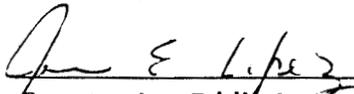


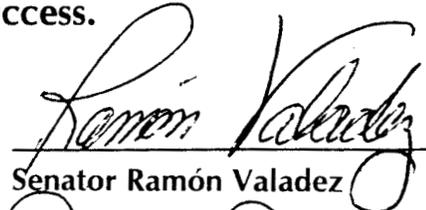
**THE COST OF EDUCATING ARIZONA'S
ENGLISH LEARNERS**

January, 2001

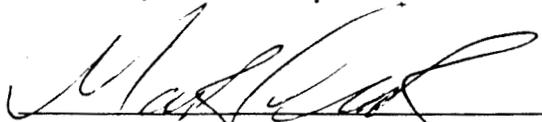
We are presenting this cost study because we believe that the Legislature should make funding for English learner programs a priority during this session. An increase in funding is necessary not only to satisfy our obligations under the Flores vs. Arizona lawsuit but also to ensure that immigrant and Native American children who are not proficient in English be given an equal opportunity for academic success.



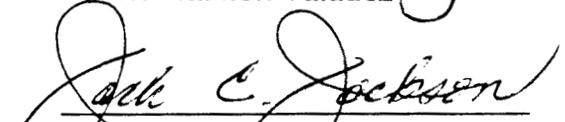
Senator Joe Eddie Lopez



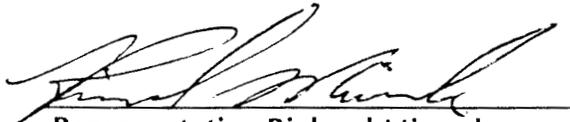
Senator Ramón Valadez



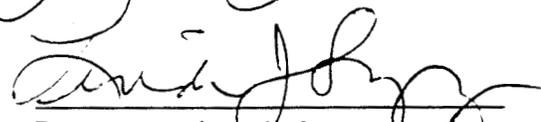
Representative Mark Clark



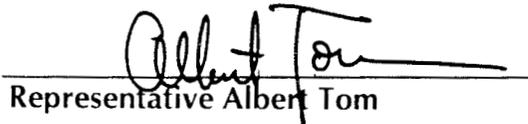
Senator Jack Jackson



Representative Richard Miranda



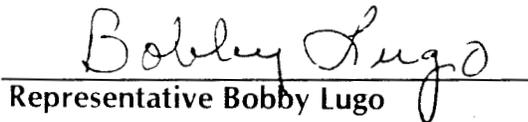
Representative Linda Lopez



Representative Albert Tom



Representative John Loreda



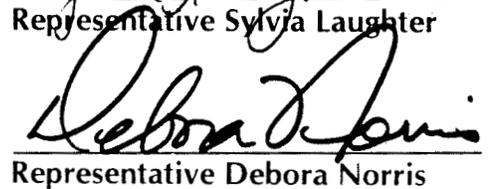
Representative Bobby Lugo



Representative Sylvia Laughter



Representative Mary Hartley



Representative Debora Norris



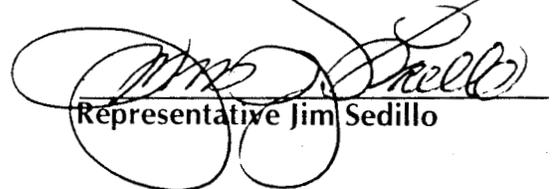
Senator Linda Aguirre



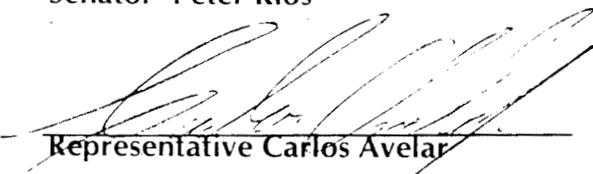
Representative Victor Soltero



Senator Peter Rios



Representative Jim Sedillo



Representative Carlos Avelar

Executive Summary

Almost a year ago, Judge Alfredo Marquez ruled in the Flores vs. Arizona lawsuit that Arizona was inadequately funding programs for English learners, and as a result their programs had "1) too many students in a class room, 2) not enough class rooms, 3) not enough qualified teachers . . . 4) not enough teacher aids, 5) an inadequate tutoring program, and 6) insufficient teaching materials . . ." After the Legislature failed to take any action, the Judge ordered that a cost study be done in time for the upcoming budget session. This cost study complies with Judge Marquez's order.

The per student amount required to provide programs to English learners is \$ 1527, approximately ten times the current allocation in the school funding formula. In addition, Students FIRST funding must be made available for additional classroom space.

PER STUDENT COST OF -	
Reducing Class Size From 25.5 to 20	\$ 435
Paying Stipends to Qualified Teachers	\$ 100
Providing Training to the 50% of Teachers Who Do Not Have the Required Endorsement	\$ 23
Hiring One Teacher Aide for Every 30 English Learners	\$ 302
Providing Compensatory Instruction for English Learners Who Are Not Progressing	\$ 494
Purchasing Instructional Materials and Supplies	\$ 26
Testing for Language Proficiency	\$ 32
Administering Bilingual Education and Immersion Programs	\$ 75
Granting Waivers	\$ 15
Miscellaneous Expenses	\$ 25
TOTAL	\$1527

These costs are necessary to:

- correct the program deficiencies Judge Marquez noted in his decision,
- comply with the provisions of the Flores vs. Arizona consent decree, and
- implement the provisions of Proposition 203.

For fiscal year 2000, the Department of Education reports that there were 125,000 English learners. Funding each one at \$ 1527 would cost \$191 M, about \$170 M more than was allocated to schools. The Legislature must appropriate that amount for the FY 2002 and 2003 budgets in order to settle the federal Flores vs. Arizona lawsuit and to ensure that children who do not know English have an equal opportunity for academic success.

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PURPOSE

This study is submitted in response to Judge Alfredo Marquez's October 12, 2000 order to prepare a cost study to establish the proper appropriation to effectively implement the State's Lau educational theory in the Flores vs. Arizona case (CIV 92-596).

TIMELINE OF EVENTS

1974 The U.S. Supreme Court rules in *Lau vs. Nichols* that schools must provide English learners with programs that will make them proficient in English so that they can achieve the same academic standards as other students.

1988 An Arizona Department of Education (ADE) study determines that schools spend an average of \$424 to educate each English learner. The study admits that \$424 does not represent the amount needed for a quality program, but is only what schools can afford.

1989 The Legislature establishes a funding weight that provides only \$50 per English learner.

1991 The Legislature increases the English learner funding weight to \$150.

1992 The *Flores vs. Arizona* lawsuit is filed in federal court claiming that Arizona is failing to properly fund programs for English learners and that ADE is failing to ensure that schools are providing adequate programs for these students.

Spring, 1999 SB 1001, a comprehensive bill which would have settled the *Flores vs. Arizona* lawsuit, is gutted in the Senate, then defeated in the House of Representatives.

August, 1999 A three day trial of the *Flores vs. Arizona* lawsuit is held on the issue of whether the state is properly funding English learner programs. The parties work on a settlement agreement on the other issues.

January, 2000 Judge Marquez rules that Arizona's funding of programs for English learners is inadequate and has resulted in not enough teachers, teachers' aides, classrooms, materials and tutoring. The state does not appeal the decision and it becomes final.

Spring, 2000 SB 1242, which would have funded a cost study on programs for English learners is defeated in the Senate. Several other amendments to provide funding for a cost study are also defeated.

June, 2000 During the special session on school funding, the Governor and some Republican legislators insist that funding for a cost study be removed from what would become Proposition 301.

June, 2000 Judge Marquez signs a consent decree that contains most of the provisions of SB 1001 (1999). It requires the Board of Education to adopt regulations by the end of the year regarding the quality of instruction for English learners, compensatory instruction and monitoring by the Department of Education. The issue of the qualifications of teachers of English learners will be decided at a trial in December.

July, 2000 Citing legislative inaction, the plaintiffs return to court, asking the judge to order that a cost study be done.

Oct. 12, 2000 Judge Marquez orders the state to do a cost study to establish the proper appropriation to effectively implement programs for English learners in time for legislators to use in the upcoming budget session.

Nov. 7, 2000 Voters approve Proposition 203 which requires most English learners to be taught through structured English immersion, unless their parents receive a bilingual education waiver.

Nov. 29, 2000 The parties in the Flores vs. Arizona lawsuit agree that the trial on teacher qualifications will be postponed and that the Board of Education will adopt rules regarding the requirements for teachers under Proposition 203 by July, 2001.

Dec. 15, 2000 ADE finally issues a Request for a Proposal (RFP) for a cost study, however, it contains deadlines that are nearly impossible to meet. For example, it asks the contractor to: select schools offering specified immersion programs in Texas, Canada, California, Washington, Phoenix and Glendale; determine what those schools are spending on each component (e.g., teacher salaries, teacher training, compensatory instruction, etc.) of their program; adjust those amounts to the Arizona cost-of-living dollars and project them to the year 2002; individually itemize sources and amounts of funding available for immersion programs for every charter school and school district in the state; and issue a preliminary report *in three weeks*.¹

Dec. 31, 2000 The State Board of Education misses their agreed upon deadline to adopt rules required by the Flores vs. Arizona consent agreement.

Jan. 3, 2001 No bidder responds to the Department of Education's RFP for a cost study by the deadline.

Jan. 10, 2001 Seventeen Arizona legislators release a cost study showing that it will cost the state a total of \$191 million, or \$1527 per student, to provide English learners with the type of program required under the judge's order and the Flores vs. Arizona consent agreement.

FLORES VS. ARIZONA LAWSUIT

History of the Lawsuit

Issues in the Lawsuit

In 1992 the Flores vs. Arizona lawsuit was filed in federal court alleging that Arizona was violating the civil rights of English learners by denying them the ability to participate meaningfully in our educational system. Specifically, it charged that the Legislature failed to adequately fund programs to educate English learners and that the Department of Education (ADE) failed to ensure that schools were providing adequate programs.

The issue of the inadequacy of the programs offered to English learners was resolved by a consent decree that required uniform standards for determining English proficiency, curriculum for English learners that was comparable to that offered native English speakers, compensatory instruction for English learners who were not progressing and regular monitoring by the ADE. The issue of inadequate funding went to trial.

The Judge's Decision on Funding

The issue of inadequate funding went to trial in August, 1999. On January 24, 2000 Judge Alfredo Marquez ruled that Arizona was in violation of the federal Equal Educational Opportunity Act because its funding for English learner programs was "arbitrary and capricious". He said that inadequate state funding has resulted in the following deficiencies: "1) too many students in a class room 2) not enough class rooms, 3) not enough qualified teachers, including teachers to teach ESL and bilingual teachers to teach content area studies, 4) not enough teacher aids, 5) an inadequate tutoring program, and 6) insufficient teaching materials for both ESL classes and content area courses." His decision was not appealed and is now final.

The Judge's Order for a Cost Study

Although several attempts were made during the 2000 legislative session to secure adequate funding for these programs, none were successful. After the legislature refused to fund even a cost study, the plaintiffs asked Judge Marquez to order the state to conduct one. ADE claimed that it would take \$300,000 and two and a half years to complete such a study.

On October 12, 2000 Judge Marquez called ADE's claims "brazen" and ordered the state to "prepare a cost study to establish the proper appropriation to effectively implement the State's Lau² educational theory." He also ordered "that the cost study shall be prepared in a timely fashion so that the Arizona Legislature can appropriate funding for Lau programs during the upcoming biannual budget session, beginning January, 2001."

Reason for This Cost Study

In the past few years, legislators began budget deliberations at the beginning of its session in January. They try to adopt a budget by March 15. It is necessary, then, for the Legislature to have a cost study at the beginning of the legislative session. This study satisfies the judge's requirement that there be a cost study produced in a timely manner.

Provisions of the Flores vs. Arizona Consent Decree

The consent decree approved by Judge Alfredo Marquez in June, 2000 contained the following provisions.

Standards for English Proficiency

Requires the Superintendent of Public Instruction to select a list of tests and corresponding scores by July 1, 2000 to determine whether a child is proficient in English. The test scores must be based on the vendor's cut scores for each test.

Status: Superintendent Keegan convened a committee of various educators to evaluate tests. Although they made their recommendations by the July deadline, the final determination of the selected tests was not issued until October, 2000. Schools still have not been officially informed that the vendors' cut scores determine proficiency.

Monitoring Exited Students

Requires the State Board of Education to issue regulations by December 31, 2000 that require schools to monitor former English learners for two years after they have become proficient enough to leave a Lau program. If a former English learner is not passing the AIMS or other tests selected by the Superintendent, the student must be re-enrolled in a bilingual or immersion class or be given compensatory instruction.

Status: The State Board of Education has not issued the regulations.

Quality of Programs

Requires the State Board of Education to issue regulations by December 31, 2000 that require bilingual or immersion programs to:

- Provide daily instruction in both English language development and basic subject areas.
- Incorporate the State Board's academic standards
- Be comparable in amount, scope and quality to educational programs provided to English proficient students.

Status: The State Board of Education has not issued the regulations.

Compensatory Instruction

Requires the State Board of Education to issue regulations by December 31, 2000 that would require schools to provide compensatory instruction to English learners who are not improving their scores on either the Stanford 9 or the AIMS test. Compensatory instruction can be in the form of individual or small group instruction, extended day classes, summer school and intersession school.

Status: The State Board of Education has not issued the regulations.

Individual Education Programs

Requires the State Board of Education to issue regulations by December 31, 2000 that establishes Individual Education Plan (IEP) teams and IEP standards which schools may provide to students when they have too few English learners at a grade level or when a parent wishes their child to be removed from a bilingual education or immersion program.

Status: The State Board of Education has not issued the regulations, however, Proposition 203 eliminated the option for IEP's.

Monitoring for Compliance with State and Federal Laws

Requires the Superintendent of Public Instruction beginning July 1, 2000 to monitor at least 32 school districts or charter schools each year to determine their compliance with state and federal laws regarding services to English learners. School districts with large numbers of English learners will be monitored every four years. Reports and corrective action plans must be issued according to specified timelines.

Status: The Department of Education has begun monitoring school districts and charter schools.

Impact of the Flores vs. Arizona Consent Decree on Program Costs

There are two areas where the consent decree will have a significant impact on costs: instruction in content areas and compensatory instruction.

Instruction in Content Areas

Prior to the consent decree, schools were permitted to use pullout programs. These programs pulled English learners out of their regular classroom for one period a day for English instruction. The remainder of the day the student stayed in a mainstream classroom without any assistance in understanding what was being taught. Pullout programs allowed one teacher to provide instruction for the English learners in six different classrooms. Studies have shown that pullout programs are the most expensive, because of the additional teacher required.

Under the consent decree, pullout programs will no longer be allowed unless they are supplemented by daily instruction in basic subject areas by a teacher trained in ESL (or immersion) methods. Schools will have to hire many more teachers to meet this requirement or help their regular classroom teachers get the required endorsement. These costs are addressed under the sections entitled Paying Stipends to Qualified Teachers and Training Teachers.

Compensatory Instruction

The consent decree requires that schools give compensatory instruction to both former English learners who are not performing satisfactorily after leaving a bilingual or immersion program, and to current English learners who do not show improvement on their Stanford 9 or AIMS scores. Examples of compensatory instruction are individual or small group instruction, extended day classes, summer school and intersession school. These costs are outlined in the section entitled Providing Compensatory Instruction.

Individual Education Programs (IEP's)

In addition, the consent decree strengthens the procedures for individual education programs, which some schools have used when there were not enough students to make a regular program feasible or when parents wanted their children removed from regular programs. Proposition 203, however, eliminated the option of individual education programs, therefore, these costs are not included in this study.

PROPOSITION 203

What Did Proposition 203 Do?

Programs

Prior to the passage of Proposition 203 schools had the choice of offering English as a Second Language (ESL), three types of bilingual education, or Individual Education Plans (IEP's) to their English learners. Proposition 203 required structured English immersion to be taught to all English learners who do not receive waivers. Immersion uses English almost exclusively, however, it uses methods to make English language instruction and subject matter understandable to an English learner. It is very similar to what is commonly referred to as self-contained or content ESL.

Proposition 203 allows children with waivers to be educated through "bilingual education techniques or other generally recognized educational methodologies permitted by law." The proposition, however, also eliminated all the other program choices permitted by Arizona law, with the exception of bilingual education. It is not clear whether schools would be permitted to offer other programs that would be permitted under *federal* law.

Proposition 203 defined bilingual education programs as those in which "much or all instruction, textbooks, or teaching materials are in the child's native language other than English." Although there are no bilingual programs in Arizona which use the native language exclusively, the definition in Proposition 203 is broad enough to encompass all of the models allowed prior to its passage.

Proposition 203 eliminated the IEP option. This means that parents can no longer withdraw their children from an immersion program until they are proficient and that schools are required to provide an immersion program even if there are only a few students in the school.

Waivers

Proposition 203 allows children to receive bilingual education if their parents receive a waiver for one of the following reasons:

- 1) The child already knows enough English to score above their peers on the Stanford 9 test or to pass an oral evaluation.
- 2) The child is at least 10 years of age and the principal and educational staff believes that bilingual education would be better.
- 3) The principal and educational staff believe that a child has a physical or psychological need that would make bilingual education preferable. This need must be documented in a 250 word statement and approved by the school superintendent.

Lawsuits

The parent of any school child can sue a school board member, elected official or administrator (but not teachers) to enforce the provisions of the Proposition. They can be awarded attorney's fees and actual and compensatory damages. Anyone who is successfully sued is removed from office and cannot participate in the Arizona public school system for at least five years. Administrators and board members cannot purchase insurance to indemnify themselves from these lawsuits.

Testing

All students, including English learners, must be given the Stanford 9 test in grades 2 through 12. The test results of English learners shall be separately aggregated and made available on the internet.

Repeal of Old Provisions

Proposition 203 repealed all the old statutory language regarding English learners including several accountability measures such as parental notification of student's progress toward English proficiency, an annual report to the Department of Education and financial penalties for failing to comply with state law. Other repealed provisions such as determining the home language of new students and the procedures for reclassifying students are addressed by federal law.

What *Didn't* Proposition 203 Do?

- It did not eliminate bilingual education for the 30% of English learners who are in bilingual education programs. Their parents must get a waiver for them to continue receiving bilingual education, but it is expected that the vast majority of them will apply for one. In some cases, schools that have never offered bilingual education will be required to do so.
- It did not make any significant changes to the instruction for 70% of English learners that were already in English as a Second Language programs. They will continue to be instructed almost entirely in English.
- It did not require English learners to be placed in a program of intensive English instruction. The language of the Proposition and the consent decree make it clear that academic subject matter must be taught in addition to English.
- It did not require students to learn English in one year. Federal law requires schools to provide students with language services for as long as it takes them to learn English.

Will Proposition 203 Limit Funding for English Learners to One Year?

During the election, both proponents and opponents cited the one-year time limit on services for English learners as a reason to vote for (or against) Proposition 203. Even the state's fiscal analysis claimed in the publicity pamphlet that the state could save up to \$20 million per year if the vast majority of English learners were exited from the programs after one year. One legislator proposed using that "savings" for an adult literacy program. All of those statements ignored federal civil rights law, which supersedes state law on this issue.

Proposition 203 states "Children who are English learners shall be educated through sheltered English immersion during a temporary transition period *not normally intended to exceed one year.*"(italics added) Similar language was in California's Proposition 227. Prior to the passage of Proposition 227 in California, the federal Office of Civil Rights addressed the question of the one-year limit in the following manner:

Question: Would a one year limit on services to LEP³ students be permissible under federal law?

Answer: Lau requires that LEP students who need alternative language instruction in order to receive meaningful access to the district's mainstream educational program, be provided those services until an individualized determination is made that a student no longer needs the services in order to participate meaningfully in the District's educational program. Some children may reach this level of English proficiency within one year. However, children learn at different speeds, and districts cannot limit to one year alternative services for LEP students who are not yet able to participate meaningfully in the district's programs.⁴

California has experienced an increase, not a decrease, in the total number of English learners every year since Proposition 227 passed.⁵ Last year only 7 to 8% of English learners in California were reclassified as English proficient⁶, which means that over 90% of English learners have been in immersion programs for longer than a year. This is not surprising since the vast majority of research indicates that it takes considerably longer than one year for a child to become proficient in English.

ARS 15-901, which was not affected by Proposition 203, allows Group B weight funding for English learners in a program, without regard for how long they have been in that program. In summary, the phrase "not normally intended to exceed one year" may be a goal or a suggestion, but it will not significantly affect the amount of funding needed for English learners.

Impact of Proposition 203 on Program Costs

Not only does Proposition 203 not save the state any money, in several ways it will make providing services to English learners more expensive.

Schools Must Offer Both Immersion and Bilingual Education, In Some Cases

Prior to the passage of Proposition 203, schools had the option of whether to offer bilingual education or English as a Second Language or both. Proposition 203 requires schools in which 20 students or more receive a bilingual education waiver to provide bilingual education. If there are less than 20 students with a waiver, the school must either provide them with bilingual education or transport them to another school that does. This situation will create additional costs for administration and transportation.

Class Sizes Likely Will Be Reduced

Class sizes for English learners will likely be smaller not only because of the bilingual education waivers, but because Proposition 203 repealed options for individual education programs when there were only a few English learners in a grade. (See discussion under Reducing Class Size.)

There Will Likely be an Increase in Compensatory Instruction

The Flores vs. Arizona consent agreement requires schools to provide compensatory instruction to English learners who do not improve their Stanford 9 test scores. Proposition 203 does two things that will increase the number of students eligible for compensatory instruction:

- It requires all students in grades 2 through 12 to take the Stanford 9 test. Previously English learners could be exempted from the Stanford 9 for up to three years. If more English learners are given the Stanford 9 test when they have had minimal or no instruction in English, more will fail to improve their test scores.
- According to the last three years of ADE's Census reports, English learners in bilingual education classes have outperformed English learners in all-English classes.⁷ To the extent that Proposition 203 succeeds in reducing the number of students in bilingual education classes, there will be more English learners with lower Stanford 9 test scores.

Group B Weight Funding

Proposition 203 repeals the authority of the Superintendent of Public Instruction to limit Group B weight funding for students in programs with a bilingual education or ESL endorsement. Instead, all English learners in programs will be eligible for funding. This may result in additional funding for as many as 16,000 English learners.⁸

Administrative Costs for Waivers

Approximately 30% of students are now in bilingual programs. It is expected that the vast majority of parents will apply for a waiver to keep their children in those programs. Granting waivers entails such expenses as meeting with the parent at the school, documenting individual psychological or physical needs, getting signatures from principals and superintendents, etc. This is discussed further in the section entitled Granting Waivers.

METHODOLOGY

1988 Cost Study

In 1988 the Arizona Department of Education conducted a cost study on programs for English learners, using a methodology similar to their biannual assessment of special education costs. The 1988 study examined sample school districts to determine what they were actually spending in the areas of administration, instruction, instructional support, operations and capital outlay. The study concluded that schools were spending approximately \$424 per English learner.⁹ If that amount were adjusted for inflation to the year 2000, it would be approximately \$624 per student.¹⁰

Judge Marquez noted that the cost study was not reflective of the actual cost of operating successful programs for several reasons, including that “there was no assessment made between the cost of a program and the quality of the program, and . . . certain conditions were not considered that may contribute additional significant costs.” The study, itself, acknowledged its shortcomings:

“It should be noted that the costs represented herein probably do not represent all the additional costs essential to providing a *quality* (emphasis added) LEP program, but rather they represent the costs from limited resources allocated by the district for the LEP programs.”¹¹

In conclusion, even if that study were updated to the year 2000, it would not satisfy the judge’s ruling in the Flores vs. Arizona lawsuit. If schools are not spending enough money, determining how much they spend will not help to ascertain what an adequate amount is.

Methodology of this Study

This study used a different approach. It enumerates the important components of an effective program for English learners, such as reduced class size, specially trained teachers and language assessments. Special emphasis was placed on the deficiencies that were outlined in Judge Marquez’s decision. A cost was determined for each component, which were then added together for a final cost. In all cases, the extra costs are for items that are required for programs for English learners that would not have been incurred in a classroom of English proficient students.

The 1988 Cost Study showed that self-contained ESL programs were more expensive than self-contained bilingual programs (\$473 to \$504 vs. \$239 to \$359). In another study, Thomas Parrish found that self-contained bilingual programs were more cost effective than either sheltered English or ESL programs by a margin of nearly 20 percent.¹² This study, however, does not distinguish between the costs of bilingual and immersion programs. The individual components of a quality program, such as reduced class size and adequate materials, are the same regardless of the particular instruction method used.

REDUCING CLASS SIZE

Issue

There are numerous studies which indicate that smaller class sizes are beneficial for all students. This is particularly true of students who have trouble with understanding the language in which they are being taught. Judge Marquez found in Nogales Unified School District that “the typical total enrollment in a primary classroom to which LEP students are assigned ranges from 20 students, which is good, to 30 students in a classroom” and that the state’s inadequate funding has led to “too many students in a classroom” and “not enough classrooms”.

Current Class Size

One method for determining class size is to divide the number of students by the number of teachers. That method, however, fails to take into account a number of “teachers” who perform administrative functions or are otherwise not in the classroom.

In 1998 the Arizona Education Association used a more accurate method – they sampled several school districts from throughout the state and counted the number of students that were in the classroom. Their study concluded that the average class size in Arizona is 25.5.¹³

That estimate may be low, however. Education Week’s “Quality Counts” uses 1996 data to conclude that only 45% of Arizona’s fourth graders are in classes of 25 or fewer and that only 35% of 8th graders are in math classes of 25 or fewer.¹⁴

This study uses the Arizona Education Association’s estimate of 25.5 for current average class size.

Optimum Class Size

Although most studies conclude that student achievement improves with reduced class sizes, there are very few studies which determine the optimum class size for English learners.

Rosita Apodaca studied a successful high-intensity language training program in El Paso Independent School District in which the class sizes were 8-12 in beginning courses, 15-20 in intermediate courses and the regular class size in advanced courses.¹⁵ “Characteristics of Effective Secondary Vocational Education Programs for Special Populations”¹⁶ by Marie Parks concluded that a class size ranging from 11-15 students was an important element of a successful program. The class sizes recommended by those studies are simply too impractical and expensive. This study assumes that the optimum ideal class size for instruction of English learners is 20.

In some circumstances, Proposition 203 will force even a lower class size for English learners. Prior to the passage of 203, schools were not required to offer a formal ESL or bilingual program to students unless there were at least 10 English learners per grade level, per school. In those cases, children may have been in a mainstream program, but were provided additional services under an Individual Education Program (IEP). Proposition 203 eliminated the IEP option. Therefore, a school district is required to provide a structured English immersion or bilingual program, even if there is only a single English learner attending the school.

Per Student Cost of Reducing Class Size from 25.5 to 20

Average Teacher Salary ¹⁷	\$34,873
Average Teacher Benefits ¹⁸	+ 5,475
Total Teacher Cost	\$40,348

Divided by Average # of Students	÷ 25.5
Per Student Allocation of Salary and Benefits	\$ 1,582

Per Classroom Cost of Reducing From 25.5 to 20 (5.5 X \$1582)	\$ 8,701
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Divided by New Classroom Size	÷ 20
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Per Student Cost for Reducing Classroom Size

\$435

Capital Expenses

Under Students FIRST, the state has assumed the responsibility for constructing classrooms. It would not, therefore, be appropriate to allocate in the Group B weight capital funding for what is now a state responsibility. In order to make it possible for schools to reduce English learner class sizes to 20, they must have adequate classroom space. Therefore, the School Facilities Board must be directed to assume that there will be only 20 English learners per classroom when they determine if there is a square footage deficiency or if new construction is warranted.

PAYING STIPENDS TO QUALIFIED TEACHERS

Issue

The most important requirement for the success of a bilingual or immersion program, as in any educational program, is a qualified teacher. Arizona requires teachers to have either an ESL or bilingual education endorsement on their teaching certificate in order to teach in one of those programs. The endorsements both require 21 semester hours in specified college classes. In order to get a bilingual education endorsement, a teacher must also demonstrate proficiency in another language.¹⁹ The requirements for an ESL endorsement are being reviewed in light of Proposition 203's requirement for immersion programs, however, they are likely to be similar.

Judge Marquez's decision noted that Nogales Unified needed at least 160 more elementary and middle school teachers with an endorsement, plus additional high school teachers. Nogales is not alone. A recent study by the ADE concluded that 37% of the teachers providing bilingual or immersion instruction to English learners did not have the necessary endorsement. Another 15% had only a provisional endorsement and were in the process of taking the necessary classes. In other words, **less than half of Arizona's English learners are being taught by fully qualified teachers.**²⁰

This problem could worsen with the passage of Proposition 203. A recent study sponsored by the University of California Linguistic Minority Research Center²¹ found that 1/3 of the certified bilingual teachers who were teaching in bilingual classrooms prior to the passage of Proposition 227 were no longer doing so. Equally disturbing was the reduction of teachers who were studying for their bilingual credential; in the year following the passage of Proposition 227, the number dropped by half.

Stipends

One method that schools have been using to encourage teachers to get the necessary training is offering stipends to teachers who have an ESL or bilingual endorsement. Judge Marquez noted that Nogales Unified paid a \$2,000 stipend per year for language endorsed teachers. A survey of 50 schools presented to the English as Second Language and Bilingual Education Study Committee in 1999 showed that half of the districts paid stipends ranging from \$400 to \$2500 annually.²²

Because the shortage of teachers is so severe, it is estimated that in order to recruit and retain teachers with an ESL (immersion) or bilingual education endorsement, schools must provide at least a \$2,000 per year stipend.

Per Student Cost of Stipends

Stipend Amount \$2,000

Class Size ÷ 20

**Per Student Cost
For Stipends**

\$100

TRAINING TEACHERS

Issue

Another method for increasing the supply of endorsed teachers is to provide the training necessary for the endorsement. The federal Office of Civil Rights says "If a recipient (school) has shown that it has unsuccessfully tried to hire qualified teachers, it must provide adequate training to teachers already on staff. Such training must take place as soon as possible." ²³

Judge Marquez noted in his decision that as part of an OCR agreement, Nogales Unified School District had required new teachers to get a bilingual or ESL endorsement within three years, but discontinued the rule when it became too burdensome. He also noted that Nogales Unified arranged with Northern Arizona University to offer the courses required for endorsement and contracted with California State Fullerton to provide additional training for its teachers, even though that program does not lead to an endorsement. Judge Marquez also noted that if NUSD had the money to upgrade its Lau programs, it would be able to cover the cost for its teachers to acquire the necessary endorsements.

Some schools have been able to afford to provide the necessary training. The survey mentioned above found that of the 50 schools surveyed, 26 reimbursed tuition costs and/or held onsite classes for teachers to get their ESL or bilingual endorsement. ²⁴

The necessity for teacher training will increase as the number of English learners entering our schools increases.

	Total English Learners ²⁵	Increase From Previous Year
1996-97	93,528	—
1997-98	111,207	17,679
1998-99	139,599	28,392

At a standard class size of 20 students, last year's increase alone in the number of English learners would require an additional 1400 teachers with an endorsement.

Per Student Cost for Training Teachers

Because half of English learners are currently without an endorsed teacher, it is assumed that at any given time half of all Lau program teachers are (or should be) taking courses necessary for an endorsement. Although, over time, the number of endorsed teachers should grow, it is assumed that for the next several years, at least 50% of teachers of English learners will be seeking endorsement due to expected continued growth in the English learner population.

Cost of a College Course on Bilingual or ESL Methods	\$400
Per Class Cost of Books and Materials	<u>+ \$ 50</u>
Total Cost Per Class	\$450
Number of Classes a Teacher Will Take Each Year	<u>X 2</u>
Total Annual Cost of Teacher Training	\$900
Times Percentage of Teachers That Need Training	<u>X 50%</u>
Annual Classroom Cost for Teacher Training	\$450
Number of Students in a Classroom	<u>÷ 20</u>
Per Student Cost for Teacher Training	\$ 23

HIRING TEACHER AIDES

Issue

Schools use teacher aides to help in the instruction of English learners. Teacher aides may assist by reinforcing vocabulary and pronunciation skills, translating tests, meeting with non-English speaking parents, providing individual or small group tutoring, etc. According to a survey presented to the English as Second Language and Bilingual Education Study Committee, almost 85% of schools with a significant English learner population hired teacher aides to assist in bilingual or ESL education. There was an average of one aide for every 60 English learners.²⁶

Judge Marquez noted in his decision that Arizona's inadequate level of funding resulted in a shortage of teacher aides. One aide for 60 students would mean that a single aide would split time between three classrooms. This study assumes that there should be a minimum of one aide for every 30 English learners.

Per Student Cost for Hiring One Teacher Aide for Every 30 English Learners

Hourly wage for teacher aides	\$ 7.45 ²⁷
Times annual hours for teacher aides	X 1050 ²⁸
Annual wage for a teacher aides	\$7, 822
Estimated benefits ²⁹	+ 1,228
Total Cost of Each Teacher Aide	\$9,050 ³⁰
English Learners Per Aide	÷ 30
Per Student Cost for Teacher Aides	\$302

PROVIDING COMPENSATORY INSTRUCTION

Issue

The Flores vs. Arizona consent decree requires schools to provide compensatory instruction whenever an English learner is not making progress towards state standards as evidenced by his or her failure to improve scores on either the AIMS test or the Stanford 9 test. Examples of compensatory instruction, as outlined in the consent decree, are individual or small group instruction, extended day classes, summer school and intersession school. Because this is a district obligation, English learners cannot be required to pay for the cost of compensatory instruction.

Additionally, Judge Marquez noted that if Nogales Unified School District had additional revenues it would pay teachers to tutor students after school and hire outside instructors to tutor students. He concluded that the State's inadequate funding has resulted in an "inadequate tutoring program".

How Many English Learners Will Need Compensatory Instruction?

Elementary English Learners

The AIMS test is given in the third, fifth and eighth grades. It will not be known if a child improves his scores on the second (fifth grade) test until he is in the sixth grade. Therefore, no English learners will be eligible for compensatory instruction because of failure to improve AIMS scores until the sixth grade.

The passage of Proposition 203 requires the Stanford 9 test to be given in grades 2 through 12. If an English learner first takes the test in second grade, he or she cannot have a chance to improve their test scores until the third grade. The results of the Stanford 9, however, would not be known until the child is in the fourth grade. For the purposes of this estimate, it is assumed that there will not be data available to determine if a child is making academic progress until the fourth grade, therefore compensatory instruction will not be required in kindergarten through third grades.

According to ADE 40-50% of *all* elementary students do not show improvement on Stanford 9 scores from one year to the next. English learners will have more difficulty showing improvement than the general population because the test is given in a language that they do not understand. It is estimated that 75% of all elementary English learners will not show improvement on their Stanford 9 scores from one year to the next.

High School English Learners

The number of high school students who have failed the AIMS test has been the source of substantial public debate. The numbers look even worse when they are sorted by ethnic group. For example, over 97% of Native American and 94.5% of Hispanic eighth graders failed the math portion of the test. Over 92% of Native American and 89% of Hispanic eleventh graders failed the writing portion of the *retest*.³¹ Given that the majority of students in both the Hispanic and Native American categories are proficient in English, it is doubtful whether students who are not proficient in English are prepared to pass the AIMS test. This study assumes that 100% of the English learners in high school will require compensatory instruction.

Based on the percentage of English learners in each grade and the assumptions of what percentage in each grade will not show academic improvement, it is estimated that overall 41% of English learners will require compensatory instruction.

Grade	% of all English Learners ³²	Est. % Not Improving Test Scores	Overall %
K	12.8%	0.0%	0.0%
1	13.9%	0.0%	0.0%
2	11.7%	0.0%	0.0%
3	11.0%	0.0%	0.0%
4	9.6%	75.0%	7.2%
5	8.0%	75.0%	6.0%
6	7.3%	75.0%	5.5%
7	6.7%	75.0%	5.0%
8	6.1%	75.0%	4.6%
9	4.8%	100.0%	4.8%
10	3.7%	100.0%	3.7%
11	2.3%	100.0%	2.3%
12	2.1%	100.0%	2.1%
TOTAL	100.0%		41.2%

Cost of Compensatory Instruction

Compensatory instruction is expensive. In the Flores vs. Arizona trial, Dr. Gene Glass of Arizona State University testified that the most effective form of compensatory instruction was tutoring. According to Dr. Glass, the cost for 30 minutes a day of tutoring by an adult is \$820 in 1987 dollars.³³ That amount would be **\$1,257** in 2000 dollars, adjusted by the CPI.³⁴ Some schools have turned to private companies to provide this type of instruction. For example, in 1993 Sylvan Learning Systems, a private tutoring company, contracted with Baltimore Public Schools to provide one-hour tutorials twice a week with no more than three students per teacher.³⁵ Their contract for \$1.4 M served 660 students, for a per student cost of \$2121 or **\$2555** in 2000 dollars.³⁶

This study assumes that the average cost for compensatory instruction is \$1200.

Per Student Cost for Providing Compensatory Instruction to English Learners Who Are Not Progressing

Average Cost for Compensatory Instruction \$1200

Percentage of Students Needing
Compensatory Instruction X .412

**Per Student Cost for
Compensatory Instruction**

\$494

BUYING INSTRUCTIONAL MATERIALS AND SUPPLIES

Issue

In order to carry out an effective bilingual education or immersion program, it is necessary to have adequate instructional materials. According to the Office of Civil Rights:

Materials need to be appropriate to the student's age or grade level ... If the district has chosen a bilingual program model, the District should acquire appropriate materials in both instructional languages. If the district has chosen an ESL program model, the District should acquire materials appropriate to ESL instruction. Acquiring appropriate materials may include the need to update reference documents such as library materials. Merely providing LEP students with the same materials that are provided to their English proficient peers does not constitute providing those students with equal access to the District's educational program."³⁷

Judge Marquez noted that Nogales Unified School District needed materials for both language groups. He further noted that NUSD needed "ESL materials, especially to teach language skills in content areas, such as English, social studies, science and math." He concluded that the inadequate funding has led to "insufficient teaching materials for both ESL classes and content area courses."

Per Student Cost for Additional Instructional Materials and Supplies Necessary for English Learner Programs

A 1987-88 study of Hartford Public Schools found that there was \$63,746 for instructional supplies for bilingual education services to 5,700 English learners³⁸, which averages out to \$11.18 per student. If that amount is inflated to 2000 dollars, using the federal CPI, it would be \$16.45 per student.³⁹ However, the authors of the study underestimated the costs of materials because they did not count any materials that were in English and they counted only half the cost of materials that were in the students native language.

According to the National Center for Education Statistics, schools in Arizona spend approximately \$52 per student in instructional supplies for all students, including English learners.⁴⁰ It is assumed that schools will need 50% more instructional materials than the average for all students.

**Per Student Cost for
Materials and Supplies**

\$26

CONDUCTING LANGUAGE ASSESSMENTS

Issue

Schools are required to do regular testing to determine a child's proficiency in English. If a new student's home language is not English, the child is given a proficiency test to determine whether or not he or she is proficient in English. Those who are classified as English learners are tested annually to determine whether they are proficient enough in English to be placed in a mainstream classroom. English learners who are mainstreamed are tested for the next two years to ensure that they continue to make academic progress.

Assessment costs include the test instrument, capital equipment, such as a tape recorder, and the costs of labor for administering and scoring the test, and entering results into a central computer system. There are also costs for administering a testing program and for conducting further assessments of students who pass the formal proficiency tests.

Cost of Test Materials, Scoring and Reporting

Using data provided by the Tucson Unified School District, the following are estimates for costs of test materials, scoring and reporting:

Grade	Oral Testing Cost	Reading and Writing Test Cost	Total Test Cost	% of all English Learners ⁴¹	Weighted Test Cost
K-1	\$ 5.51	\$ 0.00	\$ 5.51	26.7%	\$ 1.47
2-3	\$ 5.21	\$ 9.01	\$14.22	22.7%	\$ 3.23
4-6	\$ 5.21	\$ 7.50	\$12.71	24.9%	\$ 3.16
7-12	\$ 4.93	\$ 7.19	\$12.12	25.7%	\$ 3.11
TOTAL				100.0%	\$10.97

Cost of Conducting Proficiency Tests

According to TUSD, the average number of minutes for conducting the tests are as follows:

Grade	Oral Testing Time (min.)	Reading and Writing Test Time	Total Test Time	% of all English Learners ⁴²	Weighted Test Time (Minutes)
K-1	16	0	16	26.7%	4.3
2-3	37	14	51	22.7%	11.6
4-6	37	8	45	24.9%	11.2
7-12	37	8	45	25.7%	11.6
TOTAL				100.0%	38.7

Assuming an average of \$13.25 an hour for wages and benefits for a testing technician, the costs for conducting the tests would average \$8.55. This estimate is for a district with a large number of English learners, therefore they are able to benefit from economies of scale by allowing several students to take the reading and writing test at the same time. Adjusting for that, it is assumed that the cost for an average school district is \$10.

Additional Language Assessment Costs

There are additional costs associated with language proficiency testing. For example, schools are required to test all students whose home language is not English, only a portion of which are classified as English learners. For English learners who score high enough on proficiency tests, other assessments must take place before they can be mainstreamed. Although Proposition 203 eliminated the specific requirements for mainstreaming students, it is likely that schools will continue to use a comprehensive approach that considers, for example the teacher's opinion and the parents' wishes, in addition to the test scores. Other costs include transportation of testing technicians to school sites, capital equipment such as tape recorders and computer terminals for test score entry, and maintaining a data base on student's test scores. In addition there are the administrative expenses in arranging and tracking the tests. It is assumed that all these items will cost an additional \$10 per student.

Per Student Cost for Language Assessment

Cost of Test Materials, Scoring and Reporting	\$11
Cost of Conducting Proficiency Tests	\$10
Additional Language Assessment Costs	<u>\$10</u>
Per Student Cost for Language Assessment	\$32

By comparison, a study by Chambers and Parrish in 1992 of selected California schools found that assessment costs averaged \$36⁴³, which would be \$45⁴⁴ in 2000 dollars.

ADMINISTRATIVE COSTS

Issue

Administrative costs include the cost of a bilingual education director, his or her staff and their related costs. The responsibilities of administrative staff may include: ensuring that all students are tested for English proficiency; assisting in the design of curriculum and the selection of textbooks for English learner programs; administering federal grants; recruiting endorsed teachers; providing in-service training on English learner issues; preparing the annual language assessment report for the Department of Education; conducting a self-assessment of bilingual education or immersion programs; and ensuring that the district complies with state and federal laws.

Per Student Cost of Administering Bilingual Education or Immersion Programs

The 1988 Cost Study estimated that administrative costs comprised \$30 per student or 7.1% of the total student cost of \$424. In 2000 dollars that amount would equate to \$44 per student.⁴⁵ However, this amount is probably low because the authors arbitrarily decided not to count any costs that comprised less than 25% of a person's salary.⁴⁶ Also, Judge Marquez noted in his decision that one of the problems in the report was the different ways in which schools categorized program costs and that teachers performing administrative tasks could have been categorized as teachers instead of administrators.

Nogales Unified School District reported that administrative costs for their bilingual/ESL programs totaled \$297,960 for 4,843 English learners, at an average of \$62 per student.⁴⁷ This included costs for the Bilingual Education Administrator's salary and benefits, bilingual consultants, translating equipment and other translating costs, the Into English Program and the ESL Laboratory.

Nogales' administrative expenses may be lower than other districts because they have an extraordinarily high concentration of English learners (79% of their 99-00 ADM) and are thus able to benefit from economies of scale. Also, 95% of their English learners come from Mexico and are therefore primarily speakers of Spanish. By contrast, some schools have students speaking numerous languages. There are 43 different languages reported on the ADE's Arizona Language Census and Program report.⁴⁸ These schools have much higher translation costs.

A 1992 study contracted by the California State Department of Education of 15 "exemplary" California schools showed that administrative costs, which had a similar definition to those used in the 1988 Cost Study and the Nogales Unified School District, ranged from \$44 to \$132⁴⁹. In 2000 dollars, that range would be \$55 to \$164⁵⁰

Based on this information, this study assumes that administrative costs equal \$75 per student. These costs do not include the new costs to administer waiver requests, which are addressed below.

**Per Student Cost for
Administrative Costs**

\$75

GRANTING WAIVERS

Issue

Proposition 203 imposed an involved process for granting waivers for parents who wanted their children to be in a bilingual education or other program, other than immersion. Currently 30% of English learners are in bilingual education programs.⁵¹ Because these programs have been voluntary on the part of both the school and the parents, it is expected that a large number of waivers will be requested and processed. It is estimated that on average, 25% of parents of English learners will request waivers.

Administrative Costs of Waivers

Proposition 203 will require that the following steps be taken every year for each waiver:

#	Steps	Estimated Staff Time (min.)
1	Arrange for parents to visit the school	15
2	Provide parents with a full description of educational materials to be used and the different educational choices. Determine which waiver the parent will apply for.	45
3A	If waiver is based on already knowing English. . . .	
	Verify that Stanford 9 test scores are at the level specified in law	15
	or conduct an oral evaluation	30
3B	If waiver is based on age . . .	
	Verify that the principal and other educational staff agree that a waiver would be better	30
3C	If waiver is based on physical or psychological need . . .	
	Write a 250 word statement documenting the special needs	60
	Verify that the principal and other educational staff agree that a waiver would be better	30
	Obtain original signatures of principal and the superintendent	15
	Enter the statement on the student's official school record	15
4	Documenting, recording and filing the waiver.	10

Depending on the waiver option chosen, it will take from 85 to 190 minutes, to complete each waiver. At a rate of \$25 per hour for staff time, waivers will cost from \$35 to \$79 apiece. Because the experience in California has shown that the third (most expensive) option is the one most likely to be used, it is assumed that each waiver will cost an average of \$60.

Per Student Cost of Granting Waivers

Average cost of granting a waiver \$60

Estimated percent of parents who will request waivers X 25%

Per Student Cost of Granting Waivers

\$15

MISCELLANEOUS EXPENSES

Issue

There are several other expenses which have thus far not been addressed in this study. They include:

Transportation Expenses

Some school districts transport English learners to specific schools that offer bilingual education or immersion instruction. These costs are likely to increase under Proposition 203, because the individual education plan option has been eliminated. There is also the expense of bilingual/immersion staff traveling from one school to another.

Recruitment Expenses

Because of the severe shortage of teachers with a bilingual or immersion endorsement, schools have to spend a lot of money on recruitment costs. For example, some schools are even recruiting for teachers from Spain and Mexico. Last year Nogales Unified School District spent \$25,000 on recruitment costs, which amounted to \$5 per English learner.

Library Books and Endorsed Librarians

Schools with bilingual programs in which the goal is proficiency in English and one other language need library books and other materials in that language. Schools with immersion programs also need library materials geared to students who are learning English.

Inservice Training and Staff Development

In addition to the college credits needed to get a bilingual education or immersion endorsement, teachers and other school personnel must receive regular training on English learner issues. Last year, Nogales Unified School District spent \$19,575⁵² on this type of training, which equaled about \$4 per English learner.

Professional and Technical Services

Schools often hire outside personnel to do the following: enter data on English learners; develop software specifically for use in bilingual education or immersion classrooms; develop software to support testing, tracking and monitoring English learners.

Maintenance and Utilities Needed for Additional Classrooms

Although the additional classroom space needed for English learners should be provided through the School Facilities Board, the school must supply utilities, clean and maintain the extra space needed.

Per Student Cost of Miscellaneous Expenses

It is estimated that the per student amount for all of these expenses equals \$25.

**Per Student Cost for
Miscellaneous Expenses**

\$25

SUMMARY AND CONCLUSION

Arizona has been neglecting the education of English learners for more than a decade.

In 1989 when the Legislature first adopted a special funding weight for English learners, it appropriated only \$50, less than a twelfth of what a cost study showed that schools were actually spending. Since then the weight has increased to \$150, however, it is still a small fraction of what is required.

There are three events that happened last year that will cause major changes to English learner programs and affect their costs.

1) In November, 2000 voters approved Proposition 203 which established structured English immersion as the default program for English learners. Parents who want their children to participate in bilingual education will have to get a waiver. Currently, 30% of English learners are in bilingual programs.

Proposition 203 will likely result in more English learners becoming eligible for Group B funding. It will also add costs for granting waivers, reducing class sizes and providing compensatory instruction.

2) Judge Marquez approved a consent agreement in the Flores vs. Arizona. The agreement required establishing statewide standards for determining English proficiency, monitoring former English learners, providing curriculum that is comparable in amount, scope and quality to that provided to English proficient students, giving compensatory instruction to English learners who are not progressing and monitoring by the Department of Education.

The consent agreement will require schools to provide more content instruction, instead of just English instruction. This will require an increase in trained teachers. It also requires that schools provide compensatory instruction, which can be very expensive, to students who do not improve their AIMS or Stanford 9 scores.

3) In January, 2000 Judge Marquez ruled in Flores vs. Arizona that Arizona was inadequately funding English learner programs and as a result there were "1) too many students in a class room, 2) not enough class rooms, 3) not enough qualified teachers . . .4) not enough teacher aids, 5) an inadequate tutoring program, and 6) insufficient teaching materials . . ." In October, 2000 he ordered the state to conduct a cost study to "establish the proper appropriation to effectively implement the State's programs for English learners.

The judge's ruling forces Arizona to provide funding for the deficiencies that he pointed out.

This study calculates the costs to implement Proposition 203, to abide by the consent agreement and to correct the deficiencies noted by Judge Marquez. It shows that the actual cost of providing services to English learners is \$1527, ten times what the Legislature has previously allocated.

PER STUDENT COST OF -	
Reducing Class Size From 25.5 to 20	\$ 435
Paying Stipends to Qualified Teachers	\$ 100
Providing Training to the 50% of Teachers Who Do Not Have the Required Endorsement	\$ 23
Hiring One Teacher Aide for Every 30 English Learners	\$ 302
Providing Compensatory Instruction for English Learners Who Are Not Progressing	\$ 494
Purchasing Instructional Materials and Supplies	\$ 26
Testing for Language Proficiency	\$ 32
Administering Bilingual Education and Immersion Programs	\$ 75
Granting Waivers	\$ 15
Miscellaneous Expenses	<u>\$ 25</u>
TOTAL	\$1527

Although \$1527 seems high compared to what has been previously appropriated, it is right in line with what other studies suggest is an adequate amount. For example, separate studies by the Intercultural Development Research Association, a pioneer in the development of models for determining the costs of implementing bilingual education or ESL models, found in Texas, Colorado and Utah concluded that add-on costs for these programs equaled 33% of the basic cost of providing an education program.⁵³ If that weight is multiplied by Arizona's average per student M&O expenditure of \$4,754⁵⁴, it equals \$1568.

Arizona must properly fund English learner programs not only to avoid federal sanctions, but also because we must provide immigrant and Native American children who are not yet proficient in English an equal opportunity for academic success.

SOURCES

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- ² "Lau", which comes from the Lau vs. Nichols case, is often used to refer to programs for English learners.
- ³ "LEP" stands for Limited English Proficient and has the same meaning as English learner.
- ⁴ "Questions That May Be Raised By Proposition 227", U.S. Department of Education, Office of Civil Rights, June, 1998.
- ⁵ California Department of Education website on English Learners at California Public School at <http://data1.cde.ca.gov/dataquest/ASPGraph2.asp?Level=State>
- ⁶ California Department of Education website on English Learners at <http://data1.cde.ca.gov/dataquest/Cbeds1.asp?Enroll=on&PctEL=on&PctFEP=on&PctRe=on&cChoice=StatProf1&cYear=1999-00>
- ⁷ English Acquisition Services: A Summary of Bilingual and English as a Second Language Programs, Report of the Superintendent of Public Instruction, 1998-99, 1997-98 and 1996-97.
- ⁸ The Department of Education apportionment files for 1998-99 show that there were 116,800 LEP students which received Group B funding. The ALCAP report for that same year, however, reports that there were 132,800 students in programs.
- ⁹ Limited English Proficient (LEP) cost Study, Fiscal Year 1987-88, Arizona Department of Education, page 8.
- ¹⁰ Consumer Price Index for Urban Consumers, U.S. Department of Labor, Bureau of Labor Statistics at <http://stats.bls.gov/> - inflation calculator.
- ¹¹ Limited English Proficient (LEP) cost Study, Fiscal Year 1987-88, Arizona Department of Education, page 8.
- ¹² "Review of the Research on Instruction of Limited English Proficient Students" UC Linguistic Minority Research Institute Education Policy Center, UC Davis, 1997.
- ¹³ Class Size Counts for Quality; The AEA Class Size Study, Arizona Education Association, February 1998
- ¹⁴ Education Week's Quality Counts 1999 at the following website: www.edweek.org/sreports/qc99/states/grades/az-t.htm#climate

¹⁵ Apodaca, Rosita "How We Educate Non-English Speaking Students Successfully7. The High Intensity Language Training Program Description, Paper Presented at the Annual Convention of the National School Boards Association (Anaheim, CA, March 31, 1985)

¹⁶ Parks, Marie A., "Characteristics of Effective Secondary Vocational Education Programs for Special Populations," 1987.

¹⁷ 1997-98 data from the Digest of Education Statistics 1999 at <http://nces.ed.gov/pubs2000/digest99/d99t079.html> updated to the 1999-2000 school year by increasing it each year by 1.4%.

¹⁸ According to Public Elementary and Secondary School Revenues and Current Expenditures, by State, Fiscal Year 1997, National Center for Education Statistics, employees benefits in Arizona averaged 15.7% of instructional employees salaries.

¹⁹ Arizona Administrative Code R7-2-613

²⁰ English Acquisition Services: A Summary of Bilingual and English as a Second Language Programs, Report of the Superintendent of Public Instruction, 1998-99, page 29.

²¹ Gandara, P., Maxwell-Jolly, J., Garcia E., Asato, J., Gutierrez, K., Stritkus, T and Curry, J. (2000) "The Initial Impact of Proposition 227 on the Instruction of English Learners." Davis, CA: University of California Linguistic Minority Research Center.

²² Arizona Legislature English as a Second Language and Bilingual Education Study Committee, Final Report, December 1, 1999.

²³ Consolidated Guide to the Provision of Equal Educational Opportunities for LEP Students, U.S. Department of Education, Office for Civil Rights, April, 1996, page 16.

²⁴ Arizona Legislature English as a Second Language and Bilingual Education Study Committee, Final Report, December 1, 1999.

²⁵ English Acquisition Services: A Summary of Bilingual Programs and English as a Second Language Programs, Arizona Department of Education, 1996-97, 1997-98 and 1998-99.

²⁶ Arizona Legislature English as a Second Language and Bilingual Education Study Committee, Final Report, December 1, 1999.

²⁷ 1998 Arizona Employer Wage Survey, Arizona Department of Economic Security, Labor Market Information.

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- ²⁸ Assumes teachers' aides work 6 hours a day for a 175 day school year.
- ²⁹ According to Public Elementary and Secondary School Revenues and Current Expenditures, by State, Fiscal Year 1997, National Center for Education Statistics, employees benefits in Arizona averaged 15.7% of instructional employees salaries.
- ³⁰ This amount is much less than the average teacher aide salary and benefits (\$9,809), reported in a response by Ana Doan, Director of Bilingual Education and Curriculum for Nogales Unified School District, to a survey submitted to her by Senator Joe Eddie Lopez, June, 2000.
- ³¹ Arizona Department of Education AIMS data by ethnicity at the following website: www.ade.state.az.us/standards/AIMS/downloads/aimsrace2000final.pdf
- ³² Printout Entitled Arizona Department of Education Language Census and Program Report – ARS 15-751-756, State Totals, January 30, 1998.
- ³³ Statement of Facts in Support of Motion for Partial Summary Judgement (Non-Lau Claims), Flores vs. Arizona, No. CIV 92-596 TUC ACM, page 15.
- ³⁴ Consumer Price Index for Urban Consumers, U.S. Department of Labor, Bureau of Labor Statistics at <http://stats.bls.gov/> - inflation calculator.
- ³⁵ Beales, Janet R. and O'Leary, John "Making Schools Work: Contracting Options for Better Management, Reason Public Policy Institute, November, 1993.
- ³⁶ Consumer Price Index for Urban Consumers, U.S. Department of Labor, Bureau of Labor Statistics at <http://stats.bls.gov/> - inflation calculator.
- ³⁷ Consolidated Guide to the Provision of Equal Educational Opportunities for LEP Students, U.S. Department of Education, Office for Civil Rights, April, 1996, page 20.
- ³⁸ Prince, Cynthia D. and Hubert, John A., "Measuring the Cost of Bilingual Education," The Journal of Educational Issues of Language Minority Students, Spring, 1994.
- ³⁹ Consumer Price Index for Urban Consumers, U.S. Department of Labor, Bureau of Labor Statistics at <http://stats.bls.gov/> - inflation calculator.
- ⁴⁰ Public Elementary and Secondary School Revenues and Current Expenditures , by State, Fiscal Year 1997, National Center for Education Statistics
- ⁴¹ Printout Entitled Arizona Department of Education Language Census and Program Report – ARS 15-751-756, State Totals, January 30, 1998.
- ⁴² Ibid.

⁴³ Crawford, Jim "Responding to Unz-Supported Claims" at his website ourworld.com/compuserve.com/homepages/jwcrawford/unzargs.htm

⁴⁴ Consumer Price Index for Urban Consumers, U.S. Department of Labor, Bureau of Labor Statistics at <http://stats.bls.gov/> - inflation calculator.

⁴⁵ Ibid.

⁴⁶ Limited English Proficient (LEP) cost Study, Fiscal Year 1987-88, Arizona Department of Education, page 4.

⁴⁷ Response by Ana Doan, Director of Bilingual Education and Curriculum for Nogales Unified School District, to a survey submitted to her by Senator Joe Eddie Lopez, June, 2000.

⁴⁸ English Acquisition Services: A Summary of Bilingual and English as a Second Language Programs, Report of the Superintendent of Public Instruction, 1998-99, Page 12.

⁴⁹ Parrish, Thomas, "A Cost Analysis of Alternative Instructional Models for Limited English Proficient Students in California", Journal of Education Finance, 1994.

⁵⁰ Consumer Price Index for Urban Consumers, U.S. Department of Labor, Bureau of Labor Statistics at <http://stats.bls.gov/> - inflation calculator.

⁵¹ English Acquisition Services: A Summary of Bilingual and English as a Second Language Programs, Report of the Superintendent of Public Instruction, 1998-99, Page 6.

⁵² Response by Ana Doan, Director of Bilingual Education and Curriculum for Nogales Unified School District, to a survey submitted to her by Senator Joe Eddie Lopez, June, 2000.

⁵³ Intercultural Development Research Association, Tucson Unified School District: External Audit of the Bilingual Education and Hispanic Studies Department, February, 1998, page 179.

⁵⁴ Education Statistics Quarterly, The Common Core of Data, "Early Estimates of Public Elementary and Secondary Education Statistics; School Year 1999-2000".

APPENDIX

1 Judge Alfredo Marquez's Order for a Cost Study

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UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

MIRIAM FLORES, individually and as a parent of))	CIV 92-596 TUC ACM
MIRIAM FLORES, a minor child, et. al.,		
Plaintiffs,)	
v.)	
STATE OF ARIZONA, et. al.,)	ORDER
Defendants.)	

Background: Motion for Post-judgment Relief

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 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 programs¹ bears no relation to the actual funding needed to ensure that LEP students are achieving

¹Now being called the English Acquisition Program (EAP).

1 mastery of the State's specified "essential skills." (Judgment at 23.) The Court ruled that the
2 State's appropriation of \$150.00 per LEP student is arbitrary and capricious because it is not
3 reasonably calculated to effectively implement the Lau programs adopted by the Nogales Unified
4 School District (NUSD), which have been approved by the State. (Judgment at 23.) The Court
5 made this finding based on a 1987-88 cost study that showed it cost approximately \$450.00 per
6 LEP student to provide Lau program instruction.

7 At the time the Court ruled, Defendants questioned the reliability of their own 1987-88
8 cost study. Defendants attacked their studies' credibility because it was so old, and the
9 methodology for the study was not ascertainable and, therefore, its integrity was questionable.
10 The State had never updated the 1987-88 study. At trial, the Defendant informed the Court that
11 the State legislature had established the English as a Second Language and Bilingual Education
12 Study Committee to conduct a cost study to determine the amount of funding provided by the State
13 and Federal governments for English instruction of LEP students and the amount of money being
14 spent by schools to educate those students. In the Judgment issued by this Court January 24,
15 2000, the Court noted that this was the first step the State needed to take towards setting a
16 minimum base funding level for Lau programs that would not be arbitrary and capricious.
17 (Judgment at 23.)

18 The Committee was supposed to submit the report to the Governor's office by December
19 1, 1999, to recommend the level of funding necessary to support the programs that it determined
20 to be the most effective. The Report was timely submitted, but it failed to contain the
21 recommendations for funding levels. After the regular legislative session convened in January,
22 2000, Plaintiffs sent a letter to the legislature asking that the cost study be performed. A Senate
23 bill was introduced that would have provided for the study, but it was defeated. Several
24 amendments were also defeated which would have provided funding for the State Department of
25 Education to perform the cost study. The legislative session ended April 18, 2000, with the State
26 continuing its pattern of inaction.

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1 June 6, 2000. Governor Hull convened a special session on education to address a 0.6
2 % funding increase in the state sales tax for specified educational programs. Lau programs were
3 removed from the list of permissible items to be funded by the state sales tax. Again, the
4 legislature rejected an amendment that required the state to conduct the cost study of Lau
5 programs. On June 30, 2000, Governor Hull signed the bill providing for the increase in state
6 sales tax to finance education. Again, the state failed to take any action to fund Lau programs in
7 Arizona at a level reasonably calculated to make LEP students proficient in speaking,
8 understanding, reading, and writing English. Contrary to the information provided to this Court
9 in January of 2000, the State has not even taken the first step of conducting the cost study.

10 Against this backdrop, Plaintiff's Motion for Post-judgment Relief asks this Court to
11 order the State to conduct the cost study by November 1, 2000, so that the State legislature will
12 be in a position to fund Arizona's Lau programs during its next legislative session, which begins
13 January 1, 2001. This is especially important because Arizona has a biannual budget so unless
14 funding is secured this session, LEP students will have to wait until 2003 to see any improvement
15 in funding for Lau programs.

16 Defendants, however, suggest that further delay is necessary because conducting the cost
17 study now is unrealistic and counterproductive in light of the Consent Decree entered in this action
18 in June, 2000. Now that Defendants have agreed to make procedural and substantive revisions
19 to the State Lau programs, as sought by Plaintiff's in this very class action law suit, the cost study
20 can only be conducted after the changes are implemented and in place for some period of time.
21 Only then, after the Department of Education has had an opportunity to determine which programs
22 are working well, should the cost of the Lau Programs be calculated. Besides, there is a
23 referendum item, Proposition 203, on the November ballot which will repeal the existing bilingual
24 education statutes and adopt a one-year immersion program for LEP students.

25 Defendants propose that during this next legislative session the Department of Education
26 will ask the legislature to provide \$300,000 in funding to conduct the cost study and perform the

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1 monitoring required under the Consent Decree. If funded by the legislature, the study would
2 begin in the summer of 2001 and be complete in the spring of 2002. This would be just in time
3 for the next biannual budget in 2003.

4 This Court is not surprised by Defendants' suggestion to continue to delay appropriating
5 adequate funding for Lau programs in Arizona, nor is the Court surprised by the continued
6 inaction of the State legislature. See Roosevelt Elementary School District No. 66, et al. v. C.
7 Diane Bishop, (Roosevelt I) 877 P.2d 806 (1994) (en banc), appeal after remand, Hull v.
8 Albrecht, (Roosevelt II) 950 P.2d 1141 (1997), appeal after remand, (Roosevelt III) 960 P.2d 634
9 (1998) (continued legislative refusal to take action as directed by the state courts to remedy
10 disparities in school financing). The Court is, however, surprised by the Defendants' brazen
11 argument that a cost assessment cannot be done now because it should not be "based on models
12 that have not been getting the job done." (Response at 3.)² For example, Defendants argue: "A
13 study of the state's English Acquisition Programs prior to implementation of the changes
14 envisioned by the Consent Order would, however, be just that—an assessment of the costs of a
15 system that both plaintiffs and defendants agree was not appropriate." Id.

16 This Court's Order of January 24, 2000, made 64 specific Findings of Fact and not one
17 criticized the Lau models being used to teach LEP students in Arizona. The parties agreed "that
18 the State of Arizona has prescribed, and NUSD has adopted, models that are generally regarded
19 by experts as sound designs for effective Lau instruction." (Judgment at 22.) The Judgment
20 entered by this Court was that the primary reason the Lau programs failed LEP students in
21 Nogales, Arizona, was because the programs were not adequately funded by the State.

22 Plaintiffs' Reply accurately reflects the findings and conclusions of this Court, as follows:

23 . . . The Court determined in its Conclusions of Law that the State of Arizona
24 had prescribed, and NUSD had adopted, models that are generally regarded by
25 experts as sound designs for effective Lau instruction. Judgment at 22,
26 Conclusion of Law (A)(3). The Court further concluded that the state's
27 minimum \$150 appropriation per LEP student, in combination with its property

27 ²This same language is reflected in Proposition 2003.

1 based finance scheme, is inadequate and has resulted in the following Lau
2 program deficiencies:

- 3 1. Too many students in a classroom.
- 4 2. Not enough classrooms.
- 5 3. Not enough qualified teachers, including teachers to teach ESL
6 and bilingual teachers to teach content area studies.
- 7 4. Not enough teacher aides.
- 8 5. An inadequate tutoring program, and
- 9 6. Insufficient teaching materials for both ESL classes and content
10 area courses.

11 These deficiencies are not the result of an inadequate model. The model was
12 prescribed by the state and adopted by NUSD. *Id.* at 22. The problem is the
13 state's inadequate funding to support the model.

14 Reply at 4-5 (citing Judgment at 22.)

15 This Court agrees with Plaintiffs, as follows:

16 There is no reason to wait to address [the] cost of the deficiencies
17 identified by the Court. The cost implications of those deficiencies have
18 not changed as a result of the Consent Order. The Consent Order did not
19 change the models for providing bilingual and ESL instruction at all.
20 Instead, the Consent Order prescribes implementation procedures for
21 those models. . . . While there may be additional cost implications
22 associated with the Consent Order, they are most assuredly modest
23 compared to the structural funding problems identified by the Court.

24 Reply at 4-5. Additionally, the Court adds that even if Proposition 203 passes there will still be
25 costs associated with the "new" English immersion model. There are costs which are common
26 to all programs of instruction for LEP students.

27 The Court is not persuaded that a specific model must be implemented and successfully
28 operating before a cost assessment can be prepared. Cost studies are routinely performed prior
to implementing a model and serve the useful purpose of comparing costs of various models.
Models do not become successfully operational without funding; therefore, it is Defendants'
proposal to wait that is unrealistic and counterproductive. Unless, a realistic cost assessment is
prepared and available this legislative session, which begins January 8, 2001, Plaintiffs will miss
the biannual budget process and will have to wait until 2003 for Lau programs to be funded at a
level that is not arbitrary and capricious.

1 Judgment having been entered against Defendants, Plaintiff is entitled to equitable relief.
2 Alaska Center for the Environment v. Browner, 20 F.3d 981, 986-87 (9th Cir. 1994) (district court
3 has broad latitude to fashion equitable relief when necessary to remedy an established wrong);
4 Swan v. Charlotte-Mecklenburg Board of Education, 402 U.S. 1, 15-17 (1971) (if school
5 authorities fail in their affirmative obligations . . . , judicial authority may be invoked). The
6 "remedial powers of an equity court must be adequate to the task, . . . they are not unlimited,"
7 Missouri v. Jenckins, 495 U.S. 33, 51 (1990) (quoting Whitcomb v. Chavis, 403 U.S. 124, 161
8 (1971), "and one of the most important considerations governing the exercise of equitable power
9 is proper respect for the integrity and function of local government institutions." Jenckins, 495
10 U.S. at 51. Obviously, here, the equitable relief requested by Plaintiffs encroaches on a domain
11 that primarily belongs to local government institutions, including the State's legislature.
12 Therefore, the Court exercises its equitable power conscientiously and takes every step to allow
13 state authorities, whose powers are plenary, to decide how to provide LEP students with a
14 meaningful Lau program. Assessing the cost of such a program, however, does not involve public
15 policy considerations. Against the egregious backdrop of state agency and judicial inactivity, the
16 Court must grant Plaintiffs' requested relief because without judicial action, the federal law
17 violations as set out in this Court's Order of January 24, 2000, will continue for at least another
18 three years.

19 Accordingly,

20 **IT IS ORDERED** that Plaintiffs' Motion for Post-Judgment Relief is GRANTED.

21 **IT IS FURTHER ORDERED** that Defendants, the State of Arizona, shall prepare a cost
22 study to establish the proper appropriation to effectively implement the State's Lau educational
23 theory.

24 **IT IS FURTHER ORDERED** that the cost study shall be prepared in a timely fashion
25 so that the Arizona legislature can appropriate funding for Lau programs during the upcoming
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1 biannual budget session, beginning January, 2001.

2 **IT IS FURTHER ORDERED** that as to the one remaining issue in this litigation,
3 teacher certification or language endorsements, a Pretrial Conference shall be held before this
4 Court on November 3, 2000 at 11:30 a.m.

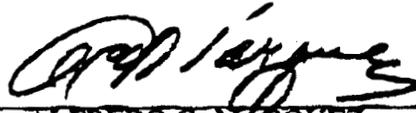
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6 Dated this 19th day of October, 2000.

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ALFREDO C. MARQUEZ
Senior U.S. District Judge

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Flores vs. Arizona Consent Order

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10
 11 UNITED STATES DISTRICT COURT
 12 DISTRICT OF ARIZONA
 13

14 MIRIAM FLORES, individually
 and as a parent of Miriam
 15 Flores, minor child, et. al,

16 Plaintiffs,

17 v.

18 THE STATE OF ARIZONA, et al.,

19 Defendants.
 20

CIV 92-596 TUC ACM

CONSENT ORDER

21 In order to settle certain issues without need for a trial, the parties to this action, by and
 22 through their counsel undersigned, hereby enter into this Consent Order.

23 **I. LEP DETERMINATION CRITERIA**

24 A. Pursuant to Arizona Revised Statutes ("A.R.S.") § 15-756(7), the Superintendent of
 25 Public Instruction (the "Superintendent") is charged with the selection of a list of
 26 tests and the setting of test scores to determine whether a child is limited English
 27 proficient ("LEP"). The Superintendent shall carry out this mandate before July 1,
 28 2000. The test scores adopted by the Superintendent as indicating English language

1 proficiency shall be based on the test vendors' cut scores for each test included on the
2 list prepared pursuant to A.R.S. § 15-756(7).

3 B. After the list of tests has been compiled and the scores determined, the Superintendent
4 shall distribute that information, as well as any additional explanatory materials that
5 the Superintendent deems necessary, to all school districts and charter schools in the
6 state. The Superintendent shall also designate individuals within the Department of
7 Education (the "Department") as contacts regarding the tests, in the event school
8 districts or charter schools need further information or assistance.

9 **II. PERFORMANCE STANDARDS**

10 **A. Duties of the State Board of Education.**

11 The State Board of Education (the "State Board" or the "Board") shall amend its existing rules
12 regarding bilingual education and English as a second language ("ESL") instruction, or enact new
13 rules, that effectuate the following policies:

- 14 1. After a student is exited from a *Lau* program, that exited student shall be
15 reassessed in each of the two years following the student's exit.¹
- 16 2. The reassessment shall consist of tests of the exited student's reading and writing
17 skills, math skills and mastery of academic content areas.
- 18 3. The exited student's scores on the reassessment tests shall be compared to the
19 scores of other students of the same age or grade level within the state to
20 determine whether the student is performing at a satisfactory level.
- 21 4. In reassessing an exited student's math skills and content area mastery, a school
22 district may use either the regularly administered Arizona Instrument to Measure
23 Standards (the "AIMS Test") or the Stanford 9 Test.
- 24 5. In reassessing an exited student's reading and writing skills, a school district may

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27 ¹ *Lau v. Nichols*, 414 U.S. 563 (1974), requires that school districts provide LEP students with a program of
28 instruction calculated to make them proficient in speaking, understanding, reading, and writing English so that they can
achieve the same academic standards required of all other students. Programs that are operated pursuant to the mandate
of the *Lau* case are referred to as "*Lau* programs."

1 use any of the tests identified by the Superintendent pursuant to A.R.S. § 15-
2 756(7), or it may use any of the tests (if any) identified by the Superintendent
3 pursuant to Section II.B, below.

4 6. The determination of whether an exited student has performed satisfactorily on the
5 reassessment tests shall be based on the following:

6 a. If one of the tests selected by the Superintendent pursuant to A.R.S. § 15-
7 756(7) is used as a reassessment test, a student must score at or above the
8 proficiency score established by the Superintendent for that test.

9 b. If the Stanford 9 Test is used as a reassessment test for math skills and
10 content area mastery, a student must score at or above the proficiency score
11 established by the Superintendent for that test in connection with her
12 responsibilities pursuant to A.R.S. § 15-756(7).

13 c. If the AIMS test is used as a reassessment test for math skills and content
14 area mastery, a student must meet or exceed the minimum competency
15 standards adopted by the Board pursuant to A.R.S. § 15-203 (the "Board's
16 Academic Standards").

17 d. If a test selected by the Superintendent pursuant to Section II.B of this Order
18 is used as a reassessment test for reading and writing skills, a student must
19 score at or above the proficiency score established by the Superintendent for
20 that test.

21
22 7. Exited students who do not perform satisfactorily on the reassessment tests in the
23 two years following their exit from a *Lau* program shall, subject to parental
24 consent, be re-enrolled in a *Lau* program and/or given compensatory instruction
25 aimed at curing the skill or knowledge deficits revealed by the reassessment
26 results.

27 8. "Compensatory instruction" may include individual or small group instruction,
28 extended day classes, summer school and intersession school.

1 9. The State Board shall adopt the rules described in this section before December
2 31, 2000.

3 **B. Duties of the Superintendent.**

4 1. If, after consultation with the testing company that prepared the test at issue, the
5 Superintendent determines that a test for reading and writing assessment selected
6 by the Superintendent pursuant to A.R.S. § 15-756(7) may also be used for
7 reassessment of exited students, such test may be used for reassessment of a
8 student. If such tests are used for reassessment, the test scores used to determine
9 a student's current English proficiency shall not be lower than the test scores used
10 to initially determine whether the child was LEP.

11 2. If, after consultation with the testing company, the Superintendent determines that
12 the tests selected pursuant to A.R.S. § 15-756(7) for reading and writing
13 assessment cannot be used for reassessment of exited students, the Superintendent
14 shall select a list of tests that can be used by school districts and charter schools
15 for reading and writing reassessment of students who have been exited from *Lau*
16 programs. The Superintendent shall also determine the acceptable score for each
17 of the selected tests. An "acceptable score" shall at least be equivalent to the score
18 that would have indicated initially that the student was not LEP. The
19 Superintendent shall create the reassessment test list, if necessary, and determine
20 the required test scores prior to December 31, 2000.

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22 **III. ENGLISH LANGUAGE INSTRUCTION**

23 The State Board shall amend its existing rules regarding bilingual education and ESL
24 instruction, or enact new rules, that require the following:

25 A. Daily instruction in English language development. The English language instruction
26 shall be appropriate to the level of English proficiency and shall include listening and
27 speaking skills, reading and writing skills, and cognitive and academic development in
28 English.

- 1 B. Daily instruction in basic subject areas that is understandable and appropriate to the
2 level of academic achievement of the LEP student, and is in conformity with accepted
3 strategies for teaching LEP students.
- 4 C. The curriculum of all bilingual education and ESL programs shall incorporate the
5 Board's Academic Standards and shall be comparable in amount, scope, and quality to
6 that provided to English proficient students.
- 7 D. The State Board shall adopt the rules described in this section before December 31,
8 2000.

9 **IV. LEP INDIVIDUAL EDUCATION PLANS**

10 The State Board shall amend its existing rules regarding bilingual education and ESL
11 instruction, or enact new rules, to include the following:

- 12 A. On request of a parent or legal guardian with regard to that parent or legal guardian's
13 own LEP student, the principal of the student's school shall require a meeting with the
14 principal or principal's designee, the parent or legal guardian, and the classroom teacher
15 to review the student's progress in achieving proficiency in the English language or in
16 making progress toward the Board's Academic Standards and to make modifications to
17 the student's instruction in order to address identified problems.
- 18 B. LEP students who are not progressing toward achieving proficiency of the Board's
19 Academic Standards, as evidenced by failure to improve scores on tests conducted
20 pursuant to A.R.S. §§ 15-741(A)(2) and (3), shall be provided additional compensatory
21 instruction to help them achieve those academic standards.
- 22 C. The modifications to a student's instruction described in Section IV.A of this Order and
23 the compensatory instruction described in Section IV.B shall be provided in the form of
24 an Individual Education Plan ("IEP").
- 25 D. IEPs shall also be provided to students (1) whose school has too few LEP students at a
26 given grade level to require maintenance of a regular bilingual education program or
27 ESL program for that grade level, or (2) whose parents or legal guardians withhold
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1 consent to place a student in a regular *Lau* program.

- 2 E. An IEP required by Section IV.D shall be prepared by an IEP team comprised of the
3 school principal or the principal's designee, one of the student's academic subject
4 teachers, the student's *Lau* program teacher or another certified teacher who has a
5 bilingual education or ESL endorsement, and the parent(s) or legal guardian(s), unless
6 they decide not to participate in the IEP team. If the parent(s) or legal guardian(s) so
7 desire, the IEP team shall also include one advocate for the student selected by the
8 student's parent(s) or legal guardian(s) and/or the student.
- 9 F. The IEP team shall determine the scope and/or type of services the student will need to
10 become proficient in English. The curriculum of all IEPs required by Section IV.D shall
11 incorporate the academic standards adopted by the Board pursuant to A.R.S. § 15-
12 701 and shall be comparable in amount, scope, and quality to that provided to English
13 proficient students.
- 14 G. Upon request by the Department, a copy of the IEP shall be submitted to the
15 Department, along with a summary of the student's progress, including academic gain
16 as measured by the AIMS Test, the Stanford 9 Test, or other school assessments for use
17 in the Department's annual English Acquisition Report to the Legislature.
- 18 H. The IEP is not required to be implemented by a classroom teacher who possesses a basic
19 or standard certificate to teach and a bilingual or ESL endorsement, and may be
20 implemented by any certificated teacher. In the latter circumstance, however, a teacher
21 who possesses a basic or standard certificate to teach and a bilingual or ESL
22 endorsement shall collaborate with the classroom teacher in the implementation of the
23 IEP, including documentation of periodic reviews of the student's progress toward
24 English proficiency and content area knowledge, as well as plans to remedy any lack of
25 progress.
- 26 I. The State Board shall adopt the rules described in this section before December 31,
27 2000.
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1 **V. MONITORING**

2 **A. Duties of the State Board.**

3 The State Board shall amend its existing rules regarding bilingual education and ESL
4 instruction, or enact new rules, to include the following:

- 5 1. If the monitoring report described in Section V.B of this Order indicates that a
6 school district or charter school is not in compliance with state or federal laws
7 regarding LEP students, the district or charter school shall submit a corrective
8 action plan to the Department within sixty days from the date of the report.
- 9 2. The State Board shall adopt the rules described in this section before December
10 31, 2000.

11 **B. Duties of the Superintendent.**

- 12 1. The Superintendent shall direct the Department to monitor each year at least
13 twelve school districts or charter schools from the fifty school districts or charter
14 schools in this State with the highest number of LEP students. The Department
15 shall monitor all fifty school district or charter schools with the highest number of
16 LEP students in the State at least once every four years.
- 17 2. The Superintendent shall direct the Department to monitor each year at least ten
18 school districts or charter schools that are not included in the fifty described in
19 Section V.B. 1 of this Order.
- 20 3. The Superintendent shall direct the Department to monitor each year at least ten
21 school districts or charter schools that, pursuant to A.R.S. § 15-754, are not
22 required to provide bilingual education programs or ESL programs for a majority
23 of their grade levels.
- 24 4. The school districts and charter schools described in the previous Sections V.B. 1,
25 .2, and .3 of this Order shall be chosen in the Department's sole discretion based
26 upon the Department's review of the reports submitted pursuant to A.R.S. § 15-
27 755.
28

- 1 5. In addition, the Department shall monitor of any school district or charter school
2 if the Department receives a documented, written complaint from any citizen, or
3 a complaint from the United States Department of Education or from the United
4 States Office of Civil Rights regarding a district's or charter school's compliance
5 with state or federal law regarding LEP students.
- 6 6. The monitoring required by this Section V shall be on-site monitoring and shall
7 include classroom observations, curriculum reviews, faculty interviews, student
8 records, and a review of LEP programs. The Department may use bilingual
9 education or ESL endorsed personnel from other schools to assist with the
10 monitoring.
- 11 7. Based on the results of its monitoring, the Department shall determine whether or
12 not the school district or charter school is complying with state and federal laws
13 applicable to LEP students.
- 14 8. The Department shall issue a report on the results of its monitoring within forty-
15 five days after completing the monitoring.
- 16 9. Within sixty days following the issuance of the Department's report, the district
17 or charter school receiving the report shall prepare and submit to the Department
18 a corrective action plan that sets forth steps that will be taken to correct the
19 deficiencies (if any) noted in the Department's report.
- 20 10 Within thirty days after its receipt of a district's or charter school's corrective
21 action plan, the Department shall review such corrective action plan, and may
22 require changes to the corrective action plan.
- 23 11. After the Department has reviewed a district's or charter school's corrective action
24 plan and has made any changes it determines are necessary, the corrective action
25 plan shall be returned to the district or charter school.
- 26 12. Within thirty days after receiving its corrective action plan back from the
27 Department, the district or charter school shall begin implementing the measures
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1 set forth in its corrective action plan.

2 13. The Department shall conduct a follow-up evaluation of the district or charter
3 school within one year after the date it issued the changed corrective action plan.

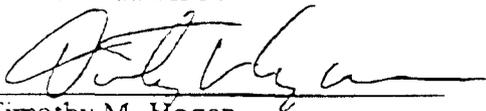
4 14. If the Department finds continued non-compliance during the follow-up
5 evaluation, the district or charter school shall be referred to the State Board for a
6 determination, pursuant to A.R.S. § 15-755(D), of non-compliance for purposes
7 of continuing to receive group B weight funds for LEP students, as described in
8 A.R.S. § 15-943. A district or charter school determined to be non-compliant
9 pursuant to this subsection shall not reduce the amount of funds spent on its LEP
10 programs as the result of its loss of group B weight funds for its LEP students
11 because of its continued non-compliance.

12 15. The Department shall monitor all districts or charter schools that the State Board
13 has determined, pursuant to A.R.S. § 15-755(D), are non-compliant and are no
14 longer receiving group B weight funds for LEP students to ensure that such
15 districts or charter schools do not reduce the amount of funds spent on their
16 bilingual education programs as the result of its loss of group B weight funds.

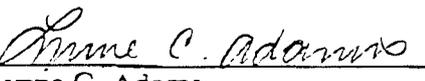
17 16. The Department shall begin the monitoring described in this section before July 1,
18 2000.

19
20 APPROVED AS TO FORM AND CONTENT this 30th day of June, 2000.

21
22 ARIZONA CENTER FOR LAW IN THE
23 PUBLIC INTEREST

24 By 
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1 **PROPOSITION 203**

2 **AN INITIATIVE MEASURE**

3 TITLE 15, CHAPTER 7, ARTICLE 3.1, ARIZONA REVISED STATUTES, IS REPEALED. SEC.
4 3. TITLE 15, CHAPTER 7, ARIZONA REVISED STATUTES, IS AMENDED BY ADDING A
5 NEW ARTICLE 3.1, ENGLISH LANGUAGE EDUCATION FOR CHILDREN IN PUBLIC
6 SCHOOLS

7 **TEXT OF PROPOSED AMENDMENT**

8 Sec. 1. Findings and Declarations

9 The People of Arizona find and declare:

10 1. The English language is the national public language of the United States of
11 America and of the state of Arizona. It is spoken by the vast majority of Arizona
12 residents, and is also the leading world language for science, technology, and
13 international business, thereby being the language of economic opportunity; and

14 2. Immigrant parents are eager to have their children acquire a good knowledge
15 of English, thereby allowing them to fully participate in the American Dream of
16 economic and social advancement; and

17 3. The government and the public schools of Arizona have a moral obligation and
18 a constitutional duty to provide all of Arizona's children, regardless of their ethnicity or
19 national origins, with the skills necessary to become productive members of our society.
20 Of these skills, literacy in the English language is among the most important.

21 4. The public schools of Arizona currently do an inadequate job of educating
22 immigrant children, wasting financial resources on costly experimental language
23 programs whose failure over the past two decades is demonstrated by the current high
24 drop-out rates and low English literacy levels of many immigrant children.

25 5. Young immigrant children can easily acquire full fluency in a new language,
26 such as English, if they are heavily exposed to that language in the classroom at an
27 early age.

28 6. Therefore it is resolved that: all children in Arizona public schools shall be
29 taught English as rapidly and effectively as possible.

30 7. Under circumstances in which portions of this statute are subject to conflicting
31 interpretations, these Findings and Declarations shall be assumed to contain the
32 governing intent of the statute.

33
34 Sec. 2. Repeal

35 Title 15, chapter 7, article 3.1, Arizona Revised Statutes, is repealed.

1 Sec. 3. Title 15, chapter 7, Arizona Revised Statutes, is amended by adding a new
2 article 3.1, to read:

3 ARTICLE 3.1. ENGLISH LANGUAGE EDUCATION FOR CHILDREN IN PUBLIC
4 SCHOOLS

5
6 SECTION 15-751. DEFINITIONS

7 IN THIS ARTICLE,

8 1. "BILINGUAL EDUCATION/NATIVE LANGUAGE INSTRUCTION" MEANS A
9 LANGUAGE ACQUISITION PROCESS FOR STUDENTS IN WHICH MUCH OR ALL
10 INSTRUCTION, TEXTBOOKS, OR TEACHING MATERIALS ARE IN THE CHILD'S NATIVE
11 LANGUAGE OTHER THAN ENGLISH.

12 2. "ENGLISH LANGUAGE CLASSROOM" MEANS A CLASSROOM IN WHICH
13 ENGLISH IS THE LANGUAGE OF INSTRUCTION USED BY THE TEACHING PERSONNEL,
14 AND IN WHICH SUCH TEACHING PERSONNEL POSSESS A GOOD KNOWLEDGE OF THE
15 ENGLISH LANGUAGE. ENGLISH LANGUAGE CLASSROOMS ENCOMPASS BOTH ENGLISH
16 LANGUAGE MAINSTREAM CLASSROOMS AND SHELTERED ENGLISH IMMERSION
17 CLASSROOMS

18 3. "ENGLISH LANGUAGE MAINSTREAM CLASSROOM" MEANS A CLASSROOM IN
19 WHICH THE STUDENTS EITHER ARE NATIVE ENGLISH LANGUAGE SPEAKERS OR
20 ALREADY HAVE ACQUIRED REASONABLE FLUENCY IN ENGLISH.

21 4. "ENGLISH LEARNER" OR "LIMITED ENGLISH PROFICIENT STUDENT" MEANS
22 A CHILD WHO DOES NOT SPEAK ENGLISH OR WHOSE NATIVE LANGUAGE IS NOT
23 ENGLISH, AND WHO IS NOT CURRENTLY ABLE TO PERFORM ORDINARY CLASSROOM
24 WORK IN ENGLISH.

25 5. "SHELTERED ENGLISH IMMERSION" OR "STRUCTURED ENGLISH
26 IMMERSION" MEANS AN ENGLISH LANGUAGE ACQUISITION PROCESS FOR YOUNG
27 CHILDREN IN WHICH NEARLY ALL CLASSROOM INSTRUCTION IS IN ENGLISH BUT
28 WITH THE CURRICULUM AND PRESENTATION DESIGNED FOR CHILDREN WHO ARE
29 LEARNING THE LANGUAGE. BOOKS AND INSTRUCTIONAL MATERIALS ARE IN
30 ENGLISH AND ALL READING, WRITING, AND SUBJECT MATTER ARE TAUGHT IN
31 ENGLISH. ALTHOUGH TEACHERS MAY USE A MINIMAL AMOUNT OF THE CHILD'S
32 NATIVE LANGUAGE WHEN NECESSARY, NO SUBJECT MATTER SHALL BE TAUGHT IN
33 ANY LANGUAGE OTHER THAN ENGLISH, AND CHILDREN IN THIS PROGRAM LEARN TO
34 READ AND WRITE SOLELY IN ENGLISH. THIS EDUCATIONAL METHODOLOGY
35 REPRESENTS THE STANDARD DEFINITION OF "SHELTERED ENGLISH" OR
36 "STRUCTURED ENGLISH" FOUND IN EDUCATIONAL LITERATURE.

37
38 SECTION 15-752. ENGLISH LANGUAGE EDUCATION

39 SUBJECT TO THE EXCEPTIONS PROVIDED IN SECTION 15-753, ALL CHILDREN
40 IN ARIZONA PUBLIC SCHOOLS SHALL BE TAUGHT ENGLISH BY BEING TAUGHT IN
41 ENGLISH AND ALL CHILDREN SHALL BE PLACED IN ENGLISH LANGUAGE
42 CLASSROOMS. CHILDREN WHO ARE ENGLISH LEARNERS SHALL BE EDUCATED
43 THROUGH SHELTERED ENGLISH IMMERSION DURING A TEMPORARY TRANSITION

1 PERIOD NOT NORMALLY INTENDED TO EXCEED ONE YEAR. LOCAL SCHOOLS SHALL
2 BE PERMITTED BUT NOT REQUIRED TO PLACE IN THE SAME CLASSROOM ENGLISH
3 LEARNERS OF DIFFERENT AGES BUT WHOSE DEGREE OF ENGLISH PROFICIENCY IS
4 SIMILAR. LOCAL SCHOOLS SHALL BE ENCOURAGED TO MIX TOGETHER IN THE SAME
5 CLASSROOM ENGLISH LEARNERS FROM DIFFERENT NATIVE-LANGUAGE GROUPS BUT
6 WITH THE SAME DEGREE OF ENGLISH FLUENCY. ONCE ENGLISH LEARNERS HAVE
7 ACQUIRED A GOOD WORKING KNOWLEDGE OF ENGLISH AND ARE ABLE TO DO
8 REGULAR SCHOOL WORK IN ENGLISH, THEY SHALL NO LONGER BE CLASSIFIED AS
9 ENGLISH LEARNERS AND SHALL BE TRANSFERRED TO ENGLISH LANGUAGE
10 MAINSTREAM CLASSROOMS. AS MUCH AS POSSIBLE, CURRENT PER CAPITA
11 SUPPLEMENTAL FUNDING FOR ENGLISH LEARNERS SHALL BE MAINTAINED. FOREIGN
12 LANGUAGE CLASSES FOR CHILDREN WHO ALREADY KNOW ENGLISH SHALL BE
13 COMPLETELY UNAFFECTED, AS SHALL SPECIAL EDUCATIONAL PROGRAMS FOR
14 PHYSICALLY- OR MENTALLY-IMPAIRED STUDENTS.

15
16 SECTION 15-753. PARENTAL WAIVERS

17 A. THE REQUIREMENTS OF SECTION 15-752 MAY BE WAIVED WITH THE PRIOR
18 WRITTEN INFORMED CONSENT, TO BE PROVIDED ANNUALLY, OF THE CHILD'S
19 PARENTS OR LEGAL GUARDIAN UNDER THE CIRCUMSTANCES SPECIFIED IN THIS
20 SECTION. SUCH INFORMED CONSENT SHALL REQUIRE THAT SAID PARENTS OR
21 LEGAL GUARDIAN PERSONALLY VISIT THE SCHOOL TO APPLY FOR THE WAIVER AND
22 THAT THEY THERE BE PROVIDED A FULL DESCRIPTION OF THE EDUCATIONAL
23 MATERIALS TO BE USED IN THE DIFFERENT EDUCATIONAL PROGRAM CHOICES AND
24 ALL THE EDUCATIONAL OPPORTUNITIES AVAILABLE TO THE CHILD. IF A PARENTAL
25 WAIVER HAS BEEN GRANTED, THE AFFECTED CHILD SHALL BE TRANSFERRED TO
26 CLASSES TEACHING ENGLISH AND OTHER SUBJECTS THROUGH BILINGUAL
27 EDUCATION TECHNIQUES OR OTHER GENERALLY RECOGNIZED EDUCATIONAL
28 METHODOLOGIES PERMITTED BY LAW. INDIVIDUAL SCHOOLS IN WHICH 20
29 STUDENTS OR MORE OF A GIVEN GRADE LEVEL RECEIVE A WAIVER SHALL BE
30 REQUIRED TO OFFER SUCH A CLASS; IN ALL OTHER CASES, SUCH STUDENTS MUST
31 BE PERMITTED TO TRANSFER TO A PUBLIC SCHOOL IN WHICH SUCH A CLASS IS
32 OFFERED.

33 B. THE CIRCUMSTANCES IN WHICH A PARENTAL EXCEPTION WAIVER MAY BE
34 APPLIED FOR UNDER THIS SECTION ARE AS FOLLOWS:

35 1. CHILDREN WHO ALREADY KNOW ENGLISH: THE CHILD ALREADY POSSESSES
36 GOOD ENGLISH LANGUAGE SKILLS, AS MEASURED BY ORAL EVALUATION OR
37 STANDARDIZED TESTS OF ENGLISH VOCABULARY COMPREHENSION, READING, AND
38 WRITING, IN WHICH THE CHILD SCORES APPROXIMATELY AT OR ABOVE THE STATE
39 AVERAGE FOR HIS GRADE LEVEL OR AT OR ABOVE THE 5TH GRADE AVERAGE,
40 WHICHEVER IS LOWER; OR

41 2. OLDER CHILDREN: THE CHILD IS AGE 10 YEARS OR OLDER, AND IT IS THE
42 INFORMED BELIEF OF THE SCHOOL PRINCIPAL AND EDUCATIONAL STAFF THAT AN
43 ALTERNATE COURSE OF EDUCATIONAL STUDY WOULD BE BETTER SUITED TO THE

1 CHILD'S OVERALL EDUCATIONAL PROGRESS AND RAPID ACQUISITION OF BASIC
2 ENGLISH LANGUAGE SKILLS; OR

3 3. CHILDREN WITH SPECIAL INDIVIDUAL NEEDS: THE CHILD ALREADY HAS
4 BEEN PLACED FOR A PERIOD OF NOT LESS THAN THIRTY CALENDAR DAYS DURING
5 THAT SCHOOL YEAR IN AN ENGLISH LANGUAGE CLASSROOM AND IT IS
6 SUBSEQUENTLY THE INFORMED BELIEF OF THE SCHOOL PRINCIPAL AND
7 EDUCATIONAL STAFF THAT THE CHILD HAS SUCH SPECIAL AND INDIVIDUAL
8 PHYSICAL OR PSYCHOLOGICAL NEEDS, ABOVE AND BEYOND THE CHILD'S LACK OF
9 ENGLISH PROFICIENCY, THAT AN ALTERNATE COURSE OF EDUCATIONAL STUDY
10 WOULD BE BETTER SUITED TO THE CHILD'S OVERALL EDUCATIONAL DEVELOPMENT
11 AND RAPID ACQUISITION OF ENGLISH. A WRITTEN DESCRIPTION OF NO LESS THAN
12 250 WORDS DOCUMENTING THESE SPECIAL INDIVIDUAL NEEDS FOR THE SPECIFIC
13 CHILD MUST BE PROVIDED AND PERMANENTLY ADDED TO THE CHILD'S OFFICIAL
14 SCHOOL RECORDS, AND THE WAIVER APPLICATION MUST CONTAIN THE ORIGINAL
15 AUTHORIZING SIGNATURES OF BOTH THE SCHOOL PRINCIPAL AND THE LOCAL
16 SUPERINTENDENT OF SCHOOLS. ANY SUCH DECISION TO ISSUE SUCH AN
17 INDIVIDUAL WAIVER IS TO BE MADE SUBJECT TO THE EXAMINATION AND APPROVAL
18 OF THE LOCAL SCHOOL SUPERINTENDENT, UNDER GUIDELINES ESTABLISHED BY
19 AND SUBJECT TO THE REVIEW OF THE LOCAL GOVERNING BOARD AND ULTIMATELY
20 THE STATE BOARD OF EDUCATION. TEACHERS AND LOCAL SCHOOL DISTRICTS MAY
21 REJECT WAIVER REQUESTS WITHOUT EXPLANATION OR LEGAL CONSEQUENCE, THE
22 EXISTENCE OF SUCH SPECIAL INDIVIDUAL NEEDS SHALL NOT COMPEL ISSUANCE OF
23 A WAIVER, AND THE PARENTS SHALL BE FULLY INFORMED OF THEIR RIGHT TO
24 REFUSE TO AGREE TO A WAIVER.

25
26 SECTION 15-754. LEGAL STANDING AND PARENTAL ENFORCEMENT

27 AS DETAILED IN SECTIONS 15-752 AND 15-753, ALL ARIZONA SCHOOL
28 CHILDREN HAVE THE RIGHT TO BE PROVIDED AT THEIR LOCAL SCHOOL WITH AN
29 ENGLISH LANGUAGE PUBLIC EDUCATION. THE PARENT OR LEGAL GUARDIAN OF ANY
30 ARIZONA SCHOOL CHILD SHALL HAVE LEGAL STANDING TO SUE FOR ENFORCEMENT
31 OF THE PROVISIONS OF THIS STATUTE, AND IF SUCCESSFUL SHALL BE AWARDED
32 NORMAL AND CUSTOMARY ATTORNEY'S FEES AND ACTUAL AND COMPENSATORY
33 DAMAGES, BUT NOT PUNITIVE OR CONSEQUENTIAL DAMAGES. ANY SCHOOL BOARD
34 MEMBER OR OTHER ELECTED OFFICIAL OR ADMINISTRATOR WHO WILLFULLY AND
35 REPEATEDLY REFUSES TO IMPLEMENT THE TERMS OF THIS STATUTE MAY BE HELD
36 PERSONALLY LIABLE FOR FEES AND ACTUAL AND COMPENSATORY DAMAGES BY THE
37 CHILD'S PARENTS OR LEGAL GUARDIAN, AND CANNOT BE SUBSEQUENTLY
38 INDEMNIFIED FOR SUCH ASSESSED DAMAGES BY ANY PUBLIC OR PRIVATE THIRD
39 PARTY. ANY INDIVIDUAL FOUND SO LIABLE SHALL BE IMMEDIATELY REMOVED FROM
40 OFFICE, AND SHALL BE BARRED FROM HOLDING ANY POSITION OF AUTHORITY
41 ANYWHERE WITHIN THE ARIZONA PUBLIC SCHOOL SYSTEM FOR AN ADDITIONAL
42 PERIOD OF FIVE YEARS.

1 SECTION 15-755. STANDARDIZED TESTING FOR MONITORING EDUCATION
2 PROGRESS

3 IN ORDER TO ENSURE THAT THE EDUCATIONAL PROGRESS OF ALL ARIZONA
4 STUDENTS IN ACADEMIC SUBJECTS AND IN LEARNING ENGLISH IS PROPERLY
5 MONITORED, A STANDARDIZED, NATIONALLY-NORMED WRITTEN TEST OF ACADEMIC
6 SUBJECT MATTER GIVEN IN ENGLISH SHALL BE ADMINISTERED AT LEAST ONCE EACH
7 YEAR TO ALL ARIZONA PUBLIC SCHOOLCHILDREN IN GRADES 2 AND HIGHER. ONLY
8 STUDENTS CLASSIFIED AS SEVERELY LEARNING DISABLED MAY BE EXEMPTED FROM
9 THIS TEST. THE PARTICULAR TEST TO BE USED SHALL BE SELECTED BY THE OFFICE
10 OF THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION, AND IT IS INTENDED
11 THAT THE TEST SHALL GENERALLY REMAIN THE SAME FROM YEAR TO YEAR. THE
12 NATIONAL PERCENTILE SCORES OF STUDENTS SHALL BE CONFIDENTIALLY
13 PROVIDED TO INDIVIDUAL PARENTS, AND THE AGGREGATED PERCENTILE SCORES
14 AND DISTRIBUTIONAL DATA FOR INDIVIDUAL SCHOOLS AND SCHOOL DISTRICTS
15 SHALL BE MADE PUBLICLY AVAILABLE ON AN INTERNET WEB SITE; THE SCORES FOR
16 STUDENTS CLASSIFIED AS "LIMITED-ENGLISH" SHALL BE SEPARATELY SUB-
17 AGGREGATED AND MADE PUBLICLY AVAILABLE THERE AS WELL. ALTHOUGH
18 ADMINISTRATION OF THIS TEST IS REQUIRED SOLELY FOR MONITORING
19 EDUCATIONAL PROGRESS, ARIZONA PUBLIC OFFICIALS AND ADMINISTRATORS MAY
20 UTILIZE THESE TEST SCORES FOR OTHER PURPOSES AS WELL IF THEY SO CHOOSE.

21
22 Sec. 4. Severability

23 If a provision of this act or its application to any person or circumstances is held
24 invalid, the invalidity does not affect other provisions or applications of the act that can
25 be given effect without the invalid provision or application, and to this end the
26 provisions of this act are severable.

27
28 Sec. 5. Application

29 The provisions of this act cannot be waived, modified, or set aside by any elected
30 or appointed official or administrator, except as through the amendment process
31 provided for in the Arizona constitution.