

Date of Hearing: April 11, 2018

ASSEMBLY COMMITTEE ON EDUCATION
Patrick O'Donnell, Chair
AB 2735 (O'Donnell) – As Introduced February 15, 2018

SUBJECT: English learners: participation in standard instructional program

SUMMARY: Prohibits an English learner student from being denied enrollment in core curriculum courses and courses required for high school graduation, except for English learners who are enrolled in newcomer programs. Specifically, **this bill:**

- 1) Requires that, consistent with federal law, a middle or high school pupil who is classified as an English learner (EL) and scores at any proficiency level on the assessment of English language development not be denied participation in the standard instructional program of a school by being denied any of the following:
 - a) Enrollment in courses that are part of the standard instructional program of the school that the pupil attends. Defines “standard instructional program” to mean, at a minimum:
 - i. core curriculum courses in English language arts, mathematics, science, and history/social science
 - ii. courses required to meet state and local graduation requirements (this would include physical education, and either visual and performing arts, career technical education, or foreign language, and any course required locally for graduation)
 - iii. courses required for middle school grade promotion
 - b) Enrollment in a full course load of courses that are part of the standard instructional program.
 - c) Enrollment in courses that are not part of a school’s standard instructional program that either meet the subject matter requirements for purposes of recognition for college admission pursuant to Section 66205.5 or are advanced courses, such as advanced placement courses, on the sole basis of a pupil’s classification as an English learner.
- 2) States that the above requirements shall not apply to a middle or high school pupil who is classified as an English learner and who is participating in a program designed to meet the academic and transitional needs of newly arrived immigrant pupils that has as a primary objective the development of English language proficiency, provided that, pursuant to federal law, the program is designed to remedy any academic deficits incurred during participation and that the program’s design is reasonably calculated to enable these pupils to attain parity of participation in the standard instructional program within a reasonable length of time after they enter the school system.

EXISTING LAW:

- 1) The federal Equal Educational Opportunity Act of 1974 (EEOA) prohibits the denial of equal educational opportunity by the failure of an educational agency to take appropriate action to overcome language barriers that impede equal participation by its students in its instructional programs. (20 U.S.C. Section 1701 et seq.)
- 2) Existing case law, *Castaneda v. Pickard* (1981, 648 F.2d 989), interprets the EEOA to require schools to ensure English learners' participation in the "standard instructional program" of a school either by providing access to the standard instructional program along with English language support, or instead by providing a program for English learners, "during the early part of their school career, which has, as its primary objective the development of literacy in English," provided that the program is designed to help the student "overcome the academic deficits" incurred during participation in that program, and that it is "reasonably calculated to enable students to attain parity of participation in the standard instructional program within a reasonable length of time after they enter the school system."
- 3) Existing case law, *Lau v. Nichols* (1974, 414 U.S. 563), establishes that, under the Civil Rights Act of 1964, schools were required to provide equal opportunities, specifically support for language learning, to English learners.
- 4) Establishes state high school graduation requirements, including three courses in English. Permits local educational agencies to adopt additional requirements for graduation which exceed those of the state.
- 5) Defines "English learner" or "student of limited English proficiency," and requires each school district to assess the English language development of each of those students within 30 days of initial enrollment and annually thereafter until the students are redesignated as fluent English proficient.
- 6) Title VI of the federal Civil Rights Act of 1964 prohibits recipients of federal financial assistance, including school districts, from discriminating on the basis of race, color, or national origin. Title VI's prohibition on national origin discrimination requires school districts to take "affirmative steps" to address language barriers so that EL students may participate meaningfully in schools' educational programs.

FISCAL EFFECT: This bill has been keyed a state mandated local program by the Office of Legislative Counsel.

COMMENTS:

Need for the bill. The author states, "California educates one in three English learners in the United States. Each one deserves an education worthy of their potential.

But research over decades shows that, for some English learners, the opportunity to learn is out of reach. Research has found that English learners are less likely than non-English learners to be enrolled in core academic subject courses including English language arts, mathematics, and science. In some cases, this is due to the use of English language development courses being used as substitutes for English language arts courses. In other cases, English learners are placed in intervention courses which do not provide access to the full curriculum. Some students are

trapped - prohibited from taking English language arts courses until they are reclassified, but unable to be reclassified due to lack of proficiency in English language arts.

Federal law prohibits the denial of English learners' equal participation in the core curriculum of schools, but contains a broad exception which permits districts to exclude students from the core curriculum while first providing them a more intensive English program. Research indicates that this exception is sometimes used to exclude students from the core curriculum even when they are fully capable of participating in, and benefitting from, this coursework.

AB 2735 prohibits an English learner student from being denied enrollment in core curriculum courses and courses required for high school graduation. The bill does not apply to students enrolled in newcomer programs, provided that they can be "caught up" after leaving the program. These clarifications of federal law are a necessary step in ensuring that all of California's students have the opportunity to learn."

The backstory: English learners and the opportunity to learn in California. This bill addresses the rights of English learners to participate in the core curriculum of schools, an issue with roots in the long and complex history of language policy and segregation in California schools. Below is a brief history of this issue in California.

- In the 1860's the California Legislature adopted a segregated schooling policy which explicitly excluded Chinese and other non-white students from public schools (and withheld state funds for allowing these students to enroll), but permitted the establishment of schools for non-white students. In the 1940's, some school districts established "Mexican schools" which were segregated by language. While ostensibly intended to address English proficiency before students moved into mainstream environments, Mexican American children of any language proficiency were excluded from traditional schools and thus forced into these schools. This policy was overturned in *Mendez v. Westminster* (1947), in which the court found this practice to be unconstitutional.
- As English learners gained access to the public schools, some districts routinely placed them in special education programs (a practice common enough that in 1969 the federal government issued a report entitled "The Six Hour Retarded Child.") In the 1970 *Diana v. California State Board of Education* case, brought on behalf of English learners who had been placed in special education after being assessed in English, the court required that English learners be tested in their primary language.
- In 1974 the U.S. Supreme Court found, in *Lau v. Nichols*, that the lack of supplemental language instruction in public school for English learners violated the Civil Rights Act of 1964, and required that districts provide appropriate relief.
- In the 1981 *Castaneda v. Pickard* case, brought by parents who argued that their Texas school district's grouping system (which used English proficiency to determine academic placement) was racially discriminatory, the court interpreted the Equal Educational Opportunities Act of 1974 to require schools to provide for English learners' participation in the "standard instructional program" of a school. This could be achieved either by providing access to the standard instructional program along with English language support, or by providing a program for English learners, "during the early part of their school career, which has, as its primary objective the development of literacy in English," provided that the

program is designed to help the student "overcome the academic deficits" incurred during participation in that program, and that it is "reasonably calculated to enable students to attain parity of participation in the standard instructional program within a reasonable length of time after they enter the school system."

- In 1998 the voters approved Proposition 227, which virtually eliminated bilingual education, and required that English learners be enrolled in a program of "structured English immersion," to not normally last longer than one year, prior to moving into regular academic programs. Proposition 58, approved by the voters in 2016, reversed this policy, requiring that schools ensure that English learners become proficient in English, while allowing bilingual education and dual language immersion programs to be established without parental waivers. In 2017, the State Board of Education adopted the English Learner Roadmap, a non-binding policy statement expressing the state's support for English learners' "meaningful access to a full standards-based and relevant curriculum."

Research on denial of access to core curriculum for English learners. Multiple studies conducted over the last 25 years, including many conducted in California, point to a pattern of English learners' exclusion from the standard instructional programs of schools. Much of this research has found that, even with demographic and academic controls, English learners have markedly different course taking patterns, and that overall they experience significantly less academic exposure. This literature includes the following research:

- Umansky, 2016: In a large California school district, "47% of ELs were not enrolled in at least one core curriculum area, compared to 5% of non-ELs. 42% of ELs were not enrolled in English language arts (ELA) courses (compared to 1-2% of non-ELs), 4% were not enrolled in math courses (compared to 1% of non-ELs), 10% of ELs were not enrolled in science courses (compared to 1% of non-ELs). In math and science, ELs with higher levels of English proficiency were just as likely as those with lower levels of English proficiency to not be enrolled. Some students were prohibited from taking ELA courses because they were enrolled in ELD courses, when the content area preventing ELs from being reclassified was generally ELA itself. This finding suggests that some English learners are stuck in a kind of trap - unable to access ELA courses until they are proficient in ELA.
- Callahan, 2016: Among a nationally representative sample, "Despite considerable linguistic, sociodemographic, and academic controls, marked disparities in high school course taking patterns remain, with EL students experiencing significantly less academic exposure."
- Umansky, 2016: In a large California district, "Among language-minority students who enter kindergarten with relatively advanced English proficiency, EL classification results in a substantial negative net impact on math and English language arts test scores in Grades 2 through 10... Students at the cusp of EL-IFEP identification are the canary in the coalmine: with comparatively little to gain from EL programmatic services, they are a sensitive indicator of the effects of EL classification."
- Estrada, 2014: In two California districts enrolling 1 in 5 English learners in the state, "The findings from all data sources, quantitative analysis of EL versus non-EL course credits earned, and EL concentration in classrooms, staff reports, and EL Curricular Streams indicate that remaining EL in secondary school restricts access to the academic core, the full

curriculum, and non-EL students, and that reclassification acts as a gateway to these opportunities.”

- Kanno, 2014: In a Pennsylvania school district, “Regardless of their academic performance, the ELLs were largely confined to low-track courses. Our ELL participants together represented a large spectrum of academic performance. Yet, an analysis of their transcripts showed that regardless of academic levels, they were confined largely to ELL courses and low-track courses. As long as students had not exited the ELL program and still carried the institutional label ELL, it marked them as not possessing the requisite linguistic capital for taking high-track courses and justified placing them in low-track courses. The findings expose the way in which ELLs’ chances for rigorous academic preparation are systematically reduced and point to the importance of providing ELLs with high-level academic curriculum while also supplying linguistic scaffolding that makes such learning possible.”
- Estrada, 2014: In four urban California districts, “The results reveal local definitions of EL status and wide variation in EL *Curricular Streams*: One school emphasized English Language Proficiency (ELP) and remediation over access to the core. Another integrated ELs more quickly into mainstream courses, yet its remediation emphasis limited access to the core. The third provided more access, but isolated ELs. The fourth provided more access to the core, accelerated ELD, and eschewed interventions.”
- Estrada, 2013: In two California districts enrolling 1 in 5 English learners in the state, “At secondary level in both districts, EL access to the core, the full curriculum, and non-ELs was more restricted in numerous ways. First, EL placement, which was usually based on ELP and/or achievement, was often in separate nonmainstream ELD or sheltered Curricular Streams where students remained isolated from the mainstream, honors, and magnet programs until reclassifying. Even high performing ELs who had met the CELDT and CST-ELA criteria at Proficient or above typically remained in sheltered classes. Second, Curricular Streams involving ELD or interventions, which were typically 2-hour blocks, reduced access to the academic core and full curriculum markedly. These courses and ELD, until at least advanced levels, were usually considered electives, which garnered neither high school nor 4-year college admission requirements credit. Third, core curricula use in sheltered classes was often decreased and alternative and noncore curricula use was increased. Fourth, appropriate curricular placement adjustment after reclassification could be delayed due to scheduling conflicts, class size limitations, concerns about the quality of the ‘new’ teachers, teacher reluctance to accept new students mid-year, ‘disruptions to the norm,’ and concerns about students’ adjustment outside of EL Curricular Streams.”
- Wang, 2010: In one large California district, “The marginal effect of being classified as LEP changes depending upon whether the student was enrolled in a minimum standards mathematics course or whether the student was enrolled in high-level coursework. The effect of English learner status was minimized among those students placed in high track classes.”
- Callahan, 2010: Among a nationally representative sample, “As long as students had not exited the ELL program and still carried the institutional label ELL, it marked them as not possessing the requisite linguistic capital for taking high-track courses and justified placing

them in low-track courses. Specifically, language minority students placed in ESL are 49% less likely to enroll in college preparatory science coursework relative to language minority students not placed in ESL. In addition, those placed in ESL are 36% less likely and 56% less likely than their counterparts not placed in ESL to enroll in college preparatory math and social science coursework, respectively. These negative effects are found even after controlling for a variety of individual, family, and school background characteristics, including important covariates such as socioeconomic status, generational status, grade in school upon arrival to the U.S., English language ability, and native language usage.”

- Callahan, 2009: In nationally representative sample, “We find significant negative predicted effects of ESL placement for respondents matched on observed covariates predicting placement on math and science enrollment and overall college preparation. First-generation students placed in ESL were significantly less likely to enroll in Algebra II or Chemistry, while their mainstreamed matched counterparts with a similar propensity for ESL placement on average completed at least one of these college preparatory requirements. ESL students also demonstrated significantly lower rates of overall preparation for college, not quite completing even two of the five required categories, while their mainstreamed peers with a similar propensity for ESL placement completed on average two and a half.”
- Callahan, 2005: In a rural California district, “In the case of a variety of outcomes...results indicate that track placement is a better predictor of English learners’ academic performance than proficiency in English, highlighting the importance of quality instruction for English learners.”
- Zuniga, 2004: In a high school in Iowa, “The results indicate that track placement was inappropriate, as Latino/a students with demonstrated success on standardized tests written in English, and with high grade point averages, were placed in the lower-level science course. Students placed in the lower-level science course, regardless of academic ability, were unlikely to take subsequent courses required for college admission despite the fact that most had college aspirations. Conversely, low-achieving White students were disproportionately placed in upper-level science classes, a track associated with greater success in science for all.”
- Katz, 1999: In a California middle school “Students in the ESL program were in core curriculum classes for only two periods per day. English learners were isolated in bungalows set far apart from the rest of the school.”
- Harklau, 1994: At a California high school, identified “significant differences in the content and goals of the ESL versus mainstream curricula,” and the “isolated and marginalized position of the ESL program.” The author found that “English learners who negotiated entry into high track courses learned complex discourse skills, while those who remained in low track courses learned to repeat and respond at a very superficial level.”
- Olsen, 1992: In 27 California secondary schools, “Fewer than one-fourth of the schools surveyed were able to offer a full menu of core content courses to Limited English Proficient students.”

Perhaps the most extreme form of restriction of English learners’ access to the core curriculum was implemented in Arizona, where, beginning in 2008, all ELs were enrolled in a four-hour

block of English language development each day. Rios-Aguilar (2012) found that “the 4-hour ELD block does *not* contribute to increase ELL students’ academic achievement; ELLs who participated in mainstream classrooms and in other instructional arrangements have higher academic achievement compared to ELLs who participated in the 4-hour ELD block.”

Isolation, stigmatization, and low expectations: lack of access to the core curriculum damages students’ motivation and self-concept. Qualitative research has also shed light on the experience of English learners who are excluded from the core curriculum. Numerous studies conducted in California and other states characterize separate courses for English learners as 1) having a low level of rigor or being remedial in nature, 2) conveying low expectations of students, 3) socially, linguistically, and physically isolating, and 4) have the effect of “crowding out” study of other subjects. In some cases these courses are not credit bearing toward graduation, and they are rarely if ever advanced or college preparatory in nature.

Multiple studies (Thompson, 2017; Dabach, 2014; Estrada, 2017; Dabach 2010) indicate that students enrolled in these programs 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. Dabach (2014) observed that these courses are “stigmatizing spaces where students made social distinctions and engaged in impression management to mitigate perceptions that they lacked intelligence because of their programmatic placements.” In another study (Dabach, 2010), teachers “recounted common experiences in which ELL students doubted their ability, talked about their inferiority to other students in the school, and, in cases where they were reclassified as English proficient, mocked students who remained in ESL classes.”

Estrada (2017) reported that teachers were “acutely aware of the isolation of ELs in the other streams and concerned about negative consequences. They expressed adamantly that mainstreaming and increasing learning opportunities was urgent, especially for high-performing ELs whom they considered held back by the EL label . . . Describing how ELs could internalize a sense of failure and stigmatization and give up, a staff shared, ‘I’m finding . . . their joy of learning is gone. I’ve always gotten kind of like a fail,’ . . . so they’ve checked out.’”

The number one compliance issue for English learners? Access to the core curriculum. The CDE is required to conduct compliance monitoring of LEAs to ensure that the law is being followed with regard to English learners. CDE reviews one quarter of all LEAs each year. Half of these reviews are conducted in person, and half online. This year CDE will review about four hundred LEAs. CDE’s English learner monitoring instrument identifies access to core curriculum as an area of evaluation, and reflects the requirements of the Castaneda decision. LEAs are required to submit procedural guidelines and other evidence of their EL policies, student course placement information, EL instructional methods, and information on student progress. For on-site reviews the CDE visits classrooms to verify the information the district has provided.

The Committee may wish to consider that, to date this academic year, CDE reports that the most common compliance finding with regard to English learners was “Access to core subject matter.”

“Before the deficits become irreparable:” The problem with sequential programs for English learners. In the *Castaneda v. Pickard* decision, the court stated that students cannot be permitted to incur “irreparable academic deficits” while access to the core curriculum is withheld. This is

reflected in CDE's compliance monitoring instrument states that "Actions to overcome content academic barriers must be taken before the deficits become irreparable."

These statements recognize that at some point, withholding access to academic content results in deficits which simply cannot be made up. However, the *Castaneda* decision does allow schools to choose between a sequential and a simultaneous approach to English language development.

Linquanti (2001) describes a sequential approach as one that initially focuses on intensive English language development, and in which access to grade-level academic curriculum is postponed until the student is considered to have attained a knowledge of English adequate for effectively participating in content learning. In contrast, a simultaneous approach is one in which the student is taught English while at the same time receiving access to grade-level (or near grade-level) academic content.

School districts must ensure that any academic deficits incurred in a sequential approach are remedied, but research shows that, once ELs are tracked into less rigorous courses with little access to the core curriculum, it can be close to impossible for them to catch up. In one example (Kanno, 2014) reported, "ELL courses fed into non-ELL, remedial-level courses of the same subject matter... This course sequence would partially explain why even reclassified ELLs rarely reached high-track courses: They were ELLs at the beginning of high school and therefore started in ELL classes and proceeded on to remedial classes. In contrast, students who were slated to take Advanced Placement courses in 11th and 12th grade were groomed from the start of high school through placement in advanced- and honors-level classes."

Estrada (2017) had similar findings. Teachers expressed a common concern about English learners remaining in sheltered courses: "a staff member said, 'The pacing is completely different, and the level of rigor seems to be completely different [than mainstream core courses].' Consequently, according to staff, students fell increasingly behind '... even when they reclassify, they'll enter a regular English ten classroom, and be behind ...'"

In the most insidious form of tracking, a sequential approach coupled with local reclassification policy can also trap students in EL status and withhold access to the core curriculum indefinitely (Umansky, 2016; Estrada, 2017). In some districts, students who are excluded from core curriculum courses until they are reclassified as fully English proficient are unable to access the courses which would allow them to be reclassified as fully English proficient.

Research indicates that sequential programs are far less detrimental for newly arrived immigrant students (newcomers), who appear to benefit from more intensive English language development before they move into academic content study. Callahan (2010), for example, reports: "Findings indicate that [English learners] who most closely fit the EL profile (recent immigrant, relatively low English proficiency) experience positive math outcomes and null effects in other academic areas; however, [English learners] students who fit this profile less well experience negative effects."

Does federal law fully address this issue? As noted above, the 1981 *Castaneda v. Pickard* case governs how districts comply with the Equal Educational Opportunities Act of 1974 regarding English learners' access to the core curriculum.

The *Castaneda* case was brought by parents of Mexican American students enrolled in the Raymondville Independent School District (RISD) in Texas. They argued that the grouping system used by the schools was racially discriminatory. The court found that:

The primary ‘ability’ assessed by the district's ability grouping practices in the early grades is the English language proficiency of the students. Students entering RISD kindergarten classes are given a test to determine whether their dominant language is English or Spanish. Predominantly Spanish speaking children are then placed in groups designated "low" and receive intensive bilingual instruction. "High" groups are those composed of students whose dominant language is English. "Ability groups" for first, second and third grade are determined by three basic factors: school grades, teacher recommendations and scores on standardized achievement tests. These tests are administered in English and cannot, of course, be expected to accurately assess the "ability" of a student who has limited English language skills and has been receiving a substantial part of his or her education in another language as part of a bilingual education program.

The court ruled that schools must provide for English learners' participation in the "standard instructional program" of a school. This could be achieved either by providing access to the standard instructional program along with English language support, or by providing a program for English learners, "during the early part of their school career, which has, as its primary objective the development of literacy in English," provided that the program is designed to help the student "overcome the academic deficits" incurred during participation in that program, and that it is "reasonably calculated to enable students to attain parity of participation in the standard instructional program within a reasonable length of time after they enter the school system."

As noted above, the use of a sequential approach for English learners in which access to the core curriculum is withheld, the use of intervention courses which do not provide full access to the curriculum, or time intensive blocks of instruction which “crowd out” other core subjects, makes “remediating academic deficits” extremely difficult and in many cases impossible once a student has been deemed proficient. Yet, based on the research cited above and CDE’s compliance findings, it appears to be a relatively common practice.

This bill is intended to clarify the circumstances under which withholding access to the core curriculum should be permitted in California by limiting it to students enrolled in newcomer programs. It also clarifies the meaning of "standard instructional program of a school" in this state (to mean core curriculum courses in English language arts, mathematics, and science, and courses needed for graduation and for middle school grade promotion). And it clarifies that ELs should not be prohibited from taking advanced and courses and courses required for admissions to the UC and CSU on the sole basis of classification as an EL.

English Learner Roadmap for California supports access to core curriculum for English learners. In July, 2017, the State Board of Education adopted the California English Learner Roadmap State Board of Education Policy. The Roadmap is intended to articulate a common vision and mission for educating English learners and to assist the CDE in providing guidance to LEAs in order to welcome, understand, and educate the diverse population of students who are English learners attending California public schools.

The vision of the Roadmap is: “English learners fully and meaningfully access and participate in a twenty-first century education from early childhood through grade twelve that results in their

attaining high levels of English proficiency, mastery of grade level standards, and opportunities to develop proficiency in multiple languages.” The principles of the Roadmap are:

- 1) Assets-Oriented and Needs-Responsive Schools
- 2) Intellectual Quality of Instruction and Meaningful Access
- 3) System Conditions that Support Effectiveness
- 4) Alignment and Articulation Within and Across Systems

The second principle affirms the importance of English learners’ access to the core curriculum of schools. This principle is explained as follows: “English learners engage in intellectually rich, developmentally appropriate learning experiences that foster high levels of English proficiency. These experiences integrate language development, literacy, and content learning as well as provide access for comprehension and participation through native language instruction and scaffolding. English learners have meaningful access to a full standards-based and relevant curriculum and the opportunity to develop proficiency in English and other languages.”

English learners in California. There are approximately 1.4 million English learners in California public schools, representing 22% of the state’s enrollment. 2.7 million students speak a language other than English in their homes, representing about 43 percent of the state's public school enrollment. 73% of English learners are enrolled in the elementary grades, and 27% are enrolled in the secondary grades. One in three English learners in the U.S. resides in California.

Recommended amendments. *Staff recommends that this bill be amended to* 1) make the requirements of the bill effective in the 2019-20 school year, 2) clarify that the bill applies to pupils in all public schools, including charter schools, and 3) makes changes to the findings and declarations.

REGISTERED SUPPORT / OPPOSITION:

Support

Californians Together (sponsor)
 California Association for Bilingual Education (sponsor)
 Association of California School Administrators
 American Civil Liberties Union of California
 AVID Center
 CATESOL
 California Association for Health, Physical Education, Recreation and Dance
 California Catholic Conference
 California Council for the Social Studies
 California Immigrant Policy Center
 California Language Teachers Association
 California Science Teachers Association
 California State PTA
 Education Trust-West
 Public Advocates
 Riverside County Superintendent of Schools
 San Bernardino County District Advocates for Better Schools
 San Francisco Unified School District

State Superintendent of Public Instruction, Tom Torlakson
Teach Plus

Opposition

None on file

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