

## **META, Inc.**

### **An Analysis of the Supreme Court's Decision in *Horne vs. Flores*, the Arizona ELL Funding Case**

In a recent ruling on issues in the *Horne vs. Flores* case, the U.S. Supreme Court issued a 5 to 4 split decision involving a challenge to the way the state of Arizona funded its programs serving English language learner (ELL) students. Following the release of the ruling, there were numerous media stories and related editorial pieces that attempted to clarify the ruling. Some of those accounts were accurate but not comprehensive, others were more comprehensive but included important misinterpretations, while still others were both inaccurate and too short to do justice to the majority and minority opinions issued in the case. The following is offered in an attempt to address key facets of the ruling and to facilitate further discussion from a common understanding of what the ruling did, and did not do and what comes next in the process.

#### **Questions & Answers**

##### **What is the *Horne vs. Flores* case about?**

The U.S. Supreme Court has issued a 5-4 decision in *Horne vs. Flores*, a case concerning the funding provided for English language learners in Arizona's public schools. The court has now sent the case back down to the lower court to determine various facts and legal issues but now also taking into consideration the Supreme Court's ruling.

The *Horne vs. Flores* case was a class action suit brought in 1992 on behalf of ELL students in Nogales, Arizona, claiming that the state had failed under the *Equal Educational Opportunity Act of 1974* (EEOA) to serve ELL students. The plaintiffs won in the lower court showing that the state had violated the rights of ELL students under the EEOA by failing to take "appropriate action," in this case, by not providing sufficient state funding.

The lower court ordered the state of Arizona to determine the funding needed to effectively implement the ELL programs. Ultimately, Arizona filed a motion to lift the court's order, arguing that there had been major improvements in ELL programs referencing the mandated implementation of English immersion programs for all Arizona ELL students, as well as increased funding for these programs and therefore compliance with a funding order was not needed. After the state's motion was denied by the lower courts, Arizona's Superintendent of Schools, and House Speaker and Senate President ("State appellants") appealed to the Supreme Court.

The state appellants also argued to the Supreme Court that by complying with the *No Child Left Behind Act* (NCLB), a state is thereby absolved of its responsibilities under the EEOA.

##### **What did the Supreme Court do?**

The Supreme Court remanded the case (sent it back) to the lower court to determine whether the changes in language programs, the reforms made under NCLB, and the additional funding were sufficient to satisfy the state's obligation to ELL students under the EEOA and substantial enough to merit the dismissal of the case. It also determined that lower courts should consider a number of factors, beyond funding, when making rulings related to state or school compliance with EEOA requirements as it relates to ELL students.

##### **What did the Supreme Court *not* do?**

The Supreme Court did not determine that the state of Arizona provided sufficient funding to support effective instruction of ELL students. It also did not determine that the use of

the new English immersion program now in place in Arizona, constituted enough of a change in circumstances to merit the closing of the existing case. In both of these areas, the court simply asked the district court to review its prior conclusions in light of the factors it identified as meriting another review at the lower court level.

### **What did the Supreme Court say about funding for English language learner students in Arizona?**

The court held that the “singular focus” by the lower courts on the specific funding of ELL programs was too narrow. However, the court did find that funding is relevant and ordered the lower court on remand to determine: “whether the state’s budget for general education funding, in addition to any local revenues, is currently supporting EEOA-compliant ELL programming in Nogales” (p. 33).

### **What was the state appellants’ argument regarding the NCLB and the EEOA?**

The state argued that compliance with NCLB automatically means the state also is in compliance with the rights of ELL students under the EEOA.

### **What did the Supreme Court do with the issue of the relationship between NCLB and the EEOA?**

The Supreme Court rejected the state appellants’ argument that by complying with the NCLB, a state would be automatically in compliance with ELL students’ civil rights under the EEOA.

The Supreme Court sent the case back (remanded) to the lower district court to determine whether the state’s actions in complying with the NCLB together with the increase in educational funding was or was not enough to demonstrate compliance with the EEOA.

The court also said that states and local educational agencies are forbidden from failing to take “appropriate action” to serve ELL students. The state appellants’ argument attempting to eliminate the rights of ELL students protected under the EEOA was not accepted by the court.

### **What else did the court say about the EEOA (itself) and why is this important?**

The Supreme Court held that a state’s EEOA obligations are not met merely by having an NCLB plan. The court said: “Approval of a NCLB plan does not entail substantive review of a state’s ELL programming or a determination that the programming results in equal educational opportunity for ELL students.”

While sending the case back to the lower court to reconsider whether Arizona took steps in light of NCLB that may have resulted in “appropriate action” under the EEOA, the court nonetheless made clear that a substantive review of state ELL programs and results must be done.

The Supreme Court made note of some of the ELL program changes asserted by Arizona that will need to be examined by the lower court to see if the state is now taking “appropriate action” under the EEOA. In addition to re-examining whether the supplementary funding provided since the case was first filed is sufficient for schools to provide appropriate language related services to ELL students, the lower court was instructed to look at mandatory training of ELL teachers, reduced class-sizes, state promulgated program models, and enhanced monitoring, among other factors. These factors constitute some important new guidance for demonstrating compliance with the EEOA not only in Nogales, Arizona, but also nationwide.

### **What did the Supreme Court say about structured English immersion (SEI) and bilingual programs and what does it mean?**

Justice Alito, who wrote the majority opinion for the court, commented on Arizona's structured English immersion (SEI) program model, favorably comparing it to bilingual education models. In a dissenting opinion, Justice Breyer complained that the state's own witnesses were unable firmly to conclude that the state's new SEI program had so far produced significantly improved results, reinforcing the lower court's assessment that existing levels of support for ELL students remained inadequate.

The statement by Justice Alito in the majority opinion is rhetorical in nature, expressing a particular viewpoint, and *does not constitute* legal precedent. In his dissent, Justice Breyer, writing for the four in the minority, notes that the debate on the most effective approaches for serving ELL students is a complex one and is best left to the scholars most well versed in these issues.

Judge Alito's comments on the issue of SEI vs. bilingual education programs are what is referred to as "dicta" and carry no legal weight. This is because the structured immersion program was not an issue brought before the court, and no conclusions regarding its effectiveness were ever proposed by either party.

### **What does "dicta" mean and how does it differ from a ruling or finding issued by a court?**

Dicta is any language in an opinion issued by a court relating some observation or example *but which is not part of the court's judgment in the case*. The definition of dicta as found in Black's Law Dictionary is a judicial comment made while delivering a judicial opinion, but one that is unnecessary to the decision in the case and therefore not precedential.

Dicta is distinguishable from a court's ruling or its findings, which do constitute legal precedent.

### **What does this case mean for English language learner students beyond Arizona?**

Although the court's decision regarding the funding issue for ELL programs in Arizona is disappointing, the court upheld the rights of ELL students (nationally) under the EEOA, confirming that these rights are enforceable against state defendants as well as local school districts. This is a victory for the civil rights of ELL students throughout this country.

Specifically, the court said: "There is no question that the goal of the EEOA – overcoming language barriers – is a vitally important one, and our decision will not in any way undermine efforts to achieve that goal."

The court confirmed that the EEOA requires "taking 'appropriate action' to teach English to students who grew up speaking another language."

### **What does this case *not* mean for English language learner students beyond Arizona?**

The *Flores* decision leaves the question of what constitutes adequate funding for specialized programs serving ELL students an open question, a question that must be addressed with focused research that takes into account unique state and area contextual issues that impact funding needed.

It also acknowledges that there are a number of factors that impact ELL students' opportunity to acquire English proficiency, in addition to, but not limited to specialized funding.

Finally, the decision does not require any policy changes in states that currently offer or require some variant of bilingual education to address EEOA requirements as they relate to serving ELL students.

### **Where can I read the Supreme Court's decision?**

The Supreme Court's decision in *Horne vs. Flores* can be downloaded at: <http://www.supremecourt.us/opinions/08pdf/08-289.pdf>.