

Date of Hearing: April 25, 2023

ASSEMBLY COMMITTEE ON HIGHER EDUCATION

Mike Fong, Chair

AB 1096 (Mike Fong) – As Amended March 8, 2023

SUBJECT: Educational instruction: language of instruction

SUMMARY: Authorizes a community college to offer courses taught in languages other than English and permits students to enroll in the courses without concurrently enrolling in an English as a Second Language (ESL) course. Specifically, **this bill:**

- 1) Authorizes a community college to offer courses taught in languages other than English. Permits students to enroll in the aforementioned course without the requirement to concurrently enroll in an ESL course.
- 2) Makes a technical and conforming change to existing law.

EXISTING LAW:

- 1) Establishes English as the basic language of instruction in all schools. Permits the governing board of a school district and community college, and any private school the ability to determine when and under what circumstances instruction may be given bilingually. Establishes it is the policy of the state to ensure the mastery of English by all pupils in all schools provided that bilingual instruction is offered in those situations when the instruction is educationally advantageous to pupils. Authorizes bilingual instruction to the extent that it does not interfere with the systemic, sequential, and regular instruction of all pupils in the English language. Students who have become proficient in another world language other than English and are also proficient in English may receive instruction in classes conducted in the world language. Defines bilingual education as a system of instruction that builds upon the English language skills of a student whose primary language is neither English nor derived from English (Education Code (EDC) Section 30 and 30.5).
- 2) Establishes the California Community College (CCC) under the administration of the Board of Governors of the CCC, as one of the segments of public postsecondary education in California. The CCC shall be comprised of community college districts (EDC Section 70900).
- 3) Establishes that CCC districts are under the control of a board of trustees, known as the governing board, who has the authority to establish, maintain, operate, and govern one or more community colleges, within its district as specified. Permits districts to establish policies for and the approval of courses of instruction and educational programs (EDC Section 70902).

FISCAL EFFECT: Unknown

COMMENTS: *Need for the measure.* As disseminated by the author, “there are many benefits to allowing students to take classes in native languages. Monolingual students would be able to earn credits necessary for employment or to maintain employment. English speakers would be able to learn a second language for jobs seeking bilingual speakers. Currently, a California

Community College (CCC) may provide instruction in a language other than English, but students taking those classes are required to concurrently enroll in ESL classes. AB 1096 (M. Fong) clarifies that a CCC may offer classes in a language other than English without requiring students to also enroll in an ESL class, which will result in better-trained individuals serving their local communities and increased enrollment at the CCCs.”

California Community Colleges. The CCC was created after the implementation of the 1960 California Master Plan for Higher Education. The CCC’s primary duty to the people of California is to provide academic and vocational certificates and associate degrees for the purpose of preparing a highly skilled workforce for the industries of California. For many, the CCC is the gateway for postsecondary education, higher wages, and new career opportunities.

Couched with the mission of the CCC, is the requirement to provide instruction and additional learning supports to close learning gaps including instruction in English as a second language, adult noncredit instruction, and support services that will help students achieve a degree at the postsecondary level. This bill seeks to amplify this mission of closing learning gaps by providing educational opportunities in languages other than English without the requirement for students to master English as a language.

California’s population. According to the most recent (2021), data collected by the U.S. Census Bureau, California is home to 39 million people and is the most culturally diverse state in the Union. In 2020, Pew Research Center statistical portraits of the U.S. foreign-born population found that California had the largest immigrant population of all 50 states. Twenty-four percent of the 39 million people within the California identify as foreign-born according to the U.S. Census Bureau. The U.S. Census Bureau found 43.9% of households in California have a primary language other than English. Committee staff acknowledges that U.S. Census data is not an accurate depiction of the total population of California, as citizens of California who identify as immigrants may not be comfortable answering a federal survey, and the homeless population is often undercounted in the U.S. Census. The Public Policy Institute of California (PPIC) after examining data from multiple sources determined the population of California was home to 10.5 million immigrants and based on data from 2021, only 32% of the California immigrant population have earned a bachelor’s degree.

History of English as a Second Language (ESL) and non-English course. In 1973, a school system in San Francisco limited the course availability of supplemental English courses to students with Chinese ancestry. The students claimed that failure to provide adequate supplemental English courses violated the Fourteenth Amendment of the United States Constitution and the Civil Rights Act of 1964. *Lau v. Nichols*, 414 US 563 (1974) went before the U.S. Supreme Court which ruled the school system’s failure to provide supplemental English language instruction did in fact violate the Civil Rights Act and California State law. From this ruling, the right to access ESL courses in K-12 and postsecondary education was born. California’s history with ESL offerings is fraught with controversy. In 1998, a highly controversial, proposition proposed limiting the number of ESL courses and to instead have the majority of non-English speakers learn English through English-only immersion K-12 classrooms. Proposition 227 passed with 61.28% of the vote. However, 18 years later, the State sought to remove the “English-only” classroom provision and instead permit dual immersion classrooms or bilingual education. One of the main arguments by the proponents was while non-English speakers immersed in English-only classrooms may learn the language at a faster rate, the students miss portions of the academic teaching due to the language barrier. Proposition 58

passed with a vote of 73.52% and bilingual education resumed in K-12 schools. This bill builds upon the educational principles established by Proposition 58 (2016) by permitting community colleges to offer for-credit courses in languages other than English.

In November 2022, the PPIC published a report on ESL at the CCCs, specifically examining the impacts of remediation reform at the CCC. As determined by the report, the CCCs educate the largest population of ESL learners in the state, with tens of thousands of ESL learners enrolling in ESL-related courses at the 116 CCCs throughout the state and while their educational goals may vary, each student has a goal of mastering the English language. The report linked English proficiency with economic mobility, access to high-wage jobs, and lower levels of unemployment. Furthermore, proficiency in English is a requirement for entry into the California State University and the University of California.

Legal opinion on offering courses in a language other than English. In 2006, LeBaron Woodyard, the then-Dean of Instructional Program and Services at the CCC Chancellor's Office, requested a legal opinion on whether community colleges could provide instruction in Spanish, or languages other than English. The then-Vice-Chancellor and General Counsel to the CCC system provided a Legal Opinion 06-10, which stipulated community colleges could offer courses in languages other than English; however, the students, who enrolled in the non-English vocational or academic course must either:

- 1) Be enrolled in a basic English corequisite course; or,
- 2) Be part of a cohort of students that are required to concurrently enroll in another course or courses designed to help them achieve proficiency in English.

In forming the legal opinion, the General Counsel cited a mixture of Education Code, the California Code of Regulations, and case law in justification of the opinion. While the majority of evidence highlighted by the General Counsel has since been repealed or amended, there are salient points that still render the legal memo germane to the standard of practice as to how a course in a language other than English shall be offered at the CCC.

Education Code Section 30 and 30.5, *see the existing law section of the analysis*, stipulates English as the primary language of instruction for all schools in California including the community colleges. The code section also permits bilingual education to be taught for the purpose of assisting non-English speakers to gain a mastery of English. While the Education Code is explicit as to the right of students to receive bilingual instruction, the type of course and how it is provided to the students is delegated to the system of instruction. Therefore the legal memo provided by the CCC is aligned with existing law as it permits courses to be taught in languages other than English so long as the students enrolled in the said course are dually enrolled in an English proficiency course or are enrolled in a basic skill English corequisite.

The legal opinion further highlighted the California Code of Regulations, Title 5, Section 55002, as justification for the additional English course requirement. The regulations delegate the creation of a curriculum to faculty in the form of a curriculum committee, which determines the skills necessary for a student to be successful academically in a course or in the vocational industry. Since the mastery of English is a basic skill required for most academic courses and a basic requirement by industry standards, the curriculum committee would more likely than not require either co-enrollment or a corequisite enrollment in an English course for courses offered in a language other than English.

The legal opinion further explained that the curriculum committee would have to provide the same curriculum requirements regardless of whether the course was offered in English or in another language and therefore the textbooks used would have to be the same as those offered in English and would need to meet the industry standards. This bill provides the necessary changes in law, according to the CCC's legal opinion, to provide community colleges an avenue for offering academic and vocational courses in languages other than English to students without any additional course requirements or funding restrictions.

Los Angeles Community College District pilot program in non-English courses. Los Angeles County is the most populous county in the State with over nine million people residing within the county's borders. The 2021 American Community Survey by the U.S. Census Bureau recorded that 33.3% of the population identified as foreign-born. The survey further indicated 55.3% of Los Angeles County's population spoke a language other than English at home and of the population who speak a language other than English at home, 23.2% self-identified as speaking English less than very well.

Los Angeles Community College District (LACCD) is the largest community college district in the CCC system and is home to nine different colleges located throughout Los Angeles County. In the fall 2022 term, LACCD served 108,491 students as recorded by the CCC Chancellor's Office Management Information Systems Data Mart. A student survey administered online in the fall 2022 term by LACCD, found 69.2% of the students surveyed spoke a language other than English, with Spanish as the predominant non-English home language.

In the summer of 2022, the LACCD surveyed its students to determine whether the students would prefer to be taught in a language other than English. Of the 2,508 students who completed the survey (a 2.5% response rate), 66% identified as having an interest in taking a course taught in a language other than English. The survey also identified the following:

- 70% of students were interested in taking courses in education, child development, and family services and 64% were interested in taking courses in business and finances; and,
- 32% of students listed getting a new or better job as a reason for taking a course in a language other than English.

On December 13, 2022, LACCD issued a press release announcing a new pilot program to teach selected courses in Spanish, called the in-language pilot program. The in-language pilot program was to consist of 23 courses offered across six colleges in the LACCD during the winter intercession. The in-language pilot program advertised courses in computer basics, healthcare services, child development, nutrition, ESL, GED preparation, and workplace success, all taught either entirely in Spanish or in a bilingual setting. The courses were offered both in-person and online. After enrolling students the course offerings were reduced to 15 courses.

In the spring 2023 term, LACCD expanded the pilot program expanded to 60 courses offered at seven colleges. LACCD highlighted the success of the pilot program in its letter to the Assembly Committee on Higher Education:

“Fifteen classes were offered during the 5-week winter 2023 semester and were well attended. This spring the pilot was expanded and the LACCD offered 60 classes in three languages (Spanish, Korean, and Russian) in a variety of subject areas including basic skills, automotive repair, computer literacy, medical terminology, and child care and development.

As a result, the District was able to attract and enroll over 1,500 students in these classes, nearly 450 of which were first-time community college students.”

The courses offered through the pilot program are tuition-free and only require that students pay for their textbooks and materials associated with the course. The pilot program offered noncredit courses as there was concern from LACCD as to whether the district could accept apportionment funds for credit-bearing courses in a language other than English.

This bill would remove the provision in the code prohibiting the community colleges from offering courses in a language other than English without additional English course enrollment and thereby would permit the college to collect apportionment funds for the course offerings.

The *Los Angeles Times* featured an article on the pilot program in April 2023, entitled “A game changer for immigrants: Job-ready college classes in their native language.” The article lifted the voices of students who were enrolled in non-English, non-credit, vocational courses as to the benefits of the in-language courses:

“At Los Angeles City College, Vanessa Salitrero, a student enrolled in the in-home support service course, said she feels more prepared to work in the field by learning skills in Spanish. ‘If I take the classes in English, I will capture half of what they teach me since it is not my first language,’ she said.”

The community college is home to the most diverse population of college students in the United States and providing courses in languages other than English solidifies the CCC as an open-access institution for all students regardless of their primary language and this bill provides an equitable step in removing barriers, such as English proficiency, for students who wish to matriculate in their progress towards degree or certificate attainment.

Arguments in support. The Asian Americans Advancing Justice Southern California highlights the need for AB 1096 (M. Fong) as “community colleges currently offer a variety of noncredit courses taught in languages other than English; however, students enrolled in those courses must also enroll in concurrent ESL courses. This requirement creates a restrictive barrier to accessing high-quality, higher-education courses, degrees, and certifications for many current or prospective community college students. The 2020 United States Census results indicate more than one in four California residents were born outside of the United States. AB 1096 would provide immediate benefits to several categories of students, including students who are non-English monolingual and wish to advance their education or upskill in their current workforce sector, students who already hold degrees or certifications from their countries of origin and wish to advance their careers, and English-speaking students who seek to improve their skills in a subsequent language and improve their employability.”

Committee comments. As an open access college system unlike the public four-year institutions, the CCC does not maintain an English proficiency requirement as a barrier to entry; instead, the CCC provides robust ESL courses designed to help all students gain a mastery of the English language. As a college designed to accept 100% of students and fill in basic skills gaps, this measure fulfills a portion of this mission as it provides an avenue for students who are not proficient in English to continue their educational journey without mastering the often difficult prerequisite of English proficiency.

This measure lays the foundation for the goal of the LACCD pilot program, as articulated by Dr. Gabriel Buelna (a member of the LACCD governing board), from the aforementioned *Los Angeles Times* article, “the hope is to one-day offer classes required for an associate’s degree in languages other than English. The article further highlighted that “the district [LACCD] is also trying to determine if credits from classes taught in non-English languages would transfer to four-year colleges and universities.”

The population of California has already ruled through Proposition 58 (2016), the efficacy of providing K-12 students with an academic education in their native tongue while also teaching them English. The K-12 system permits students to continue on their educational journey without mastering the English language. This measure would align community colleges with their K-12 counterparts, in permitting students agency in their educational journey by removing the barrier of English proficiency may be hindering their academic progress.

In recent years, the Legislature has partnered with the CCC Chancellor’s Office to take significant steps to streamline degree pathways for the purpose of reducing time-to-degree and accelerating degree attainment. Additionally, the Legislature and Governor with the Multi-Year Roadmap for the CCC, have agreed to additional funding to help close equity gaps and improve systemwide graduation rates. By permitting students the option to engage in coursework, and with their professors in their native language, the Legislature is taking an equitable step in removing English proficiency as a prerequisite for academic and vocational degrees.

This measure removes the “and” requirement of English proficiency for any course offered by the CCC and instead offers an “or” option for students, permitting the student to decide whether English proficiency is a part of their educational goals or if they would elect not to gain English proficiency.

The population demographics of California have significantly changed in the last decade, with California being home to the largest immigration population in the United States. Offering courses in a student’s primary language is an admirable, inclusive, and equitable policy to help students attain their degree, especially when one considers that English proficiency may not be a requirement for the student to gain employment in their community upon graduation.

Completing an English composition course or an English course remains a general education requirement for an associate degree, an associate degree for transfer, and for many vocational certificates. As previously mentioned in this analysis, the faculty curriculum committee is the entity tasked with determining the curriculum for courses and the academic skill required for each degree and certificate program. Since this measure does not limit the type of courses that could be taught in a language other than English, it is entirely possible for some curriculum committees to determine a composition course taught in Russian has the same skill requirements as an English composition course and therefore, a student could graduate with a degree from a community college without ever having to demonstrate English proficiency. However, since curriculum committees are tasked with examining the skills required for a student to be successful in a given industry or market, it appears that this bill does not preclude, nor limit, the academic freedom of the curriculum committee to determine that English proficiency is still a prerequisite for a given course and therefore, the course could only be taught in the English language. The measure is not explicit as to the type of courses permitted to be taught in languages other than English, and with the trustee of LACCD mentioning the desire for degree

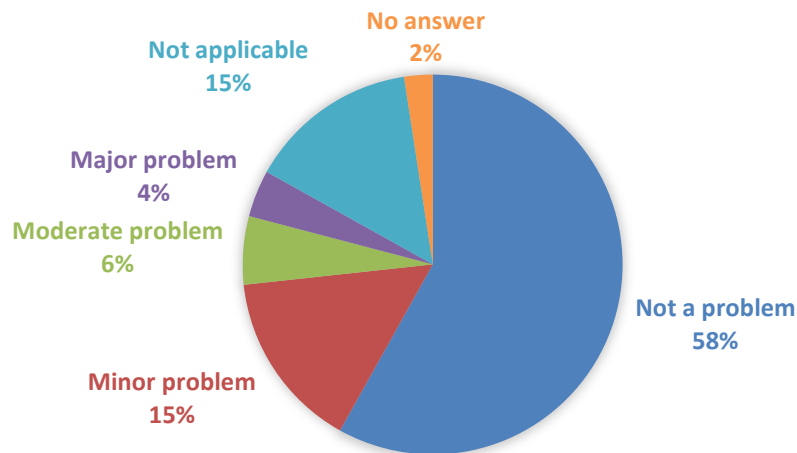
programs to be taught in languages other than English, the requirement for an English course could be replaced by the equivalency of another language.

Furthermore, the measure could unintentionally create a barrier for students who wish to gain access to four-year degrees. Both California State University (CSU) and the University of California (UC) require English proficiency as a requirement for enrollment. While some transfer-level courses taught in languages other than English could be accepted by the CSU and UC, not every course would be transferable. For example, the CSU requires students to have completed a course in English composition where the language of instruction was English.

With this in mind, the author may wish to limit the type of courses authorized to be taught in languages other than English. Specifically, the author may wish to exclude English, English composition courses, and transfer-level courses.

Providing students with courses in their primary language offers the students the ability to grasp academic concepts they might otherwise miss if taught in English. In 2022, LACCD conducted a student survey of their population where they asked students if proficiency in English prevented the student from achieving their educational goals. The survey found:

Percentage of students who identified English as a barrier to achieving their educational goal



LACCD is the largest community college district in the State and of their enrolled students, 25% identified English as a barrier to achieving their educational goal. This measure would remove this barrier and permit students the ability to choose a course based on the language of instruction thereby providing an educational tool to help students obtain their goals. With over two million Californians having some education but no degree, offering courses in a language other than English may result in the elimination of the final barrier that was preventing these adult learners from returning to the CCC for their degree.

REGISTERED SUPPORT / OPPOSITION:

Support

Asian Americans Advancing Justice-southern California

Chinatown Service Center
Los Angeles Community College District

Opposition

None on file.

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