

# PRINT

STATE OF CALIFORNIA—OFFICE OF ADMINISTRATIVE LAW

**NOTICE PUBLICATION/REGULATIONS SUBMISSION**

(See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-2013)

OAL FILE NUMBERS	NOTICE FILE NUMBER <b>Z-</b>	REGULATORY ACTION NUMBER <b>2020-0609-03P</b>	EMERGENCY NUMBER
For use by Office of Administrative Law (OAL) only		2020 JUN -9 P 2:42 OFFICE OF ADMINISTRATIVE LAW	
NOTICE		REGULATIONS	
AGENCY WITH RULEMAKING AUTHORITY Board of Governors of the California Community Colleges			AGENCY FILE NUMBER (if any)

**ENDORSED - FILED**  
In the office of the Secretary of State  
of the State of California**JUN 09 2020****2:10 p.m.****A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)**

1. SUBJECT OF NOTICE N/A	TITLE(S) N/A	FIRST SECTION AFFECTED N/A	2. REQUESTED PUBLICATION DATE N/A
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other	4. AGENCY CONTACT PERSON N/A	TELEPHONE NUMBER N/A	FAX NUMBER (Optional) N/A
<b>OAL USE ONLY</b>	ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn	NOTICE REGISTER NUMBER	PUBLICATION DATE

**B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)**

1a. SUBJECT OF REGULATION(S) AB 705, English as a Second Language (ESL) Placement and Assessment	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)
2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)	
<b>SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)</b>	ADOPT 55522.5 AMEND REPEAL
TITLE(S) 5	
3. TYPE OF FILING	
<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346)	<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §511346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.
<input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §511349.3, 11349.4)	<input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h))
<input type="checkbox"/> Emergency (Gov. Code, §11346.1(b))	<input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)
<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)	<input checked="" type="checkbox"/> File & Print
<input checked="" type="checkbox"/> Print Only	<input checked="" type="checkbox"/> Other (Specify) <u>Authority - Ed. Code section 70901.5</u>
4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)	
5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)	
<input type="checkbox"/> Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a))	<input type="checkbox"/> Effective on filing with Secretary of State
<input type="checkbox"/> §100 Changes Without Regulatory Effect	<input checked="" type="checkbox"/> Effective other (Specify) <u>30 days after filed w/Secretary of State</u>
6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY	
<input checked="" type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660)	<input type="checkbox"/> Fair Political Practices Commission
<input type="checkbox"/> Other (Specify)	<input type="checkbox"/> State Fire Marshal
7. CONTACT PERSON Tanya Bosch - Regulations Coordinator	TELEPHONE NUMBER (916) 445-4826
FAX NUMBER (Optional)	E-MAIL ADDRESS (Optional)

8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE <u>M. A. LeForestier</u>	DATE 6-8-2020
TYPED NAME AND TITLE OF SIGNATORY Marc A. LeForestier, General Counsel	

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# Final Text of Title 5 Section 55522.5 English as a Second Language Placement and Assessment

1. Section 55522.5 is added to article 3 of subchapter 6 of chapter 6 of division 6 of title 5 of the California Code of Regulations:

## § 55522.5. ENGLISH AS A SECOND LANGUAGE PLACEMENT AND ASSESSMENT.

### (a) Scope and Intent

(1) Instruction in credit English as a Second Language (ESL) is distinct from remediation in English.

(2) Students enrolled in ESL coursework are foreign language learners who require additional language training in English, require support to successfully complete degree and transfer requirements in English, or require both.

(3) ESL students with a goal of transfer to a four-year institution or an associate degree should enter and complete a transfer-level English composition course or an ESL course equivalent to transfer-level English within a three-year timeframe of declaring a transfer- or degree-seeking goal.

(4) Credit ESL placement methods should minimize disproportionate impacts on students.

### (b) Placement Methods

(1) Districts shall place students who are English language learners using evidence based multiple measures from the placement methods for ESL identified below:

(A) Any Chancellor's Office ESL placement method published by the Chancellor's Office to implement Education Code section 78213;

(B) An evidence-based district placement method collected from local research using high school performance data, including self-reported high school performance data;

(C) A district placement method based upon guided placement, including self-placement; or

(D) Methods based on articulation agreements between the district and partners as defined in section 55003.

(2) Students who have acquired a United States high school diploma or the

equivalent shall be placed according to section 55522.

(3) Placement methods authorized by this section shall be designed to maximize the probability that transfer- or degree-seeking students enrolled in credit ESL will enter and complete a transfer-level English composition or an equivalent ESL course within a three-year timeframe.

(4) Districts adopting a district placement method under subparagraph (b)(1)(B) or (b)(1)(C) shall, by July 1, 2020, provide an adoption plan on a form prescribed by the Chancellor, explaining the placement method, the evidence to be collected, and why the district believes it will be effective. Within two years of the adoption of a district placement method, the district shall report to the Chancellor on the method's efficacy. The Chancellor may order the district to relinquish the district placement method and adopt a placement method published by the Chancellor's Office under either of the following circumstances:

(A) The district's failure to report within two years of adoption; or

(B) The district's failure to demonstrate that the local placement method meets or exceeds the credit ESL throughput rate(s) of a placement method, once published, by the Chancellor's Office.

(5) Districts must inform students placed into credit ESL coursework prior to fall 2020 of their right to access the newly adopted placement processes that comply with this section and students who have completed a United States high school diploma or the equivalent shall be placed according to section 55522. Districts shall disclose their plans to implement retroactive placement recommendations as part of the adoption plan described in subparagraph (b)(4).

(6) Any placement for the fall semester or quarter of 2020 must comply with this section and Education Code section 78213.

(c) Assessment

(1) The Chancellor shall establish and update, at least annually, a list of the approved assessment tests and instruments for use in placing students in credit ESL courses and guidelines for their use by community college districts. When using an ESL assessment test for placement into credit ESL coursework, it must be used with one or more other measures to comprise multiple measures.

(2) Districts and colleges are required to use the Chancellor's guidelines for the validation of all assessment tests used for placement to ensure that they minimize or eliminate cultural or linguistic bias and are being used in a valid manner. Based on this evaluation, the district or college shall determine whether any assessment test, method, or procedure has a disproportionate impact on particular groups of students, as defined by the Chancellor. When there is a disproportionate impact on any such group of students, the district or college shall, in consultation with the Chancellor, develop and implement a

plan setting forth the steps the district will take to correct the disproportionate impact.

(3) The Chancellor may identify other measures of a student's college readiness that community college districts may use for student placement into the college's curriculum.

(d) Each community college district utilizing approved assessment tests or instruments shall adopt procedures that are clearly communicated to students regarding the college's sample test preparation, how the student test results will be used to inform placement decisions, and the district's limits on the student's ability to re-test.

(e) Community college districts shall not, except as provided in subdivision (g), do any of the following:

(1) Use an assessment test for placement which has not been approved by the Chancellor pursuant to this section, except that the Chancellor may permit limited field-testing, under specified conditions, of new or alternative assessment tests;

(2) Use any assessment test in a manner or for a purpose other than that for which it was developed or has been otherwise validated;

(3) Use any assessment test process to exclude any person from admission to a college, except that a college may determine the admission of special part-time or full-time students under Education Code section 76002 based on an assessment which involves multiple measures and complies with other requirements of this subchapter;

(4) Use any assessment test, method, or procedure to exclude students from any particular course or educational program, except that districts may establish appropriate prerequisites pursuant to sections 55002 and 55003; or

(5) Use any Student Success and Support Program practice which has the purpose or effect of subjecting any person to unlawful discrimination prohibited by subchapter 5 (commencing with section 59300) of chapter 10.

(f) Colleges or districts that receive funding from the Student Equity and Achievement Program shall do the following pursuant to Education Code section 78213:

(1) Inform students of their rights, pursuant to Education Code section 78213, to access transfer-level coursework in English or in credit academic ESL and of the multiple measures placement policies or other college placement processes including the availability of challenge processes;

(2) Include information about the student's course placement options in the college catalog, in orientation and advisement materials, on the college's website, and in any written communication by counseling services;

(3) Annually report the college's placement results to the Chancellor's Office, in a

manner and form described by the Chancellor's Office. Colleges shall include the number of students assessed and the number of students placed into transfer-level English composition or ESL equivalent, transfer-level English composition or ESL equivalent with concurrent support or transfer-level or credit academic ESL coursework, disaggregated by race and ethnicity; and

(4) Publicly post the college's placement results. Colleges shall include the number of students assessed and the number of students placed into transfer-level English composition or ESL equivalent, transfer-level English composition or ESL equivalent with concurrent support, or transfer-level or credit academic ESL coursework, disaggregated by race and ethnicity.

(g) The Chancellor shall provide districts with notice and an opportunity to cure actions found to be out of compliance with this section. The Chancellor may use any means authorized by law to obtain compliance in the event of a failure or refusal to cure.

(h) The Chancellor's Office shall collect and analyze all placement methods and their impact on throughput rates for ESL students with a goal of transfer to a four-year institution or an associate degree, and produce a report for the Board of Governors by January 30, 2023. This report will inform a re-evaluation of credit ESL placement methods by the Chancellor's Office, and whether this section should be amended.

Note: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 72011, 76002, 78211, 78212, 78213, and 78261, Education Code; and Section 11135, Government Code.