

AMENDED IN ASSEMBLY AUGUST 15, 2013

AMENDED IN ASSEMBLY AUGUST 6, 2013

**SENATE BILL**

**No. 201**

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**Introduced by Senator Liu**

February 7, 2013

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An act to amend, repeal, and add Sections 313 and 60810 of, and to add Section 60211 to, the Education Code, relating to instructional materials.

LEGISLATIVE COUNSEL'S DIGEST

SB 201, as amended, Liu. Instructional materials: academic content standards: English learners.

(1) Existing law requires the Superintendent of Public Instruction to review existing tests that assess the English language development of pupils whose primary language is a language other than English, and requires that the tests include, but not be limited to, an assessment of the achievement of these pupils in English reading, speaking, and written skills, in accordance with specified criteria. Existing law requires each school district that has one or more pupils who are English learners, and, to the extent required by federal law, a county office of education and a charter school, to assess the English language development of each of those pupils in order to determine their level of proficiency. 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 a school district to annually conduct the assessment during a period that commences on the day upon which 55% of the instructional year is completed through July 1 of that calendar year.

This bill would apply the above requirements to initial and summative assessments and make conforming changes. The bill would require the Superintendent to determine which assessments, if any, meet specified requirements, and would require the assessments to be used for certain purposes. The bill would require the state board to approve assessment blueprints, assessment performance descriptors, and performance-level cut scores based on standard settings. The bill would require the Superintendent to report to the appropriate policy committees of the Legislature when the assessments are ready for their initial administration. The bill would make the above-described provisions of existing law inoperative when the Superintendent makes this report, and would repeal those provisions the following January 1. The bill, after the Superintendent reports to the appropriate policy committees of the Legislature, would require the summative assessment to be conducted annually during a 4-month period after January 1 determined by the Superintendent with the approval of the state board and the assessment for initial identification to be conducted upon the initial enrollment of a pupil.

(2) Existing law requires the State Board of Education to adopt basic instructional materials for use in kindergarten and grades 1 to 8, inclusive, for governing boards, as specified. Existing law also requires the state board to adopt and approve academic content standards for language arts and for English language development for pupils whose primary language is a language other than English.

This bill would authorize the state board to adopt basic instructional materials for kindergarten and grades 1 to 8, inclusive, that are aligned to those standards for language arts and English language development by no later than November 30, 2015. The bill would, among other things, require the State Department of Education, before conducting an adoption of basic instructional materials for language arts and English language development, to provide notice, as specified, to all publishers or manufacturers that each publisher or manufacturer is required to pay a fee, as specified, to offset the cost of conducting the adoption process.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. (a) It is the intent of the Legislature, in enacting  
2 this act, to continue the implementation of the common core

1 academic content standards by ensuring the adoption of  
2 instructional materials that are aligned to the common core  
3 academic content standards for language arts and by providing  
4 local educational agencies flexibility in their use of instructional  
5 materials.

6 (b) It is further the intent of the Legislature that this adoption  
7 of instructional materials will meet the needs of English learners  
8 by requiring alignment of the materials to the English language  
9 development standards adopted pursuant to Section 60811 of the  
10 Education Code.

11 (c) It is further the intent of the Legislature to ensure that school  
12 districts have access to as many high-quality standards-aligned  
13 instructional material options as possible, so that educators may  
14 have as many rigorous options in choosing the best instructional  
15 materials that meet the needs of all pupils, including English  
16 learners and pupils with disabilities, and that ensure that their  
17 pupils are able to master the academic content standards adopted  
18 by the State Board of Education pursuant to Section 60605.8 of  
19 the Education Code.

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

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

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

30 (c) Commencing with the 2000–01 school year until subdivision  
31 (d) is implemented, the assessment shall be conducted upon initial  
32 enrollment, and annually, thereafter, during a period of time  
33 determined by the Superintendent and the state board. The annual  
34 assessments shall continue until the pupil is redesignated as English  
35 proficient. The assessment shall primarily utilize the English  
36 language development test identified or developed by the  
37 Superintendent pursuant to Chapter 7 (commencing with Section  
38 60810) of Part 33 of Division 4 of Title 2.

39 (d) (1) This subdivision shall not be implemented unless and  
40 until the department receives written documentation from the

1 United States Department of Education that federal law permits  
2 the implementation of the changes set forth in this subdivision or  
3 until the 2013–14 school year, whichever occurs later.

4 (2) The assessment shall be conducted annually during a period  
5 that commences on the day upon which 55 percent of the  
6 instructional year is completed through July 1 of that calendar  
7 year. Annual assessments shall continue until the pupil is  
8 redesignated as English proficient. The annual assessment shall  
9 primarily utilize the English language development test identified  
10 or developed by the Superintendent pursuant to Chapter 7  
11 (commencing with Section 60810) of Part 33 of Division 4 of Title  
12 2.

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

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

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

24 (4) Notwithstanding paragraph (2), a school district shall assess  
25 the English language development of a pupil pursuant to this  
26 section no more than one time per school year.

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

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

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

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

40 (3) Parental opinion and consultation.

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

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

12 (h) This section shall remain in effect only until the  
13 Superintendent reports to the appropriate policy committees of the  
14 Legislature pursuant to paragraph (2) of subdivision (h) of Section  
15 60810 as added by the chapter that added this subdivision during  
16 the 2013–14 Regular Session, and as of January 1 of the following  
17 year, this section is repealed.

18 SEC. 3. Section 313 is added to the Education Code, to read:

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

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

28 (c) Commencing with the 2000–01 school year until subdivision  
29 (d) is implemented, the assessment shall be conducted upon initial  
30 enrollment, and annually, thereafter, during a period of time  
31 determined by the Superintendent and the state board. The annual  
32 assessments shall continue until the pupil is redesignated as English  
33 proficient. The assessment shall primarily utilize the English  
34 language development test identified or developed by the  
35 Superintendent pursuant to Chapter 7 (commencing with Section  
36 60810) of Part 33 of Division 4 of Title 2.

37 (d) (1) This subdivision shall not be implemented unless and  
38 until the department receives written documentation from the  
39 United States Department of Education that federal law permits

1 the implementation of the changes set forth in this subdivision or  
2 until the 2013–14 school year, whichever occurs later.

3 (2) The summative assessment shall be conducted annually  
4 during a four-month period after January 1 determined by the  
5 Superintendent with the approval of the state board. Annual  
6 assessments shall continue until the pupil is redesignated as English  
7 proficient. The annual assessment shall primarily utilize the English  
8 language development assessment identified or developed by the  
9 Superintendent pursuant to Chapter 7 (commencing with Section  
10 60810) of Part 33 of Division 4 of Title 2.

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

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

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

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

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

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

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

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

1 (3) Parental opinion and consultation.

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

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

13 (h) This section shall become operative when the Superintendent  
14 reports to the appropriate policy committees of the Legislature  
15 pursuant to paragraph (2) of subdivision (h) of Section 60810 as  
16 added by the chapter that added this subdivision during the  
17 2013–14 Regular Session.

18 SEC. 4. Section 60211 is added to the Education Code, to read:

19 60211. (a) Notwithstanding subdivision (a) of Section 60200  
20 and Section 60200.7, the state board may adopt basic instructional  
21 materials for kindergarten and grades 1 to 8, inclusive, that are  
22 aligned to the language arts content standards adopted pursuant to  
23 Section 60605.8 and the English language development standards  
24 adopted pursuant to Section 60811 by no later than November 30,  
25 2015.

26 (b) For purposes of conducting an adoption of basic instructional  
27 materials pursuant to subdivision (a), all of the following shall  
28 apply:

29 (1) (A) The department shall provide notice, pursuant to  
30 subparagraph (B), to all publishers or manufacturers known to  
31 produce basic instructional materials in language arts and English  
32 language development, post an appropriate notice on its Internet  
33 Web site, and take other reasonable measures to ensure that  
34 appropriate notice is widely circulated to potentially interested  
35 publishers and manufacturers.

36 (B) The notice provided pursuant to subparagraph (A) shall  
37 specify that each publisher or manufacturer choosing to participate  
38 in the adoption shall be assessed a fee based on the number of  
39 programs the publisher or manufacturer indicates will be submitted

1 for review and the number of grade levels proposed to be covered  
2 by each program.

3 (2) The department, before incurring substantial costs for the  
4 adoption, shall require that a publisher or manufacturer that wishes  
5 to participate in the adoption first declare the intent to submit one  
6 or more specific programs for adoption and specify the specific  
7 grade levels to be covered by each program.

8 (3) After a publisher or manufacturer has declared the intent to  
9 submit one or more programs and the grade levels to be covered  
10 by each program, the department shall assess a fee that shall be  
11 payable by the publisher or manufacturer even if the publisher or  
12 manufacturer subsequently chooses to withdraw a program or  
13 reduce the number of grade levels covered.

14 (4) The fee assessed pursuant to paragraph (3) shall be in an  
15 amount that does not exceed the reasonable costs to the department  
16 in conducting the adoption process. The department shall take  
17 reasonable steps to limit costs of the adoption and to keep the fee  
18 modest.

19 (5) A submission by a publisher or manufacturer shall not be  
20 reviewed for purposes of adoption until the fee assessed pursuant  
21 to paragraph (3) has been paid in full.

22 (6) (A) Upon the request of a small publisher or small  
23 manufacturer, the state board may reduce the fee for participating  
24 in the adoption.

25 (B) For purposes of this section, “small publisher” and “small  
26 manufacturer” mean an independently owned or operated publisher  
27 or manufacturer that is not dominant in its field of operation and  
28 that, together with its affiliates, has 100 or fewer employees, and  
29 has average annual gross receipts of ten million dollars  
30 (\$10,000,000) or less over the previous three years.

31 (7) If the department determines that there is little or no interest  
32 in participating in an adoption by publishers and manufacturers,  
33 the department shall recommend to the state board whether or not  
34 the adoption shall be conducted, and the state board may choose  
35 not to conduct the adoption.

36 (8) Revenue derived from fees assessed pursuant to paragraph  
37 (3) shall be budgeted as reimbursements and subject to review  
38 through the annual budget process, and may be used to pay for  
39 costs associated with any adoption and for any costs associated  
40 with the review of instructional materials, including reimbursement

1 of substitute costs for teacher reviewers and may be used to cover  
2 stipends for content review experts.

3 SEC. 5. Section 60810 of the Education Code is amended to  
4 read:

5 60810. (a) (1) The Superintendent shall review existing tests  
6 that assess the English language development of pupils whose  
7 primary language is a language other than English. The tests shall  
8 include, but not be limited to, an assessment of achievement of  
9 these pupils in English reading, speaking, and written skills. The  
10 Superintendent shall determine which tests, if any, meet the  
11 requirements of subdivisions (b) and (c). If any existing test or  
12 series of tests meets these criteria, the Superintendent, with  
13 approval of the state board, shall report to the Legislature on its  
14 findings and recommendations.

15 (2) If no suitable test exists, the Superintendent shall explore  
16 the option of a collaborative effort with other states to develop a  
17 test or series of tests and share test development costs. If no suitable  
18 test exists, the Superintendent, with approval of the state board,  
19 may contract to develop a test or series of tests that meets the  
20 criteria of subdivisions (b) and (c) or may contract to modify an  
21 existing test or series of tests so that it will meet the requirements  
22 of subdivisions (b) and (c).

23 (3) The Superintendent and the state board shall release a request  
24 for proposals for the development of the test or series of tests  
25 required by this subdivision. The state board shall select a  
26 contractor or contractors for the development of the test or series  
27 of tests required by this subdivision, to be available for  
28 administration during the 2000–01 school year.

29 (4) The Superintendent shall apportion funds appropriated to  
30 enable school districts to meet the requirements of subdivision (d).  
31 The state board shall establish the amount of funding to be  
32 apportioned per test administered, based on a review of the cost  
33 per test.

34 (5) An adjustment to the amount of funding to be apportioned  
35 per test is not valid without the approval of the Director of Finance.  
36 A request for approval of an adjustment to the amount of funding  
37 to be apportioned per test shall be submitted in writing to the  
38 Director of Finance and the chairpersons of the fiscal committees  
39 of both houses of the Legislature with accompanying material  
40 justifying the proposed adjustment. The Director of Finance is

1 authorized to approve only those adjustments related to activities  
2 required by statute. The Director of Finance shall approve or  
3 disapprove the amount within 30 days of receipt of the request and  
4 shall notify the chairpersons of the fiscal committees of both houses  
5 of the Legislature of the decision.

6 (b) (1) The test or series of tests developed or acquired pursuant  
7 to subdivision (a) shall have sufficient range to assess pupils in  
8 grades 2 to 12, inclusive, in English listening, speaking, reading,  
9 and writing skills. Pupils in kindergarten and grade 1 shall be  
10 assessed in English listening and speaking, and, once an assessment  
11 is developed, early literacy skills. *The early literacy assessment*  
12 *shall be administered for a period of four years beginning after*  
13 *the initial administration of the assessment or until July 1, 2014,*  
14 *whichever occurs first.* Six months after the three administered  
15 assessments are collected, but no later than June 30, 2013, the  
16 department shall report to the Legislature on the administration of  
17 the kindergarten and grade 1 early literacy assessment results, as  
18 well as on the administrative process, in order to determine whether  
19 reauthorization of the early literacy assessment is appropriate.

20 (2) In the development and administration of the assessment  
21 for pupils in kindergarten and grade 1, the department shall  
22 minimize any additional assessment time, to the extent possible.  
23 To the extent that it is technically possible, items that are used to  
24 assess listening and speaking shall be used to measure early literacy  
25 skills. The department shall ensure that the test and procedures for  
26 its administration are age and developmentally appropriate. Age  
27 and developmentally appropriate procedures for administration  
28 may include, but are not limited to, one-on-one administration, a  
29 small group setting, and orally responding or circling a response  
30 to a question.

31 (c) The test or series of tests shall meet all of the following  
32 requirements:

33 (1) Provide sufficient information about pupils at each grade  
34 level to determine levels of proficiency ranging from no English  
35 proficiency to fluent English proficiency with at least two  
36 intermediate levels.

37 (2) Have psychometric properties of reliability and validity  
38 deemed adequate by technical experts.

39 (3) Be capable of administration to pupils with any primary  
40 language other than English.

- 1 (4) Be capable of administration by classroom teachers.
- 2 (5) Yield scores that allow comparison of the growth of a pupil  
3 over time, can be tied to readiness for various instructional options,  
4 and can be aggregated for use in the evaluation of program  
5 effectiveness.
- 6 (6) Not discriminate on the basis of race, ethnicity, or gender.
- 7 (7) Be aligned with the standards for English language  
8 development adopted by the state board pursuant to Section 60811.
- 9 (8) Be age and developmentally appropriate for pupils.
- 10 (d) The test shall be used for the following purposes:
- 11 (1) To identify pupils who are limited English proficient.
- 12 (2) To determine the level of English language proficiency of  
13 pupils who are limited English proficient.
- 14 (3) To assess the progress of limited-English-proficient pupils  
15 in acquiring the skills of listening, reading, speaking, and writing  
16 in English.
- 17 (e) (1) A pupil in any of grades 3 to 12, inclusive, shall not be  
18 required to retake those portions of the test that measure English  
19 language skills for which he or she has previously tested as  
20 advanced within each appropriate grade span, as determined by  
21 the department in accordance with paragraph (8) of subdivision  
22 (c).
- 23 (2) Notwithstanding paragraph (1), a pupil in any of grades 10  
24 to 12, inclusive, shall not be required to retake those portions of  
25 the test that measure English language skills for which he or she  
26 has previously tested as early advanced or advanced.
- 27 (3) This subdivision shall not be implemented until the test  
28 publisher's contract that is in effect on January 1, 2012, expires.
- 29 (4) This subdivision shall not be implemented unless and until  
30 the department receives written documentation from the United  
31 States Department of Education that implementation is permitted  
32 by federal law.
- 33 (f) This section shall remain in effect only until the  
34 Superintendent reports to the appropriate policy committees of the  
35 Legislature pursuant to paragraph (2) of subdivision (h) of Section  
36 60810 as added by the chapter that added this subdivision during  
37 the 2013–14 Regular Session, and as of January 1 of the following  
38 year, this section is repealed.
- 39 SEC. 6. Section 60810 is added to the Education Code, to read:

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

12 (2) If no suitable assessment exists, the Superintendent shall  
13 explore the option of a collaborative effort with other states to  
14 develop an assessment or series of assessments and share  
15 assessment development costs. If no suitable assessment exists,  
16 the Superintendent, with the approval of the state board, shall either  
17 release a request for proposals for the development of an  
18 assessment or series of assessments that meets the criteria of  
19 subdivisions (b) to (f), inclusive, or contract to modify an existing  
20 assessment or series of assessments so that it will meet the  
21 requirements of subdivisions (b) to (f), inclusive. The state board  
22 shall approve assessment blueprints, assessment performance  
23 descriptors, and performance-level cut scores based on standard  
24 settings.

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

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

1 request and shall notify the chairpersons of the fiscal committees  
2 of both houses of the Legislature of the decision.

3 (b) (1) The assessment or series of assessments developed or  
4 acquired pursuant to subdivision (a) shall have sufficient range to  
5 assess pupils in grades 2 to 12, inclusive, in English listening,  
6 speaking, reading, and writing skills. Pupils in kindergarten and  
7 grade 1 shall be assessed in English listening and speaking, and,  
8 once an assessment is developed, early literacy skills. Six months  
9 after the results of three administrations are collected, but no later  
10 than June 30, 2013, the department shall report to the Legislature  
11 on the administration of the kindergarten and grade 1 early literacy  
12 assessment results, as well as on the administrative process, in  
13 order to determine whether reauthorization of the early literacy  
14 assessment is appropriate.

15 (2) In the development and administration of the assessment  
16 for pupils in kindergarten and grade 1, the department shall  
17 minimize any additional assessment time, to the extent possible.  
18 To the extent that it is technically possible, items that are used to  
19 assess listening and speaking shall be used to measure early literacy  
20 skills. The department shall ensure that the assessment and  
21 procedures for its administration are age and developmentally  
22 appropriate. Age and developmentally appropriate procedures for  
23 administration may include, but are not limited to, one-on-one  
24 administration, a small group setting, and orally responding or  
25 circling a response to a question.

26 (3) The assessment for initial identification developed or  
27 acquired pursuant to subdivision (a) shall have sufficient range to  
28 identify if the pupil is an English learner, as defined by Section  
29 306.

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

32 (1) Have psychometric properties of reliability and validity  
33 deemed adequate by technical experts.

34 (2) Be capable of administration to pupils with any primary  
35 language other than English.

36 (3) Be capable of administration by classroom teachers.

37 (4) Not discriminate on the basis of race, ethnicity, or gender.

38 (5) Be aligned with the standards for English language  
39 development adopted by the state board pursuant to Section  
40 60811.3.

- 1 (6) Be age and developmentally appropriate for pupils.  
2 (d) The assessment for initial identification shall be used to  
3 identify pupils who are limited English proficient.  
4 (e) The summative assessment shall meet all of the following  
5 requirements:  
6 (1) Provide sufficient information about pupils at each grade  
7 level to determine levels of proficiency ranging from no English  
8 proficiency to fluent English proficiency with at least two  
9 intermediate levels.  
10 (2) Yield scores that allow comparison of the growth of a pupil  
11 over time, that may be tied to readiness for various instructional  
12 options, and that may be aggregated for use in the evaluation of  
13 program effectiveness.  
14 (3) Have psychometric properties of reliability and validity  
15 deemed adequate by technical experts.  
16 (4) Be capable of administration to pupils with any primary  
17 language other than English.  
18 (5) Be capable of administration by classroom teachers.  
19 (6) Not discriminate on the basis of race, ethnicity, or gender.  
20 (7) Be aligned with the standards for English language  
21 development adopted by the state board pursuant to Section  
22 60811.3.  
23 (8) Be age and developmentally appropriate for pupils.  
24 (f) The summative assessment shall be used for both of the  
25 following purposes:  
26 (1) To identify the level of English language proficiency of  
27 pupils who are limited English proficient.  
28 (2) To assess the progress of limited-English-proficient pupils  
29 in acquiring the skills of listening, reading, speaking, and writing  
30 in English.  
31 (g) (1) A pupil in any of grades 3 to 12, inclusive, shall not be  
32 required to retake those portions of the assessment that measure  
33 English language skills for which he or she has previously tested  
34 as advanced within each appropriate grade span, as determined by  
35 the department in accordance with paragraph (8) of subdivision  
36 (e).  
37 (2) Notwithstanding paragraph (1), a pupil in any of grades 10  
38 to 12, inclusive, shall not be required to retake those portions of  
39 the assessment that measure English language skills for which he  
40 or she has previously tested as early advanced or advanced.

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

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

9 ~~(h)~~

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

O