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AB-2268 English learners: initial identification: English language proficiency assessment. (2023-2024)

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Assembly Bill No. 2268

CHAPTER 15

An act to amend Sections 313 and 60810 of the Education Code, relating to English learners, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor June 14, 2024. Filed with Secretary of State June 14, 2024.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2268, Muratsuchi. English learners: initial identification: English language proficiency assessment.

Existing law requires each school district that has one or more pupils who are English learners, and, to the extent required by federal law, each county office of education and each charter school, to assess the English language development of each pupil in order to determine the pupil's level of proficiency, as specified. Existing law requires the State Department of Education, with the approval of the State Board of Education, to establish procedures for conducting the assessment and for the reclassification of a pupil from English learner to English proficient. Existing law requires those reclassification procedures to utilize multiple criteria in determining whether to reclassify a pupil as proficient in English, including, among other things, an assessment of language proficiency using the English language development test that is developed or acquired by the Superintendent of Public Instruction, as provided. Existing law requires the assessment for initial identification to be conducted upon the initial enrollment of a pupil, as provided. Existing law requires the English language development test to assess pupils in kindergarten and grade 1 in English listening and speaking, as provided.

This bill would define "initial enrollment" for the purposes of the above-described provision regarding initial identification to exclude enrollment in a transitional kindergarten program. The bill would expressly state that the above-described requirement for pupils in kindergarten to be assessed in English listening and speaking does not include pupils in transitional kindergarten.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: 2/3 Appropriation: no Fiscal Committee: no Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. The Legislature finds and declares all of the following:

(a) State and federal law require the state and its local educational agencies to do both of the following:

- (1) Identify and assess all potential English learners in kindergarten and grades 1 to 12, inclusive, in a timely, valid, and reliable manner.

(2) Assess pupils in kindergarten and grades 1 to 12, inclusive, who have been identified as English learners to measure their progress towards acquiring English proficiency.

(b) In 2018, the State Board of Education adopted the English Language Proficiency Assessments for California (ELPAC) for the purposes of subdivision (a).

(c) Transitional kindergarten was created in 2010 for children four years of age who would turn five years of age in the months of September, October, November, or December following the entrance date for kindergarten. In 2022, California expanded transitional kindergarten to include all four-year-old children beginning with the 2025–26 school year.

(d) The ELPAC was field tested in 2017 with nearly 47,000 pupils enrolled in over 400 local educational agencies. Field testing included pupils in transitional kindergarten for the initial and summative field tests. At that time, only the oldest four-year-old children were eligible to be enrolled in transitional kindergarten. As a result, the ELPAC was not validated for use with younger four-year-olds who are increasingly becoming eligible to be enrolled in transitional kindergarten.

(e) It is important that assessments administered to pupils in transitional kindergarten are valid, reliable, and developmentally appropriate in order to ensure that pupils are accurately identified and provided appropriate English language services. Therefore, this urgency measure is necessary to ensure that transitional kindergarten pupils are appropriately assessed.

SEC. 2. Section 313 of the Education Code is amended to read:

313. (a) Each school district that has one or more pupils who are English learners, and, to the extent required by federal law, each county office of education and each charter school, shall assess the English language development of each pupil in order to determine the level of proficiency for purposes of this chapter.

(b) The department, with the approval of the state board, shall establish procedures for conducting the assessment required pursuant to subdivision (a) and for the reclassification of a pupil from English learner to English proficient.

(c) Commencing with the 2000–01 school year until subdivision (d) is implemented, the assessment shall be conducted upon initial enrollment, and annually, thereafter, during a period of time determined by the Superintendent and the state board. The annual assessments shall continue until the pupil is redesignated as English proficient. The assessment shall primarily utilize the English language development test identified or developed by the Superintendent pursuant to Chapter 7 (commencing with Section 60810) of Part 33 of Division 4 of Title 2.

(d) (1) This subdivision shall not be implemented unless and until the department receives written documentation from the United States Department of Education that federal law permits the implementation of the changes set forth in this subdivision or until the 2013–14 school year, whichever occurs later.

(2) The summative assessment shall be conducted annually during a four-month period after January 1 determined by the Superintendent with the approval of the state board. Annual assessments shall continue until the pupil is redesignated as English proficient. The annual assessment shall primarily utilize the English language development assessment identified or developed by the Superintendent pursuant to Chapter 7 (commencing with Section 60810) of Part 33 of Division 4 of Title 2.

(3) The assessment for initial identification shall be conducted upon the initial enrollment of a pupil in order to provide information to be used to determine if the pupil is an English learner.

(A) If the initial enrollment of a pupil occurs on a date outside of the testing period identified pursuant to paragraph (2), the prior year's annual assessment for the grade in which the pupil is enrolling shall be used for this purpose.

(B) If the initial enrollment of a pupil occurs on a date within the testing period identified pursuant to paragraph (2), the initial assessment of the pupil shall be conducted as part of the annual assessment conducted pursuant to paragraph (2).

(4) Notwithstanding paragraph (2), a school district shall assess the English language development of a pupil pursuant to this section no more than one time per school year for each assessment purpose pursuant to Chapter 7 (commencing with Section 60810) of Part 33 of Division 4 of Title 2.

(e) The assessments conducted pursuant to subdivision (d) shall be conducted in a manner consistent with federal statutes and regulations.

(f) The reclassification procedures developed by the department shall utilize multiple criteria in determining whether to reclassify a pupil as proficient in English, including, but not limited to, all of the following:

(1) Assessment of language proficiency using an objective assessment instrument, including, but not limited to, the English language development test that is developed or acquired pursuant to Section 60810.

(2) Teacher evaluation, including, but not limited to, a review of the pupil's curriculum mastery.

(3) Parental opinion and consultation.

(4) Comparison of the performance of the pupil in basic skills against an empirically established range of performance in basic skills based upon the performance of English proficient pupils of the same age, that demonstrates whether the pupil is sufficiently proficient in English to participate effectively in a curriculum designed for pupils of the same age whose native language is English.

(g) This section does not preclude a school district or county office of education from testing English learners more than once in a school year if the school district or county office of education chooses to do so.

(h) For purposes of this section, "initial enrollment" does not include enrollment in a transitional kindergarten program.

SEC. 3. Section 60810 of the Education Code is amended to read:

60810. (a) (1) The Superintendent shall review existing assessments that assess the English language development of pupils whose primary language is a language other than English. The assessment for initial identification and the summative assessment shall include, but not be limited to, an assessment of achievement of these pupils in English reading, speaking, and written skills. The Superintendent shall determine which assessments, if any, meet the requirements of subdivisions (b) to (f), inclusive. If any existing assessment or series of assessments meets these criteria, the Superintendent, with approval of the state board, shall report to the Legislature on its findings and recommendations.

(2) If no suitable assessment exists, the Superintendent shall explore the option of a collaborative effort with other states to develop an assessment or series of assessments and share assessment development costs. If no suitable assessment exists, the Superintendent, with the approval of the state board, shall either release a request for proposals for the development of an assessment or series of assessments that meets the criteria of subdivisions (b) to (f), inclusive, contract to modify an existing assessment or series of assessments so that it will meet the requirements of subdivisions (b) to (f), inclusive, or amend the contract authorized pursuant to Section 60643 so that an assessment or a series of assessments are developed or modified to meet the requirements of subdivisions (b) to (f), inclusive. The state board shall approve assessment blueprints, assessment performance descriptors, and performance-level cut scores based on standard settings.

(3) The Superintendent shall apportion funds appropriated to enable school districts to meet the requirements of subdivisions (c) and (e). The state board shall establish the amount of funding to be apportioned per assessment administered, based on a review of the cost per assessment for initial identification and summative assessment purposes.

(4) An adjustment to the amount of funding to be apportioned per assessment is not valid without the approval of the Director of Finance. A request for approval of an adjustment to the amount of funding to be apportioned per assessment shall be submitted in writing to the Director of Finance and the chairpersons of the fiscal committees of both houses of the Legislature with accompanying material justifying the proposed adjustment. The Director of Finance is authorized to approve only those adjustments related to activities required by statute. The Director of Finance shall approve or disapprove the amount within 30 days of receipt of the request and shall notify the chairpersons of the fiscal committees of both houses of the Legislature of the decision.

(b) (1) The assessment or series of assessments developed or acquired pursuant to subdivision (a) shall have sufficient range to assess pupils in grades 2 to 12, inclusive, in English listening, speaking, reading, and writing skills. These assessments shall include the use of accessibility resources, as may be determined by the department, and those determinations shall not be subject to the requirements of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code). Pupils in kindergarten and grade 1 shall be assessed in English listening and speaking, and, once an assessment is developed, early literacy skills. Six months after the results of three administrations are collected, but no later than June 30, 2013, the department shall report to the Legislature on the administration of the kindergarten and grade 1 early literacy assessment results, as well as on the administrative process, in order to determine whether reauthorization of the early literacy assessment is appropriate.

(2) In the development and administration of the assessment for pupils in kindergarten and grade 1, the department shall 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. The department shall ensure that the assessment and procedures for its administration are age and developmentally appropriate. 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.

(3) For purposes of this subdivision, "kindergarten" does not include transitional kindergarten.

(4) The assessment for initial identification developed or acquired pursuant to subdivision (a) shall have sufficient range to identify if the pupil is an English learner, as defined by Section 306.

(c) The assessment for initial identification shall meet all of the following requirements:

- (1) Have psychometric properties of reliability and validity deemed adequate by technical experts.
- (2) Be capable of administration to pupils with any primary language other than English.
- (3) Be capable of administration by classroom teachers.
- (4) Not discriminate on the basis of race, ethnicity, or gender.
- (5) Be aligned with the standards for English language development adopted by the state board pursuant to Section 60811.3, as it read on June 30, 2013.
- (6) Be age and developmentally appropriate for pupils.

(d) The assessment for initial identification shall be used to identify pupils who are limited English proficient.

(e) The summative assessment shall meet all of the following requirements:

- (1) Provide sufficient information about pupils at each grade level to determine levels of proficiency ranging from no English proficiency to fluent English proficiency with at least two intermediate levels.
- (2) Yield scores that allow comparison of the growth of a pupil over time, that may be tied to readiness for various instructional options, and that may be aggregated for use in the evaluation of program effectiveness.
- (3) Have psychometric properties of reliability and validity deemed adequate by technical experts.
- (4) Be capable of administration to pupils with any primary language other than English.
- (5) Be capable of administration by classroom teachers.
- (6) Not discriminate on the basis of race, ethnicity, or gender.
- (7) Be aligned with the standards for English language development adopted by the state board pursuant to Section 60811.3, as it read on June 30, 2013.
- (8) Be age and developmentally appropriate for pupils.

(f) The summative assessment shall be used for both of the following purposes:

- (1) To identify the level of English language proficiency of pupils who are limited English proficient.
- (2) To assess the progress of limited-English-proficient pupils in acquiring the skills of listening, reading, speaking, and writing in English.

(g) (1) A pupil in any of grades 3 to 12, inclusive, shall not be required to retake those portions of the assessment that measure English language skills for which the pupil has previously tested as advanced within each appropriate grade span, as determined by the department in accordance with paragraph (8) of subdivision (e).

(2) Notwithstanding paragraph (1), a pupil in any of grades 10 to 12, inclusive, shall not be required to retake those portions of the assessment that measure English language skills for which the pupil has previously tested as early advanced or advanced.

(3) This subdivision shall not be implemented unless and until the department receives written documentation from the United States Department of Education that implementation is permitted by federal law.

(h) (1) The Superintendent shall not administer an assessment for initial identification or a summative assessment pursuant to this section until both assessments are developed and adopted by the state board.

(2) The Superintendent shall report to the appropriate policy committees of the Legislature when the assessments are ready for their initial administration.

SEC. 4. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the California Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to implement changes before the start of the 2024–25 school year, it is necessary for this act to take effect immediately.