
SENATE COMMITTEE ON EDUCATION

Senator Benjamin Allen, Chair

2017 - 2018 Regular

Bill No: AB 2735 **Hearing Date:** June 6, 2018
Author: O'Donnell
Version: April 18, 2018
Urgency: No **Fiscal:** Yes
Consultant: Olgalilia Ramirez

Subject: English learners: participation in standard instructional program.

SUMMARY

This bill prohibits, commencing in the 2019-20 school year, 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.

BACKGROUND

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 re-designated 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 ENGLISH LEARNER students may participate meaningfully in schools' educational programs.

ANALYSIS

This bill:

- 1) Commencing in the 2019-20 school year, prohibits a middle or high school student who is classified as an English learner and scores at any proficiency level on the assessment of English language development from being 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 student attends.
 - 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 on the sole basis of a student's classification as an English learner.
- 2) Specifies that the requirements in 1) above are not applicable to a middle or a high school student who is classified as an English learner and who is participating in a program designed to meet the needs of newly arrived immigrant students 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 students to attain parity for participation in the standard instructional program within reasonable length of time after they enter the school system.
- 3) Provides that for purposes of the bill, "pupil," includes a pupil attending a school operated by a school district or a county office of education, a charter school or the state special schools for the blind and deaf.
- 4) Defines for the purposes of the bill, "standard instruction program," to mean, at a minimum, core curriculum courses, as defined under current law, courses required to meet graduation requirements, and courses required for middle school grade promotion.

- 5) States legislative findings and declarations relative to existing research regarding the course-taking patterns of English learners in California and evidence of restricted access to core curriculum and advanced coursework necessary to graduate from high school experience for English learners.

STAFF COMMENTS

- 1) **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.

This bill 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."

- 2) **English learners in California.** According to the California Department of Education, in the 2016-17 school year there were approximately 1.3 million English learners in California public schools, representing 21.4 percent of the total enrollment. The majority of English learners (72 percent) are enrolled in the elementary grades (K-6) with the remaining 28 percent enrolled in grades 7-12. The statewide average rate of annual reclassification of English learners to English proficient is approximately 11 percent. It is the state's goal to ensure that English learners acquire full proficiency in English as rapidly and effectively as possible and attain parity with native English speakers and achieve the same rigorous grade-level academic standards that are expected of all students.
- 3) **English learner achievement gap.** Research shows that English learner students score substantially lower on state assessments than non-English learner students. While there has been incremental growth in achievement

among students in both the general population and English learners, the rate of growth in the general population has significantly outpaced that of English learners widening the achievement gap over time. According to the California Department of Education, the overall 2013-2014 four-year cohort graduation was 91 percent, while the rate for English learners was 65 percent, the lowest of any subgroup besides students in special education. The dropout rate for English learners, at 21 percent, was the highest of any subgroup. Other notably gaps include the following:

- a) During the 2013 California Standards Tests of English language arts, 23 percent of English learners scored at the proficient or advanced levels, compared with 63 percent of English-only peers, and on the tests of mathematics 37 percent scored at those levels compared with 55 percent of their peers.
 - b) During the 2015 administration of the California Assessment of Student Performance and Progress (CAASPP), 11 percent of English learners in all grades met or exceeded standard in English Language arts/literacy and 11 percent in math, compared with 69 percent and 55 percent for those subjects, respectively, for students proficient in English.
 - c) In 2014, the pass rate of English learners on the California High School Exit Examination language arts test was half the rate of English only peers (17 percent vs 34 percent), and was also lower on the mathematics portion (13 percent vs 20 percent)
- 4) ***English learners less likely to be enrolled in core curriculum.*** In October 2015, the Policy Analysis for California Education's (PACE) issued, "Improving the Opportunities and Outcomes of California's Students Learning English," a report on research examining English learner needs, policies, practices, and outcomes. Among other things, researchers found that English learners are less likely than non-English learners to be enrolled in core academic subject courses and, as a result, earn fewer credits toward graduation than non-English Learner students. The research further found that limited access to English language arts (ELA) is largely due to 1) English Language Development (ELD) courses being used as a substitute, rather than a complement, for ELA courses, and 2) the enrollment of elementary and secondary English learners in intervention classes for language arts and math which were not designed for English learners' language and academic needs.

This research found that in one large urban school district, 30 percent of English learners were not enrolled in ELA courses, and 35 percent were not enrolled in a full course load. PACE concluded, "Research from the three partnerships suggests that English learners often suffer from restricted educational opportunity compared to that of non-English learners, particularly with regard to their academic learning needs."

The report also noted that the most common barrier to reclassification for middle and high school English learners was passage of the English Language Arts content standards criterion. Given the findings that enrollment in ELD prohibits

some students from taking English language arts (ELA) courses; it is unclear how students are expected to obtain the course content necessary to successfully meet criteria for reclassification.

This bill, in response to these concerns, 1) prohibits middle and high school English learners from being denied enrollment in core curriculum course, and courses required for graduation or middle school grade promotion; 2) prohibits the exclusion of English learners from, meeting A-G requirements for college admission and advanced coursework, on the sole basis of their classification as English learners and; 3) provides an exception for newly arrived immigrant students who are enrolled in English course designed to meet their need to rapidly acquire basic English skills.

- 5) **Author's amendments.** The author requests that the bill be amended to add coauthors and make the following clarifying amendments:
- On page 3, in line 22, strike out “and scores at any proficiency level”, strike out line 23 and in line 24, strike out “pursuant to Section 60810 or any success assessment”
 - On page 3, in line 40, after “as” insert “honors or”
 - Specify that "Nothing in this act shall be construed to require schools to create supplemental courses in languages other than English."
- 6) Prior legislation.

AB 2350 (2016, O'Donnell) similar to this bill, would have prohibited middle and high school English learner students from being denied enrollment in core curriculum courses, courses required for graduation, and courses required for middle school grade promotion, consistent with federal law. AB 2350 was held in the Assembly inactive file and subsequently died.

SUPPORT

American Civil Liberties Union of California
 Asian Americans Advancing Justice
 Association of California School Administrators
 AVID Center
 California Association for Bilingual Education
 California Association for Health, Physical Education, Recreation and Dance
 California Association for the Gifted
 California Catholic Conference
 California Council for the Social Studies
 California Immigrant Policy Center
 California Language Teachers Association
 California Science Teachers Association
 California State PTA
 California Teachers Association
 Californians Together
 CATESOL
 Education Trust-West

Los Angeles Unified School District
Public Advocates
Riverside County Superintendent of Schools
San Bernardino County District Advocates for Better Schools
San Francisco Unified School District
Santa Clara County Office of Education
State Superintendent, Tom Torlakson
Teach Plus

OPPOSITION

None received

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