

Minutes
State Board of Education Special Session
Friday, January 6, 2006

The Arizona State Board of Education held a Special Session at the Arizona Department of Education, 1535 West Washington, Phoenix, Arizona. The meeting was called to order at 10:06AM.

Members Present

Mr. Jesse Ary
Dr. Matthew Diethelm
Superintendent Tom Horne
Ms. Cecilia Owen

Members Absent

Dr. Michael Crow
Mr. Bill Estes, Jr.
Ms. Joanne Kramer

Members participating via telephone

Dr. Vicki Balentine
Dr. Matthew Diethelm
Ms. JoAnne Hilde
Ms. Anita Mendoza
Dr. Karen Nicodemus

PLEDGE OF ALLEGIANCE AND MOMENT OF SILENCE

ROLL CALL

1. Presentation, Discussion and Consideration to Approve Legislative Recommendations to Comply with Court Order Relating to Flores v. State of Arizona, et. al. Pursuant to A.R.S. §38-431.03 (A) (3) and (4), the Board May Vote to Go Into Executive Session for Consultation and Legal Advice and/or for Instructing the Board's Attorneys Regarding the Board's Position in Connection with this Matter.

Dr. Diethelm asked Ms. Susan Segal to explain what the Arizona Constitution says relative to the State Board's authority and limitations regarding this matter.

Chief Counsel for Education and Public Advocacy, and the Attorney General's Representative on the case of *Flores v. State of Arizona*, Arizona Attorney General's Office, noted the following:

- The State Board of Education is established by the Arizona Constitution Article 11 § 3
 - This article states who shall be on the Board
 - Does not provide any powers, duties or other provisions other than to say that the powers, duties, compensation and expenses and the terms of the offices of the Board shall be such as may be prescribed by the law
- The Legislature can assign duties to the State Board of Education
- Regarding school finance the legislature shall provide guidelines for a general and uniform system of education

Dr. Diethelm summarized that the Board is neither charged with nor restricted from commenting on this issue.

Mr. Yanez clarified that A.R.S. § 15-203 (A) (8) states that the State Board of Education shall develop legislative recommendations on matters relating to schools. This statute is silent on what areas recommendations should be made in but within the powers and duties of the Board, the development of legislative recommendations is required.

Dr. Diethelm commented that the Board's decision to have this discussion and develop recommendations is the right thing to do.

Mr. Yanez presented the background information as provided in the materials packet noting that the Board has the ability to modify, accept or reject the proposed recommendations presented today. He made the following points about today's recommendations:

- They are intended to assist the legislature in complying with the court order
- The *Flores* matter is extremely complex
- The legislature will have to address many ELL issues
- Best approach is to address the key issues and provide general/broad recommendations on those issues
 - Funding Mechanism for ELL students
 - One suggestion is to fund ELL students based on applications from LEAs
 - Another suggested option is to dedicate a specific dollar amount to be allocated to each ELL student
 - Recommendation is to dedicate a specific dollar amount to ELL students in Arizona
 - Rationale: there are other students that require special types of educational services that receive funding on a specific commitment
 - Does not have a dollar amount attached to it but legislature must use available research to determine an appropriate dollar amount
 - Use of Federal Funds
 - Amount to be allocated per ELL student must be determined
 - Appropriate use of federal funds must be determined
 - Recommend is to exclude from the calculation any federal funds that a school district or charter school uses for the education of its ELL students
 - May be an argument that federal funds should be included
 - Additional Policy Considerations
 - Many duties and policy considerations may be delegated to outside agencies
 - Recommendation that any policy decisions not specifically addressed in legislation be delegated to the Board and that the legislature provide the Board with resources necessary to meet these requirements

Mr. Yanez noted that if these recommendations are approved, a letter will be drafted and sent to the members of legislature by the beginning of the session on Monday, January 9, 2006.

Ms. Segal clarified that the Attorney General's Office has not seen the proposed recommendations prior to this meeting and therefore will not opine as to the legality of the recommendations. Ms. Segal pointed out the following:

- The court declined to address the issue regarding the use of federal funds
- Title III has a partial goal of monies specifically allocated from federal funds toward English Language Acquisition services
- Parties have been asking the court to address the availability of federal funds in respect to whether sanctions should be imposed and the court has declined and also has not decided whether federal funds can be considered in determining the adequacy
- The court's first decision in 2000 stated this was too speculative as those funds were going to go away
 - Federal funds changed due to NCLB Act
- Arguments in 2003 and 2004 were that the court should re-visit this in light of the change in federal legislation

Ms. Hilde asked if "supplemental" is used in Title III rather than "supplanting" and Ms. Segal responded that this is still an open question and does not apply to bilingual programs.

Ms. Mendoza commented that because of the grant application process some schools may not have access to Title III funds and that there is a growing number of charter schools and smaller schools.

Ms. Segal stated that her response is purely factual but that the federal funds issue was not addressed by the Governor and the legal issue has not been decided as to what is available in federal funding.

Ms. Hilde commented in favor of the recommendations as follows:

- Asked questions of people in the field in general about ELL and the frustration that the State Board has in addressing questions in this regard
 - State Board must bring a voice to the discussion
- Read the old legislation brought forward which was vetoed by the Governor but has not seen the new language being proposed
- Comfortable with information from Mr. Yanez and a general motion is needed that calls on Board leadership within these general guidelines that the State Board be a voice as bills go forward in the legislature

Dr. Diethelm summarized that it is important for the Board to take a leadership role in this matter and that it position itself with the legislature so it is involved in the ongoing process.

Superintendent Horne spoke about his recent vote against the motion brought forward by this Board and stated that he will again vote against another motion regardless of the specifics. He explained the following:

Point #1:

- Has been involved with the legislative proposal
- In his view the court has been asking for a scientific basis for the amount it spends on ELLs
 - Arbitrary amounts have been set from time to time and there is no scientific basis at this time
 - Has information in an affidavit from Margaret Garcia Dugan and the NCLS report
 - Will support a bill to set up a mechanism to show how schools meet the standards, how they are applying for the funding, and how much additional monies they need

Point #2:

- Agrees that additional funding is needed
- Bulk is attributed to smaller class sizes
 - No more than 15:1 for first year ELLs
 - This is the bulk of any additional costs needed
- If school has Title I monies, it uses funds to reduce class size for high poverty students
 - Half will be ELLs
- Class size can be reduced only once
- Doesn't make sense to exclude federal funds that have been targeted for either ELLs (as in Title III) or high poverty students (as in Title I)
- No existing program is being supplanted; need additional programs
- Have submitted figures regarding Nogales School District that show if federal funds are included the amount available is about \$1400/student in addition to the \$600/student already being spent

Other comments by members:

Ms. Mendoza:

- Don't disagree with the generalities of Mr. Horne's statement regarding special programs offered for students who have exceptional needs but it can't be cut and dried
 - Students are integrated into the school day
- Various factors contribute to how the student will be at school, i.e., high poverty
 - Title I funds can be used for these students
- ELL and/or Special Education issues compound the factors that may interfere with what the student is learning

- Hard to look at a specific figure and determine this is the exact amount needed to assist the student
- Test results still show wide gap with ELLs
- Must consider the compounded factors

Dr. Balentine:

- Comfortable with the recommendation given that excluded federal funds from the calculation in the development of the dollar amount

Dr. Diethelm:

- “Closing the Achievement Gap” report by NASBE, including about 30 research reports, points out that class size is a secondary effect
- Two more important factors are training or re-training or development of teachers and time on task
 - Especially for any student who must do more to catch up

Ms. Segal:

- The Governor, speaking for the state, is not a party in *Flores*
- NCSL study is all over the board as to whether class size makes a difference
 - Don’t know if this result is because the NCSL study is flawed or whether the data is correct
 - NCSL study says that class size doesn’t make a difference at the high school level
 - Governor made a good faith effort based on the information she had in making a cost determination

Superintendent Horne:

- Agree with Dr. Diethelm regarding most important factors
- Bulk of costs noted in the NCSL study are attributed to 15:1 class size

Dr. Nicodemus:

- Recommendation is suggesting a mechanism that the Board feels is most appropriate for the monies to go to schools

Ms. Hilde:

- Many schools are meeting students’ needs with funds already available
- Dr. Garcia’s report shows that the students most at risk around AIMS are in the minority population who are not represented by an ELL category
- Not every ELL student is poverty or minority
 - There are situations where children move to the USA speaking English but perhaps not reading or writing it
 - We have to make sure that our funding mechanism allows the district to meet those needs
- Concerned that if every federal dollar that could be used for ELL is pulled the district’s decision based on its staffing and student needs is diminished

Superintendent Horne clarified:

- The Board doesn’t have the resources to develop the scientific basis to determine a specific amount per pupil
- The legislature doesn’t have the scientific basis either
- That’s why they are saying they can’t assign a specific amount per pupil but have to put into place a mechanism whereby a school-by-school basis can be determined

Motion by Dr. Nicodemus to go into Executive Session for consultation and legal advice.

Seconded by Ms. Mendoza. *Motion passes.*

The Board went into Executive Session at 10:55AM and reconvened at 11:17AM.

Further comments by members:

Ms. Owen:

- Question Superintendent Horne's position as he is making a distinction between the federal funds and the money coming from the state and suggesting some of those funds be used to supplement services to ELLs
- The State Board is trying to make a statement to the contrary
- Why are the Superintendent's statements acceptable and defensible from a legal standpoint but the Board is having difficulty wordsmithing a statement in terms of distinguishing federal and state monies

Ms. Segal:

- Not saying Superintendent's comments are or are not defensible
- Legal determination should be deferred to the court

Dr. Diethelm:

- "Effective" could be used instead of "equitable"
 - Effective is defined by the way the results are measured

Mr. Ary:

- Superintendent has discretion to take opposite action of the State Board of Education
- Not implied that we still may not have an imbalance regarding the federal and state funds issue

Dr. Diethelm:

- Funding Mechanism:
 - Board wants recommendation to state that the money should follow the students giving local authority to specific usage on behalf of ELLs
 - As opposed to state programs that are provided locally by a grant

Drs. Balentine and Nicodemus agree with Dr. Diethelm's statement

Dr. Nicodemus:

- Add accountability measures and monitoring provisions

Ms. Hilde:

- Accountability says spending monies properly
- Monitoring says that students achieved and moved forward and indicates which program was more effective

Dr. Balentine:

- Add some language that offers a caution that accountability and monitoring component be built in the current components rather than creating new administrative reports

Dr. Diehelm:

- Don't want to create new administrative work but do want to add new tools

Ms. Hilde:

- Small and/or rural schools don't have staff to do additional accountability
- Modify Ms. Mendoza's statements adding today's suggestions and clarify how state and federal funds could be utilized regarding accountability

Dr. Balentine:

- Accountability should be built into current programs related to AZ LEARNS, NCLB, Title III, AYP

Dr. Diethelm:

- Wording suggestion: "Using existing measurement tools and methodology"

Ms. Hilde:

- Should consider adding that the State Board is the constitutional organization that is charged with oversight of K-12 education in Arizona

- Also add that that the legislation should direct the SBE to develop the ELL framework and to identify successful programs and that funding through the SBE would allow it to engage in this responsibility
 - Heard a comment that legislation gets passed and the State Board or Department gives instructions and there isn't adequate framework so every district may do bits and pieces until an audit shows that the school may not be complying properly
 - State Board, in conjunction with the Department, should develop the ELL framework to help guide districts through this process
 - Concerned when a bill around ELL is so many pages with minute details in law and to make any changes at all we have to go back to the legislature, hoping that this legislature is in line with the previous one
 - State Board doesn't want to do serious damage to a district while waiting for legislature's response
 - Hope that bills get scaled back and allow SBE to develop framework

Ms. Owen:

- Include comments in recommendation

Dr. Diethelm:

- More effective way may be member testimony and interaction with legislature

Dr. Nicodemus:

- If Board accepts today's recommendations, does this provide a platform for State Board representatives to testify at the legislature or do we anticipate a letter to be sent to legislators

Mr. Yanez:

- Understood that it is both to develop a letter from the Board to the legislature listing the recommendations and also to allow Mr. Yanez and Board members to speak to this issue as soon as next week
- Letter to be sent to Governor's Office also
- Language in the letter would be very similar to the language approved today

Dr. Nicodemus:

- Include that the State Board sees this as a responsibility and appropriate for the Board to engage in, providing its recommendations and/or concerns

Dr. Balentine:

- Policy considerations are a high concern in the field and how students are re-classified related to their ELL status and the need for districts to be prepared to provide follow up for students who are no longer classified but actually need extreme levels of support in that they are barely able to function in regular instruction

Mr. Yanez:

- Student assessment is an item that will be discussed at the regular Board meeting on January 23, 2006
- Policy decisions are already within the purview of the State Board

Ms. Segal:

- May authorize someone (could be the Executive Director) to draft a letter signed by someone else (could be the Board President) containing above recommendations with additional language that refers to the Board's role in making these recommendations

Dr. Diethelm:

- Appoint Ms. Hilde, Mr. Yanez and legal counsel to finalize the letter of recommendation from the Board to the legislature and include the Board's approval of forwarding such letter

Ms. Hilde:

- Request to include Dr. Diethelm in the group to finalize the letter

Motion by Ms. Owen to accept the recommendation as presented and authorize the Executive Director to draft a letter signed by the Board President that contains the above recommendations, including recommendations as modified and the additional language that refers to the Board's role in making these recommendations. Seconded by Mr. Ary.

Ms. Jennifer Pollock, Assistant Attorney General, Attorney General's Office, reiterated the recommendations suggested by Ms. Mendoza:

- Regarding statement #2, if a funding mechanism is developed it should distinguish between state and federal funds that establish an effective funding stream made available to effect the education and achievement of ELL students in Arizona
- Accountability is added to recommendation #1

The motion passes by a roll call vote of 7 yes, 1 no, and 3 absent.

Dr. Diethelm:

- The motion carries and the Executive Director, Ms. Hilde and Dr. Diethelm will meet in the near future to write a letter to be delivered to the legislature and the Governor
- All members are asked to assist in getting this interpreted, explained and to guide the political leadership to do the right thing

2. ADJOURN

Motion by Ms. Owen to adjourn. Seconded by Mr. Ary. *Motion passes.*

The meeting adjourned at 11:45AM.