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11 UNITED STATES DISTRICT COURT
12 DISTRICT OF ARIZONA
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14 MIRIAM FLORES, individually
15 and as a parent of Miriam
Flores, minor child, et. al,

CIV 92-596 TUC ACM

16 Plaintiffs,

17 v.

CONSENT ORDER

18 THE STATE OF ARIZONA, et al.,

19 Defendants.
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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.

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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.
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- 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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set forth in its corrective action plan.

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

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

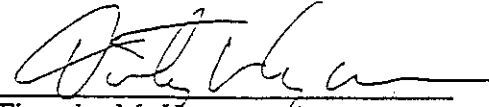
15. The Department shall monitor all districts or charter schools that the State Board has determined, pursuant to A.R.S. § 15-755(D), are non-compliant and are no longer receiving group B weight funds for LEP students to ensure that such districts or charter schools do not reduce the amount of funds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


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

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

ARIZONA CENTER FOR LAW IN THE PUBLIC INTEREST

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