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# SENATE COMMITTEE ON EDUCATION

Senator Benjamin Allen, Chair

2017 - 2018 Regular

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**Bill No:** AB 1661 **Hearing Date:** June 27, 2018  
**Author:** Limón  
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**Urgency:** No **Fiscal:** Yes  
**Consultant:** Brandon Darnell

**Subject:** School accountability: federal compliance with accountability requirements.

## SUMMARY

This bill conforms state law to the federal Every Student Succeeds Act (ESSA), the 2015 successor to the federal No Child Left Behind Act (NCLB), as it relates to English learners, migrant education, family engagement, and foster youth transportation programs.

## BACKGROUND

Existing federal law, the federal Elementary and Secondary Education Act of 1965, as amended by the federal ESSA:

- 1) Requires, commencing with the 2017–18 school year, the state to identify schools for comprehensive support and improvement pursuant to specified accountability system requirements. The federal ESSA provides for the allotment of formula grants to states for various activities to support effective educational instruction, including English learner, migrant education and family engagement programs. (United States Code, Title 20, Section 6318, et seq.)

Existing state law:

- 1) Identifies parental involvement, including efforts the school district makes to seek parent input in making decisions for the school district and each individual schoolsite, and including how the school district will promote parental participation in programs for unduplicated pupils and individuals with exceptional needs, as one of the eight state priorities for purposes of the local control funding formula and local control and accountability plans. (Education Code (EC) § 52060)
- 2) States the intent of the Legislature to ensure that parent involvement programs are properly designed and implemented and to provide a focus and structure for these programs based on prior experience and research while maintaining sufficient local flexibility to design a program that best meets the needs of the local community. (EC § 11501)
- 3) Both federal and State law require that each school district with English language learners annually assess these students' English language development until they are redesignated as English proficient. The assessment, must be administered to all students whose primary language is not English within 30

calendar days after they are enrolled in a California public school for the first time, and annually thereafter during a period of time determined by the Superintendent of Public Instruction and the State Board of Education (SBE) until they are reclassified as fluent English proficient. (EC § 313)

- 4) Under federal law requires that a school district that receives federal funds for providing a language instruction education program for limited English proficient students to provide notice to a parent within 30 days of the start of the school year of specified information if their child has been identified for participation in the program. In addition, state law requires that, in conformance with these provisions, that the notice include specified information. (EC § 440)
- 5) Under federal law, authorizes the allocation of grants to state educational agencies to establish or improve, directly or through local operating agencies, programs and educational opportunities for migratory children to help overcome educational disruption, cultural and language barriers, social isolation, various health-related problems, and other factors that inhibit the ability of these children to succeed in school.
- 6) Under federal law requires each state that receives a grant shall ensure that the state and its local operating agencies identify and address the unique needs of migratory children in accordance with a comprehensive statewide plan, as specified. (20 U.S.C Sec. 1301 et seq.)
- 7) Under federal law requires local educational agencies to develop and implement clear written procedures governing how transportation to maintain children in foster care in their school of origin when in their best interest will be provided, arranged and funded for the duration of the time in foster care. (20 U.S.C Sec. 6312 (c)(5))

## ANALYSIS

This bill conforms state law to the federal Every Student Succeeds Act (ESSA), the 2015 successor to the federal No Child Left Behind Act (NCLB), as it relates to English learners, migrant education, family engagement, and foster youth transportation programs. Specifically, this bill:

- 1) Replaces statutory references to the federal NCLB with references to the federal ESSA.

### *English learners*

- 2) Replaces statutory references to “pupil of limited English proficiency” with references to “English learners.”
- 3) Prohibits exclusion from any federally assisted education program on the basis of a surname or language-minority status.
- 4) Defines “English learner with a disability,” means an English learner who is also a child with a disability, as that term is defined in federal law.

- 5) Replaces statutory references to “Immigrant pupil” with references to “immigrant children and youth.”
- 6) Revises definition for “Immigrant children and youth,” to mean individuals who were born in a country other than the United States, are 3 to 21, inclusive, years of age, and have not been attending one or more schools in one or more states for more than three full academic years (rather than a pupil who has attended a kindergarten class or any of grades 1 to 12, inclusive, in a school in the United States for three or fewer years).
- 7) Revises definition for “English learner,” to mean an individual:
  - a) Who is 3 to 21, inclusive, years of age;
  - b) Who is enrolled or preparing to enroll in an elementary or secondary school;
  - c) Either;
    - i) Who is not born in the United States or whose native language is a language other than English or whose native language is a language other than English;
    - ii) Who is a Native American, Alaska Native, or native resident of the outlying areas, and who comes from an environment where language other than English has had a significant impact on the individual’s level of English language proficiency;
    - iii) Or, who is migratory and whose native language is a language other than English and who comes from an environment where a language other than English is dominant;
  - d) And, whose difficulties in speaking, reading, writing, or understanding the English language may be sufficient to deny the individual the ability to meet the states challenging academic standards (rather than proficient level of achievement on state assessments) the ability to successfully achieve in classrooms where the language of the instruction is English, or the opportunity to participate fully in society. (current law)
- 8) Revises notification to parents regarding the assessment of their child’s English language proficiency as follows:
  - a) For those children who have not been identified as English learners before the beginning of the school year, provides that a parent be notified during the first two weeks of the child being identified as an English learner.
  - b) Specifies that the notification be provided in an understandable and uniform format.

- c) Revises information included in notification to parents to, among other things, state, how the level of proficiency was assessed, and the status of the child's academic achievement, the methods of instruction used in the program and how those methods differ from other available programs as well as information pertaining to parental rights as it relates to having their child immediately removed from that program upon their request and options for declining enrollment in that program or choose another program or method of instruction, if available, such as a language acquisition program.
- 9) Requires a local education agency (LEA) receiving federal funding for language instruction for English learners and immigrant students to implement an effective means of outreach to parents of English learners as specified.
- 10) Revises the information to be included in the plan submitted to California Department of Education by an LEA for purposes of qualification for the federal subgrant to include, among other things, a description of how the agency will ensure that schools assist English learners in achieving English proficiency based on the state's English language proficiency assessment and meeting the state's challenging academic standards.

#### *Migrant education*

- 11) Revises definition for "migratory child," to mean a child or youth who made a qualifying move in the preceding 36 months either as a migratory agricultural worker or a migratory fisher or with or to join a parent or spouse who is a migratory agricultural worker or a migratory fisher.
- 12) Defines "qualifying move" to mean a move due to economic necessity from one residence to another residence and from one school district to another school district, as specified.
- 13) Defines "migratory agricultural worker," and "migratory fisher," and strikes definitions for and statutory references to "currently migratory child," "agricultural activity" and "fishing activity."
- 14) Revises definition for "former migratory child," to mean a child who was formerly eligible as a migratory child and may be served for one additional year, but only if comparable services are not available through other programs.
- 15) Revises the period for which a migratory child may be deemed a migratory child to a period during which the child meets the "qualifying definition," rather than a period during which the child resides in an area where programs are provided.
- 16) Revises the information to be included in the plan (rather than master plan) adopted by the state board for services to migrant children as follows:
  - a) Identification of migrant pupil needs and strategies to address these needs, as specified and measurable program goals and objectives for purposes of evaluating the program's impact.

- b) Integration of local, state and federal services and programs such as Every Student Succeeds Act available to migratory pupils.
- 17) Strikes the criteria for granting priority for services to currently migratory children of a certain age and instead grants priority for services to migratory children who made a qualifying move within the previous one-year period and who are either of the following:
- a) Failing, or most at risk of failing, to meet the challenging state academic standards.
  - b) Have dropped out of school.
- 18) Revises program requirements as follows:
- a) Strikes references to “compensatory education.”
  - b) Removes the offering of remedial and compensatory instruction as a specified program requirement.
  - c) Requires that the individual assessment of educational and relevant health needs of migrant education program participants include *state* assessments as specified and strikes outdated assessments relative to compensatory education, bilingual-cross cultural education and other programs as specified.
  - d) Includes outreach activities for migratory children and their families to inform them of other educational, health and nutrition services.
- 19) Removes a state standard for the number of instructional days and minutes a summer school program is required to operate.

*Family engagement programs*

- 20) Replaces statutory references to "parent involvement" with references to "parent and family engagement."
- 21) Revises the certain purposes of parent and family engagement programs to include:
- a) Engaging parents and family members positively in their children’s education by providing assistance and training on topics such as state academic standards and assessments to develop knowledge and skills to use at home to support their children's academic efforts.
  - b) Building consistent and effective two-way communication between family members and the school so that parents and family members may know when and how to assist their children in support of classroom learning activities.

- c) Training teachers, school administrators, specialized instructional support personnel, and other staff to communicate effectively with parents as equal partners.
  - d) Coordinating parent and family engagement activities with the local control and accountability plan.
- 22) Requires each county office of education to also establish a written parent and family engagement program, and requires the program for school districts and county offices of education to additionally contain:
- a) Procedures to involve parents and family members in developing the Local Educational Agency Plan and school support and improvement plans required by federal law.
  - b) Procedures to provide assistance and support necessary to build schools' capacity to plan and implement effective parent and family engagement activities.
  - c) Procedures to train teachers, school administrators, and other staff on outreach and effective communication with parents and family members as equal partners.
- 23) Requires the required regular and periodic programs throughout the school year to also provide for training, instruction, and information on explaining curriculum, state academic achievement standards, and state and local assessments

#### *Foster youth*

- 24) Revises requirements related to transportation services for foster youth.

#### *Other*

- 25) Makes various technical and conforming changes.
- 26) States that no reimbursement for state-mandated local costs is required because the bill implements a federal law or regulation.

### **STAFF COMMENTS**

- 1) ***Need for the bill.*** According to the author, "AB 1661 updates certain references in California's Education Code to reflect statutory changes made by the federal Every Student Succeeds Act (ESSA). ESSA was signed into law on December 10, 2015, and went into effect in the 2017-18 school year. The ESSA reauthorizes the Elementary and Secondary Education Act, the nation's federal education law, and replaces the No Child Left Behind Act."

This bill conforms state law to ESSA as it relates to family engagement, migrant education, English learner, foster youth programs and services.

2) **Author's amendments.** The author would like to amend the bill to delete those portions relating to English learners and migrant education, and also to make clarifying amendment to portions of the bill relating foster youth transportation. **Staff recommends that the bill be amended** to reflect the author's intent, as shown below:

- Delete Sections 1 to 9, inclusive, from the bill.
- Delete Sections 24 to 33, inclusive, from the bill.
- Revise Section 48853.5(f)(5), as follows:

“(5) (A) Paragraphs (2), (3), and (4) do not require a school district to provide transportation services to allow a foster child to attend a school or school district, unless there is an agreement with a local child welfare agency that the school district assumes part or all of the transportation costs in accordance with Section 6312(c)(5) of Title 20 of the United States Code, or unless otherwise required under federal law. This paragraph does not prohibit a school district from, at its discretion, providing transportation services to allow a foster child to attend a school or school district.

(B) In accordance with Section 6312(c)(5) of Title 20 of the United States Code, local educational agencies shall collaborate with local child welfare agencies to develop and implement clear written procedures to address the transportation needs of foster youth to maintain them in their school of origin, when it is in the best interest of the foster youth.”

- 3) **Local control funding formula (LCFF) and local control and accountability plans (LCAPs).** Existing law continues implementation of the LCFF, which provides targeted base funding levels tied to four grade spans for the core educational needs of all students and supplemental funding for the additional educational needs of low-income students, English learners, and foster youth, and requires local educational agencies to adopt and annually revise LCAPs, establishing annual goals and identifying specific actions, within the eight state priority areas, including parent engagement and pupil achievement.
- 4) **Federal Every Student Succeeds Act.** In 2015, Congress passed the Every Student Succeeds Act (ESSA), which amended the Elementary and Secondary Education Act and replaced the No Child Left Behind Act. This bill, as proposed to be amended, conforms state law to the ESSA as it relates to family engagement programs and foster youth transportation.
- 5) **Migrant Education Program (MEP).** MEP was created by the federal government in 1966, to address the educational needs of children whose family members are employed doing seasonal agricultural work. Children are eligible to participate in the MEP if they or their parents or guardians are migrant workers in the agricultural, dairy, lumber, or fishing industries, and have moved during the past three years from one residence to another or across school district due to

economic necessity. Migrant students are eligible for program services from age 3 until they (1) attain a high school diploma or its equivalent or (2) turn 21.

Though funded almost entirely by federal funds California's 5) Migrant Education Program (MEP) is governed by both federal and state laws. While the state law provides no funding, it does set out the administrative framework for delivering local MEP services through regional services. The California Department of Education (CDE) reports in the 2015-16 school year, there were over 96,750 migrant students attending California schools during the regular school year and 42,570 attending summer/intersession classes.

In addition to conforming state law with federal requirements relative to migrant education this bill also removes the minimum standard imposed by the state for the number of days a summer school program (funding by a supplement federal grant program) is required to operate. Without those standards, operating agencies could conduct a summer school program for eligible migrant students for any length of time.

The bill, as proposed to be amended, no longer makes changes to provisions relating to migrant education.

- 6) **English learners.** According to the CDE, in the 2016-17 school year there were approximately 1.332 million English learners in California public schools, constituting 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.

The bill, as proposed to be amended, no longer makes changes to provisions relating to English learners.

## SUPPORT

California School Boards Association

## OPPOSITION

EdVoice

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