

CLIENT NEWS BRIEF

State, Feds Reach Settlement Agreement Regarding the Provision and Monitoring of Services to English Language Learners

On September 8, 2016, the United States Department of Justice (DOJ) reached a settlement agreement with the California Department of Education and State Board of Education (CDE) to improve the CDE's compliance monitoring systems and ensure provision of language instruction services to English learner (EL) students in the state's public schools. In light of this agreement, school districts should expect changes and closer scrutiny from the CDE with respect to monitoring and compliance efforts for ensuring language services to EL students.

The settlement agreement follows the DOJ's 2015 finding that the CDE was out of compliance with the federal Educational Opportunities Act of 1974 (EEOA). The EEOA prohibits state and local education agencies (LEA) from denying equal educational opportunities to any individual "on account of his or her race, color, sex, or national origin." (20 U.S.C. § 1703.) Such denial of opportunity occurs if, among other things, a state or local education agency fails to take appropriate action to overcome language barriers that impede students' equal participation in instructional programs.

In 2013, the DOJ began an EEOA compliance review of California's system for monitoring the provision of English language services to EL students. In May of 2015, the DOJ found that the CDE had failed over the course of a decade to respond timely or appropriately to school districts' certified reports showing that over 20,000 EL students were not receiving instructional language services. The CDE disagreed with the DOJ's findings and denied liability under the EEOA.

To resolve the dispute, the CDE and the DOJ reached a settlement agreement. The agreement requires the CDE to complete certain actions over the next two years relating to responding to LEA data regarding unserved EL students, federal program monitoring of LEA compliance with the EEOA and other laws and professional development for CDE monitoring consultants. Some key terms of the settlement agreement require the CDE to:

- Respond in a timely and effective manner to credible evidence that LEAs are failing to serve EL students, including notifying LEAs of violations and providing a protocol by which they must submit to the CDE documented evidence that resolves the violations;
- Provide written notice to all LEAs who reported unserved ELs in their 2015-2016 CALPADS 2.4 report, directing the LEAs to provide EL services immediately and requiring the LEAs to submit evidence of compliance to the CDE;
- When selecting LEAs for onsite and online monitoring reviews in the future, consider the LEA's prior data regarding unserved ELs in CALPADS 2.4 reports since 2015-2016, and specifically include charter schools in the selection process for such reviews each year;
- Improve the CDE's online monitoring tool and require that LEAs found out of compliance with certain requirements in the online tool receive onsite monitoring within the following two years if they fail to provide adequate evidence that the noncompliance has been resolved; and

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- Develop and implement policies and training on the monitoring, review and corrective action processes of the CDE's monitoring of schools for EL service violations and ensure that all EL monitoring consultants receive such training.

The DOJ will monitor the CDE's compliance with the settlement agreement and will require CDE to report on its efforts annually between 2016 and 2018.

This settlement agreement serves as a reminder to all LEAs of the importance of meeting their obligations under state and federal laws to provide English language instruction to EL students.

Separately, the United States Department of Education released what it billed as "significant guidance" on September 23, 2016, intended to help states and LEAs meet their obligations to EL students under the Elementary and Secondary Education Act of 1965, as amended by the Every Student Succeeds Act of 2015. The guidance, which can be found [here](#), addresses how Title III funds can be used to provide supplemental services to improve English learners' academic language and English language proficiency, as well as new reporting requirements that will become effective on July 1, 2017.

If you have any questions about this settlement agreement, responding to notices from CDE regarding unserved EL students or requirements for English language instruction services in general, please contact the authors of this Client News Brief or an attorney at one of our [10 offices](#) located statewide. You can also visit our [website](#), follow us on [Facebook](#) or [Twitter](#) or download our [Client News Brief App](#).