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*Public Education*

## School finance commission reviews programs for English learners

*July 19* — The Texas Commission on School Finance is considering the funding and effectiveness of state instruction programs for public school students who are English learners, who comprise nearly one-fifth of public school students and whose academic progress is below the state average.

For each student in a bilingual or English as a Second Language program, schools receive extra funding from the state through a 0.10 multiplier to the basic allotment. The estimated total allotment was about \$505 million in fiscal 2018. Districts also receive extra funding for textbooks and technology for students in these programs, with \$10.3 million set aside for the current biennium.

The bilingual allotment has not changed since it was created in 1984. Some have called for increasing the allotment and targeting funding to programs shown to boost the academic achievement of English learners, a fast-growing student group. Among the commission's charges is to recommend policy changes to the public education funding system to adjust for student demographics.

Texas school districts may choose from six options for teaching students for whom English is not their first language. These include English as a Second Language (ESL) programs, which are designed mainly to develop proficiency in English, and Bilingual Education (BE) programs, which purposefully integrate the students' first language with English.

According to the Texas Education Agency (TEA), about 975,000 students were served in ESL and BE programs during the 2016-17 school year. Every district with an enrollment of 20 or more students of limited English proficiency in the same grade level must offer a BE or ESL program. About 90 percent of students in these programs speak Spanish as their native language.

Education Code, [ch. 29, subch. B](#) requires that children be identified as English learners within four weeks of initial enrollment in a public school through a parent-completed home language survey. If the survey indicates a language other than English as the language spoken at home, school district personnel administer an English language proficiency test to determine if the child should be identified as an English learner. Parents must approve or deny services for their child.

Children in the language programs are monitored annually for academic progress and attainment of English until they achieve full proficiency. They are monitored for two years after leaving the program and may re-enter if necessary.

**ESL programs.** Both kinds of ESL programs provide some or all content instruction in English while allowing for minimal support in the child's primary language. In the "pull-out" model, students receive instruction in language arts/reading from a part-time ESL teacher and the rest in a mainstream classroom. In the "content-based" model, students receive instruction from a full-time ESL teacher in all subjects.

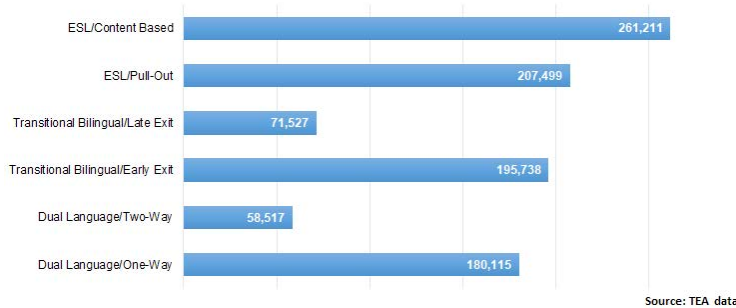
**BE programs.** The four types of BE programs provide full-time instruction in both the student's home language and English, commensurate with the student's level of academic achievement and proficiency in each language. Some programs, known as transitional early exit and transitional late exit, differ in length and the amount of instruction time devoted to a student's primary language. They are designed to gradually transition students to instruction in English. Students develop low to medium levels of literacy in two languages through these models.

Another BE program, dual language, delivers at least half of a student's instruction in the student's primary language

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throughout the program. One-way, dual-language programs serve only students identified as limited English proficient, while two-way, dual-language programs integrate students proficient in English with those identified as limited English proficient. Unlike ESL and transitional BE, dual-language programs are designed so that children attain high levels of literacy in both their native language and English. Twenty-four percent of students in ESL or BE programs were enrolled in dual-language programs during the 2016-17 school year.

English learners enrollment by program



A TEA official testified at the June 5 [hearing](#) that a national research study involving 8 million students found that those in dual-language programs significantly outperformed their peers in transitional bilingual and ESL programs on standardized tests in English reading taken over the course of their school careers. A witness from the University of Texas at El Paso presented 2016-17 data from the state’s STAAR tests showing students in dual-language programs statewide outperformed students in ESL programs in reading, math and writing.

Some members of the commission have proposed eliminating less effective instructional programs, such as ESL pull-out, and providing financial incentives for dual-language programs. Asked by commission members about barriers to districts that want to create dual language programs, several witnesses pointed to the initial costs to hire qualified teachers and buy textbooks in both English and Spanish. In addition, they said, some communities and some parents of English learners oppose dual-language programs because they believe the focus should be on getting students to achieve English proficiency, rather than proficiency in two languages.

— Janet Elliott

## Judiciary and Jurisprudence, Taxation

# States could receive online sales tax revenue after Supreme Court decision

**July 24** — In the wake of a recent U.S. Supreme Court decision, online merchants doing significant business in a state may be required to collect sales taxes on products shipped to that state even if the merchant has no physical presence there.

*South Dakota v. Wayfair, Inc.*, handed down June 21, overturns *Quill Corp. v. North Dakota*, a 1992 case that required states to show that a merchant had a “physical presence,” such as a warehouse or office, in the state before requiring a merchant to collect sales taxes. This became a barrier to collecting sales taxes on e-commerce, which exploded in popularity in the decades after the decision.

While goods shipped into states with sales taxes are generally subject to a use tax paid by the consumer if sales tax is not paid by the merchant, consumer compliance is rare. A report from the U.S. Government Accountability Office said Texas state and local governments could have gained about **\$1 billion** in revenue if all remote sales had been taxed in 2017.

Court precedent has determined that the Commerce Clause of the U.S. Constitution inherently restricts certain state taxes that

inhibit interstate commerce. In *Complete Auto Transit, Inc. v. Brady* (1977) the court held unconstitutional a state tax imposed on a merchant without a “substantial nexus” in the state. The *Quill* decision in 1992 confirmed that a substantial nexus implied a “physical presence.”

Last month’s decision in *Wayfair* eliminates the requirement for physical presence but not for substantial nexus. The court said the substantial nexus requirement was satisfied because the South Dakota law applied only to merchants doing more than 200 transactions in the state or more than \$100,000 in total sales.

Many large e-commerce businesses, including Amazon and Walmart, already pay sales taxes in Texas, either by an agreement with the state or because they have a physical presence through a store or warehouse. In its [initial guidance](#) on the ruling, the Texas Comptroller’s Office said it had begun reviewing rules that may need to be updated, but the changes would not include any retroactive application of the new law to remote sellers that have no physical presence in Texas.

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In light of *Quill*'s reversal, some say Texas should require more internet retailers to collect sales taxes. This would broaden the tax base, they say, and level the playing field between the online merchants that do not pay sales tax and brick-and-mortar stores, which must. Others say states should be cautious about taxing more online sales because it may not be practical for every state right now. Texas has more than 1,500 taxing jurisdictions and, unlike South Dakota, is not a member of the Streamlined Sales and Use Tax Agreement (SSUTA) that centralizes the collection of sales taxes. In its recent decision, the court

considered the low cost of compliance in South Dakota due to its SSUTA status, and critics caution that similar laws in other states might not meet the same standard. Still others say that any increase in sales tax collections must be accompanied by tax relief. Sales taxes increase consumer prices and reduce economic vitality, they say.

— Anthony Severin