



Department of Corrections and Rehabilitation  
NOTICE OF CHANGE TO REGULATIONS

<b>Sections:</b> <b>3040.3</b>	<b>NCR Number:</b> <b>20-05</b>	<b>Publication Date:</b> <b>May 15, 2020</b>	<b>Effective Date:</b> <b>April 28, 2020</b>
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**INSTITUTION POSTING AND CERTIFICATION REQUIRED**

This Notice announces the proposed adoption of Section 3040.3 of the California Code of Regulations (CCR), Title 15, Crime Prevention and Corrections, Division 3, Chapter 1, regarding Education Assignments.

**PUBLIC COMMENT PERIOD**

The public comment period will close on **July 2, 2020**. Any person may submit written comments about the proposed regulations by mail to the California Department of Corrections and Rehabilitation (CDCR), Regulation and Policy Management Branch (RPMB), P.O. Box 942883, Sacramento, CA 94283-0001, or by e-mail to [RPMB@cdcr.ca.gov](mailto:RPMB@cdcr.ca.gov). All written comments must be received or postmarked no later than **July 2, 2020**.

**POSTING**

This Notice shall be posted immediately upon receipt at locations accessible to inmates, parolees, and employees in each Department facility and field office not later than five calendar days after receipt. Also, institutions and facilities shall make this Notice available for review by inmates in segregated housing who do not have access to the posted copies, and shall distribute it to inmate law libraries and advisory councils. CDCR Form 621-A (Rev. 04/18), Certification of Posting, shall be returned to RPMB by mail or email. See Department Operations Manual Section 12010.6.7 for posting and certification of posting procedures.

**CONTACT PERSON**

Inquiries regarding this Notice should be directed to S. Pollock, by mail to California Department of Corrections and Rehabilitation, RPMB, P.O. Box 942883, Sacramento, CA 94283-0001, by telephone at (916) 445-2308, or e-mail to [RPMB@cdcr.ca.gov](mailto:RPMB@cdcr.ca.gov). Inquiries regarding the subject matter of these regulations should be directed to Hillary Iserman, Division of Rehabilitative Programs, at (916) 545-0599.

*Original Signed By:*

JEFF MACOMBER  
Undersecretary, Administration  
California Department of Corrections and Rehabilitation

Attachments

**NOTICE OF PROPOSED REGULATIONS**  
**California Code of Regulations**  
**Title 15, Crime Prevention and Corrections**  
**Department of Corrections and Rehabilitation**

**NOTICE IS HEREBY GIVEN** that the Secretary of the California Department of Corrections and Rehabilitation (CDCR or Department), proposes to adopt new Section 3040.3 into Title 15, Division 3, Chapter 1, regarding Education Assignments.

**PUBLIC COMMENT PERIOD**

The public comment period begins **May 15, 2020** and closes on **July 2, 2020**. Any person may submit written comments by mail addressed to the primary contact person listed below, or by email to [rmb@cdcr.ca.gov](mailto:rmb@cdcr.ca.gov), before the close of the comment period. For questions regarding the subject matter of the regulations, call the program contact person listed below.

No public hearing is scheduled for these proposed regulations; however, pursuant to Government Code Section 11346.8, any interested person or their duly authorized representative may request a public hearing, no later than 15 days prior to the close of the written comment period.

**CONTACT PERSONS**

Primary Contact

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Program Contact

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Division of Rehabilitative  
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**AUTHORITY AND REFERENCE**

**Government Code Section 12838.5** provides that commencing July 1, 2005, CDCR succeeds to, and is vested with, all the powers, functions, duties, responsibilities, obligations, liabilities, and jurisdiction of abolished predecessor entities, such as: Department of Corrections, Department of the Youth Authority, and Board of Corrections.

**Penal Code (PC) Section 5000** provides that commencing July 1, 2005, any reference to Department of Corrections in this or any code, refers to the CDCR, Division of Adult Operations. **PC Section 5050** provides that commencing July 1, 2005, any reference to the Director of Corrections in this or any other code, refers to the Secretary of the CDCR. As of that date, the office of the Director of Corrections is abolished.

**PC Section 5054** provides that commencing July 1, 2005, the supervision, management, and control of the State prisons, and the responsibility for the care, custody, treatment, training, discipline, and employment of persons confined therein are vested in the Secretary of the CDCR. **PC Section 5055** provides that commencing July 1, 2005, all powers and duties previously granted to and imposed upon the Department of Corrections shall be exercised by the Secretary of the CDCR. **PC Section 5058** authorizes the Director to prescribe and amend rules and regulations for the administration of prisons and for the administration of the parole of persons. **PC Section 5058.3** authorizes the Director to certify in a written statement filed with Office of Administrative Law that operational needs of the Department require adoption, amendment, or repeal of a regulation on an emergency basis.

## **INFORMATIVE DIGEST / POLICY STATEMENT OVERVIEW**

Current regulations do not provide for educational assignments of inmates even though they are provided for in the authorizing statutes of Penal Codes 2053 and 2053.1. Adoption of these regulations will implement, interpret, and make specific Penal Codes 2053 and 2053.1.

The adoption of new Section 3040.3 will also rectify issues identified in the California State Audit, released January 31, 2019, which stated in part, "Corrections has neither consistently placed inmates on waiting lists for needed rehabilitation programs nor prioritized those with the highest need correctly. This has contributed to Corrections' failure to meet any of the rehabilitative needs for 62 percent of the inmates released in fiscal year 2017-18 who had been assessed as at risk of recidivating."

### **This action will:**

- Ensure that the Department properly identifies and places inmates into education programs in accordance with their rehabilitative needs, and in accordance with Penal Code 2053.
- Establish Adult Basic Education (ABE) and Adult Secondary Education (ASE) for inmates who do not have a nationally-recognized high school diploma, high school equivalency, or certificate of completion.
- Establish the reading level guidelines for ABE and ASE.
- Provide that inmates who are precluded from placement into ABE or ASE shall have the preclusion documented pursuant to Section 3375(g). In addition, inmates at the Enhanced Outpatient Program level of care shall participate in ABE and ASE courses in accordance with Section 3043.7(d)(1).
- Provide that inmates with language barriers or developmental, cognitive, or physical impairments shall be mainstreamed in ABE and ASE courses and offered additional assistance with course assignments during course hours.
- Allow for Post-Secondary Education for those inmates with a high school diploma or high school equivalency.
- Allow inmates to participate in Career Technical Education if they have a medium to high need for employment based on the Department's automated needs assessment tool.
- Allow for inmates to participate in Computer Related Technologies to educate inmates on computer literacy.
- Provide Transition classes to inmates within two years of release or prior to a parole consideration, which will provide inmates with essential skills necessary to be successful in the community upon release.

## **DOCUMENTS INCORPORATED BY REFERENCE**

N/A

## **SPECIFIC BENEFITS ANTICIPATED BY THE PROPOSED REGULATIONS**

These regulations will ensure that all the educational rehabilitative needs of inmates are met prior to their release, and will better prepare inmates for success in college and/or employment once released from prison. By improving the education and skills of inmates, they will be better equipped to financially support themselves and their families, which will lead to reduced recidivism and safer communities.

## **EVALUATION OF CONSISTENCY / COMPATIBILITY WITH EXISTING LAWS AND REGULATIONS**

Pursuant to Government Code 11346.5(a)(3)(D), the Department has determined the proposed regulations are not inconsistent or incompatible with existing regulations. This was determined by performing a search of existing regulations.

## **LOCAL MANDATES**

This action imposes no mandates on local agencies or school districts, or a mandate which requires reimbursement of costs or savings pursuant to Government Code Sections 17500 - 17630.

## **FISCAL IMPACT STATEMENT**

- Cost or savings to any State agency: *None*
- Cost to any local agency or school district that is required to be reimbursed: *None*
- Other nondiscretionary cost or savings imposed on local agencies: *None*
- Cost or savings in federal funding to the State: *None*

## **EFFECT ON HOUSING COSTS**

The Department has made an initial determination that the proposed action will have no significant effect on housing costs.

## **COST IMPACTS ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES**

The Department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

## **SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT ON BUSINESS**

The Department has made an initial determination that the proposed regulations will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states, because the proposed regulations place no obligations or requirements on any business.

## **EFFECT ON SMALL BUSINESSES**

The Department has determined that the proposed regulations will not affect small businesses. This action has no significant adverse economic impact on small business because they place no obligations or requirements on any business.

## **RESULTS OF THE ECONOMIC IMPACT ASSESSMENT**

The Department has determined that the proposed regulation will have no effect on the creation of new, or the elimination of existing, jobs or businesses within California, or effect the expansion of businesses currently doing business in California. The Department has determined that the proposed regulation will have no effect on worker safety or the State's environment. These regulations may benefit the welfare of California residents by helping to make inmates released from prison more successful in employment, which will in turn reduce recidivism and create safer communities.

## **CONSIDERATION OF ALTERNATIVES**

The Department must determine that no reasonable alternative considered by the Department or that has otherwise been identified and brought to the attention of the Department would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed regulatory action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provisions of law. Interested persons are invited to present statements or arguments with respect to any alternatives to the changes proposed at the scheduled hearing or during the written comment period.

## **AVAILABILITY OF PROPOSED TEXT AND INITIAL STATEMENT OF REASONS**

The Department has prepared and will make available the text and the Initial Statement of Reasons (ISOR) of the proposed regulations. The rulemaking file for this regulatory action, which contains those items and all information on which the proposal is based (i.e., rulemaking file) is available to the public upon request directed to the Department's contact person. The proposed text, ISOR, and Notice of Proposed Action will also be made available on the Department's website: [www.cdcr.ca.gov](http://www.cdcr.ca.gov).

## **AVAILABILITY OF THE FINAL STATEMENT OF REASONS**

Following its preparation, a copy of the Final Statement of Reasons may be obtained from the Department's contact person.

## **AVAILABILITY OF CHANGES TO PROPOSED TEXT**

After considering all timely and relevant comments received, the Department may adopt the proposed regulations substantially as described in this Notice. If the Department makes modifications which are sufficiently related to the originally proposed text, it will make the modified text, with the changes clearly indicated, available to the public for at least 15 days before the Department adopts, amends or repeals the regulations as revised. Requests for copies of any modified regulation text should be directed to the contact person indicated in this Notice. The Department will accept written comments on the modified regulations for at least 15 days after the date on which they are made available.

## 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:

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

## INITIAL STATEMENT OF REASONS

The California Department of Corrections and Rehabilitation (CDCR) (also referred to as the Department) proposes to adopt new Section 3040.3 into the California Code of Regulations (CCR), Title 15, Division 3, concerning Education Assignments.

The proposed regulations implement, interpret, and make specific, the following authorizing statutes:

### Penal Code 2053:

(a) The Legislature finds and declares that there is a correlation between prisoners who are functionally literate and those who successfully reintegrate into society upon release. It is therefore the intent of the Legislature, in enacting “The Prisoner Literacy Act,” to raise the percentage of prisoners who are functionally literate, in order to provide for a corresponding reduction in the recidivism rate.

(b) The Department of Corrections shall determine the reading level of each prisoner upon commitment.

### Penal Code 2053.1:

(a) The Secretary of the Department of Corrections and Rehabilitation shall implement, in every state prison, literacy programs that are designed to ensure that upon parole inmates are able to achieve the goals contained in this section. The Department shall prepare an implementation plan for this program, and shall request the necessary funds to implement this program as follows:

(1) The Department shall offer academic programming throughout an inmate’s incarceration that shall focus on increasing the reading ability of an inmate to at least a 9th grade level.

(2) For an inmate reading at a 9th grade level or higher, the Department shall focus on helping the inmate obtain a general education development certificate, or its equivalent, or a high school diploma.

(3) The Department shall offer college programs through voluntary education programs or their equivalent.

(4) While the Department shall offer education to target populations, priority shall be given to those with a criminogenic need for education, those who have a need based on their educational achievement level, or other factors as determined by the Department.

(b) In complying with the requirements of this section, the Department shall give strong consideration to the use of libraries and librarians, computer-assisted training, and other innovations that have proven to be effective in reducing illiteracy among disadvantaged adults.

With the election of Governor Newsom in 2019, there is a new focus on improving inmate-student literacy. For the purposes of this Initial Statement of Reasons, literacy is defined as an individual who does not have a verified High School Diploma (HSD), High

School Equivalency (HSE), or College Degree from a United States recognized and accredited school, college or university.

According to the Department's Strategic Offender Management System (SOMS), which is an electronic automated offender management system and database, CDCR currently has approximately 48,500 inmates without a high school diploma or equivalent who are not enrolled in education courses. The Department wants all inmates to be better prepared for success in college and/or employment upon release. One of the best ways to reduce recidivism is for inmates to earn a high school diploma, equivalency or alternative diploma, or a nationally-recognized vocational certification. CDCR acknowledges that nearly all employers require job candidates to possess a high school diploma or equivalency as recognized by the United States, and that the formerly incarcerated will need to possess an academic credential in order to be eligible for jobs, to be admitted to institutions of higher education, or for participation in apprenticeship programs.

In these proposed regulations, CDCR outlines the criteria and prerequisites for the institutional Classification Committees to identify inmates for education courses. This will ensure that inmates are placed into Adult Basic Education (ABE) and/or Adult Secondary Education (ASE) if they do not possess a nationally-recognized high school diploma or equivalency, into Career Technical Education (CTE) if they have an identified need for employment based on the Department's automated needs assessment tool, and in Transition courses if they are within two years of release. Additionally, the proposed new language authorizes the institution's school principal to reassign inmates within education programs to meet their individual and specific learning needs, goals, and objectives. This will ensure inmates are taught at a level commensurate with their skills and abilities, and provide the most successful results for both the inmate and the Department.

In January 2020, the Department implemented Integrated Substance Use Disorder Treatment, which places inmates into evidence-based substance use disorder and cognitive behavioral intervention courses based on a medical diagnosis. In order to ensure that all rehabilitative needs of inmates are met prior to their release, including substance use disorders, education, employment, etc., the Department must establish regulations regarding assignments to education programs, based on an inmate's risk and needs.

The Department utilizes a risk and automated needs assessment tool to identify inmates' risk to reoffend and treatment needs, and also utilizes a set of risk factors to predict recidivism. The assessment tool is used to assess the likelihood of an offender becoming a recidivist, and their rehabilitative needs.

In order to meet the language and intent of the California Penal Code and fulfill the new Governor's focus on improving the literacy levels of the incarcerated, the Department provides Adult Basic Education (reading levels 0-6.9), Adult Secondary Education (reading levels 7-12.9), and Career Technical Education courses. Additionally, the

Department offers college courses to those that wish to further their education, and reentry courses to prepare inmates for release into the community.

The proposed regulations clarify and make specific Penal Codes 2053 and 2053.1 by specifying that inmates shall be provided education assignments specific to their individual needs, and outlining the criteria for the various assignments that are available.

The proposed regulations will benefit inmates by providing them valuable education and life skills to assist them in becoming productive members of society once released, giving them the ability to financially support themselves and their families, and reduce recidivism, which will in turn benefit the public.

### **CONSIDERATION OF ALTERNATIVES:**

The Department must determine that no reasonable alternative considered, or that has otherwise been identified and brought to the attention of the Department, would be more effective in carrying out the purpose for which this action is proposed, would be as effective and less burdensome to affected private persons than the action proposed, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

Currently, no reasonable alternatives have been brought to the attention of the Department that would alter the Department's initial determination.

### **ECONOMIC IMPACT ASSESSMENT**

In accordance with Government Code Section 11346.3(b), the Department has made the following assessments regarding the proposed regulations:

#### **Creation of New or Elimination of Existing Jobs within the State of California:**

The Department has determined that the proposed regulations will not have an impact on the creation of new or elimination of existing jobs within California as the proposed regulations only effect the provision of education to inmates in CDCR prisons.

#### **Creation of New, Expansion or the Elimination of Existing Businesses Currently Doing Business within the State of California:**

The Department has determined that the proposed regulations will not have an impact on the creation of new, expansion, or the elimination of existing businesses currently doing business within California, as the proposed regulations only effect the provision of education to inmates in CDCR prisons.

## **Benefits to the Health and Welfare of California Residents, Worker Safety, and the State's Environment:**

The Department has determined that the proposed regulations will not have an impact on worker safety or the State's environment. The proposed regulations will provide benefits to the health and welfare of California residents by providing education to inmates, which will improve inmates' chances for success once released from prison, reducing recidivism, and creating safer communities.

## **Significant Adverse Economic Impact on Business:**

The Department has made an initial determination that the regulatory action will not have a significant adverse economic impact on business. Additionally, there have been no facts, evidence, documents, testimony, or other evidence provided that would alter the Department's initial determination.

The proposed regulations do not have a direct impact on California businesses as the proposed regulations only effect the provision of education to inmates in CDCR prisons.

## **BENEFITS OF THE REGULATIONS:**

The proposed regulations provide education, career training, and life skills to inmates, improving their chances for success once released from prison. In addition, by providing education and skills to inmates, they will be equipped to financially support themselves and their families, which will lead to reduced recidivism, and safer communities.

## **MATERIALS RELIED UPON:**

In proposing additions and/or amendments to these regulations, the Department has relied upon language as a result of the California State Audit, January 2019, Report 2018-113, which was requested by the Joint Legislative Audit Committee.

This document is available for review at the following link:  
<http://www.auditor.ca.gov/pdfs/reports/2018-113.pdf>.

Additionally, the Department has relied upon recommendations per the CDCR Expert Panel on Adult Offender Reentry and Recidivism Reduction Programming Report (Expert Panel Report) to the California State Legislature: A Roadmap for Effective Offender Programming in California, dated June 29, 2007.

This document is available for review at the following link:  
[http://ucicorrections.seweb.uci.edu/files/2007/06/Expert\\_Panel\\_Report.pdf](http://ucicorrections.seweb.uci.edu/files/2007/06/Expert_Panel_Report.pdf).

**SPECIFIC PURPOSE AND RATIONALE FOR EACH SECTION, PER GOVERNMENT  
CODE SECTION 11346.2(b)(1)**

**Chapter 1. Rules and Regulations of Adult Operations and Programs**

**Article 3. Work and Education**

**New Section 3040.3. Education Assignments**

**New Subsection 3040.3(a) is adopted** to provide that 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. Additionally, language is adopted to provide that every effort shall be made to assign inmates concurrently to education programs, rehabilitative programs, and work assignments, and every effort shall be made to reasonably accommodate all 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 specified criteria as enumerated in subdivisions (a)(1) through (a)(5). This language is necessary to set forth the requirements for the prisons to provide educational programs and services to inmates to assist in their educational rehabilitative needs. The language provides authority and clarity to institution staff and inmates. By increasing literacy and employability for inmates, their chances for success once released from prison will be improved, and the potential for recidivism will be decreased.

**New Subsection 3040.3(a)(1) is adopted** to establish that if inmates do not possess a nationally-recognized High School Diploma (HSD), High School Equivalency (HSE), or for inmates with developmental disabilities, a Certificate of Completion, they will be placed on a waiting list for Adult Basic Education (ABE) or Adult Secondary Education (ASE) during the classification process. The classification process is initiated when the inmate is received at an institution reception center. Language in this section is necessary to ensure that inmates who do not have a HSD or HSE are provided the opportunity to receive the necessary education in order to obtain a HSD or HSE, which is crucial to an inmate's success and ability to get a job or further their education.

**New Subsection 3040.3(a)(1)(A) is adopted** to establish that 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. The Family Educational Rights and Privacy Act of 1974 (FERPA or the Buckley Amendment) is a United States federal law that governs the access to educational information and records by public entities such as potential employers, publicly funded educational institutions, and foreign governments. FERPA requires that the students request transcripts or provide authorization for their transcripts to be sent to the CDCR school. In order to determine if the inmate needs to be assigned to ABE or ASE courses to complete a GED or High

School Diploma, the inmate needs to request in writing that transcripts be sent to the CDCR school or authorize in writing the CDCR school to request the transcript. Additional language in this section establishes that 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. This language is necessary to provide a clear understanding of the acceptable documentation, and the process for providing proof, regarding education that the inmate may have already completed.

**New Subsection 3040.3(a)(1)(B) is adopted** to establish that inmates shall be assigned to the course in the order in which they appear on the waiting list, subject to space availability, and that 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). Currently, there are two National Reporting System (NRS)-approved assessments to determine reading levels, the TABE and the CASAS. Developed by the U.S. Department of Education's Division of Adult Education and Literacy (DAEL), the NRS is a reporting system managed by state adult education directors in collaboration with DAEL. NRS approval includes psychometric analysis to correlate student performance to adopted educational functional levels. Therefore, the TABE and CASAS exams are calibrated to equally assess reading levels. The CDCR uses either assessment, the TABE or the CASAS, for determining placement of inmates into classes based on the reading grade level. This section further establishes a corresponding chart for staff use to appropriately place inmates based on the inmate's most recently assessed reading level. This will ensure proper placement of inmates into the appropriate course.

**New Subsection 3040.3(a)(1)(C) is adopted** to provide that 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). This language ensures consistency with the classification process. In addition, language specifies that 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). This language ensures that those with special needs are appropriately placed in ABE and ASE courses consistent with their needs, as specified in Section 3043.7(d)(1).

**New Subsection 3040.3(a)(1)(D) is adopted to** provide that 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. This ensures that these inmates are given the assistance they need, and that they are given the opportunity to learn in the same classroom environment as their peers. The federal Individuals with Disabilities Education Act (IDEA) requires mainstreaming of students with special learning needs. Mainstreaming means servicing students with special needs into traditional classrooms with their peers who have no disabilities. This is done during specific times of the day and is based on skill level. Special needs students may be studying in a resource room or a self-contained

classroom. In this environment the student has access to more one-on-one time with specialized teachers who provide additional support and tutor students based on specific learning needs. CDCR is committed to educating students with special needs with their peers to the extent possible, pending staff, inmate, and institutional safety and security, and is based upon teacher and education specialist observations and professional judgement as an educator.

**New Subsection 3040.3(a)(2) is adopted** to specify that inmates with a HSD or HSE may apply to colleges or universities as recognized by a United States Department of Education accrediting agency. Inmates may choose to attend via correspondence courses, or onsite teacher facilitated courses, with approval of the institution's school principal. Inmates are responsible for 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. This language is specified in Senate Bill 1391, which governs college participation between colleges and CDCR and is consistent with the Memorandum of Understanding between the colleges and CDCR. Furthermore, it ensures the inmate is not taking classes that don't count toward graduation, so that monetary and staff resources aren't wasted, and also ensures that the student takes college courses that will count towards credit earnings. Language in this subsection clarifies the criteria and specifications for inmates interested in taking college courses. This language is necessary to allow inmates to apply for colleges, should they meet the requirements.

**New Subsection 3040.3(a)(3) is adopted** to provide for Career Technical Education (CTE) as an option for inmates who need to obtain job skills and employment training for a specific trade, and have sufficient time left to serve. Priority inmates for CTE courses are those with a medium to high need for employment based on the Department's automated needs assessment tool, and those with six months to four years prior to release or six months to four years prior to a parole consideration. This timeline ensures that there is enough time to complete the course, and that the information learned will be useful and relevant upon release. The Department's needs assessment tool assesses the rehabilitative needs of an individual, and the likelihood of them becoming a recidivist. Inmates with an identified need for employment will be placed into CTE programs that meet their rehabilitative need, prior to release, so that upon release they will have nationally certified entry level work skills, and will be trained for jobs that are high in demand, so that they can earn a livable wage. Inmates that meet the criteria for enrollment in CTE have a better chance for successful employment once released from prison.

**New Subsection 3040.3(a)(3)(A) is adopted** to provide that 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. This ensures that these inmates are given the assistance they need, and that they are given the opportunity to learn in the same classroom environment as their peers. In addition, see reasons explained above for Subsection 3040.3(a)(1)(D).

**New Subsection 3040.3(a)(4) is adopted** to establish Computer Related Technologies (CRT) to educate inmates on computer literacy, as the Department believes that inmates should be computer literate in order to be successful in the 21<sup>st</sup> century workforce. CRT is a component of CTE. Inmates will be placed on the waiting list for CRT by the Classification Committee. 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. Inmates who have previously completed CRT courses are exempt from assignment to CRT courses. This ensures that resources are allocated to as many inmates as possible. This language is necessary to establish CRT programs as an educational tool and benefit for inmates.

**New Subsection 3040.3(a)(5) is adopted** to establish Transition courses as an educational program requirement for all inmates, to prepare them for release into the community. Transition courses focus on issues such as workplace readiness, and financial literacy, and provide inmates with essential soft skills needed to be successful in the community upon release. The criteria for enrollment in Transition courses is fewer than two years prior to release, or fewer than two years prior to a parole consideration. This timeline ensures that there is enough time to complete the course, and that the information learned will be useful and relevant upon release. Inmates who have previously completed a Transitions course are exempt from assignment to a Transitions course. This ensures that resources are allocated to as many inmates as possible.

**New Subsection 3040.3(b) is adopted** to specify the provisions for education programs. Education programs are open-entry and open-exit. Open-entry and open-exit refers to courses in which students enroll at various times and can learn at varying paces based on their skill level. This language is necessary to specify the provisions regarding education programs.

**New Subsection 3040.3(b)(1) is adopted** to specify that students may be reassigned to alternative education courses 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, with the approval of the institution's school principal. The CDC Form 128-B has previously been incorporated by reference into the California Code of Regulations, Title 15, Division 3, and no changes were made to this form in this rulemaking. This language is necessary to ensure a clear understanding of the reasons for a reassignment. Reassignments ensure that inmates are appropriately placed for the most effective placement of the individual, and the most effective use of State resources.

**New Subsection 3040.3(b)(2) is adopted** to specify the reasons for unassignment of an education course, which include but are not limited to: receipt of official school transcripts indicating an inmate has earned a HSD, HSE, Certificate of Completion, or college degree, inmate release from prison, inmate transfer to a different institution, inmate disciplinary action, or the inmate poses a threat to institutional safety and security. This

language is necessary to ensure a clear understanding of the potential reasons for unassignment of an education course.

**New Subsection 3040.3(b)(2)(A) is adopted** to provide that once inmates have completed educational courses they shall be unassigned from the course. This language is necessary to ensure that inmates are properly unassigned from educational courses once they have been completed.