



NOVEMBER 2003 AGENDA

SUBJECT Standardized Testing and Reporting (STAR) Program: Adoption of Amended Title 5 STAR Regulations	<input checked="" type="checkbox"/>	Action
	<input checked="" type="checkbox"/>	Information
	<input type="checkbox"/>	Public Hearing

Recommendation:

Consider comments received during the public comment period and at the public hearing and take action on the regulations.

Summary of Previous State Board of Education Discussion and Action

The State Board of Education (SBE) approved the Notice of Proposed Rulemaking, the proposed amendments to the STAR Regulations, and the beginning of the 45-day comment process at its meeting on September 11, 2003.

Summary of Key Issue(s)

At its September 2003 meeting, SBE approved proposed amendments to the Title 5 STAR Regulations. The proposed amendments add requirements related to the California Alternate Performance Assessment (CAPA), modify the accommodation policy related to English learners to comply with requirements of No Child Left Behind (NCLB), and modify the District STAR Coordinator Security Agreement to enhance test security.

The Notice of Proposed Rulemaking and proposed STAR Regulations were mailed out on September 22, 2003, and the public hearing was set for 10 a.m., on November 10, 2003. Written public comments may be submitted until 5 p.m., on the day of the public hearing. CDE will summarize and present the public comments at the November 12, 2003, SBE meeting.

If SBE makes revisions to the proposed amendments at this meeting, the revised regulations will be sent out for an additional 15-day comment period. If this occurs, there will need to be a special SBE meeting to receive and review the public comments and adopt the amended regulations before November 30, 2003. Adoption of section 853.5 before November 30, 2003, is required to comply with the requirements of NCLB.

Fiscal Analysis (as appropriate)

The California Department of Education reviewed the proposed amendments and determined that there are no additional costs associated with them.

Attachment(s)

- Attachment 1: [Title 5. EDUCATION, California State Board of Education, Notice of Proposed Rulemaking, STAR Program \(Pages 4\)](#)
- Attachment 2: [Proposed Regulations, Title 5. EDUCATION, Division 1. State Department of Education, Chapter 2. Pupils, Subchapter 3.75. Standardized Testing and Reporting Program, Article 1. General, Sections 850, 852, 853, 853.5, and 859 \(Pages 9\)](#)

CALIFORNIA STATE BOARD OF EDUCATION

1430 N Street; P.O. Box 944272
Sacramento, CA 95814-5901

**TITLE 5. EDUCATION****CALIFORNIA STATE BOARD OF EDUCATION****NOTICE OF PROPOSED RULEMAKING****Standardized Testing and Reporting Program**

[Notice published September 26, 2003]

The State Board of Education (State Board) proposes to adopt the regulations described below after considering all comments, objections, or recommendations regarding the proposed action.

PUBLIC HEARING

The State Board will hold a public hearing beginning at 10 a.m. on November 10, 2003, at 1430 N Street, Room 1101, Sacramento. 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 State Board requests that any person desiring to present statements or arguments orally notify the Regulations Adoption Coordinator of such intent. The Board requests, but does not require, that persons who make oral comments at the hearing also submit a summary of their statements. No oral statements will be accepted subsequent to this public hearing.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Regulations Adoption Coordinator. The written comment period ends at **5:00 p.m. on November 10, 2003**. The Board will consider only written comments received by the Regulations Adoption Coordinator or at the Board Office by that time (in addition to those comments received at the public hearing). Written comments for the State Board's consideration should be directed to:

Debra Strain, Regulations Adoption Coordinator
California Department of Education
LEGAL DIVISION
1430 N Street, Room 5319
Sacramento, California 95814
E-mail: dstrain@cde.ca.gov
Telephone: (916) 319-0641
FAX: (916) 319-0155

AUTHORITY AND REFERENCE

Authority: Sections 12001, 33031 and 60605, Education Code.

Reference: Sections 60615, 60640, 60642, and 60642.5, Education Code; 20 USC Section 6311.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

California Education Code section 60605(f) states, “The State Board of Education shall adopt regulations for the conduct and administration of the testing and assessment program.” Section 60605(g) requires the State Board of Education to adopt a regulation for minimum-security procedures to ensure the security and integrity of test and assessment questions and materials.

The purpose of these amended regulations is to modify regulations previously adopted by the State Board of Education to:

- Conform to legislative changes in the California Education Code.
- Expand and clarify sections related to ensuring the security and integrity of test and assessment questions and materials where the lack of clarify has resulted in security breaches.
- Replace terms that are no longer used in the Program.

DISCLOSURES REGARDING THE PROPOSED ACTION

Mandate on local agencies and school districts: None

Cost or savings to any state agency: None

Costs to any local agency or school district which must be reimbursed in accordance with Government Code section 17561: None

Other non-discretionary cost or savings imposed on local educational agencies: None

Cost or savings in federal funding to the state: 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 State Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Adoption of these regulations will not:

- (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.

Significant effect on housing costs: None.

Affect on small businesses: The proposed regulations will have no affect on small businesses because they only apply to local educational agencies.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5(a)(13), the State Board must determine that no reasonable alternative it considered or that has otherwise been identified and brought to the attention of the State Board, 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.

The State Board 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.

CONTACT PERSONS

Inquiries concerning the substance of the proposed regulations should be directed to:

Linda Lownes, Consultant
Standards and Assessment Division
California Department of Education
1430 N Street, 5th Floor
Sacramento, CA 95814
E-mail: lownes@cde.ca.gov
Telephone: (916) 445-9441

Requests for a copy of the proposed text of the regulations, the Initial Statement of Reasons, the modified text of the regulations, if any, or other technical information upon which the rulemaking is based or questions on the proposed administrative action may be directed to the Regulations Adoption Coordinator, or to the backup contact person, Najia Rosales, at (916) 319-0584.

AVAILABILITY OF INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The Regulations Adoption Coordinator will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at her office at the above address. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulations, and the initial statement of reasons. A copy may be obtained by contacting the Regulations Adoption Coordinator at the above address.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

Following the public hearing and considering all timely and relevant comments received, the State Board may adopt the proposed regulations substantially as described in this notice. If the State Board makes modifications that are sufficiently related to the originally proposed text, the modified text (with changes clearly indicated) will be available to the public for at least 15 days before the State Board adopts the regulations as revised. Requests for copies of any modified regulations should be sent to the attention of the Regulations Adoption Coordinator at the address indicated above. The State Board will accept written comments on the modified regulations for 15 days after the date on which they are made available.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, a copy of the Final Statement of Reasons may be obtained by contacting the Regulations Adoption Coordinator at the above address.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the Notice of Proposed Rulemaking, the Initial Statement of Reasons, the text of the regulations in underline and strikeout, and the Final Statement of Reasons, can be accessed through the California Department of Education's website at <http://www.cde.ca.gov/regulations>.

1 **Title 5. EDUCATION**

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

3 **Chapter 2. Pupils**

4 **Subchapter 3.75. Standardized Testing and Reporting Program**

5 **Article 1. General**

6
7 *Amend Sections 850, 852, and 853 to read:*

8 **§ 850. Definitions.**

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

11 (a) "Designated achievement test" is the achievement test required by Education Code section
12 60640(b). The designated achievement test includes test booklets, test answer documents, administration
13 manuals, and administrative materials, ~~and practice tests~~. The designated achievement test is to be
14 administered in the areas of reading, spelling, written expression and mathematics for pupils in grades 2
15 to 8, inclusive; and in the core curriculum areas of reading, writing, mathematics, history/social science
16 and science for pupils in grades 9 to 11, inclusive.

17 (b) "Primary language test" includes any test administered pursuant to Education Code section
18 60640(f) or a test administered pursuant to the requirement of Education Code section 60640(g), as
19 applicable, and includes the test booklets, test answer documents, administration manuals, administrative
20 materials and practice tests.

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

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

24 (e) "Department" means the California Department of Education.

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

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

1 all of the standards-based achievement tests collectively.

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

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

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

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

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

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

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

24 NOTE: Authority cited: Sections 33031 and 60605~~(g) and (h)~~, Education Code. Reference: Sections
25 60615, 60640, 60642 and 60642.5, Education Code.

26 **§ 852. Pupil Exemptions.**

27 (a) A parent or guardian may submit to the school a written request to excuse his or her child from
28 any or all parts of any test provided pursuant to Education Code section 60640. A school district and its
29 employees may discuss the Standardized Testing and Reporting program with parents and may inform
30 parents of the availability of exemptions under Education Code section 60615. However, the school

1 district and its employees shall not solicit or encourage any written exemption request on behalf of any
2 child or group of children.

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

7 NOTE: Authority cited: Sections 33031 and 60605~~(g) and (h)~~, Education Code. Reference: Sections
8 60615 and 60640, Education Code.

9 **§ 853. Administration.**

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

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

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

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

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

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

15 ~~(e) Except for pupils in special education programs with individualized education programs and~~
16 ~~pupils with section 504 plans or English language learners enrolled in the school district for less than one~~
17 ~~year, no pupil shall be tested with accommodations or modifications.~~

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

20
21 *Add new section 853.5 to read:*

22 **§ 853.5 Use of Variations, Accommodations, and Modifications for the Standards-Based**
23 **Achievement Test and the California Alternate Performance Assessment.**

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

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

27 (2) special or adaptive furniture.

28 (3) special lighting or acoustics.

29 (4) an individual carrel or study enclosure.

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

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

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

5 (1) large print versions.

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

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

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

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

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

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

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

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

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

20 (11) use of an assistive device that does not interfere with the independent work of the student on the
21 writing portion of the test.

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

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

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

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

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

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

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

31 (4) spellcheckers, grammar checkers, or word processing software programs that check or correct

1 spelling and/or grammar on the writing portion of the grade 4 and 7 English-language arts tests.

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

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

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

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

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

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

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

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

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

26 NOTE: Authority cited: Sections 12001, 33031 and 60605, Education Code. Reference: Section 60640,
27 Education Code; 20 USC 6311.

28
29 *Amend 859 to read:*

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

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

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

4 STAR TEST SECURITY AGREEMENT

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

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

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

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

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

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

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

23 By: _____

24 Title: _____

25 School District: _____

26 Date: _____

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

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

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

5 STAR TEST SECURITY AFFIDAVIT

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

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

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

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

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

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

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

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

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

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

25 Signed: _____

26 Print Name: _____

27 Position: _____

28 School: _____

29 School District: _____

30 Date: _____

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

4 NOTE: Authority cited: Sections 33031 and 60605(~~g~~) and (~~h~~), Education Code. Reference: Section
5 60640, Education Code.

6 9-10-03