



Published: 10.15.2007

AZ pursuing appeal over non-English-learner order

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CAPITOL MEDIA SERVICES

PHOENIX — State officials will argue before a federal appeals court that a trial judge is illegally ordering them to spend more money to teach English to students who come to school not knowing the language.

The 9th U.S. Circuit Court of Appeals will consider claims on Dec. 4 by state Superintendent of Public Instruction Tom Horne as well as Republican legislative leaders that the order by U.S. District Judge Raner Collins ignored evidence of the progress that has been made in programs for students who are not proficient in English. They want the appellate court to overturn a series of his rulings.

That includes a new order issued by Collins on Thursday declaring that lawmakers "wilfully violated" a March order for them to come up with a proper plan by the end of this year's legislative session. Instead lawmakers adjourned in June after doing nothing in hopes that their 2006 plan — one Collins previously said was inadequate — would be found legal by an appellate court.

But Collins, in finding the state in contempt, did not levy any fines. Instead he gave lawmakers until March 4 to finally comply. Only if they miss that deadline for adopting an acceptable plan would Collins impose penalties.

At this point, though, GOP leaders say there is no way they will comply with what Collins wants, at least not unless and until the appellate court says otherwise.

The big sticking point is not so much the program that Collins wants but the conditions he has attached to it.

Horne noted that the judge has agreed to let the state adopt new "instructional models" of exactly how English should be taught to the approximately 135,000 students in Arizona who are not proficient in English. Attorney Tim Hogan, who represents the parents who first filed suit in 1992, said legislators have been promising that for more than a year.

"What the judge has said is the Legislature needs to follow through with the process the Legislature itself has set up," he said. Horne said that simply requires schools to figure how much it will cost them to comply with the models and then for the state to fund those costs.

But House Majority Leader Tom Boone said the state cannot accept Collins' ruling that it is illegal for the state to limit that extra funding to just two years for each student.

Boone said there is no reason it should take longer than that. He said the models require students to have four hours a day of nothing but English, something that has not been a part of the way most schools have taught language skills before.

And Boone said the Legislature also believes it is entitled to reduce extra funding to school districts by the amount of federal aid they get, the other provision in the state plan Collins said is illegal.

Even that March 4 deadline poses a problem. Senate Majority Leader Thayer Verschoor said it normally takes lawmakers at least until April — and sometimes longer — to adopt a budget.

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