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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

MIRIAM FLORES, individually and as)
parent of Miriam Flores, a minor child, et)
al.,

Plaintiffs,

vs.

STATE OF ARIZONA, et al.,

Defendants.

No. CIV 92-596-TUC-RCC

ORDER

Pending before the Court is Plaintiffs' Third Motion for Injunctive Relief and Motion to Expedite filed December 13, 2004. The Court heard oral argument on January 24, 2005. After consideration, the Court will grant Plaintiffs' Motions.

FACTUAL AND PROCEDURAL BACKGROUND

On January 24, 2000, the Honorable Alfredo Marquez entered his ruling on this case when he found that Defendants violated the Equal Education Act of 1974 (EEOA) by failing to adequately fund instruction for children who are English language learners (ELLs)¹. Plaintiffs filed a Motion for Post-Judgment Relief on July 13, 2000 asking the Court to order

¹ Originally, these particular students were referred to as limited English proficient (LEP) and the program of instruction was referred to as "Lau programs" after the Supreme Court case, *Lau v. Nichols*, 414 U.S. 563 (1974).

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1 Defendants to complete a new cost study by November 1, 2000 which was granted on
2 October 12, 2000. The Court's Order made it clear that the study was to be completed in a
3 timely fashion so that the Arizona legislature could appropriate funding and take action
4 during the next budget session beginning in January 2001. In November 2000, Arizona
5 voters passed Proposition 203 which repealed the Arizona statutes prescribing the models for
6 the delivery of language acquisition programs and established a new model based on
7 sheltered English or structured English immersion. In response to Proposition 203, the
8 parties entered into a stipulation on November 28, 2000 which provides that the State of
9 Arizona will determine the training, background and qualifications necessary for teachers of
10 ELL students and adopt appropriate rules. Further, the State agreed that the cost study that
11 was to be prepared pursuant to the Court's October 12, 2000 Order would reflect the finding
12 and resources necessary to train and develop teachers of ELL students under the Proposition.

13 The cost study was completed; however, the legislature did not consider funding the
14 programs and Plaintiffs sought further post-judgment relief by filing a Motion for Injunctive
15 Relief on May 22, 2001 asking the Court to set a deadline for the State to comply with the
16 January 2000 Declaratory Judgment. The Court granted the Motion on June 11, 2001
17 ordering the State to comply by January 31, 2002. The state legislature enacted HB2010 on
18 December 19, 2001 which provided an interim measure to satisfy the Court's Order to change
19 the way ELL programs are funded. HB2010 provided funding of an additional \$150 per ELL
20 student raising the formula to approximately \$339.91 per ELL student (based on the amount
21 that the Nogales Unified School District was incurring as reported in the 2001 cost study).
22 The bill also required the Legislative Council to award the contract for a new cost study to
23 a private entity and this study was to be completed and submitted to the Joint Legislative
24 Committee, the Governor, the President of the Senate and the Speaker of the House of
25 Representatives on or before August 1, 2004. Further, the bill established the Joint
26 Legislative Committee on School Maintenance and Operations Funding which consists of
27 four members from the House of Representatives and four members from the State Senate.

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1 Among other things, the Committee was to evaluate and make specific recommendations on
2 school district funding and ELL programs. On January 9, 2002, Plaintiff filed for an
3 injunction challenging the legislation as not bearing a rational relationship to the actual
4 funding actually needed to implement language acquisition programs in Arizona. The Court
5 granted that Motion on April 8, 2002, but reconsidered and vacated the Order on April 30,
6 2002. On June 12, 2002, the Court issued an Order finding that the State took appropriate
7 action to address the directives in the case in part because the legislature recognized that the
8 funding levels may require further adjustment once the new cost study was completed.
9 Defendants filed the new cost study on October 11, 2002.

10 The cost study has not been completed, missing the August deadline set by HB2010.
11 Also, the Joint Legislative Committee was set to automatically expire on December 31, 2004.
12 Plaintiffs filed this Third Motion for Injunctive Relief on December 13, 2004 asking that the
13 Court set a deadline for the State to comply with the January 2000 judgment.

14 LEGAL STANDARD

15 The granting or denying of injunctive relief rests within the sound discretion of the
16 trial court. *See S.E.C. v. Goldfield Deep Mines Co. of Nevada*, 758 F.2d 459 (9th Cir. 1985);
17 *Transgo, Inc. v. Ajac Transmission Parts Corp.*, 768 F.2d 1001 (9th Cir. 1985); and *G.C. and*
18 *K.B. Investments, Inc. v. Wilson*, 326 F.3d 1096 (9th Cir. 2003). "Courts have inherent power
19 to enforce compliance with their lawful orders. . . ." *Shillitani v. United States*, 384 U.S. 364,
20 370 (1966). "When a district court's order is necessary to remedy past discrimination, the
21 court has an additional basis for the exercise of broad equitable powers." *Spallone v. United*
22 *States*, 493 U.S. 265, 276 (1990). These powers are not unlimited however and the court
23 should use the "least possible power adequate to the end proposed." *Id.* The requirements
24 for injunctive relief are 1) the likelihood of substantial and immediate irreparable injury, and
25 2) the inadequacy of remedies at law. *G.C. and K.B. Investments, Inc.*, 326 F.3d at 1107.
26 *See also LaDuke v. Nelson*, 762 F.2d 1318, 1330 (9th Cir. 1985). The scope of federal
27 injunctive relief against a state government must always be narrowly tailored to enforce
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1 federal constitutional and statutory law only. *Clark v. Coye*, 60 F.3d 600, 603-604 (9th Cir.
2 1995). Thus, the injunction should protect the plaintiffs' federal constitutional and statutory
3 rights but not require more of state officials than is necessary to assure their compliance with
4 federal law. *Id.* at 604.

5 DISCUSSION AND ANALYSIS

6 Plaintiffs file this Motion because certain sections of HB2010 expired on December
7 31, 2004 and they fear that the legislature will do nothing for ELL programs during this
8 legislative session. Plaintiffs point out that the cost study that was supposed to be completed
9 and submitted by August 1, 2004 has not been done; however, Defendants have
10 supplemented the record with a letter that indicates it may be done by February 15, 2005.
11 Plaintiffs argue that the absence of a final cost study and the end of the Joint Legislative
12 Committee makes it a concern that the legislature will not act on its obligations to fund ELL
13 programs during this session and the Plaintiffs would have to wait another year for any relief.
14 Plaintiffs ask the Court to establish a deadline for the legislature to comply with the
15 Judgment already issued in this case.

16 Defendants counter that an injunction would be premature and the Court should defer
17 its ruling on the Motion until the legislature has had an opportunity to act on its own.
18 Defendants admit that the cost study has not been completed and that the Joint Committee
19 has not submitted a report. However, Defendants contend that the work on the cost study
20 continues and that Governor Napolitano had written to the President of the Senate and the
21 Speaker of the House on December 6, 2004 urging them to reconstitute the Joint Committee.
22 Defendants argue that the legislature is well aware of the problem and that the bill [HB2010]
23 itself contemplated that a report by the Joint Committee would not be available for action by
24 the Legislature until the 2005 session. Defendants ask that the Court give the new
25 Legislature an opportunity to take further action on its own.

26 Plaintiffs reply that Defendants failed to provide any explanation for its delay and
27 allege that they are in no hurry to comply with the Court's Order. Plaintiffs argue that the
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1 Governor's request that the Joint Committee be reconstituted has no legal effect and that the
2 legislature can disregard it. In a letter to the Court dated January 21, 2005, the President of
3 the Senate and the Speaker of the House stated that they intended legislative review during
4 this session. Further, the Joint Committee was automatically repealed at the end of
5 December and it would take new legislation to reconstitute it. Plaintiffs argue that this is not
6 the first time in the history of this case that the legislature has failed to discharge its
7 responsibilities and that a Court order establishing a deadline to comply is the least restrictive
8 remedy possible at this point.

9 The Court is mindful of the issues that have been percolating in this case for the past
10 five years. Thus far, the legislature has failed to meet the Court's deadlines as well as their
11 own. If the Court were to defer its ruling to see if the legislature acts on its own, it may
12 jeopardize any opportunity for the ELL programs to be funded during this legislative session
13 and the children will have to wait more than another year for any type of relief. Further, the
14 Court finds no harm in setting a deadline to ensure that the legislature acts when it has
15 already expressed an intent to do so. By ordering injunctive relief, the Court seeks to ensure
16 that Plaintiffs receive the relief they were found to be entitled to more than five years ago
17 while not putting any more requirements on the State than is absolutely necessary. For these
18 reasons, the Court will grant Plaintiffs' Motion and order that the legislature comply with the
19 Court's January 2000 Declaratory Judgment by the end of this legislative session.

20 Accordingly,

21 **IT IS HEREBY ORDERED** that Plaintiffs' Third Motion for Injunctive Relief is
22 (Docket No. 284) **GRANTED**. Defendants have until the end of this legislative session or
23 April 30, 2005 (whichever date is later) to comply with the Court's January 2000 Order by
24 appropriately and constitutionally funding the state's ELL programs taking into account the
25 Court's previous orders and the parties' stipulation.

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IT IS ALSO ORDERED that Plaintiffs' Motion to Expedite (Docket No. 283) and Defendants' Motion to Supplement are **GRANTED**.

DATED this 24th day of January, 2005.



RANER C. COLLINS
United States District Judge