



Court Upholds State Policy to Test English Learners in English

A California court of appeals has upheld a determination by the State Board of Education (“SBE”) that English Learner (“EL”) students must be tested in English. In *Coachella Valley Unified Sch. Dist. v. State of California* (July 30, 2009), ___ Cal. Rptr. 3d ___, 2009 WL 2263579, nine school districts claimed that California’s assessment plan violated No Child Left Behind Act (“NCLB”) requirements that test results be “valid” and “reliable.” NCLB is a federal law that provides funding to states that, among other things, conduct annual testing of students. Participating states are required to submit a testing plan to the United States Department of Education for approval. NCLB does not order states to use specific assessments or modes of instruction. Primary language testing is permitted under NCLB, but is not required.

The SBE designated two tests, the California Standards Test (“CST”) and the high school exit exam, as the assessments California schools would administer to satisfy NCLB. Both tests are administered in English. The SBE also approved testing accommodations for EL students, which include a flexible setting/schedule, translated directions, access to translation glossaries/word lists, and the opportunity to ask clarifying questions about directions that are presented orally in their primary language. As permitted under NCLB, California excludes scores from the language arts portion of the tests for EL students who are within their first year of school in the United States.

The school districts asserted that testing in English would prevent valid and reliable results. The school districts also argued that the accommodations designated by the SBE were not reasonable because they did not include testing of EL students in their native language. The Court of Appeals disagreed. Citing the importance of the separation of powers between the judiciary and the quasi-legislative function delegated to the SBE, the Court of Appeals declined to “second guess” the SBE’s determination of how to accurately assess EL students. Rather, the Court of Appeals deferred to the SBE’s policy decision, which acknowledged that the wide variety of languages spoken in California would make it difficult to develop testing materials for every EL student. The Court of Appeals also concluded that, given the mandate of Proposition 227 (Ed. Code § 305 et seq.) that all students receive instruction in English, subject to parental waiver, teaching students in English while testing in another language could “create confusion and compromise test results.”

The school districts have not yet decided whether to appeal the decision.

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