a minimum, proficiency on challenging State academic achievement standards and state academic assessments.

NCLB Section 1111(b)(3)(A) states "IN GENERAL — Each State plan shall demonstrate that the State educational agency, in consultation with local educational agencies, has implemented a set of high-quality, yearly student academic assessments that include, at a minimum, academic assessments in mathematics, reading or language arts, and science that will be used as the primary means of determining the yearly performance of the State and of each local educational agency and school in the State in enabling all children to meet the State's challenging student academic achievement standards, except that no State shall be required to meet the requirements of this part relating to science..."

Current Federal Regulation Section 200.6 “clarifies that the State’s academic assessment system must include accommodations for students with disabilities as defined under section 602(3) of the IDEA and for students covered under section 504 of the Rehabilitation Act of 1973 (Section 504) to allow the State to measure the academic achievement of these students relative to the State’s academic content and achievement standards for the grades in which they are enrolled. In addition, the regulations require States to provide one or more alternate assessments for students with disabilities, as defined under section 602(3) of the IDEA, who cannot participate in all or part of the State assessment, even with appropriate accommodations. These alternate assessments must yield results for the grade in which the student is enrolled in at least reading/language arts, mathematics, and, beginning in the 2007–2008 school year, science.” (*Federal Register / Vol. 68, No. 54 / Thursday, March 20, 2003 / Proposed Rules, page 13797*)

§ 852. Pupil Exemptions.

(b) Pupils in special education programs shall be tested with the designated achievement test and the standards-based achievement tests unless the individualized educational program for the pupil specifically ~~exempts the pupil from the Standardized Testing and Reporting program~~ states that the pupil will be assessed with the California Alternate Performance Assessment or (CAPA).

NOTE: Authority cited: Sections 33031 and 60605~~(g) and (h)~~, Education Code.
Reference: Sections 60615 and 60640, Education Code.

The Department has chosen to select a single alternate assessment for students with disabilities; thus the activities associated with the administration of the California Alternate Performance Assessment (CAPA) are not reimbursable in accordance with Section 6, of Article XIII B, of the California Constitution and Sections 17500 et. seq. of the Government Code because this regulation implements a Federal mandate.

§ 853. Administration.

(a) The designated achievement test ~~and the standards-based achievement tests, which include all those materials set forth in Section 850,~~ shall be administered and returned by school districts in accordance with the manuals or other instructions provided by the ~~publishers-contractor~~ for administering and returning the tests unless specifically provided otherwise in this subchapter including instructions for administering the test with variations, accommodations, and modifications. The procedures shall include, but are not limited to, those designed to insure the uniform and standard administration of the tests to pupils, the security and integrity of the test content and test items, and the timely provision of all required student and school level information.

(b) The standards-based achievement tests and the California Alternate Performance Assessment shall be administered and returned by school districts in accordance with the manuals and other instructions provided by the contractor, and in accordance with testing variations, accommodations, and modifications specified in Section 853.5. The procedures shall include, but are not limited to, those designed to insure the uniform and standard administration of the tests to pupils, the security and integrity of the test content and test items, and the timely provision of all required student and school level information.

NOTE: Authority cited: Sections 33031 and 60605~~(g) and (h)~~, Education Code.
Reference: Section 60640, Education Code.

The mandates of Section 853(a) and (b) would not be reimbursable in accordance with Section 6, of Article XIII B, of the California Constitution and Sections 17500 et. seq. of the Government Code because these regulations implement a Federal mandate (the administration of the “designated achievement test,” the “standards-based achievement test,” and the California Alternate Performance Assessment).

§ 853. Administration.

(c) For the 2003-04 school year only, pupils with IEPs in grades 5 through 11 may be tested one or two grades below their enrollment grade. The test level must be specified in the student’s IEP. Out-of-level testing shall be used only if the student is not receiving grade-level instruction. Students tested out-of-level must complete all tests required for the grade at which they are tested and shall be administered only one level of the tests. Out-of-level testing is not allowed for pupils in grades 2, 3, and 4. No out-of-level testing shall be allowed at any grade beginning with the 2004-05 school year.

NOTE: Authority cited: Sections 33031 and 60605~~(g)~~ and ~~(h)~~, Education Code.
Reference: Section 60640, Education Code.

The activities of Section 853(c) are permissive (not mandated) and do not create a potential for reimbursable costs.

§ 853.5 Use of Variations, Accommodations, and Modifications for the Standards-Based Achievement Test and the California Alternate Performance Assessment.

(a) School districts may provide all pupils the following testing variations if regularly used in the classroom:

- (1) test directions that are simplified or clarified.
- (2) special or adaptive furniture.
- (3) special lighting or acoustics.
- (4) an individual carrel or study enclosure.
- (5) test individually in a separate room provided that an employee of the school, district, or non-public school, who has signed the STAR Test Security Affidavit, directly supervises the pupil.
- (6) markers, masks, or other means to maintain visual attention to the examination or test items.

NOTE: Authority cited: Sections 33031 and 60605, Education Code. Reference: Section 60640, Education Code.

The activities of Section 853.5(a) are permissive (not mandated) and do not create a potential for reimbursable costs.

§ 853.5 Use of Variations, Accommodations, and Modifications for the Standards-Based Achievement Test and the California Alternate Performance Assessment.

(b) Eligible pupils with disabilities who have IEPs and students with Section 504 plans shall be permitted to take the standards-based achievement tests with the following presentation, response or setting accommodations if specified in the IEP or Section 504 plan:

- (1) large print versions;
- (2) test items enlarged through electronic means (e.g., photocopier).
- (3) Braille transcriptions provided by the test contractor.
- (4) use of manually coded or American sign language to present directions for administration.
- (5) audio or oral presentation of the mathematics tests.

- (6) use of manually coded or American sign language to present test questions on the mathematics tests.
- (7) responses marked in test booklet and transferred to the answer document by a school or district employee who has signed the Test Security Affidavit.
- (8) responses dictated to a scribe for selected-response items (e.g., multiple-choice test questions).
- (9) responses dictated to a scribe, audio recorder or speech to text converter on the grade 4 or grade 7 writing application standards section of the California English-Language Arts Standards Test, and the pupil indicates all spelling and language conventions.
- (10) use of word processing software with spell and grammar check tools turned off on the writing portion of the grade 4 or 7 test.
- (11) use of an assistive device that does not interfere with the independent work of the student on the writing portion of the test.
- (12) supervised breaks within a section of the test.
- (13) administration of the test at the most beneficial time of day to the pupil.
- (14) test administered by certificated teacher to a pupil or adult student at home or in the hospital.

(c) Eligible pupils with disabilities shall be permitted to take the standards-based tests with the following modifications if specified in the eligible pupil's IEP:

- (1) calculators on the mathematics or science tests.
- (2) audio or oral presentation of the English-language arts tests.
- (3) use of manually coded or American sign language to present test questions on the English-language arts tests.
- (4) spellcheckers, grammar checkers, or word processing software programs that check or correct spelling and/or grammar on the writing portion of the grade 4 and 7 English-language arts tests.
- (5) mechanical or electronic devices or other assistive devices that are not used solely to record the pupil's responses, including but not limited to transcribers, scribes, voice recognition or voice to text software, and that identify a potential error in the pupil's response or that correct spelling, grammar or conventions on the writing portion of the grade 4 and 7 English-language arts tests.
- (6) use of American sign language to provide a response to the written portion of the grade 4 and 7 English-language arts tests.
- (7) English dictionary on the English-language arts test.
- (8) mathematics dictionary on the mathematics section of the examination.

NOTE: Authority cited: Sections 33031 and 60605, Education Code. Reference: Section 60640, Education Code.

The mandates of Section 853.5(b) and (c) would also not be reimbursable in accordance with Section 6, of Article XIII B, of the California Constitution and Sections 17500 et. seq. of the Government Code because these regulations implement a Federal mandate.

§ 853.5 Use of Variations, Accommodations, and Modifications for the Standards-Based Achievement Test and the California Alternate Performance Assessment.

- (d) School districts shall provide English learner pupils the following additional testing variations if regularly used in the classroom or for assessment:
 - (1) Flexible setting. Tested in a separate room with other English learners provided that an employee of the school, district, or non-public school, who has signed the Test Security Affidavit, directly supervises the pupil and the pupil has been provided such a flexible setting.

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- (2) Flexible schedule. Additional supervised breaks following each section within a test part provided that the test section is completed within a testing day. A test section is identified by a “STOP” at the end of it.
- (3) Translated directions. Hear any test directions the test examiner is to read aloud translated into their primary language. English learners shall have the opportunity to ask clarifying questions about any test directions presented orally in their primary language.
- (4) Glossaries. Access to glossaries/word lists for the standards-based achievement tests in mathematics, science, and history-social science if used regularly in the classroom (English to primary language). The glossaries/word lists are to include only the English word or phrase with the corresponding primary language word or phrase. The glossaries/word lists shall include no definitions or formulas.

NOTE: Authority cited: Sections 33031 and 60605, Education Code. Reference: Section 60640, Education Code.

NCLB Section 1111(b)(3)(C)(ix)(III) states that “the inclusion of limited English proficient students, who shall be assessed in a valid and reliable manner and provided reasonable accommodations on assessments administered to such students under this paragraph, including, to the extent practicable, assessments in the language and form most likely to yield accurate data on what such students know and can do in academic content areas, until such students have achieved English language proficiency as determined under paragraph (7).”

The mandates of Section 853.5(d) would also not be reimbursable in accordance with Section 6, of Article XIII B, of the California Constitution and Sections 17500 et. seq. of the Government Code because this regulation implements a Federal mandate.

Additionally, it is important to note that the state legislature has identified that there are costs to locals in the administration of STAR and its parts (Nationally-norm Reference Test, Standards-based Achievement Test, Primary Language Test, and CAPA):

Education Code Section 60640(h) states:

- (1) The Superintendent of Public Instruction shall apportion funds to school districts to enable school districts to meet the requirements of subdivisions (b), (f), and (g).
- (2) The State Board of Education shall annually establish the amount of funding to be apportioned to school districts for each test administered and shall annually establish the amount that each publisher shall be paid for each test administered under the agreements required pursuant to Section 60643. The amounts to be paid to the publishers shall be determined by considering the cost estimates submitted by each publisher each September and the amount included in the Budget Act and by making allowance for the estimated costs to school districts for compliance with the requirements of subdivisions (b), (f), and (g).

Assembly Bill 1765 (Chapter 157, 2003), the Budget Act of 2003 states in Item 6110-113-0001(3) 20.70.030.006-STAR Program \$60,836,000 is appropriated for the pupil testing programs including “funds from primary language tests administered pursuant to Article 4 (commencing with Section 60640) of Chapter 5 of Part 33 of the Education Code.”

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Additionally, Assembly Bill 1765 (Chapter 157, 2003), the Budget Act of 2003 states in Item 6110-113-0890(2) 20.70.030.006-STAR Program \$5,119,000 is appropriated “for activities related to the Standardized Testing and Reporting Program. Of this amount \$900,000 is for the planning and development of science tests and \$650,000 is for reporting Adequate Yearly Progress pursuant to the No Child Left Behind Act of 2001 (P.L. 107-110).”

In Fiscal Year (FY) 2002-03, from the total of \$60.64 million (General Fund and Federal Fund) appropriated for STAR 2001-02; a total of \$11.37 million was set aside to be apportioned for the administration of the examination to the students in grades 2-11.

The Commission on State Mandates has found STAR to constitute an un-funded State mandate, because the existing apportionment does not cover the full cost of this program to schools. Based on the initial cost estimate (January 2003), the un-funded liability for the period FY 97/98 through FY 03/04 is estimated to be \$184.1 million. Amendments or additions to these regulations that constitute a mandate could also be viewed as generating additional costs in excess of the apportionment and would thus be reimbursable.

Do the proposed regulations impose costs upon the state?

No. The proposed amendments to the regulations should not impose additional costs upon the state, beyond those identified as potential local reimbursable mandated costs.

Do the proposed regulations impact local business?

No. The proposed amendments to the regulations should have no impact on local business.

This analysis reflects the attached Economic and Fiscal Impact Statement.

Donald E. Killmer, Consultant
Fiscal and Administrative Services Division

Date

Susan Lange, Deputy Superintendent
Finance, Technology, and Administration Branch

Date

Title 5. EDUCATION

Division 1. State Department of Education

Chapter 2. Pupils

Subchapter 3.75. Standardized Testing and Reporting Program

Article 1. General

Amend Sections 850, 852, and 853 to read:

§ 850. Definitions.

For the purposes of the Standardized Testing and Reporting (STAR) program, the following terms shall have the following meanings unless the context indicates otherwise:

(a) “Designated achievement test” is the achievement test required by Education Code section 60640(b). The designated achievement test includes test booklets, test answer documents, administration manuals, and administrative materials, ~~and practice tests~~. The designated achievement test is to be administered in the areas of reading, spelling, written expression and mathematics for pupils in grades 2 to 8, inclusive; and in the core curriculum areas of reading, writing, mathematics, history/social science and science for pupils in grades 9 to 11, inclusive.

(b) “Primary language test” includes any test administered pursuant to Education Code section 60640(f) or a test administered pursuant to the requirement of Education Code section 60640(g), as applicable, and includes the test booklets, test answer documents, administration manuals, administrative materials and practice tests.

(c) “School districts” includes school districts, county offices of education, and any charter school that does not elect to be part of the school district or county office of education that granted the charter.

(d) “Eligible pupil” is any pupil in grades 2 to 11, inclusive, who is not otherwise exempted.

(e) “Department” means the California Department of Education.

(f)(1) “Standards-based achievement tests” are those tests that measure the degree to which pupils are achieving the content standards and performance standards adopted by the State Board of Education as provided in Education Code section 60642.5. The standards-based achievement tests include test booklets, test answer documents, administration manuals, administrative materials, practice tests and other materials developed and provided by the publisher of the tests.

(2) The term “standards-based achievement test” may refer to one or more of the individual achievement tests in the subject of core curriculum areas required by Education Code section 60642.5, or all of the standards-based achievement tests collectively.

(g) “~~Wave testing~~ Administration Period” means one of multiple test administration periods by school districts with schools or programs on non-traditional calendars that begin and complete the school year at various times and have staggered vacation periods, in order to ensure that all pupils are tested at approximately the same point in the instructional year.

1 (h) “The California Alternate Performance Assessment” (CAPA) is an individually administered
2 performance assessment developed to assess students’ achievement on a subset of California’s Academic
3 Content Standards. It is administered to students receiving special education services who are significantly
4 cognitively disabled. The CAPA includes administration manuals, administrative materials, and documents
5 on which the examiner records the student’s responses.

6 (i) “Out-of-level testing” means administering a test that is below the grade level of the pupil being
7 tested.

8 (j) “Scribe” is an employee of the school district, or a person assigned by a nonpublic school to
9 implement a pupil’s IEP and is required to transcribe a pupil’s or adult student’s responses to the format
10 required by the examination. A family member or guardian is not eligible to be a scribe.

11 (k) “Accommodations” means any variation in the assessment environment or process that does not
12 fundamentally alter what the test measures or affect the comparability of scores. Accommodations” may
13 include variations in scheduling, setting, aids, equipment, and presentation format.

14 (l) “Modification” means any variation in the assessment environment or process that fundamentally
15 alters what the test measures or affects the comparability of scores.

16 (m) “Variation” is a change in the manner in which a test is presented or administered, or in how a test
17 taker is allowed to respond, and includes, but is not limited to, accommodations and modifications as defined
18 in Education Code section 60850.

19 NOTE: Authority cited: Sections 33031 and 60605(g) and (h), Education Code. Reference: Sections 60615,
20 60640, 60642 and 60642.5, Education Code.

21 **§ 852. Pupil Exemptions.**

22 (a) A parent or guardian may submit to the school a written request to excuse his or her child from any
23 or all parts of any test provided pursuant to Education Code section 60640. A school district and its
24 employees may discuss the Standardized Testing and Reporting program with parents and may inform
25 parents of the availability of exemptions under Education Code section 60615. However, the school district
26 and its employees shall not solicit or encourage any written exemption request on behalf of any child or
27 group of children.

28 (b) Pupils in special education programs shall be tested with the designated achievement test and the
29 standards-based achievement tests unless the individualized educational program for the pupil specifically
30 ~~exempts the pupil from the Standardized Testing and Reporting program~~ states that the pupil will be assessed
31 with the California Alternate Performance Assessment or (CAPA).

32 NOTE: Authority cited: Sections 33031 and 60605(g) and (h), Education Code. Reference: Sections 60615
33 and 60640, Education Code.

34 **§ 853. Administration.**

35 (a) ~~The designated achievement test and the standards-based achievement tests, which include all those~~

1 ~~materials set forth in Section 850~~, shall be administered and returned by school districts in accordance with
2 the manuals or other instructions provided by the ~~publishers-contractor~~ for administering and returning the
3 tests unless specifically provided otherwise in this subchapter including instructions for administering the test
4 with variations, accommodations, and modifications. The procedures shall include, but are not limited to,
5 those designed to insure the uniform and standard administration of the tests to pupils, the security and
6 integrity of the test content and test items, and the timely provision of all required student and school level
7 information.

8 ~~(b) Except as provided in Subdivision (c), the reading section of any test shall not be read, interpreted, or~~
9 ~~translated to any pupil and no pupil may use a calculator while taking the designated achievement test or the~~
10 ~~standards-based achievement tests.~~

11 (b) The standards-based achievement tests and the California Alternate Performance Assessment shall be
12 administered and returned by school districts in accordance with the manuals and other instructions provided
13 by the contractor, and in accordance with testing variations, accommodations, and modifications specified in
14 Section 853.5. The procedures shall include, but are not limited to, those designed to insure the uniform and
15 standard administration of the tests to pupils, the security and integrity of the test content and test items, and
16 the timely provision of all required student and school level information.

17 ~~(c) Pupils in special education programs with individualized education programs delineating~~
18 ~~accommodations such as, but not limited to, large print, Braille, extended time, or the use of a reader or~~
19 ~~scribe or a calculator; or pupils with current plans under Section 504 of the Rehabilitation Act of 1973~~
20 ~~specifying such accommodations shall be tested and the prescribed adaptations or accommodations shall be~~
21 ~~made.~~

22 (c) For the 2003-04 school year only, pupils with IEPs in grades 5 through 11 may be tested one or two
23 grades below their enrollment grade. The test level must be specified in the student's IEP. Out-of-level
24 testing shall be used only if the student is not receiving grade-level instruction. Students tested out-of-level
25 must complete all tests required for the grade at which they are tested and shall be administered only one
26 level of the tests. Out-of-level testing is not allowed for pupils in grades 2, 3, and 4. No out-of-level testing
27 shall be allowed at any grade beginning with the 2004-05 school year.

28 ~~(d) English language learners enrolled in the school district for less than one year may be tested with~~
29 ~~standard or nonstandard accommodations in accordance with the manuals or other instructions provided by~~
30 ~~the test publisher. Nonstandard accommodations shall be utilized only if the school district has adopted a~~
31 ~~policy to be applied at each school to identify those English learners enrolled in the school district for less~~
32 ~~than one year for whom nonstandard accommodations may be appropriate due to the pupil's limited English~~
33 ~~proficiency. Nonstandard accommodations may include, but are not limited to, reading and translating the~~
34 ~~test instructions into the pupil's primary language and use of a bilingual dictionary.~~

35 ~~(e) Except for pupils in special education programs with individualized education programs and pupils~~

1 ~~with section 504 plans or English language learners enrolled in the school district for less than one year, no~~
2 ~~pupil shall be tested with accommodations or modifications.~~

3 NOTE: Authority cited: Sections 12001, 33031 and 60605(g) and (h), Education Code. Reference: Section
4 60640, Education Code; 20 USC 6311.

5
6 *Add new section 853.5 to read:*

7 **§ 853.5 Use of Variations, Accommodations, and Modifications for the Standards-Based Achievement**
8 **Test and the California Alternate Performance Assessment.**

9 (a) School districts may provide all pupils the following testing variations if regularly used in the
10 classroom:

11 (1) test directions that are simplified or clarified.

12 (2) special or adaptive furniture.

13 (3) special lighting or acoustics.

14 (4) an individual carrel or study enclosure.

15 (5) test individually in a separate room provided that an employee of the school, district, or non-public
16 school, who has signed the STAR Test Security Affidavit, directly supervises the pupil.

17 (6) markers, masks, or other means to maintain visual attention to the examination or test items.

18 (b) Eligible pupils with disabilities who have IEPs and students with Section 504 plans shall be permitted
19 to take the standards-based achievement tests with the following presentation, response or setting
20 accommodations if specified in the IEP or Section 504 plan:

21 (1) large print versions;

22 (2) test items enlarged through electronic means (e.g., photocopier).

23 (3) Braille transcriptions provided by the test contractor.

24 (4) use of manually coded or American sign language to present directions for administration.

25 (5) audio or oral presentation of the mathematics tests.

26 (6) use of manually coded or American sign language to present test questions on the mathematics tests.

27 (7) responses marked in test booklet and transferred to the answer document by a school or district
28 employee who has signed the Test Security Affidavit.

29 (8) responses dictated to a scribe for selected-response items (e.g., multiple-choice test questions).

30 (9) responses dictated to a scribe, audio recorder or speech to text converter on the grade 4 or grade 7
31 writing application standards section of the California English-Language Arts Standards Test, and the pupil
32 indicates all spelling and language conventions.

33 (10) use of word processing software with spell and grammar check tools turned off on the writing
34 portion of the grade 4 or 7 test.

35 (11) use of an assistive device that does not interfere with the independent work of the student on the

1 writing portion of the test.

2 (12) supervised breaks within a section of the test.

3 (13) administration of the test at the most beneficial time of day to the pupil.

4 (14) test administered by certificated teacher to a pupil or adult student at home or in the hospital.

5 (c) Eligible pupils with disabilities shall be permitted to take the standards-based tests with the following
6 modifications if specified in the eligible pupil's IEP:

7 (1) calculators on the mathematics or science tests.

8 (2) audio or oral presentation of the English-language arts tests.

9 (3) use of manually coded or American sign language to present test questions on the English-language
10 arts tests.

11 (4) spellcheckers, grammar checkers, or word processing software programs that check or correct
12 spelling and/or grammar on the writing portion of the grade 4 and 7 English-language arts tests.

13 (5) mechanical or electronic devices or other assistive devices that are not used solely to record the
14 pupil's responses, including but not limited to transcribers, scribes, voice recognition or voice to text
15 software, and that identify a potential error in the pupil's response or that correct spelling, grammar or
16 conventions on the writing portion of the grade 4 and 7 English-language arts tests.

17 (6) use of American sign language to provide a response to the written portion of the grade 4 and 7
18 English-language arts tests.

19 (7) English dictionary on the English-language arts test.

20 (8) mathematics dictionary on the mathematics section of the examination.

21 (d) School districts shall provide English learner pupils the following additional testing variations if
22 regularly used in the classroom or for assessment:

23 (1) Flexible setting. Tested in a separate room with other English learners provided that an employee of
24 the school, district, or non-public school, who has signed the Test Security Affidavit, directly supervises the
25 pupil and the pupil has been provided such a flexible setting.

26 (2) Flexible schedule. Additional supervised breaks following each section within a test part provided
27 that the test section is completed within a testing day. A test section is identified by a "STOP" at the end of
28 it.

29 (3) Translated directions. Hear any test directions the test examiner is to read aloud translated into their
30 primary language. English learners shall have the opportunity to ask clarifying questions about any test
31 directions presented orally in their primary language.

32 (4) Glossaries. Access to glossaries/word lists for the standards-based achievement tests in mathematics,
33 science, and history-social science if used regularly in the classroom (English to primary language). The
34 glossaries/word lists are to include only the English word or phrase with the corresponding primary language
35 word or phrase. The glossaries/word lists shall include no definitions or formulas.

1 NOTE: Authority cited: Sections 12001, 33031 and 60605, Education Code. Reference: Section 60640,

2 Education Code; 20 USC 6311.

3
4 *Amend 859 to read:*

5 **§859. STAR Test Security Agreement and Test Security Affidavit.**

6 (a) All STAR program district and test site coordinators shall sign the STAR Test Security Agreement
7 set forth in Subdivision (b) before receiving any STAR tests or test materials.

8 (b) The STAR Test Security Agreement shall be as follows:

9 STAR TEST SECURITY AGREEMENT

10 The coordinator acknowledges by his or her signature on this form that the designated achievement test
11 and the standards-based achievement tests are secure tests and agrees to each of the following conditions to
12 ensure test security.

13 (1) The coordinator will take all necessary precautions to safeguard all tests and test materials by limiting
14 access to persons within the school district with a responsible, professional interest in the tests' security.

15 (2) The coordinator will keep on file the names of all persons having access to tests and test materials.
16 All persons having access to the materials shall be required by the coordinator to sign the STAR Test
17 Security Affidavit that will be kept on file in the school district office.

18 (3) The coordinator will keep the tests and test materials in a secure, locked location limiting access to
19 only those persons responsible for test security except on actual testing dates as provided in California Code
20 of Regulations, Title 5, Division 1, Chapter 2, Subchapter 3.75.

21 (4) The coordinator will not copy any part of the test or test materials without written permission from
22 the Department to do so.

23 (5) The coordinator will not review test questions, develop any scoring keys or review or score any pupil
24 responses except as required by the contractor's manuals.

25 By signing my name to this document, I am assuring that I and anyone having access to the test materials
26 will abide by the above conditions.

27 By: _____

28 Title: _____

29 School District: _____

30 Date: _____

31 (c) Each STAR test site coordinator shall deliver the tests and test materials only to those persons
32 actually administering the designated achievement test and the standards-based achievement tests on the date
33 of testing to persons trained to administer the test who have executed the STAR Test Security Affidavit set
34 forth in Subdivision (e).

(d) All persons having access to the designated achievement test and test materials and to the standards-based achievement tests and test materials shall acknowledge the limited purpose of their access to the tests by signing the STAR Test Security Affidavit set forth in Subdivision (e).

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

STAR TEST SECURITY AFFIDAVIT

I acknowledge that I will have access to the designated achievement test and to the standards-based achievement tests for the purpose of administering the test(s). I understand that these materials are highly secure, and it is my professional responsibility to protect their security as follows:

(1) I will not divulge the contents of the test to any other person through verbal, written, or any other means of communication.

(2) I will not copy any part of the test(s) or test materials.

(3) I will keep the test(s) secure until the test(s) are actually distributed to pupils.

(4) I will limit access to the test(s) and test materials by test examinees to the actual testing periods when they are taking the test.

(5) I will collect and account for all materials following each period of testing and will not permit pupils to remove test materials from the room where testing takes place.

(6) I will no disclose, or allow to be disclosed, the contents of, or the test instrument. I will not review any test questions, passages, or other test items with pupils before, during, or following testing.

(7) I will not develop scoring keys or review or score any pupil responses except as required by the publisher’s administration manual(s) to prepare answer documents for machine or other scoring.

(8) I will return all test materials to the designated STAR test site coordinator daily upon completion of testing.

(9) I will administer the test in accordance with the directions for test administration set forth in the publisher’s manual for test administration.

Signed: _____

Print Name: _____

Position: _____

School: _____

School District: _____

Date: _____

(f) To maintain the security of the program, all STAR program district coordinators and test site coordinators are responsible for inventory control and shall use appropriate inventory control forms to monitor and track test inventory.

NOTE: Authority cited: Sections 33031 and 60605~~(g)~~ and ~~(h)~~, Education Code. Reference: Section 60640, Education Code.