

## Senate Bill No. 201

### CHAPTER 478

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.

[Approved by Governor October 2, 2013. Filed with  
Secretary of State October 2, 2013.]

#### LEGISLATIVE COUNSEL'S DIGEST

SB 201, 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.

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

SECTION 1. (a) It is the intent of the Legislature, in enacting this act, to continue the implementation of the common core academic content standards by ensuring the adoption of instructional materials that are aligned to the common core academic content standards for language arts and by providing local educational agencies flexibility in their use of instructional materials.

(b) It is further the intent of the Legislature that this adoption of instructional materials will meet the needs of English learners by requiring alignment of the materials to the English language development standards adopted pursuant to Section 60811.3, as it read on June 30, 2013, of the Education Code.

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

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 assessment shall be conducted annually during a period that commences on the day upon which 55 percent of the instructional year is completed through July 1 of that calendar year. Annual assessments shall continue until the pupil is redesignated as English proficient. The annual 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.

(3) The assessment 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.

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added this subdivision during the 2013–14 Regular Session, and as of January 1 of the following year, this section is repealed.

SEC. 3. Section 313 is added to the Education Code, 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) This section shall become operative when the Superintendent reports to the appropriate policy committees of the Legislature pursuant to paragraph (2) of subdivision (h) of Section 60810 as added by the chapter that added this subdivision during the 2013–14 Regular Session.

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

60211. (a) Notwithstanding subdivision (a) of Section 60200 and Section 60200.7, the state board may adopt basic instructional materials for kindergarten and grades 1 to 8, inclusive, that are aligned to the language arts content standards adopted pursuant to Section 60605.8 and the English language development standards adopted pursuant to Section 60811.3, as it read on June 30, 2013, by no later than November 30, 2015.

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

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

(B) The notice provided pursuant to subparagraph (A) shall specify that each publisher or manufacturer choosing to participate in the adoption shall be assessed a fee based on the number of programs the publisher or manufacturer indicates will be submitted for review and the number of grade levels proposed to be covered by each program.

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

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

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

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

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

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

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

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

materials, including reimbursement of substitute costs for teacher reviewers and may be used to cover stipends for content review experts.

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

60810. (a) (1) The Superintendent shall review existing tests that assess the English language development of pupils whose primary language is a language other than English. The tests 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 tests, if any, meet the requirements of subdivisions (b) and (c). If any existing test or series of tests 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 test exists, the Superintendent shall explore the option of a collaborative effort with other states to develop a test or series of tests and share test development costs. If no suitable test exists, the Superintendent, with approval of the state board, may contract to develop a test or series of tests that meets the criteria of subdivisions (b) and (c) or may contract to modify an existing test or series of tests so that it will meet the requirements of subdivisions (b) and (c).

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

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

(5) An adjustment to the amount of funding to be apportioned per test 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 test 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 test or series of tests 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. Pupils in kindergarten and grade 1 shall be assessed in English listening and speaking, and, once an assessment is developed, early literacy skills. The early literacy assessment shall be administered for a period of four years beginning after the initial administration of the assessment or until July 1, 2014, whichever occurs first. Six months after the three administered

assessments 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 test 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.

(c) The test or series of tests 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) Have psychometric properties of reliability and validity deemed adequate by technical experts.

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

(4) Be capable of administration by classroom teachers.

(5) Yield scores that allow comparison of the growth of a pupil over time, can be tied to readiness for various instructional options, and can be aggregated for use in the evaluation of program effectiveness.

(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.

(8) Be age and developmentally appropriate for pupils.

(d) The test shall be used for the following purposes:

(1) To identify pupils who are limited English proficient.

(2) To determine the level of English language proficiency of pupils who are limited English proficient.

(3) To assess the progress of limited-English-proficient pupils in acquiring the skills of listening, reading, speaking, and writing in English.

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

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

(3) This subdivision shall not be implemented until the test publisher's contract that is in effect on January 1, 2012, expires.

(4) 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.

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

SEC. 6. Section 60810 is added to the Education Code, 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, or contract to modify an existing assessment or series of assessments so that it will 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 (d). 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. 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) 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 he or she 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 he or she 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.