

A Divided Court of Appeals Affirms Summary Judgment in “At-Risk” Case *Center will file seek review from the Arizona Supreme Court*

More than two years after it heard oral argument in *Crane Elementary School District et al. v. State of Arizona*, Division One of the Court of Appeals issued its ruling. In a 2 to 1 decision, the court affirmed the defendant’s summary judgment, rejecting the lower court’s reasoning, but agreeing in the result. The majority opinion, written by Judge Philip Hall, held that Arizona’s constitution does not require the state to remedy educational disparities for at-risk students caused by socioeconomic factors. Judge Donn Kessler disagreed: In his dissent, he wrote, “[o]ur constitutional framers required the state to provide an adequate education for *all* Arizona’s children, not just certain types of children.” As Judge Kessler observed, under the majority’s holding, the state could devise programs and budgets for school operations that would be “adequate to permit students in Paradise Valley and North Scottsdale a fair chance to pass the AIMS test and say

that if it is adequate for those students, it is adequate for the entire State.”

The lawsuit, filed by the Center in September 2001, was brought on behalf of five school districts. Three of the five school districts are high poverty districts, with over 90% of their students participating in the free and reduced lunch program that is based on federal poverty eligibility. The lawsuit contends that the Arizona school finance system is unconstitutional because it fails to provide adequate funding for the programs that students from poverty need in order to master the state’s academic standards. In the Plaintiff school districts, students from poverty backgrounds fail the AIMS test at rates two to three times that of their peers.

In the lower court the State of Arizona argued, incorrectly, that the Plaintiff school districts were asking the Court to substitute its judgment for that of the legislature and dictate which programs the state

must adopt for at-risk students. The state argued that the relief sought, if granted, would violate the separation of powers doctrine. Judge Reinstein agreed and granted the state’s motion for summary judgment. Yet, on appeal, both the majority and dissenting opinions rejected the separation of powers argument and found summary judgment on that basis improper.

Yet, the majority affirmed the judgment because the circumstances that cause “at risk” students to underperform (i.e. low parent participation and low self esteem) are not *caused* by the state’s educational funding system. However, as plaintiffs’ argued both below and on appeal, the state’s obligation to provide children with an adequate education extends to all Arizona schoolchildren, even those with special needs that are neither cause nor addressed by the state’s financing system. Consequently, we will petition the Arizona Supreme Court for review.

**Arizona Center for Law
in the Public Interest**

202 East McDowell Road
Suite 153
Phoenix, Arizona 85004
(602) 258-8850
FAX (602) 258-8757

2205 East Speedway Blvd.
Tucson, Arizona 85719
(520) 529-1798
FAX (520) 529-2927

www.aclpi.org

Phoenix Staff
Timothy M. Hogan
Executive Director

Anne Ronan
Staff Attorney

Tucson Staff
Joy E. Herr-Cardillo
Staff Attorney

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Court Sets Three-Year Extension of Deadline for Reform of Arizona Mental Health System for Children

Facing a 2007 deadline for reform of the mental health system serving 30,000 poor Arizona children, on November 21, 2006, state officials and children's advocates agreed to a three-year extension of the terms of a five-year-old settlement of a 15-year-old federal class-action lawsuit known currently as *J.K. v. Gerard*.

The groundbreaking 2001 settlement committed the state to a series of concrete steps, including a massive training program for frontline staff and supervisors, special projects to pilot the new approach to services, and specific improvements in the structure of its managed care arrangement for Medicaid-eligible children. It anticipated implementation over six years, and obliged the state to move "as quickly as is practicable" to make needed changes.

Counsel for the class of children, Ira Burnim, legal director of the Bazelon Center for Mental Health Law and Anne Ronan, staff attorney of the Arizona Center for Law in the Public Interest, have repeat-

edly raised concerns about the slow pace of implementation of the settlement and formally requested an extension of the agreement in a letter to the state's lawyers last January. "We are now at a critical juncture," they wrote, and urged extension "to make up for lost time—the time lost due to Defendants' failure to move as quickly as practicable and to make needed changes to contracts, decisions, practice guidelines and policies."

The settlement also spelled out 12 principles for serving children with behavioral health needs, which the state agreed to incorporate in all aspects of the system's operations. Signs that the state is not fully committed to implementing the reform, the attorneys' letter noted, are its lack of a quality management system and of any mechanism for reviewing practice. Lacking an implementation plan, the state has developed annual action plans "of variable quality. None described concrete steps, and none included an approach for holding responsible parties accountable."

New Hearing Scheduled in *Flores*

On August 23, 2006, the U.S. Court of Appeals for the Ninth Circuit ruled that Tom Horne, Superintendent of Public Instruction, and Jim Weiers and Ken Bennett, the Speaker of the House and Senate President, respectively, were entitled to an evidentiary hearing to determine whether the State of Arizona has complied with the judgment in *Flores v. State of Arizona*. That judgment issued in January 2000 found that the state was violating the Equal Education Opportunities Act by arbitrarily and inadequately funding programs for English language learners in Arizona.

Horne and the legislature had appealed orders issued by U.S. District Court Judge Raner Collins imposing fines in the amount of \$21 million and suspending the AIMS test as a requirement for English language learners. One of their claims was that over the last six years significant amounts of new funding had been made available to school districts for English language learners and that conditions in the Nogales Unified School District had vastly improved. The Plaintiffs in the

Flores case are a class of parents and children in the Nogales Unified School District. Judge Collins had rejected requests by Horne and the legislature for an evidentiary hearing to prove their claims.

The Ninth Circuit Court vacated Judge Collins' orders imposing fines and suspending the AIMS test. Additionally, the Court held that Horne and the legislature should have been given an opportunity to prove their claims at an evidentiary hearing. The case was remanded to Judge Collins to conduct such a hearing.

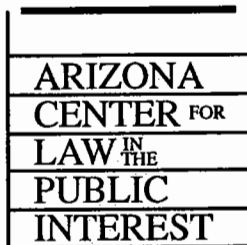
Over Horne's and the legislature's objections, Judge Collins scheduled a four-day evidentiary hearing beginning on January 9, 2007. The Defendants wanted the hearing scheduled in March at the earliest and argued that the hearing would take at least two weeks. We argued that this was just a stall tactic to get through another legislative session without having to do anything.

The Center will also be presenting evidence at the hearing on behalf of the Plaintiffs showing that the state has yet to develop a rational funding system based on the costs of providing programs and services to English language learners. The legislature has been provided with numerous cost studies showing that funding for ELL students should be increased by approximately \$1,000 per student. With 165,000 English language learners in Arizona's public schools, that would amount to an additional \$165 million annually. It's easy to see why the legislature wants to delay resolution of the issue.

We're hopeful that after the hearing concludes on January 12th, Judge Collins will rule quickly and order the legislature to provide adequate funding for English language learners during the upcoming legislative session.

THANK YOU

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202 East McDowell Road
Suite 153
Phoenix, Arizona 85004

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