

Local

Court weighs state's duty to English learners

By JOAN LOWY, The Associated Press

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WASHINGTON -

Third grade was a turning point for [Miriam Flores](#)' daughter.

For two years her classroom instruction in [Nogales, Ariz.](#), was in Spanish, the language she spoke at home. By third grade, she was expected to understand English and was assigned to a class with a teacher who spoke no Spanish.

The daughter - whose name is also Miriam Flores - began to fall behind. There were complaints she was a behavior problem, talking in class.

"That surprised me because Miriam was a very timid girl, very serious," Mrs. Flores said in Spanish. "I asked her why she was talking to other children during class and she told me, 'Mom, I'm asking them to tell me what the teacher wants us to do.' "

That was when Mrs. Flores and her daughter joined a lawsuit against the school district and the state of Arizona that contended programs for English-language learners in Nogales were deficient and received inadequate funding from the state.

In the 17 years that have passed since the case was filed, a generation of Spanish-speaking students have passed through Nogales and other Arizona public schools, and Mrs. Flores' daughter is now a student at the [University of Arizona](#).

The question of the state's responsibilities to English-learners, however, remains.

On Monday, the Supreme Court will hear arguments in an appeal of the case, now called *Horne v Flores*. Filed by Arizona state legislators and the state superintendent of public instruction, they want to be freed from federal court oversight of the state's programs for English learners and the obligation to spend potentially hundreds of millions of dollars to comply with lower court rulings.

The case has attracted a flurry of legal briefs from school boards, teachers and civil rights groups in support of the Nogales parents and students.

"It's a case that involves just Arizona at this point, but we think it's critical because as the number of English language learner kids has increased over time, these are important issues that all school districts are going to face, including districts in places you might not think likely to have these problems," said [Maree Sneed](#), attorney for the [National School Boards Association](#) and other education groups.

Another key issue is the power of federal courts to take over functions of state or local governments when trying to remedy civil rights violations, attorneys involved in the case said.

If the court were to rule in favor of Arizona officials, "it would have a significant impact in terms of helping state and local governments get out from under long-standing court orders," said [Richard Samp](#), an attorney with the conservative [Washington Legal Foundation](#), which has filed a brief siding with state officials.

In 2000, now-retired [U.S. District Court](#) Judge Alfredo Marquez ruled in favor of the Nogales parents and students, finding that the state had violated the Equal Educational Opportunities Act's requirements for appropriate instruction for English language learners. The court said Arizona's system of instruction, which at the time appropriated only \$150 per non-English speaking student, was "arbitrary and capricious" since it bore no relationship to the actual funding needed.

Marquez ordered state legislators to create a plan to provide sufficient funds and placed the state's programs for non-English speaking students under court oversight.

Since then, the two sides have fought over what the state has to do to comply with the court order. The state has more than doubled the extra per-pupil amount that schools statewide receive for non-English speaking students, and taken several other steps prescribed by the No Child Left Behind Act, a broader education accountability law passed by Congress in 2002.

Attorneys for the Nogales families said that isn't enough since education studies show it costs around \$1,600 extra per pupil to meet the education needs of a non-English speaking student. They said Nogales, on the Mexican border about 60 miles south of [Tucson](#), now spends nearly that much, taking money away from other education programs to make up for the gap in state funding for non-English speaking students.

"The overall significance here is whether states are going to be held responsible for ensuring that school districts have resources to provide for English language learner programs," said the plaintiffs' chief lawyer, [Tim Hogan](#) of the [Arizona Center for Law](#) in the Public Interest.

State officials involved in the suit - the president of the Senate, the speaker of the House and the state superintendent - argue that money shouldn't be the issue, but rather whether students' needs are being met. They say a 2006 state law set up specific criteria on how students should be taught, and the situation for English language learners has improved - test scores are higher, teachers are getting better training, more individual assistance is available.

The case has divided state officials. Then-Gov. [Janet Napolitano](#), a Democrat, and the state school board declined to join lawmakers and the superintendent, who are Republicans, in their appeal to the Supreme Court.

Looking back, Mrs. Flores said she feels the 17 years the case has consumed "were lost years for many students."

"I think of the students who can't pass state exams because the tests are in English," Mrs. Flores said. "I'm not going to consider this a victory until we see our children pursuing university careers. We're going to see that in the future."

[Associated Press](#) Writer [Richardo Alonso-Zaldivar](#) contributed to this report.

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