

ESEA Alert

September 12, 2005

California Teachers Association- Negotiations and Organizational Development Department

No Child Left Behind Implementation Struggle Moves to the Judicial Arena

Two separate lawsuits have been filed challenging the implementation of the No Child Left Behind law by both the state and federal governments.

On April 20, 2005, a diverse network of school districts, the National Education Association (NEA) and several state education associations filed the first-ever national lawsuit to force the Bush Administration to pay the costs of its own rules and regulations under NCLB.

Then, on June 1, 2005, ten California public schools districts sued the state for what they call invalid and unlawful testing of English-learners—85 percent of whom are Latino. (see story below)

The federal suit, *Pontiac School District v. Spellings*, was filed in the U.S. District Court for the Eastern District of Michigan. The plaintiffs represent several school districts in Vermont, Texas, Michigan, as well as NEA.

NEA President Reg Weaver said, "Today we're standing up for children, whose parents are saying 'No more' to costly federal regulations that drain money from classrooms and spend it on paperwork, bureaucracy, and big testing companies...The principle of the law is simple; if you regulate, you have to pay."



It is estimated that since NCLB's enactment in 2002, there has been a \$27 billion shortfall in what Congress was supposed to provide schools to meet the law's regulations and what has been funded.

The plaintiffs are not asking the court to bring down the law. The best court remedy would be to relieve schools of the current, illegal obligation to spend their money following the NCLB regulations and to allow districts to focus their funds on their own educational priorities.

10 School Districts Sue State for Unfair Testing of English Learners

The suit demands that California test its 1.6 million children whose first language is not English, and who are not yet proficient in English, in a "language and form" they understand, as mandated by NCLB.

California, in contrast to 14 other states, tests limited-English proficient children for academic knowledge in English only— whether they understand it or not. As a result, school districts with large numbers of English learners are failing NCLB accountability standards unjustifiably and sinking deeper and deeper into more sanctions.

Says Superintendent Foch Pensis of Coachella Valley Unified, where 82% of its 15,000 students are English learners, "The state labels our students and teachers educational failures. Our students are outstanding achievers despite the many obstacles many face in learning a new language and a new country. We could not accept their label as failures, and we decided to do something about it."

Three statewide nonprofit parent and civil-rights advocacy groups joined the suit against the State of California, Gov. Arnold Schwarzenegger, the State Board of Education, the State Department of Education and the State Supt. of Public Instruction Jack O'Connell.

English Learner Testing— Plaintiff School Districts

- ◆ Coachella Valley Unified (Riverside County)
- ◆ Chula Vista Elementary (San Diego County)
- ◆ Sweetwater Union High School (San Diego County)
- ◆ Alisal Union Elementary (Monterey County)
- ◆ Salinas Union High School (Monterey County)
- ◆ Terra Bella Union Elementary (Tulare County)
- ◆ Pajaro Valley Unified (Santa Cruz County)
- ◆ Oxnard Elementary (Ventura County)
- ◆ Hawthorne School District (Los Angeles County)
- ◆ Hayward Unified (Alameda County)

California Teachers Association

www.cta.org

For More Information:

Show your support for adequate funding by going to NEA's Legislative Action Center and signing a petition that tells Congress and the Administration to keep their promises and fund our schools.

Go to the website:
<http://capwiz.com/nea/issues/alert/?alertid=7400206>



The Road Ahead...

Jack Jennings, President and CEO of the Washington D.C.-based Center on Education Policy, told CSBA's *California Schools* about the growing trend of NCLB lawsuits demanding adequate, not merely equitable, school funding:

"The longer No Child Left Behind stays on the lawbook, the more likely it is that more states are going to be sued on adequacy grounds...And with these adequacy lawsuits, two-thirds of the plaintiffs are winning now. Since the law doesn't address the issue of resources, it means people will find another way to get at the issue of resources and that will be through litigation."

Questions & Answers About the Lawsuits

PONTIAC v. SPELLINGS

What is this lawsuit about?

The plaintiffs want federal officials to keep the promise they made to states and school districts when they enacted NCLB in 2002: local communities would not be forced to pay for new federal mandates.

What does the law say?

The law says in § 9527(a): "Nothing in this act shall be construed to authorize an officer or employee of the federal government to mandate, direct, or control a State, local education agency, or school's curriculum, program of instruction, or allocation of State or local resources, or mandate a State or any subdivision thereof, to spend any funds or incur any costs not paid for under this Act."

What will this lawsuit accomplish?

Filing this lawsuit is the only way to put pressure on Washington because bureaucrats aren't listening to the concerns of parents and teachers.

How long will this lawsuit drag on?

That fully depends on the U.S. Department of Education and the judicial system. It's hard to say when a final decision will be made.

COACEHLLA VALLEY, et al. v. CALIFORNIA

What would the lawsuit suit do?

The suit asks the state of California to allow students who are already literate in their primary language to be tested in that language until they are proficient in English, or to offer simplified or modified English.

Who would it affect?

More than 1.6 million English-learners in the California state public schools, teachers, administrators, employers and taxpayers. If the plaintiffs win, the annual tests administered to students might have to be translated into the 100+ languages spoken by California children.

What do other states do?

More than a dozen other states test students in a primary language other than English. These include: Colorado, Delaware, Kansas, Massachusetts, Minnesota, New Mexico, New York, Ohio, Oregon, Pennsylvania and Texas.

What would happen to test scores?

The school districts in the suit say that test scores would improve dramatically if students were tested in a "language and form" they understood. The plaintiffs allege that testing English-learners in a language they don't understand not only violates NCLB but also results in inaccurate test results and districts being unfairly labeled as Program Improvement or "failing" districts for not making enough progress.