



MALDEF

Mexican American Legal Defense and Educational Fund

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FACT SHEET ON SUPREME COURT'S DECISION IN *HORNE V. FLORES*

On June 25, 2009, the Supreme Court decided *Horne v. Flores*, a case involving education of English Language Learner (ELL) students in Arizona public schools. The Supreme Court reversed and remanded the case back to the district court to determine a number of factual and legal issues in light of its opinion.

Positive Points of the Decision

1. The significance of providing equal educational opportunities to ELL children cannot be understated. The Court said: “There is no question that the goal of the EEOA [Equal Educational Opportunities Act]- overcoming language barriers- is a vitally important one, and our decision will not in any way undermine efforts to achieve that goal.”
2. States have continuing obligations under the EEOA to develop effective programs that will allow ELL children to become proficient in English.
3. The Court rejected Arizona school officials’ claim that the State’s mere compliance with the No Child Left Behind Act (NCLB) constitutes compliance with the EEOA. Courts may now consider whether substantial state educational changes made pursuant to NCLB—including funding increases as well as programmatic and monitoring improvements to language programs for ELL students—amount to “appropriate action” under the EEOA and help ELL students become proficient in English.
4. Focusing solely on funding of ELL programs is insufficient to prove a violation of the EEOA, but funding remains relevant because courts must still determine whether available funding for general education and from local revenues supports “EEOA-compliant ELL programming.”
5. Returning control to the State by possibly dissolving the lower court injunction is important but can only occur if the public’s interest is served and the State can prove that it has satisfied its obligation of providing “appropriate action” under the EEOA.
6. No ultimate determination has been made on any of the claims by the plaintiffs in the case. The lower court must still determine whether the following changes were significant enough to satisfy the State’s obligation under the EEOA and, therefore, dissolve the injunction: a change from Bilingual Education programs to Structured English Immersion programs; a change in ELL programs and funding resulting from NCLB; and a change in Nogales’s local structural and management reforms.

Negative Points of the Decision

1. The Court further relaxed the standard to dissolve injunctions under Fed. R. Civ. P. 60(b)(5), thus providing an avenue for defendants to circumvent compliance with an existing injunction and to argue other changed circumstances.
2. The Court held that although the district court must resolve whether the State has provided sufficient funding for ELL programs, the court must take into account funding for general programs and other local sources rather than looking at targeted ELL funding alone. Thus districts may be forced to “rob Peter to pay Paul.”
3. The Court stated that compliance with NCLB is not *per se* compliance under the EEOA, but the Court also discussed in detail how the language program changes made by the State pursuant to NCLB may, along with other changes, provide the basis for significant changes and “appropriate action.”
4. The Court ignored, in essence, some of the data reflecting the overall lack of success of ELL students, especially at the secondary level. The Court held, however, that the record at this time is insufficient to make a final determination.
5. The Court’s majority opinion seemingly endorsed Structured English Immersion programs over Bilingual Education programs and indicated that putting more money into education does not matter, but those rhetorical comments carry no legal weight. As the dissenting opinion notes, there is substantial research proving that bilingual education is far more successful than Structured Immersion programs in helping students learn English and that providing sufficient funding for quality educational programs will make a difference. Clearly, the debate is not over.

Background

The original action was filed in 1992 by a class of ELL students in Nogales, Arizona, claiming that the State had failed to assist ELL students in overcoming their language barriers under the EEOA by under-funding language programs. Plaintiffs prevailed at the trial level in 2000, proving that the State had violated the rights of ELL students under the EEOA by failing to take “appropriate action.” The district court ordered the State to provide adequate funding of programs for ELL students, an order with which the State never complied. Following a series of court orders attempting to enforce the 2000 funding order, the State filed a motion seeking dismissal of the case arguing that a series of significant programmatic improvements and funding for ELL programs made state compliance with the funding order insignificant. The motion was denied by the lower courts. Arizona then sought review with the Supreme Court.

In support of the plaintiffs in this case, MALDEF and other national civil rights groups submitted an amicus brief arguing that Congress never intended for a State to be absolved of its responsibilities under the EEOA by meeting its duties under NCLB.

Founded in 1968, MALDEF, the nation’s leading Latino legal civil rights organization, promotes and protects the rights of Latinos through litigation, advocacy, community education and outreach, leadership development, and higher education scholarships. For more information on MALDEF, please visit: www.maldef.org.