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## AZ wins round on English learners

### Contempt citation, fines tossed, but case isn't over

By Howard Fischer

CAPITOL MEDIA SERVICES

PHOENIX — A federal appeals court has thrown out the contempt citation — and \$21 million in fines — that a trial judge imposed against the state for failing to come up with an acceptable plan to teach English.

The 9th U.S. Circuit Court of Appeals said U.S. District Judge Raner Collins should have given state officials a chance to prove that existing programs already are doing a better job of ensuring students who come to school speaking a foreign language learn English.

Thursday's ruling also means all high school students still will have to pass the AIMS test to graduate — at least for now.

Collins had said students classified as English-language learners could not be required to pass the test to get diplomas because the lack of funding for programs left them without the necessary skills.

"This decision is exactly what I argued," said Tom Horne, the state superintendent of public instruction.

Horne said there is evidence that some students are improving, particularly at four schools in the Nogales Unified School District. That is significant because it was the poor performance of students in that district that resulted in prior rulings that Arizona was not complying with federal laws requiring states to provide all children with equal educational opportunities.

Attorney Tim Hogan, who represents the plaintiffs, countered that there are many other schools — including some in the Nogales district — in which English learners are falling behind.

But Horne said Thursday's ruling will let him argue to Collins that the scores of the other schools are irrelevant.

"They all have the same funding," he said, which proves more money is not the answer.

"It's an issue of leadership in those schools that are not performing," Horne said. "You have schools that are doing very well with existing funding. My job is to take their techniques and bring them to the schools that aren't doing well."

English-language learners in the Tucson Unified School District appear to be doing well, judging by the number of high school seniors who passed the Arizona's Instrument to Measure Standards exam last year. Only 23 of about 300 failed the test, said Steve Holmes, TUSD's director of language acquisition.

Holmes said the ruling "doesn't change anything for us because we've been operating on the premise that we want ELL (English-language learning) students to pass AIMS. That's the expectation we have of them."

The new hearing will give the state a chance to show that a new funding plan providing an extra \$432 per student for English learners above basic state aid, adopted by legislators this year, is sufficient to adequately educate the

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more than 150,000 English learners statewide.

Thursday's ruling is a defeat not only for the parents who filed the original lawsuit but for Gov. Janet Napolitano. She had asked the appellate judges not only to declare the latest legislative action legally flawed but also to send the accumulated fines to affected school districts to help finance additional programs for English learners.

Now, those fines disappear.

House Speaker Jim Weiers said the ruling gives the Legislature its day in court to prove the new funding plan puts Arizona into compliance with the law.

But Thursday's action is not an absolute victory for either Horne or the Republican-controlled Legislature. The appellate judges refused to rule outright that Arizona finally is complying with federal law.

Arizona was providing an extra \$150 annually per student for students classified as English learners in 2000 when Judge Alfredo Marquez, ruling in a lawsuit brought by Nogales parents, found that insufficient.

Lawmakers increased that to \$355, a figure the judge said still did not meet his original order to conduct a cost study and fund programs accordingly.

This year, the Legislature agreed to provide \$432 per student, with an option for schools that use state-approved teaching methods to get more if they can prove their costs are higher.

That funding, however, has not yet been handed out. Lawmakers made it conditional on Collins' ruling that the new legislation put the state into compliance with federal law, something he refused to do.

Hogan said he does not intend to appeal Thursday's ruling.

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- *Star reporter Jeff Commings contributed to this story.*

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