

SENATE THIRD READING  
SB 753 (Padilla)  
As Amended September 1, 2011  
Majority vote

SENATE VOTE: 39-0

EDUCATION 10-0 APPROPRIATIONS 17-0

---

Ayes: Brownley, Norby, Ammiano,  
Buchanan, Butler, Carter, Eng,  
Beth Gaines, Wagner, Williams

Ayes: Fuentes, Harkey, Blumenfield,  
Bradford, Charles Calderon, Campos,  
Davis, Donnelly, Gatto, Hall, Hill,  
Lara, Mitchell, Nielsen, Norby,  
Solorio, Wagner

SUMMARY: Makes changes related to the timing and administration of the required English language development (ELD) assessments. Specifically, this bill:

- 1) Requires, commencing with the point in time when the California Department of Education receives written documentation from the United States Department of Education (USDOE) that federal law permits the implementation of these changes or the 2013-14 school year, whichever occurs later, that the annual ELD assessment of English learners (ELs), using the test specified for that purpose, be conducted annually during a testing window that begins with the day upon which 55% of the instructional year is completed and ends on July 1 of that same calendar year.
- 2) Requires a school district to determine if the pupil is an EL by conducting an assessment of a pupil at the pupil's initial enrollment, using the current or prior year's test, as specified, for the grade in which the pupil is being enrolled; also, requires a school district to assess ELD of a pupil no more than one time per school year.
- 3) Prohibits a pupil in any of grades 3 to 9, inclusive, from being required to retake portions of the ELD assessment for which he or she has previously achieved the advanced proficiency level within each appropriate grade span, and prohibits a pupil in grades 10 to 12, inclusive from being required to retake the portions of the ELD assessment for which he or she has previously achieved the early advanced or advanced levels.
- 4) Specifies the provisions in 3) shall not be implemented until the existing ELD assessment contract expires, and shall not be implemented unless and until the California Department of Education (CDE) receives written documentation from the United States Department of Education (USDOE) that implementation is permitted by federal law.

EXISTING LAW:

- 1) Requires each school district that has one or more pupils who are ELs to assess each pupil's ELD, using a test acquired or developed by the Superintendent of Public Instruction (SPI) with the approval of the State Board of Education (SBE), in order to determine the level of

proficiency upon initial enrollment, and annually, thereafter, until the pupil is redesignated as English proficient; federal law extends this requirement to all ELs.

- 2) Requires the assessment to include, but not be limited to, an assessment of achievement of these pupils in grades 2-12, inclusive, in English listening, speaking, reading, and writing skills, and pupils in kindergarten and grade 1 in English listening, speaking, and until July 1, 2012, early literacy skills; also requires the ELD assessment, among other specifications, to be aligned with the English language development standards and be age and developmentally appropriate for pupils.
- 3) Requires the SPI and the SBE to establish procedures for conducting the ELD assessments, including determining the period of time within which the annual ELD testing is required to be conducted.
- 4) Requires the CDE to develop reclassification procedures that utilize multiple criteria in determining whether to reclassify a pupil as proficient in English, including, but not be limited to, the following:
  - a) Assessment of language proficiency.
  - b) Teacher evaluation.
  - c) Parental opinion and consultation.
  - d) Comparison of the pupil's performance in basic skills that demonstrates whether the pupil is sufficiently proficient in English to participate effectively in a curriculum designed for native English speaking pupils of the same age.

**FISCAL EFFECT:** According to the Assembly Appropriations Committee, this bill requires a school district to only assess a pupil once a school year. There would be no additional General Fund/Proposition 98 costs to complete this requirement. To the extent this provision violates federal law; the state may lose a portion of federal Title I funds (\$1.6 billion) and federal Title III funds (\$175 million).

**COMMENTS:** Nearly one quarter of the student population in California's public schools are classified as ELs, and closer to one half of the state's pupils come from homes where English is not the primary language. Current law requires schools to assess the English proficiency of all pupils whose primary language is not English, using an ELD test acquired or developed by the SPI with the approval of the SBE; the California English Language Development Test (CELDT) was developed and is required as the assessment to be used for this purpose. The ELD test is used for three purposes: 1) to identify new students who are English learners in kindergarten through grade twelve; 2) to determine the level of English-language proficiency; and, 3) to annually assess ELs progress in learning English until they are reclassified. ELs in grades 2-12 are administered the ELD test, which assesses those pupils in four domains: speaking, listening, reading and writing. Title III of the federal Elementary and Secondary Education Act, the current version of which is known as the No Child Left Behind Act (NCLB), also places similar ELD testing requirements on states. This bill makes two proposals related to the administration of the ELD assessment.

Timing of the administration of the ELD assessment: Current law requires annual ELD testing to be conducted during a period determined by the SPI and SBE; the annual testing window for the CELDT is currently from July 1 to October 31. This bill proposes to specify in statute and change that testing window for the annual administration of the ELD test to commence with the day upon which 55% of the instructional year is completed and end on July 1 of that same calendar year. This approach to setting a testing window is fairly standard and sound from a policy perspective, in that it ensures that testing of pupils occurs after approximately the same amount of instructional time in the year has elapsed, independent of any variations in school calendars across schools and districts. The approach is also used in other California testing programs, including the Standardized Testing and Reporting (STAR) Program. For a school district offering 180 days of instruction, this proposal would lead to a testing window opening on the 99th day of instruction; for most school calendars this would mean testing would occur sometime between early February and the end of June. The primary argument in support of this proposal is that spring testing would ensure that test results are returned in time to provide input into decisions about pupils that are made prior to the beginning of the next school year in the fall; though that is also true of testing administered in the previous fall (as under current law), fall testing would provide results that are potentially stale in that they would not reflect any gains made by the student in the school year in which he or she were tested. Thus the move to spring ELD testing would provide better information on student progress and benefit students through improved placement and instructional decisions.

There are three issues, however, that the bill potentially raises:

- 1) Spring ELD testing increases the possibility of pupil testing fatigue, since several other tests, that are part of the state testing program, are administered in the spring.
- 2) There may be technical psychometric issues that arise from moving the testing window; for example, the scores or score scale, as well as the resulting standard setting that ties those scores to a reported outcome level, for the ELD assessment may be sensitive to the time the test is administered. This may also be an issue due to the lengthening of the testing window to include nearly the entire 2nd half of the school year.
- 3) Enactment of this proposal may potentially create a conflict with federal requirement for annual testing of EL pupils under NCLB that would require clean-up legislation; the Chair of the Assembly Committee on Education has asked the SPI and SBE to clarify this requirement with the USDOE. The preliminary response received by the SPI from USDOE is that there would be a conflict. Amendments taken on the Assembly Floor delay implementation of this proposal until this issue is clarified by the USDOE.

Exempting ELs from retaking parts of the ELD assessment: This bill prohibits a pupil in any of grades 3 to 9, inclusive, from being required to retake portions of the ELD assessment for which he or she has previously tested as early advanced or advanced within each appropriate grade span and prohibits pupils in grades 10-12, inclusive from retaking the portions of the assessment for which she or she has achieved the early advanced or advanced level.

An argument can be made that not assessing ELs in all domains every year can result in loss of data and information that can be used for instruction purposes. The level of language proficiency at one grade level in any domain may not necessarily indicate the same level in the next or any subsequent grade level within a CELDT grade span. While the test is the same throughout each

grade span, the scale score ranges and cut points for each of the proficiency levels vary by grade level, as the language demands increase grade level after grade level and the expectations are for ELs to make continuous growth in language skills year to year. On the other hand, some may argue that ELs are overly tested and requiring them to retake portions of the assessment in which the pupil has reached the highest level is duplicative and time consuming. Proponents would argue that the time could be better spent on instruction.

These provisions of the bill are in conflict with federal law requirements. Federal law requires states to annually assess all Title III-served limited English proficient pupils in each of the four language domains of speaking, listening, reading and writing. Additionally, Title I also requires an annual English language proficiency assessment in four language domains for all limited English proficient pupils. Some states have asked the USDOE whether they could exempt some of their students from annual English language proficiency test in any domain in which the student scored proficient and "bank" scores until the student is proficient in all domains. The USDOE notes that both Title I and Title III require the annual assessment in all four domains and that "banking" of scores is not an appropriate practice. A notice of final interpretations in the Federal Registry states that the banking of the proficient scores of LEP [limited English proficient] students in particular domains, in any given year, including banking of scores within grade spans, is not permitted. The notice further states, "A proficient score at one grade level does not mean a student will be proficient in a subsequent grade level in the same language domain, since language demands increase as a student advances in school."

This bill specifies that these provisions shall not be implemented until CDE receives documentation from the USDOE that implementation is permitted by federal law.

Analysis Prepared by: Marisol Aviña and Gerald Shelton / ED. / (916) 319-2087

FN: 0002517

# Senator Alex Padilla

## Fact Sheet



### SB 753 – PADILLA CELDT Date Change & Proficiency

#### Summary

This bill would require that the California English Language Development Test (CELDT) be administered in the Spring Semester, and ensure that a student would not be required to retake portions of the CELDT for which the student has previously tested proficient.

#### Background

An English Learner (EL) is a student whose primary language is not English and through the CELDT is determined not to be proficient in English. According to the Department of Education, 1.5 million California K-12 students are ELs.

Current law requires the CELDT be administered to all students whose primary language is not English within 30 calendar days of enrollment in a California public school. Additionally, there is an annual assessment during a period of time determined by the Superintendent of Public Instruction and the State Board of Education until a student is reclassified Fluent English Proficient (FEP).

The purpose of the CELDT is to: 1) identify pupils who are limited English proficient, 2) determine the level of English language proficiency, and 3) annually assess student progress in acquiring the skills of listening, speaking, reading, and writing in English.

#### Timing of the CELDT

In California the CELDT is administered at the beginning of the school year (July 1<sup>st</sup> thru October 31<sup>st</sup>). California and Montana are the only states in the nation that test in the Fall. In fact, all other states that administer annual EL assessments do so in the Spring.

Spring testing is the norm throughout the nation because it provides teachers and students the opportunity to prepare for the test during the academic school year. In a recent California Department of Education application for federal funding the Department states its intent to move the date of the annual EL assessment to the Spring sometime in the next 5 or 6 years. This delay in moving the testing date also delays the inherent benefits for teacher and students in improving English language development.

#### Honoring Proficiency

An EL who is not deemed proficient in any one section of the CELDT is currently required to retake the entire exam the following year, including the sections in which they have already demonstrated proficiency. Even students who are deemed proficient in all sections of the CELDT, but are not reclassified as Fluent Proficient due to criteria other than the CELDT, must retake the entire CELDT the following year. This redundant policy is inconsistent with many other state tests, including the California High School Exit Exam and the California Basic Educational Skills Test, which determines the proficiency of teachers, in that these tests do not

require the retaking of previously passed sections.

Annually, California succeeds in educating just 9% of ELs to proficient levels. Unlike an EL, a FEP student is able to participate in courses which are required for admission to the California State University and the University of California. Successful reclassification for ELs is vital for career and college readiness.

We should remove unnecessary and redundant barriers to proficiency and align ourselves with the practices of the rest of the nation and the stated goal of the California Department of Education by administering the CELDT in the Spring without delay.

### Existing Law

Requires a complete English Learner annual assessment to be conducted during a period of time determined by the Superintendent of Public Instruction and the State Board of Education.

Requires a student to retake portions of the CELDT for which the student has already demonstrated proficiency.

### This Bill

- Would require the annual California English Language Development Test (CELDT) be administered during a three month test period commencing with the day upon which 55 percent of the instructional year is completed.
- Would ensure that a student would not be required to retake portions of the CELDT for which the student has previously tested proficient within specific grade spans.

### Support

Los Angeles Unified School District (Sponsor)  
Alliance for a Better Community  
ACLU  
Antonio R. Villaraigosa, Mayor of Los Angeles

ACLU  
Association of California School Administrators  
Boyle Heights Learning Collaboration  
California Association for Bilingual Education  
California Association of Latino Superintendents and Administrators  
California Charter Schools Association  
California Federation of Teachers  
California State PTA  
California School Boards Association  
CTA  
California Teachers of English to Speakers of Other Languages  
Californians Together  
CARCEN  
Coalition for Humane Immigrant Right of LA  
College Board  
Contra Costa County Superintendents' Coalition  
Fremont Unified School District  
Fresno Unified School District  
GreenDot Public Schools  
Hispanas Organized for Political Equality  
Innecity Struggle  
Japanese American Citizens League  
The Latin Business Association  
Lennox School District  
Lieutenant Governor Gavin Newsom  
Long Beach Unified School District  
Los Angeles Area Chamber of Commerce  
Los Angeles County Office of Education  
MALDEF  
National Council of La Raza  
Parent Revolution  
Public Advocates  
Riverside County School Superintendents' Assoc.  
Riverside County Superintendent of Schools  
Rowland Unified School District  
Santa Clara County Office of Education  
San Francisco Unified School District  
SEIU California  
Services, Immigrant Rights & Educational Network  
Sierra Sands Unified School District  
United Teachers Los Angeles  
Vaughn Next Century Learning Center  
Visalia Unified School District  
Youth Policy Institute  
*Revised: September 2, 2011*