

US, GI Forum and LULAC v. Texas (US v. Texas)
Summary of the Language Rights Section of the
Fifth Circuit Court of Appeals' Decision (March 22, 2010)

In 1970, Judge William Wayne Justice of the United States District Court of the Eastern District of Texas ordered the State of Texas and nine school districts to remedy past discrimination that continued to harm the educational achievement of minority students in the State. MALDEF intervened on behalf of the League of United Latin American Citizens and the American GI Forum to hold the State responsible for providing equal educational opportunities to Latino and English Language Learners (ELLs) and to remedy past *de jure* discrimination against Latinos.

In 1981, the District Court found that the State had failed to help ELLs overcome language barriers under the Equal Educational Opportunities Act (EEOA). While the case was on appeal, Texas passed a law expanding bilingual education to grades K-6 and providing for English as a Second Language (ESL) programs for middle and high schools. The Fifth Circuit held that the issue was moot because the State's revised language program must be given a chance to work.¹

In February 2006, MALDEF filed a Motion for Further Relief against the State for failing to effectively monitor and supervise the State's bilingual and ESL programs. In addition, MALDEF challenged the State's ESL program for secondary students for failing to help those students to learn English. On July 30, 2007, Judge Justice issued an opinion denying the motion. MALDEF asked the court to reconsider and a year later, the court threw out its earlier opinion and found that Texas had violated the rights of ELLs under the EEOA. Among the violations included were: under-identification of ELLs; the achievement standards for monitoring language programs were arbitrary and not based upon equal educational opportunity; the State's intervention monitors lacked bilingual and ESL certifications, resulting in the "blind leading the blind;" and the system monitored language programs only at the district-level (not the campus-level) thus permitting successful bilingual programs in elementary schools to mask failing ESL programs in secondary schools. The Court also found that the secondary ESL program had failed to help students learn English under the EEOA. The Court ordered Texas to submit a revised monitoring plan and a modified secondary language program by January 2009.

The State appealed the ruling to the Fifth Circuit, and oral argument was held in June 2009. The Fifth Circuit issued its opinion on March 22, 2010, reversing the injunction and remanding the case to the lower court for additional findings in order to determine whether the State or individual districts (which have yet to be brought into the lawsuit) should be held liable for the dismal performance of secondary ELLs. MALDEF and META expect to press forward with the lawsuit on behalf of ELLs and will name individual districts as defendants in the near future.

The Multicultural Education, Training and Advocacy, Inc. is co-counsel in the case, which seeks to ensure that all students are given the opportunity to learn regardless of language ability.

¹ In 1982, the Fifth Circuit also held that Intervenors failed to present sufficient evidence of statewide *de jure* segregation against Latino students. In its 2010 decision, the Fifth Circuit also considered a State appeal in the desegregation part of the case. The Court held that the statewide desegregation order would no longer apply to any school district that was: declared unitary; under the jurisdiction of another court in a desegregation lawsuit; not a party to the case in 1970 and requests exemption from the order unless a plaintiff shows the district is not unitary.

Key Points of the 2010 Fifth Circuit Decision

1. Although the Court refused to hold the State liable for the failures of secondary ELL students based on the present record, the Court recognized that “[ELL] student performance is alarming” and that individual districts should be added to better determine which entity (the state or local districts, or both) is responsible for the failure.
2. The Court recognized that the Texas Education Agency is required to evaluate and monitor the effectiveness of language programs and that the school districts are primarily responsible for implementing language programs and ensuring student performance.
3. The State’s monitoring program (the Performance Based Monitoring Analysis System, or PBMAS) had only two years of data available and thus the Court held that there was insufficient data to determine its effectiveness; now that PBMAS has been implemented for 6 years, its effectiveness is ripe for reconsideration.
4. The Court stated that the EEOA does not command equal results between non-ELL students and ELL students when assessed in English-language tests, but the performance of ELL students on standardized tests is nevertheless relevant.
5. The Court held that the under-identification of ELL students and excessive parental denials cannot be assumed based on a comparison between local and statewide rates or between local ELL populations compared to census data; however, evidence of coercion or misinformation by state or local officials would support such findings.
6. The State’s practice under PBMAS of aggregating performance data on a district-wide basis or by subject area standing alone did not prove that it was masking the failure in secondary schools with the success of elementary programs. However, other related evidence of the total number of campuses in need of intervention or subject to intervention may support a violation of the EEOA.
7. Evidence of districts ignoring ELL student under-performance on individual campuses may also prove a violation of the EEOA.
8. Although reliance on student achievement scores on tests in the English language and evidence of retention rates is not enough to prove a violation, longitudinal data on the performance of ELL students may serve as a better indicator for the success or failure of a given language program.
9. Other possible causes for the ELL secondary student failure must also be explored such as the capability of older students to grasp the English language, job opportunities and social problems.
10. The Court stated that a violation of the EEOA may be proven if there exists “sufficient findings of fact to support a conclusion that student failures “stem from [defendants’] failure to take ‘appropriate action.’”