

United States District Court, D. Arizona.  
Miriam FLORES, individually and as a parent of  
Miriam Flores, a minor child, et. al., Plaintiffs,  
v.

STATE of Arizona, et. al., Defendants.  
**No. CIV. 92-596TUCACM.**

June 25, 2001.

ORDER

[MARQUEZ](#), Senior District J.

*Post-judgment Relief*

\*1 On January 24, 2000, this Court issued a declaratory judgment against the Defendants for failing to provide limited English proficient (LEP) children with a program of instruction calculated to make them proficient in speaking, understanding, reading, and writing English, while enabling them to master the standard academic curriculum as required of all students. (See Findings of Fact and Conclusions of Law (citing [Lau v. Nichols, 414 U.S. 563 \(1974\)](#) (failure to provide English instruction to students of Chinese descent who do not speak English denies them a meaningful opportunity to participate in public education and violates Title VI, [42 U.S.C. § 2000d](#))). The Court's ruling came against a backdrop of state inaction, existing in 1992 when Plaintiffs filed the class action law suit and continuing through the duration of the case.

This Court held that as a matter of law the State's minimum base level for funding Lau programs [FNI](#) bears no relation to the actual funding needed to ensure that LEP students are achieving mastery of the State's specified "essential skills." (Judgment at 23.) The Court ruled that the State's appropriation of \$150.00 per LEP student is arbitrary and capricious.

[FNI](#). Now being called the English Acquisition Program (EAP).

This was the basis upon which this Court entered its Order of October 12, 2000 granting post-judgment relief and ordered the State to prepare a cost study to establish the proper appropriation to effectively implement the State's Lau educational theory. In that Order, the Court ordered that the cost study should be

prepared in a timely fashion so that the Arizona legislature could appropriate funding during the budget session beginning January 1, 2001.

While the cost study was completed, the legislature did not consider funding the Lau programs. Therefore, Plaintiffs seek further post-judgment relief. On May 22, 2001, Plaintiffs filed a Motion for injunctive relief, asking the Court to set a deadline for the State to comply with the Court's January 24, 2000 Declaratory Judgment. Specifically, Plaintiffs asked the Court to set a date by which Defendants shall remedy the arbitrary and capricious nature of the State's minimum base level that it appropriates per LEP student. Plaintiffs asked the Court to consider its request for further post-judgment relief on an expedited basis so that any injunction issued by the Court would be in place in the event a special session of the state legislature convenes. The State objected to the request for an expedited ruling, but did not file a Response to the Motion for Injunctive Relief.

On June 8, 2001, the Court held a hearing on Plaintiffs' Motion for Injunctive Relief. Defendants argued that the Department of Education should study the issues further and prepare a recommendation to the legislature regarding appropriate funding levels. The Court rejected these arguments and granted the Plaintiffs' Motion for Injunction. The Court issued a Minute Entry setting a deadline for the end of January 2002, for the state to comply with the Declaratory Judgment issued January 24, 2000 and ordered that if the Governor calls a special session of the Arizona legislature, the call shall include the necessary agenda item to ensure legislative compliance during the special session. The Court asked counsel for Plaintiffs to prepare a formal Order for its signature. Plaintiffs' counsel has submitted such an Order, which basically paraphrases the Court's civil minute entry. Defendants object.

\*2 Defendants assert that this Court has no power to order the Governor to place the issue of Lau funding on the agenda of a legislative special session. Defendants note that the January 24, 2000 Order, was declaratory in nature and asks that a supplemental Order be issued to set out the precise aspects of the Declaratory Judgment, which require compliance. First, these arguments should have been made in response to the Motion for Injunction or at oral

argument. Second, while the Judgment granted for Plaintiff was declaratory, the Court's Findings of Facts and Conclusions of Law set out the specific violations upon which the Court based its Declaratory Judgment.

Not Reported in F.Supp.2d, 2001 WL 1028369  
(D.Ariz.)

END OF DOCUMENT

Just as these findings were an adequate basis for the issuance of this Court's post-judgment directive to the State to perform the cost study, these findings are an adequate basis for this Court to grant Plaintiff's request for further injunctive relief. On January 24, 2000, this Court held that as a matter of law the State's minimum base level for funding Lau programs was arbitrary and capricious because it bears no relation to the actual funding needed to ensure that LEP students are achieving mastery of the State's specified "essential skills." (Judgment at 23.) Until remedied, Defendant fails to comply with the declaratory judgment and Plaintiffs are entitled to equitable relief.

Accordingly,

IT IS ORDERED that Plaintiffs' Motion for Injunctive Relief, filed May 22, 2001, (document # 217) is GRANTED.

IT IS FURTHER ORDERED that on or before January 31, 2002, Defendants shall comply with the Court's Declaratory Judgment, filed January 24, 2000. Specifically, the State's minimum base level of funding per LEP student shall not be arbitrary and capricious, but shall bear a rational relationship to the actual funding needed to implement language acquisition programs in Arizona's schools so that LEP students may achieve mastery of the State's specified "essential skills."

IT IS FURTHER ORDERED that if a special session of the legislature is convened prior to the deadline of January 31, 2002, the deadline for compliance shall then be the date of adjournment of the special session.

IT IS FURTHER ORDERED that the Request for Telephonic Conference Re: Form of Order Granting Injunctive Relief (document # 224) is DENIED.

D.Ariz.,2001.  
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