

Zaragoza-Diaz & Associates

Martha Zaragoza-Diaz

MEMORANDUM

To: CABE Board Members

From: Martha Zaragoza Diaz, Lobbyist

Subject: Legislative Report

Date: September 14, 2015

Cc: Jan Gustafson Corea, Executive Director

I. Legislative Session Over

The first year of the 2015-2016 ended early Saturday morning. The Legislature is officially "out of session". It was a busy "end of session" with many controversial bills waiting for legislative approval. The Legislature failed to pass some bills of importance to the Governor, such as SB 32 (a major climate bill) that sought to significantly increase California's greenhouse gas reduction targets. On the other hand, some bills with stiff opposition, made it to the governors' desk such as SB 643 (McGuire) which among other provisions will track and trace medical marijuana and will classify cannabis as an agricultural product.

Governor Brown now has the duty of deciding which of the approximately 640 bills on his desk he will sign or veto. For bills passed in the regular session, the governor has 30 days or until October 11, 2015 to act. For bills passed in a special session, the governor has 12 days to act.

Among the bills on the governor's desk is our sponsored bill SB 750 (Mendoza) English Language Education!! Hooray!! In response to concerns expressed of staff to the State Board of Education and some legislative staff, last minute amendments were made to SB 750. The amendments remove the provisions specific to the State Seal of Biliteracy and further clarification of criteria that is to be used in light of the fact that assessment scores will not be available until 2017. The bill had to be amended on the Assembly floor and then pass onto the Senate for concurrence to the amendments. SB 750 (Mendoza) received 79 aye votes on the Assembly floor and 40 aye votes on the Senate floor!!

SB 750 (Mendoza) is now on the desk of the Governor for action. Letters must NOW be sent to the Governor asking for his signature on the bill. Attachment A is the enrolled version of SB 750 (Mendoza), Attachment B is the Sample letter to Governor Brown and Attachment C are the details as to where the letter should be forwarded. PLEASE ACT NOW AND FORWARD THE SAMPLE LETTER TO OTHER INTERESTED ORGANIZATIONS OR PERSONS.

A final Bill report as to which bills were signed or vetoed by the governor will be forwarded to you by November 1, 2015. Stay tuned for this report,

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II. Lawsuit filed by the ACLU of Southern California and the Asian Pacific American Legal Center on English Learners Settled.

In April 2013, the ACLU and other organizations filed the lawsuit, **D.J. et al v. state of California et al**, on behalf of a half-dozen students. **Two hundred and fifty one** (251) districts acknowledged that 20,000 English learners (EL's) received no services in 2010-11. More than half of those students were concentrated in seven districts, including Compton Unified, Los Angeles Unified and three high school districts: Salinas Union High School District; Grossmont Union High School District in San Diego County, and William S. Hart Union High School District in Los Angeles County.

School districts receive both federal and state funding earmarked for English Learner Services, Title III and LCFF (supplemental and concentration) funding.

The California Department of Education's (CDE) initial response to the lawsuit was to question the validity of the district survey that provided the data and said they were **satisfied** that 98% of English Learners received services despite significant budget cuts. Additionally CDE stated that they have a much smaller role of oversight under the LCFF. The ACLU argued that "local control" does not absolve the state of its responsibility to ensure students are served.

Los Angeles Superior Court Judge James Chalfant, who ruled on this lawsuit, agreed with the plaintiffs that local control does not absolve the state of its responsibility to ensure students are served. In his 45-page decision, Judge Chalfant ruled the state had violated a 30-year-old federal law requiring services for English learners as well as the state Constitutional guarantee that all students are entitled to an equal opportunity for an education. (See II-Attachment A for the Decision)

Judge Chalfant wrote "A state cannot abdicate its supervisory responsibilities by ignoring credible evidence of persistent or significant district noncompliance. If districts fail to provide services (to English language learners) and the state has notice of this failure, the state has a duty ...to take reasonable action."

The state agreed to settle instead of appealing the ruling. The State Superintendent of Public Instruction forwarded a news release on September 10, 2015 (Release #15-70) announcing his is seeking funding from the Legislature and the California Department of Finance for three positions within the CDE to ensure English learners are receiving quality instructions. Additionally, the CDE will take several steps to ensure all English learners receive instruction including sending additional reminders to local educational agencies of their legal obligation to provide ELs with appropriate language instructions, modifying the California Longitudinal Pupil Achievement Data System to make it easier to determine whether a course provides EL instructional services, and modifying the way CDE monitors English learner programs. (See II-Attachment B for the Superintendent's News Release #15-70)

With respect to the written guidance to be forwarded by CDE to the LEA's, the settlement specifically states the written guidance is to include:

- A reminder LEA's have a legal obligation to provide EL students with appropriate language instructional services to help overcome the language barriers "that impede equal participation by English Learner students in instructions programs."
- Clarification on how to identify the provision of English learner instructions services in courses so that so that LEAs may correctly complete required data fields (field 9.20).

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II. ACLU Lawsuit

- LEA's may not identify the type of instructional services a course provides based **solely** on the credentials or authorization of the teacher.
- Counseling and tutoring do not qualify as EL instructional services.
- Charter schools must provide EL instructional services to EL students.
- LEA's must provide EL students with disabilities who are eligible for special education with EL instructional services in accordance with the students' IEP.

With respect to the monitoring component, the settlement states the following:

- Beginning with the 2016-17 school year, the CDE will add an indicator to the FPM selection criteria to increase the probability of onsite and online monitoring for LEA's that fail to assign EL students to at least one course that provides EL instructional services.
- CDE will consider compliance history when selecting LEA's for onsite and online FPM reviews.
- In selecting LEA's for onsite and online monitoring for the 2016-17 review year and subsequent years, CDE will consider the following factors: 1) the number and percentage of EL students an LEA reports in CALPADS as not assigned to any course providing EL instructional services, prioritizing LEA's as specified; 3) whether CDE has conducted onsite monitoring of an LEA within three years of the last CALPADS report in which the LEA reported EL students not assigned to any course providing RL instructional services.
- CDE will acknowledge the addition of the criteria on the CPM Criteria page on its website.
- CDE will conduct onsite and online monitoring, using the FPM process, of LEA's programs and services in proportion to the number of LEA's that fail to assign one or more EL EL students to at least one course that provides EL instructional services.
- Nothing in the **Agreement** shall be deemed to require CDE to increase the number of reviews it performs. The intent of the monitoring component is to identify how the data collected at issue in this Agreement will be used as selection criteria for FPM reviews.

With respect to the additional funding and positions, the settlement states:

- CDE will pursue 3 full time consultants. IF CDE fails to procure additional funding and positions for the 2015-16 budget year CDE will continue to seek funding and positions for at least two additional budget years.
- CDE is to use the consultants to request responses to the written notice reminding LEAs of their legal obligation to provide instructional services to EL students and their failure of assigning an EL student with at least one course providing EL instructional services, review and response to those responses, seek evidence from these LEAs and that all EL students are receiving appropriate instructional services and provide technical assistance to LEAs. CDE may also use these consultants to increase EL reviews and for any other purpose that will specifically benefit EL students.

While the settlement does not require CDE to obtain the 3 consultants nor does the settlement require additional FPM reviews, the settlement does provide for written guidance to be forwarded to LEAs regarding their legal obligation to provide EL instructional services and it also provides for improved CALPADs reporting of data regarding instructional services to EL students. It is hoped that the specified steps to be taken by CDE as required by the Agreement Settlement will indeed provide all EL students with the instructional services they require. Please refer to II-Attachment C for the complete details of the Settlement Agreement.

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