

## Case: D.J.<sup>1</sup> v. California

The case was filed in state court in Los Angeles on April 24, 2013; the case number is BS142775.

D.J. v. California is a lawsuit against the state of California, the California Department of Education (CDE), the state Superintendent of Public Instruction, and the state Board of Education on behalf of six English Learner students in the public school system and their guardians, and Walt Dunlop, a former Oxnard Union High School District teacher who has worked with English learners.

The suit seeks a court order mandating that the state defendants address reports that California public schools are not providing any language instructional services to some English learners who need them and ensure that such services are provided to all English learners as required by state and federal law.

The students, their guardians, and Dunlop are represented by the ACLU Foundation of Southern California and co-counsel. The plaintiffs' attorneys filed the suit nearly three months after they wrote to state education officials calling attention to the issue and requesting a response within 30 days. State education officials responded, on the 28th day, and requested a meeting. The parties met, but were unable to settle their differences.

Below, we the ACLU Foundation of Southern California lay out our contentions and what we understand the state government's responses to be, so the public can better understand this dispute and litigation.

Any misstatement about the state defendant's position would be inadvertent and will be rectified by the ACLU Foundation of Southern California once brought to our attention. Please note that litigation is dynamic and positions on both sides may change as the case moves forward.

The ACLU of Southern California Says	California Education Officials Say
1. State and federal laws require schools to help English learners become fluent speakers, readers and writers of English so they'll do well in other academic subjects.	1. No dispute.
1.1. Under state law, "The government and the public schools of California have a moral obligation and a constitutional duty to provide all of California's children, regardless of their	1.1. "The California Department of Education is determined <a href="#">to ensure</a> that all English learner students receive appropriate instruction and services." (CDE Press

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<sup>1</sup> The six students and their guardians are identified by pseudonym and initials; they remain anonymous for privacy reasons.

<p>ethnicity or national origins, with the skills necessary to become productive members of our society, and of these skills, literacy in the English language is among the most important.” Education Code section 300(c).</p> <p>1.2. The federal Equal Educational Opportunities Act requires that every state take action to address the language barriers confronted by English learners.</p> <p>It defines “the failure by an educational agency to take appropriate action to overcome language barriers that impede equal participation by its students in its instructional programs” as a denial of equal educational opportunity. (20 U.S.C. § 1703(f).)</p>	<p>Release, April 23, 2013.)</p> <p>1.2. “The CDE provides assistance to local schools and districts to achieve <a href="#">the following goals</a>:</p> <ul style="list-style-type: none"> <li>• Ensure that English learners acquire full proficiency in English as rapidly and effectively as possible and attain parity with native speakers of English.</li> <li>• Ensure that English learners, within a reasonable period of time, achieve the same rigorous grade-level academic standards that are expected of all students.”</li> </ul> <p>(CDE Website, Facts about English Learners (last visited Oct. 28, 2013).)</p>
<p>2. The State has failed to take appropriate action on behalf of tens of thousands of students who don't speak English fluently and are languishing in public school classrooms without the help schools are mandated by state and federal law to provide.</p>	<p>2. The claims have no merit and should be dismissed.</p>
<p>3. Almost a quarter, or about 1.4 million, of California’s roughly 6.2 million students are designated as English learners, according to the CDE.</p>	<p>3. No dispute.</p>
<p>4. According to the most recent data on the CDE’s website, 20,318 English learners (or 2%) are reported as receiving “no EL instructional services.” That means one out of every 50 English learner students is not receiving required English language services.</p> <p>For the past 16 years, every California school</p>	<p>4. Ninety-eight percent of California's English learners receive services. <a href="#">CDE Press Release</a> (Jan. 23, 2013).</p> <p>“It is inaccurate to assume or interpret a ‘no instructional services’ designation on the census as a failure to provide any EL Services to EL Students identified in this category.”</p>

<p>district has been required to report on an annual basis the number of English Learners who need English instructional services yet are not receiving them. About 250 districts, or nearly a quarter of the state’s 1,035 districts, report they are providing no services to these students.</p>	<p>(CDE Demurrer at 9.)</p>
<p>5. The State is the ultimate guarantor of the fundamental right to a public education under California’s Constitution. The State must take meaningful steps to ensure all English learner students receive mandated services and instruction.</p>	<p>5. Responsibility for complying with state and federal laws and providing appropriate instruction and services to English learner students belongs on “other respondents.” (CDE, Demurrer at 15.)</p> <p>“School districts ... are responsible for providing instruction to students and appropriate services to English learners.” (CDE Press Release, Jan. 23, 2013).</p>
<p>6. Studies show that EL students denied those services are more likely to fail or drop out of school.</p>	<p>6. “[S]tudies that compare outcomes for English learners receiving some form of accommodation for limited English proficiency ... to outcomes for English learners simply placed in mainstream classes and receiving no accommodation for their limited English yield consistent results: the former is more beneficial than the latter.” (CDE, Improving Education for English Learners: Research-Based Approaches 30 (2010).)</p>

For more information about this case, please contact:

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