

SUPERINTENDENT HORNE APPEALS FLORES DECISION; MOVES FOR STAY OF ENFORCEMENT

State School Superintendent Tom Horne has appealed both aspects of the *Flores* decision: the order exempting English language learners from passing the AIMS test to graduate, and the order imposing sanctions on the state until legislation is passed increasing funding for English language learners. Simultaneously, Motions to Stay the enforcement of both orders were filed with the trial court, a necessary precondition to seeking a stay from the Ninth Circuit Court of Appeals. The motions included many of the arguments ultimately to be included in the appellate briefs. Horne stated the following:

Both motions raise constitutional arguments that the Court does not have jurisdiction to dictate education policy to the state of Arizona. While it is good policy to ensure that everything is being done to teach English to English language learners as quickly as possible, this is properly a legislative function; details of education policy should not be dictated to the state by a federal court. Among the bases raised are the 10th, 11th and 14th Amendments to the United States Constitution. The 10th Amendment reserves to the states those powers, which should include the details of education policy, not delegated to the federal government by the Constitution. The 11th Amendment prohibits suits against states in federal courts. The 14th Amendment, which was the purported bases for the statute relied upon by the court, requires equal treatment, and cannot be used to require that one group of students receive favorable treatment over another. Indeed, applying lower standards to English language learners than to other students is the opposite of preferential treatment.

The Flores Decision

from *The Arizona Republic*:

U.S. District Judge Raner Collins ordered lawmakers and Gov. Janet Napolitano to come up with a financial plan by late January to help educate students struggling to learn English or be fined \$500,000 a day. The penalty could rise to \$2 million a day if they fail to act.

Collins also ruled that English-language learners do not have to pass the state's exit exam, AIMS, to graduate from high school until their education is funded and working adequately. That would likely exempt them through at least spring 2007 and possibly beyond.

State Superintendent of Public Instruction Tom Horne said he will work with lawmakers to meet Collins' demands but also plans to ask a federal appeals court to block the sanctions.

In his ruling, Collins said he "can only imagine how many students have started school" since the court deemed state funding for English learners to be arbitrary and inadequate in February 2000.

"How many students may have stopped school, by dropping out or failing,

because of foot-dragging by the state and its failure to comply with the original order?" Collins wrote

The ruling is the latest in a class-action lawsuit, *Flores v. Arizona*, that was filed on behalf of a Nogales family in 1992. Last spring, lawmakers missed what was supposed to have been the judge's final deadline

Read more about the *Flores* case by clicking [here](#).