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Federal court asked to waive AIMS test for English learners

Robbie Sherwood

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One of the nation's most successful public interest attorneys asked a federal judge Monday to allow students struggling with English to graduate from high school without passing the AIMS test.

AIMS should not be a graduation requirement for immigrant children until the state complies with a federal court order to improve funding for English-learner instruction, said Tim Hogan, who heads the Center for Law in the Public Interest. Until lawmakers and Gov. Janet Napolitano can end a two-month-long stalemate over a new funding plan for English-learner programs, Hogan wants the judge to suspend the AIMS requirement for thousands of children. Starting with the Class of 2006, high school seniors must pass the reading, writing and math test to earn a diploma.

And, to turn up the heat, Hogan said he plans to ask the same judge "in the next couple of weeks" to withhold federal highway funds from the state as a sanction for not complying with the court order by the judge's deadline of last spring.

"It's not fair to require these kids to pass AIMS to graduate when the programs haven't been adequately funded for years, which the court found 5 1/2 years ago," Hogan said.

Hogan originally filed the *Flores vs. Arizona* lawsuit 13 years ago on behalf of a Nogales family. He has also forced the state to spend more than \$1 billion repairing and refurbishing schools and to take over the job of building schools, with a lawsuit in the mid-1990s over unequal funding.

Hogan noted that Latino and other minority children improved their scores on the most recent round of AIMS tests. But he said about 83 percent of 3,254 juniors who qualify as English learners - the first class that must pass AIMS to get a diploma - failed key portions such as reading and writing. It was an identical story for more than 5,000 English-learner sophomores.

Officials with the state's Department of Education say an unearned diploma is not the answer, and they hope the court rejects Hogan's latest plea.

"We don't believe it makes any sense for any high school student who isn't functioning in English to receive a diploma," said Margaret Garcia-Dugan, deputy superintendent of public instruction. "Probably the worst thing you can do is give a student a diploma (and) send them out into the world to compete with their peers when they aren't competent in English and their peers are. Without being proficient in English, you are not going to succeed in this society."

Republican House and Senate leaders plan to meet with Napolitano on Aug. 10 to

talk about English-learner funding, the first meeting of the leaders since Napolitano vetoed a GOP-crafted Flores bill in late May. Napolitano and Hogan felt that plan, which required school districts to apply for grants, was inadequate. Napolitano has since developed a funding plan of her own that would increase spending for English learners by \$185 million a year, but legislators have refused to discuss it until Napolitano pledges to reverse a veto of an unrelated measure to create a corporate tuition tax credit for private schools.

Senate President Ken Bennett said lawmakers have increased per-student spending for English learners to more than \$350 a year from \$150, so there's no evidence of ignoring the court order. He also said exempting English learners from passing AIMS is a horrible idea.

"We should not expect more out of one group of students than we expect out of another based simply on demographics," said Bennett, R-Prescott. "Graduation from high school is an earned privilege, it's not a born right. It's not granted to students just because they walked into class this year."

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