

RECEIVED AUG 10 2020

**State of California
Office of Administrative Law**

In re:
Department of Corrections and
Rehabilitation

Regulatory Action:

Title 15, California Code of Regulations

Adopt sections: 3040.3

Amend sections:

Repeal sections:

AMENDED NOTICE OF APPROVAL OF
EMERGENCY REGULATORY ACTION

Government Code Sections 11346.1 and
11349.6, and Penal Code Section 5058.3

OAL Matter Number: 2020-0408-04

OAL Matter Type: Emergency Operational
Necessity (EON)

This emergency rulemaking action by the Department of Corrections and Rehabilitation adopts requirements regarding the placement of inmates into educational assignments. This action was certified as an operational necessity by the Undersecretary of Administration on December 26, 2019.

OAL approves this emergency regulatory action pursuant to sections 11346.1 and 11349.6 of the Government Code, and section 5058.3 of the Penal Code.

This emergency regulatory action is effective on 4/28/2020 and, pursuant to section 5058.3 of the Penal Code and Executive Orders N-40-20 and N-66-20, will expire on 2/3/2021. The Certificate of Compliance for this action is due no later than 2/2/2021.



Date: August 6, 2020

Lindsey S. McNeill
Attorney

For: Kenneth J. Pogue
Director

Original: Ralph Diaz, Secretary
Copy: Sarah Pollock

EMERGENCY

See Instructions on reverse

For use by Secretary of State only

STD. 400 (REV. 10/2019)

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-	REGULATORY ACTION NUMBER	EMERGENCY NUMBER 2020-0408-04EON
For use by Office of Administrative Law (OAL) only			
NOTICE		REGULATIONS	

ENDORSED - FILED
in the office of the Secretary of State
of the State of California

APR 28 2020
1:47 PM

2020 APR -8 P 1:16
OFFICE OF
ADMINISTRATIVE LAW

AGENCY WITH RULEMAKING AUTHORITY California Department of Corrections and Rehabilitation	AGENCY FILE NUMBER (If any) 19-0099
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A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE	TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other	4. AGENCY CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)
OAL USE ONLY	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 Disapproved/Withdrawn	NOTICE REGISTER NUMBER	PUBLICATION DATE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) Education Assignments	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S) 2020-0106-01EON
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2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)	
SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)	ADOPT 3040.3
	AMEND
TITLE(S)	REPEAL
15	

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 §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.	<input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h))	<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
<input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4)	<input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	<input type="checkbox"/> File & Print	<input type="checkbox"/> Print Only
<input type="checkbox"/> Emergency (Gov. Code, §11346.1(b))		<input checked="" type="checkbox"/> Other (Specify) Emergency Op. Nec. - PC 5058.3	

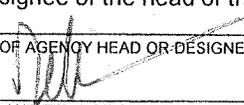
4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)

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 checked="" type="checkbox"/> Effective on filing with Secretary of State	<input type="checkbox"/> \$100 Changes Without Regulatory Effect	<input type="checkbox"/> Effective other (Specify)

6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY			
<input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660)	<input type="checkbox"/> Fair Political Practices Commission	<input type="checkbox"/> State Fire Marshal	
<input type="checkbox"/> Other (Specify)			

7. CONTACT PERSON Sarah Pollock	TELEPHONE NUMBER 916 445-2308	FAX NUMBER (Optional)	E-MAIL ADDRESS (Optional) sarah.pollock@cdcr.ca.gov
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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 	DATE 3/30/20
TYPED NAME AND TITLE OF SIGNATORY JEFFREY MACOMBER, Undersecretary, Administration, CDCR	

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

APR 28 2020

Office of Administrative Law

TEXT OF PROPOSED REGULATIONS

In the following, underline indicates additional text and ~~strikethrough~~ indicates deleted text.

California Code of Regulations, Title 15, Division 3, Adult Institutions, Programs and Parole

Chapter 1. Rules and Regulations of Adult Operations and Programs

Article 3. Work and Education

[New Section 3040.3 is adopted to read:]

3040.3 Education Assignments

(a) Institutions shall establish Adult Basic Education (ABE), Adult Secondary Education (ASE), Post-Secondary Education, Career Technical Education (CTE), Computer Related Technologies (CRT), and Transition courses that focus on increasing literacy and employability of inmates in preparation for release from state prison. Every effort shall be made to assign inmates concurrently to education programs, rehabilitative programs, and work assignments. Every effort shall be made to reasonably accommodate inmates with disabilities to enable their participation to the best of their abilities. Assignments to education programs shall be for the prescribed length of participation required to complete the course, and in accordance with the following criteria:

(1) Adult Basic Education (ABE) and Adult Secondary Education (ASE) Courses: During the classification process, inmates shall be placed on a waiting list for ABE or ASE courses if they do not have a nationally-recognized High School Diploma (HSD), High School Equivalency (HSE), or for inmates with developmental disabilities, a Certificate of Completion (certificate of attendance and participation).

(A) Inmates are responsible for authorizing official school transcripts from a regionally accredited school recognized by the United States Department of Education to be sent to the Department as proof that they have earned a HSD, HSE, or Certificate of Completion. Once the institution's school registrar receives the inmate's official school transcripts, the registrar will note the inmate's graduation status in the Strategic Offender Management System, and the student will be removed from the ABE or ASE waiting list or class.

(B) Inmates shall be assigned to the course in the order in which they appear on the waiting list, subject to space availability. Placement into the appropriate course shall be in accordance with the inmate's most recently assessed reading level on the Test of Adult Basic Education (TABE) or the Comprehensive Adult Student Assessment System (CASAS). The following chart corresponds the inmate's course placement with their reading level:

<u>Adult Basic Education</u>	<u>Reading Level</u>
<u>ABE I</u>	<u>0-3.9</u>
<u>ABE II</u>	<u>4-6.9</u>
<u>Adult Secondary Education</u>	<u>Reading Level</u>
<u>ABE III</u>	<u>7-8.9</u>

Adult Basic Education	Reading Level
GED	9+

(C) If an inmate is precluded from placement into an ABE or ASE course due to a medical or mental health diagnosis, disciplinary action, or safety or security threat, the preclusion shall be documented pursuant to Section 3375(g). Inmates at the Enhanced Outpatient Program (EOP) level of care shall participate in ABE and ASE courses in accordance with Section 3043.7(d)(1).

(D) Inmates with language barriers or developmental, cognitive, or physical impairments shall be mainstreamed in ABE and ASE courses and are offered additional assistance with course assignments during course hours.

(2) Post-Secondary Education Courses: Inmates with a HSD or HSE may apply to colleges or universities recognized by a United States Department of Education accrediting agency. Inmates may participate via correspondence courses, or may attend onsite college courses when available and with the approval of the institution's school principal. Inmates are responsible for the payment of tuition, loans, textbooks, and other associated fees. Courses shall be college level, shall not duplicate Department course content, shall be transferable, and shall lead to a degree.

(3) Career Technical Education (CTE) Courses: During the classification process, inmates with a medium to high need for employment based on the Department's automated needs assessment tool, per Section 3375.6, shall be placed on a waiting list for a CTE course of their choice, and on a waiting list for a CTE course recommended by the Education Administrator based on course availability. Inmates with six months to four years prior to release or six months to four years prior to a parole consideration shall receive priority assignment to a CTE course in the order in which they appear on the waiting list, subject to space availability. Inmates who have previously completed CTE courses are exempt from assignment to CTE courses.

(A) Inmates with language barriers or developmental, cognitive, or physical impairments shall be mainstreamed in CTE courses and are offered additional assistance with course assignments during course hours.

(4) Computer Related Technologies (CRT) Courses: During the classification process, inmates shall be placed on a waiting list for CRT courses. Inmates who are within six months of release or six months prior to a parole consideration shall be assigned to the course in the order in which they appear on the waiting list, subject to space availability. Inmates who have previously completed CRT courses are exempt from assignment to CRT courses.

(5) Transition Courses: Inmates who are within two years of release or two years prior to a parole consideration shall be placed on a waiting list for the Transition course. Inmates shall be assigned to the course in the order in which they appear on the waiting list, subject to space availability. Inmates who have previously completed a Transitions course are exempt from assignment to a Transitions course.

(b) Education programs are open-entry and open-exit; inmates may be assigned, reassigned, or unassigned to courses at any time throughout the year.

(1) Students may be reassigned to alternative ABE, ASE, CTE, CRT, or Transition courses on a case by case basis, with the approval of the institution's school principal. Reassignments shall be based on course prerequisites, mental health or medical diagnosis, test history, and

employment need, as long as assignments are made commensurate with institutional safety and security as noted on a CDC Form 128-B (Rev. 4/74), General Chrono.

(2) Students may be unassigned from ABE, ASE, CTE, CRT, or Transition courses for good cause on a case by case basis. Reasons for unassignment include but are not limited to: Department receipt of official school transcripts indicating an inmate has earned a HSD, HSE, Certificate of Completion, or college degree, inmate release from prison, transfer of the inmate to a different institution, inmate disciplinary action, or the inmate poses a threat to institutional safety and security.

(A) Once inmates have completed educational courses, they shall be unassigned from the course.

Note: Authority cited: Section 5058, Penal Code. Reference: Sections 2053 and 2053.1, Penal Code.