

Date of Hearing: April 3, 2024

ASSEMBLY COMMITTEE ON EDUCATION  
Al Muratsuchi, Chair  
AB 2268 (Muratsuchi) – As Introduced February 8, 2024

**SUBJECT:** English learners: English language proficiency assessment

**SUMMARY:** Exempts students in transitional kindergarten (TK) from the being assessed for English language development (ELD) using the English Language Proficiency Assessments for California (ELPAC). Specifically, **this bill:**

- 1) States that, for purposes of the requirement to assess students in kindergarten and first grade in English proficiency, kindergarten does not include TK.

**EXISTING LAW:**

State law:

- 1) Requires each school district, and to the extent required by federal law each county office of education (COE) and each charter school, to assess the ELD of each student in order to determine the level of proficiency. (Education Code (EC) 313)
- 2) Requires the assessment to be conducted upon initial enrollment, and annually, thereafter, during a period of time determined by the Superintendent of Public Instruction (SPI) and the State Board of Education (SBE), and until the student is redesignated as English proficient. (EC 313)
- 3) Requires the assessment to primarily utilize the ELD test identified or developed by the (SPI). (EC 313)
- 4) Requires, subject to the approval of the U.S. Department of Education (USDOE) that the assessment for initial identification be conducted upon the initial enrollment of a student in order to provide information to be used to determine if the student is an English learner (EL). (EC 313)
- 5) Requires that these assessments be conducted in a manner consistent with federal statutes and regulations. (EC 313)
- 6) Requires the SPI to review existing assessments that assess the ELD of students whose primary language is a language other than English, and requires that the assessment for initial identification and the summative assessment shall include, but not be limited to, an assessment of achievement of these students in English reading, speaking, and written skills. Requires the SPI to explore the option of a collaborative effort with other states to develop an assessment or series of assessments and share assessment development costs. (EC 60810)
- 7) Requires that students in kindergarten and grade 1 be assessed in English listening and speaking, and, once an assessment is developed, early literacy skills. (EC 60810)

- 8) Requires that, in the development and administration of the assessment for students in kindergarten and grade 1, the California Department of Education (CDE) minimize any additional assessment time, to the extent possible. To the extent that it is technically possible, items that are used to assess listening and speaking shall be used to measure early literacy skills. (EC 60810)
- 9) Requires the CDE to ensure that the assessment and procedures for its administration are age and developmentally appropriate. States that age and developmentally appropriate procedures for administration may include, but are not limited to, one-on-one administration, a small group setting, and orally responding or circling a response to a question. (EC 60810)
- 10) Requires that the initial and summative assessments, among other requirements:
  - a) Have psychometric properties of reliability and validity deemed adequate by technical experts;
  - b) Be aligned with the standards for ELD adopted by the SBE; and
  - c) Be age and developmentally appropriate for students. (EC 60810)
- 11) Defines long term English learner (LTEL) to mean a student who:
  - a) Is enrolled in any of grades 6 to 12, inclusive;
  - b) Has been enrolled in schools in the United States for six years or more;
  - c) Has remained at the same English language proficiency level for two or more consecutive prior years, or has regressed to a lower English language proficiency level, as determined by the English language development test identified or developed pursuant to Section 60810, or a score determined by the Superintendent on any successor test; and
  - d) For a student in any of grades 6 to 9, inclusive, has scored far below basic or below basic on the prior year's English language arts standards-based achievement test. (EC 313.1)
- 12) Requires the SPI to develop procedures for California State Preschool Program (CSPP) contractors to identify and report data on dual language learners (DLLs) enrolled in a CSPP, and requires those procedures to include, at a minimum:
  - a) The distribution and collection of a completed family language instrument developed by the SPI from a parent or guardian of each child enrolled in a preschool program no later than upon enrollment. Requires, at a minimum, that the family language instrument be able to identify which languages the child is exposed to in the child's home and community environment, which languages the child understands, and which languages the child is able to speak.
  - b) Criteria for state preschool contractors to use to accurately identify DLLs enrolled in their preschool programs based on the information collected from the family language instrument and criteria for the family language and interest interview. (EC 8241.5)

Federal law

- 13) Defines “English learner” to mean an individual who:
- a) Is aged 3 through 21;
  - b) Is enrolled or preparing to enroll in an elementary school or secondary school;
  - c) Was not born in the United States or whose native language is a language other than English;
    - i) Is a Native American or Alaska Native, or a native resident of the outlying areas; and
    - ii) Comes from an environment where a language other than English has had a significant impact on the individual’s level of ELP; or
    - iii) Is migratory, whose native language is a language other than English, and who comes from an environment where a language other than English is dominant; and
  - d) Whose difficulties in speaking, reading, writing, or understanding the English language may be sufficient to deny the individual:
    - i) The ability to meet the challenging state academic standards;
    - ii) The ability to successfully achieve in classrooms where the language of instruction is English; or
    - iii) The opportunity to participate fully in society. (Title 20, USC 7801)
- 14) Requires that each state plan demonstrate that local educational agencies (LEAs) in the state will provide for an annual assessment of English proficiency of all ELs; and requires that the assessments be aligned with the state’s ELP standards. (Title 20, USC 6311(b)(2)(G))
- 15) Requires that each state plan contain assurances that the state has appropriate procedures and safeguards in place to ensure the validity of the assessment process. (Title 20, USC 6311 b2g2I)
- 16) Requires each LEA to use such assessment to assess annually the ELP, including reading, writing, speaking, and listening skills, of all ELs in kindergarten through grade 12 in schools served by the LEA. Requires that the assessment:
- a) Be aligned with the state's ELP standards;
  - b) Be developed and used consistent with the requirements that the assessment be valid and accessible for use by all students, including those with disabilities and ELs; and
  - c) Provide coherent and timely information about each student's attainment of the state's ELP standards to parents. (Title 34, USC 200.6)

- 17) Requires state plans to demonstrate that the state has adopted ELP standards that:
- a) Are derived from the 4 recognized domains of speaking, listening, reading, and writing;
  - b) Address the different proficiency levels of ELs; and
  - c) Are aligned with the challenging state academic standards. (Title 20 USC 6311 b(1)(F))
- 18) Requires that state plans describe how the state will establish and implement, with timely and meaningful consultation with LEAs representing the geographic diversity of the state, standardized, statewide entrance and exit procedures, including an assurance that all students who may be ELs are assessed for such status within 30 days of enrollment in a school in the state. (Title 20 USC 6823)
- 19) Defines TK to mean the first year of a two-year kindergarten program that uses a modified kindergarten curriculum that is age and developmentally appropriate. (EC 48000)
- 20) Requires that, starting with the 2025-26 school year, a child who will have their fourth birthday by September 1 be admitted to a TK program. (EC 48000)

**FISCAL EFFECT:** This bill has been keyed non-fiscal by the Office of Legislative Counsel.

**COMMENTS:**

***Need for the bill.*** The author states, “High quality early education is a critical investment in the future of our students and our state. California’s decision to fund universal pre-kindergarten was a monumental achievement which will improve the lives of our children for generations to come.

One unintended consequence of this laudable policy is that our youngest students are being assessed and classified as English learners using an assessment which was not designed for them. This assessment, the ELPAC, is an important instrument, but it is not developmentally appropriate, and has not been proven valid and reliable for use with all four-year-olds, as required by state and federal law.

For some time, educators around the state have expressed frustration with this requirement, reporting that the assessment does not yield useful information about children’s language proficiency, and that it causes some children considerable distress. Research suggests that this practice is leading to an over-identification of our 4-year-olds as English learners. This trend may accelerate as younger 4-year-olds enroll in TK.

AB 2268 is intended to help the state course-correct and ensure that our children are not inappropriately assessed, so they can receive instruction and support based upon their true learning needs.”

***Educators raise concerns about the developmental appropriateness of the ELPAC for TK students.*** State and federal law requires that the state’s ELD assessment be age- and developmentally-appropriate for students.

For some time, teachers have raised concerns about the developmental appropriateness of using the ELPAC to assess 4-year-olds. They note that the information the ELPAC produces for this

group of students is often not meaningful, and that it can lead to the misidentification of students as ELs who are developing language normally for their age. They also report that administering this assessment causes some young students considerable distress.

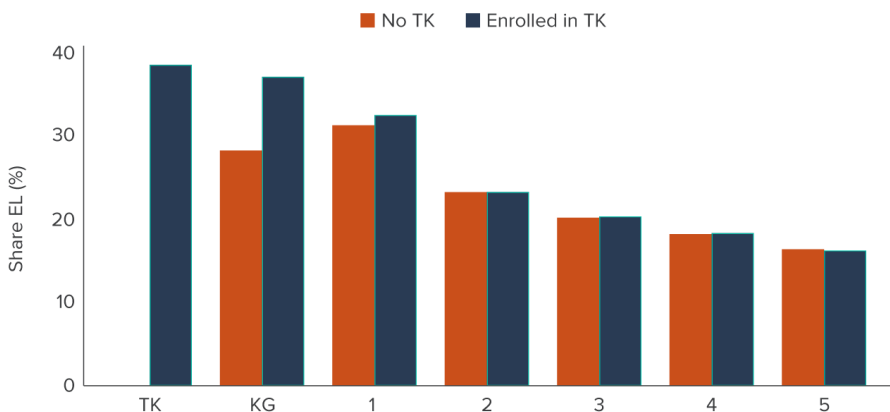
One teacher who administers the assessment, quoted in an article published by the New America Foundation, reported: “It's blank when I hand it out. And, in most cases, I'd say 99 percent [of the time], it's blank when they are done. Very few students [in TK] are able to participate.”

**Public Policy Institute of California (PPIC) analysis finds that even the oldest TK students are being over-identified as English learners.** The PPIC, in their report, *Assessing Transitional Kindergarten's Impact on Elementary School Trajectories (2023)*, analyzed the EL identification patterns among 90,000 TK students enrolled in five large districts from 2014-15 through 2020-21, and found “stark differences in the timing of EL identification and reclassification due to TK.”

The PPIC concludes, “Some students are identified in TK who would never have been identified had they started elementary school in kindergarten.”

During the years covered in the PPIC analysis, students with birthdays on or before December 2<sup>nd</sup> were eligible for TK, so this group of students included only the oldest 4-year olds. **The Committee may wish to consider** that, because the findings below do not include younger four-year-olds, who are increasingly being assessed as schools implement universal TK by the 2025-26 school year, the effect on EL identification could be even more significant. The PPIC found:

- Nearly 40% of students who enrolled in TK were classified as ELs in TK and kindergarten, compared to under 30% of kindergarteners who did not enroll in TK;
- Students who enroll in TK are 10% more likely to ever be identified as ELs;
- When the effect of TK on EL status is broken down by grade, TK assessment leads to an increased likelihood of being classified as an EL in kindergarten.
- Overall, TK students are classified as ELs for about 40% of an academic year longer than their non-TK counterparts; and
- Students who enroll in TK are both identified earlier and are more likely to ever be EL, with a higher likelihood of being EL in kindergarten for students who enrolled in TK versus those who did not.



Source: PPIC

The PPIC also found that TK students identified as ELs also reclassify earlier. **The Committee may wish to consider** that this may be another sign that some of these TK students were not in

fact ELs, but were simply incapable of showing their true language proficiency when being assessed using the ELPAC.

***Federal and state law requires that LEAs administer an ELP assessment that is valid and reliable for the students being assessed.*** Federal regulations, noted above, require that students be assessed for ELP using an assessment which is valid and reliable. Guidance from the U.S. Department of Education and the U.S. Department of Justice affirms, “Districts must annually administer a valid and reliable English language proficiency (ELP) assessment.”

According to the CDE, the ELPAC was field tested to in March and April, 2017 with almost 47,000 students in over 400 LEAs. Field testing included TK students for both the initial and summative field tests, but at that time only the oldest 4-year-olds were eligible to attend TK. As a result, the assessment was not validated for use with younger 4-year-olds. These younger children are increasingly becoming eligible to attend TK, with universal access planned for the 2025-26 school year.

***Consequences of misidentification as an EL.*** Research establishes that being appropriately identified as an EL helps students succeed academically. It also establishes that for students with higher ELP, being identified as an EL can damage students’ educational prospects in multiple ways, including:

- **Lower achievement.** Research has found that among language-minority students who enter kindergarten with relatively advanced English proficiency, EL classification or placement in ESL courses results in a substantial negative net impact on math and English language arts test scores in grades 2 through 10 (Umansky, 2016), lower achievement in secondary math (Callahan, 2009), and lower probabilities of on-time graduation and college attendance. (Johnson, 2019)
- **Lower expectations among both teachers and students.** Research has found that, except in bilingual classrooms, EL classification results in lower teacher perceptions (Umansky, 2021). Multiple studies indicate that EL students can interpret their enrollment in courses outside of the mainstream to mean that they are not capable of learning, that they lack intelligence, and that they are inferior to other students. (Thompson, 2017; Dabach, 2014; Estrada, 2017; Dabach 2010)
- **Restricted opportunity.** Current law requires that ELs receive instruction in ELD to support their progress in achieving proficiency in English. A student who is misidentified as an EL is required to receive this instruction, which may restrict their opportunity to receive other needed, or desired, instruction. Research confirms that EL status can lead to exclusionary tracking and can “crowd out” other opportunities for ELs in secondary grades. (Umansky, 2016)

Additionally, if students are not reclassified (and reclassification is not solely based on ELP but includes a measure of English Language Arts proficiency and teacher observation), they may be more likely to be labeled an LTEL.

***Preschool vs. kindergarten literacy expectations.*** California’s Preschool Learning Foundations describes word recognition for preschool children as “mainly prealphabetic,” noting that “rarely can they examine the alphabetic or phonetic structures of the word to arrive at its meaning.” The

Desired Results Developmental Profile (DRDP) assessment, which is used to measure language and other aspects of development among preschool-aged children, describes Letter and Word Knowledge development objective for this age group as “increasing awareness of letters in the environment and their relationship to sound, including understanding that letters make up words.”

In contrast, some of the questions used in the kindergarten ELPAC reflect a more advanced expectation for literacy. Sample questions include:

- Reading: “What is the first letter of this word?”; “We are going to read together. Point to where we should start reading. Follow along with your finger as I read.”
- Writing: “Now write the first letter of the word ‘Paint;” “Now write the word ‘dip.’”

***Two systems, two different assessment requirements, two different labels, for the same children.*** Federal law requires that states adopt standardized, statewide entrance and exit procedures for identifying students as ELs. But in California’s mixed delivery system for early education, the procedures for identifying students as EL vary depending upon the program in which 4-year-olds are enrolled.

As noted above, 4-year-olds who are attending a CSPP program and who are exposed to or speak a language other than English at home are identified as DLLs, using two state-developed instruments. First, parents are asked to complete a Family Language Instrument that identifies if a preschooler is exposed to or speaks a language other than English at home and which language that is. Second, if the language instrument yields information that a preschooler has a home language other than English, preschool teachers or other designated staff meet with parents and, using the Family Language and Interest Interview template, discuss the language and other desired supports for the preschooler to be able to develop both their home language and English.

Children in the CSPP may be identified as DLLs in CSPP. They are re-assessed in kindergarten using the ELPAC to see if they meet the criteria for classification as ELs. In contrast, students who attend TK as four-year-olds are assessed with the ELPAC and may be classified as ELs a year before children in the CSPP are assessed.

***California law defines TK as part of kindergarten.*** This bill defines kindergarten, for purposes of the requirement to assess kindergarteners for ELD, to not include TK.

Federal law requires that states assess students for ELP starting in kindergarten. According to the National Institute for Early Education Research (NIEER), federal regulations are intended to address state practices for schools beginning in kindergarten, which typically means children who are five years old.

In other states, this requirement results in students being assessed in kindergarten, at five years old. But because California law defines TK (for other reasons) to mean the first year of a two-year kindergarten program, the current interpretation of this requirement is to assess students for ELP starting in TK.

***Would non-EL 4-year-olds be able to show proficiency on the ELPAC?*** According to the NIEER, “tests assessing reading at this age, are potentially not discriminating even for monolingual children of the same age. This means that for some populations, assessing reading

skills would result in low scores for all children. The consequences of this are that failure to meet thresholds for bilingual children will result in an early label of EL, but for monolingual children there would be no such label or longstanding consequence.” They note that this could also lead to increases in students identified as LTELs.

***How would TK students’ language needs be met without EL classification?*** ELD support is provided to TK students in several ways. Parents share information about their home languages through the required administration of the home language survey that identifies when they are exposed to or speak a home language other than English. Teachers are required to support the academic development of their students in alignment with state standards and curricula, which includes supporting their English language development needs. The state is currently revising the Preschool/Transitional Kindergarten Learning Foundations, which will have a strong focus on supporting English and home language development of children in TK settings. Finally, TK teachers and other classroom staff build relationships with their students and families that are often more instructive about their students’ needs than a standardized assessment.

***Other states use modified ELP assessments for kindergarten students.*** According to the NIEER, while federal law requires that all four domains (speaking, listening, reading, and writing) be tested, there are states that have adopted alternative measures and approaches particularly within the first few months of the kindergarten year that allow for just listening and speaking to be used as proxies for English proficiency. These include:

- Virginia and Illinois screen children just in listening and speaking through the first semester of kindergarten; and
- Connecticut uses an assessment for kindergarten students which consists of an oral language component and a pre-literacy component.

***The ELPAC for students in kindergarten.*** The ELPAC is the required state test for ELP that must be given to students whose primary language is a language other than English. State and federal law require that LEAs administer a state test of ELP to eligible students in kindergarten (including TK), through grade twelve.

The ELPAC is aligned with the 2012 California ELD Standards. It consists of two separate ELP assessments: one for the initial identification of students as ELs, and a second for the annual summative assessment to measure a student’s progress in learning English and to identify the student’s level of ELP. Some students with disabilities take the Alternate ELPAC.

ELPAC regulations require LEAs to administer the initial ELPAC to all eligible students in kindergarten through grade twelve whose primary language is a language other than English, to determine whether they are ELs, within 30 calendar days after they are first enrolled in a California public school or 60 calendar days prior to instruction, but not before July 1. The initial ELPAC assesses public school students in K–12 in the following four domains in English: listening, speaking, reading, and writing.

The kindergarten initial assessment is estimated to take 25-40 minutes. Scores are weighted when determining the overall performance level on the Initial ELPAC. In kindergarten, this is 90% Oral Language (listening and speaking) and 10% Written Language (reading and writing). By the second grade that oral and written language domains each have 50% weight.



**Related legislation.** AB 1393 (Luz Rivas), Chapter 498, statutes of 2021 requires the SPI to develop procedures for providers to identify and report data on DLLs enrolled in the CSPP.

AB 393 (Luz Rivas), Chapter 435, Statutes of 2023, requires the Director of the California Department of Social Services (CDSS) to develop procedures for general or migrant childcare and development contractors to identify and report data on DLLs in General Childcare and Development Programs (CCTRs) or Migrant Childcare and Development Programs (CMIGs) and further requires the SPI and the Director of the CDSS to coordinate their efforts in developing procedures and reporting data regarding DLLs.

## **REGISTERED SUPPORT / OPPOSITION:**

### **Support**

Alliance for a Better Community  
Association of California School Administrators  
Association of Two-way Dual Language Education  
California Association for Bilingual Education  
California Federation of Teachers, AFL-CIO  
California Teachers of English to Speakers of Other Languages  
Californians Together  
The Center for Equity for English Learners, Loyola Marymount University  
Early Edge California  
Los Angeles County Office of Education  
Office of the Riverside County Superintendent of Schools  
Sobrato Early Academic Language  
The Children's Partnership  
UnidosUS  
46 individuals

### **Opposition**

None on file

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