

## CLIENT NEWS BRIEF

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### **COURT UPHOLDS ENGLISH-ONLY STAR AND CAHSEE TESTING FOR STUDENTS WHO ARE ENGLISH LEARNERS**

In *Coachella Valley Unified School District v. State of California* (2009) 176 Cal. App. 4th 93, the California Court of Appeal for the First Appellate District upheld the decision of a trial court that the California State Board of Education (“State Board”) did not abuse its discretion by adopting an English-only policy to test limited English proficient (“LEP”) students or “English learners” for purposes of accountability under the No Child Left Behind Act (“NCLB”).

Multiple California school districts joined in filing a court action challenging the reliability and validity of California’s testing of LEP students related to the Standardized Testing and Reporting program (“STAR”) and the California High School Exit Exam (“CAHSEE”) in English only. The relief requested included: (1) withhold or withdraw test results of English language learners for NCLB accountability purposes; (2) cease administering the State’s current tests in English to English learners enrolled in public schools for less than three consecutive school years; (3) for testing used for NCLB compliance, develop and administer tests in Spanish to English language learners “literate in Spanish or instructed in Spanish and English,” and do the same for students literate or instructed in other languages where practicable; and (4) for all other English language learners, modify assessments to account for linguistic complexity.

The court recognized that NCLB permits, but does not require, primary language testing and does not mandate that tests measure academic content independent of language. Further, a native language assessment may not yield valid and reliable results for students who are not literate in their native language, who speak a dialect that is different from the one in which the native language assessment is written, or who receive the majority of their instruction in English and thus have not been exposed to the academic vocabulary of their native language.

The court acknowledged that California’s method of assessment included in the State’s plan under NCLB (the STAR and CAHSEE exams), were submitted and approved by the United States Department of Education in July 2002. Further, the development of the State’s plan was not an abuse of discretion. The test development process was guided by the principles of “universal design” to minimize unnecessary linguistic complexity and bias on the exams, to reduce excessive wordiness and sentence lengths, and decrease avoidable disadvantage to LEP

students. Additionally, an expert panel, convened to advise the State Board on testing policies for English learners, considered significant policies and operational concerns, including Proposition 227 and its imperative to promote rapid development of English for these students. The expert panel recommended against testing in primary languages for several reasons, concluding that testing in primary languages would not improve the accuracy of state test results. According to the court, the multiplicity of languages spoken in California public schools presented other feasible concerns. While most English learners speak Spanish, the panel advised that it would not be appropriate to include some languages and exclude others. The State Board, in its discretion, did not opt for primary language testing for statewide NCLB accountability purposes, but instead, committed to develop regulations authorizing testing accommodations for English learners. Accommodations include a flexible setting and flexible schedule, translated directions, and access to translation glossaries/word lists for both tests, as well as flexible time for the CAHSEE. Further, the court noted that students can ask clarifying questions orally in their primary language about any test directions.

The court carefully reviewed the record of proceedings resulting in these policy decisions and determined that they were not arbitrary, capricious, or lacking in evidentiary support. The court also noted that “[b]ecause reasonable minds could differ as to the wisdom of the State Board’s policy decisions, we will not ask whether some other policy is preferable, or otherwise intervene to supplant the State Board’s judgment with our own views.”

Unless and until further action is taken to change the State’s policy, both STAR and CAHSEE examinations will continue to be administered in English only, despite criticism and concern from many California school districts.

If you have any questions about this case or your school district’s obligations under NCLB, please contact one of our seven offices located statewide.

*As the information contained herein is necessarily general, its application to a particular set of facts and circumstances may vary. For this reason, this News Brief does not constitute legal advice. We recommend that you consult with your counsel prior to acting on the information contained herein.*



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