

1 mastery of the State's specified "essential skills." (Judgment at 23.) The Court ruled that the
2 State's appropriation of \$150.00 per LEP student is arbitrary and capricious because it is not
3 reasonably calculated to effectively implement the Lau programs adopted by the Nogales Unified
4 School District (NUSD), which have been approved by the State. (Judgment at 23.) The Court
5 made this finding based on a 1987-88 cost study that showed it cost approximately \$450.00 per
6 LEP student to provide Lau program instruction.

7 At the time the Court ruled, Defendants questioned the reliability of their own 1987-88
8 cost study. Defendants attacked their studies' credibility because it was so old, and the
9 methodology for the study was not ascertainable and, therefore, its integrity was questionable.
10 The State had never updated the 1987-88 study. At trial, the Defendant informed the Court that
11 the State legislature had established the English as a Second Language and Bilingual Education
12 Study Committee to conduct a cost study to determine the amount of funding provided by the State
13 and Federal governments for English instruction of LEP students and the amount of money being
14 spent by schools to educate those students. In the Judgment issued by this Court January 24,
15 2000, the Court noted that this was the first step the State needed to take towards setting a
16 minimum base funding level for Lau programs that would not be arbitrary and capricious.
17 (Judgment at 23.)

18 The Committee was supposed to submit the report to the Governor's office by December
19 1, 1999, to recommend the level of funding necessary to support the programs that it determined
20 to be the most effective. The Report was timely submitted, but it failed to contain the
21 recommendations for funding levels. After the regular legislative session convened in January,
22 2000, Plaintiffs sent a letter to the legislature asking that the cost study be performed. A Senate
23 bill was introduced that would have provided for the study, but it was defeated. Several
24 amendments were also defeated which would have provided funding for the State Department of
25 Education to perform the cost study. The legislative session ended April 18, 2000, with the State
26 continuing its pattern of inaction.

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1 June 6, 2000, Governor Hull convened a special session on education to address a 0.6
2 % funding increase in the state sales tax for specified educational programs. Lau programs were
3 removed from the list of permissible items to be funded by the state sales tax. Again, the
4 legislature rejected an amendment that required the state to conduct the cost study of Lau
5 programs. On June 30, 2000, Governor Hull signed the bill providing for the increase in state
6 sales tax to finance education. Again, the state failed to take any action to fund Lau programs in
7 Arizona at a level reasonably calculated to make LEP students proficient in speaking,
8 understanding, reading, and writing English. Contrary to the information provided to this Court
9 in January of 2000, the State has not even taken the first step of conducting the cost study.

10 Against this backdrop, Plaintiff's Motion for Post-judgment Relief asks this Court to
11 order the State to conduct the cost study by November 1, 2000, so that the State legislature will
12 be in a position to fund Arizona's Lau programs during its next legislative session, which begins
13 January 1, 2001. This is especially important because Arizona has a biannual budget so unless
14 funding is secured this session, LEP students will have to wait until 2003 to see any improvement
15 in funding for Lau programs.

16 Defendants, however, suggest that further delay is necessary because conducting the cost
17 study now is unrealistic and counterproductive in light of the Consent Decree entered in this action
18 in June, 2000. Now that Defendants have agreed to make procedural and substantive revisions
19 to the State Lau programs, as sought by Plaintiff's in this very class action law suit, the cost study
20 can only be conducted after the changes are implemented and in place for some period of time.
21 Only then, after the Department of Education has had an opportunity to determine which programs
22 are working well, should the cost of the Lau Programs be calculated. Besides, there is a
23 referendum item, Proposition 203, on the November ballot which will repeal the existing bilingual
24 education statutes and adopt a one-year immersion program for LEP students.

25 Defendants propose that during this next legislative session the Department of Education
26 will ask the legislature to provide \$300,000 in funding to conduct the cost study and perform the
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1 monitoring required under the Consent Decree. If funded by the legislature, the study would
2 begin in the summer of 2001 and be complete in the spring of 2002. This would be just in time
3 for the next biannual budget in 2003.

4 This Court is not surprised by Defendants' suggestion to continue to delay appropriating
5 adequate funding for Lau programs in Arizona, nor is the Court surprised by the continued
6 inaction of the State legislature. See Roosevelt Elementary School District No. 66, et al. v. C.
7 Diane Bishop, (Roosevelt I) 877 P.2d 806 (1994) (en banc), appeal after remand, Hull v.
8 Albrecht, (Roosevelt II) 950 P.2d 1141 (1997), appeal after remand, (Roosevelt III) 960 P.2d 634
9 (1998) (continued legislative refusal to take action as directed by the state courts to remedy
10 disparities in school financing). The Court is, however, surprised by the Defendants' brazen
11 argument that a cost assessment cannot be done now because it should not be "based on models
12 that have not been getting the job done." (Response at 3.)² For example, Defendants argue: "A
13 study of the state's English Acquisition Programs prior to implementation of the changes
14 envisioned by the Consent Order would, however, be just that-an assessment of the costs of a
15 system that both plaintiffs and defendants agree was not appropriate." Id.

16 This Court' Order of January 24, 2000, made 64 specific Findings of Fact and not one
17 criticized the Lau models being used to teach LEP students in Arizona. The parties agreed "that
18 the State of Arizona has prescribed, and NUSD has adopted, models that are generally regarded
19 by experts as sound designs for effective Lau instruction." (Judgment at 22.) The Judgment
20 entered by this Court was that the primary reason the Lau programs failed LEP students in
21 Nogales, Arizona, was because the programs were not adequately funded by the State.

22 Plaintiffs' Reply accurately reflects the findings and conclusions of this Court, as follows:

23 . . . The Court determined in its Conclusions of Law that the State of Arizona
24 had prescribed, and NUSD had adopted, models that are generally regarded by
25 experts as sound designs for effective Lau instruction. Judgment at 22,
26 Conclusion of Law (A)(3). The Court further concluded that the state's
27 minimum \$150 appropriation per LEP student, in combination with its property

27 ²This same language is reflected in Proposition 2003.

1 based finance scheme, is inadequate and has resulted in the following Lau
2 program deficiencies:

- 3 1. Too many students in a classroom.
- 4 2. Not enough classrooms.
- 5 3. Not enough qualified teachers, including teachers to teach ESL
6 and bilingual teachers to teach content area studies.
- 7 4. Not enough teacher aides.
- 8 5. An inadequate tutoring program, and
- 9 6. Insufficient teaching materials for both ESL classes and content
10 area courses.

11 These deficiencies are not the result of an inadequate model. The model was
12 prescribed by the state and adopted by NUSD. Id. at 22. The problem is the
13 state's inadequate funding to support the model.

14 Reply at 4-5 (citing Judgment at 22.)

15 This Court agrees with Plaintiffs, as follows:

16 There is no reason to wait to address [the] cost of the deficiencies
17 identified by the Court. The cost implications of those deficiencies have
18 not changed as a result of the Consent Order. The Consent Order did not
19 change the models for providing bilingual and ESL instruction at all.
20 Instead, the Consent Order prescribes implementation procedures for
21 those models. . . . While there may be additional cost implications
22 associated with the Consent Order, they are most assuredly modest
23 compared to the structural funding problems identified by the Court.

24 Reply at 4-5. Additionally, the Court adds that even if Proposition 203 passes there will still be
25 costs associated with the "new" English immersion model. There are costs which are common
26 to all programs of instruction for LEP students.

27 The Court is not persuaded that a specific model must be implemented and successfully
28 operating before a cost assessment can be prepared. Cost studies are routinely performed prior
to implementing a model and serve the useful purpose of comparing costs of various models.
Models do not become successfully operational without funding; therefore, it is Defendants'
proposal to wait that is unrealistic and counterproductive. Unless, a realistic cost assessment is
prepared and available this legislative session, which begins January 8, 2001, Plaintiffs will miss
the biannual budget process and will have to wait until 2003 for Lau programs to be funded at a
level that is not arbitrary and capricious.

1 Judgment having been entered against Defendants, Plaintiff is entitled to equitable relief.
2 Alaska Center for the Environment v. Browner, 20 F.3d 981, 986-87 (9th Cir. 1994) (district court
3 has broad latitude to fashion equitable relief when necessary to remedy an established wrong);
4 Swan v. Charlotte-Mecklenburg Board of Education, 402 U.S. 1, 15-17 (1971) (if school
5 authorities fail in their affirmative obligations . . . , judicial authority may be invoked). The
6 “remedial powers of an equity court must be adequate to the task, . . . they are not unlimited,”
7 Missouri v. Jenkins, 495 U.S. 33, 51 (1990) (quoting Whitcomb v. Chavis, 403 U.S. 124, 161
8 (1971), “and one of the most important considerations governing the exercise of equitable power
9 is proper respect for the integrity and function of local government institutions.” Jenkins, 495
10 U.S. at 51. Obviously, here, the equitable relief requested by Plaintiffs encroaches on a domain
11 that primarily belongs to local government institutions, including the State’s legislature.
12 Therefore, the Court exercises its equitable power conscientiously and takes every step to allow
13 state authorities, whose powers are plenary, to decide how to provide LEP students with a
14 meaningful Lau program. Assessing the cost of such a program, however, does not involve public
15 policy considerations. Against the egregious backdrop of state agency and judicial inactivity, the
16 Court must grant Plaintiffs’ requested relief because without judicial action, the federal law
17 violations as set out in this Court’s Order of January 24, 2000, will continue for at least another
18 three years.

19 **Accordingly,**

20 **IT IS ORDERED** that Plaintiffs’ Motion for Post-Judgment Relief is GRANTED.

21 **IT IS FURTHER ORDERED** that Defendants, the State of Arizona, shall prepare a cost
22 study to establish the proper appropriation to effectively implement the State’s Lau educational
23 theory.

24 **IT IS FURTHER ORDERED** that the cost study shall be prepared in a timely fashion
25 so that the Arizona legislature can appropriate funding for Lau programs during the upcoming
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1 biannual budget session, beginning January, 2001.

2 **IT IS FURTHER ORDERED** that as to the one remaining issue in this litigation,
3 teacher certification or language endorsements, a Pretrial Conference shall be held before this
4 Court on November 3, 2000 at 11:30 a.m.

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6 Dated this 12th day of October, 2000.

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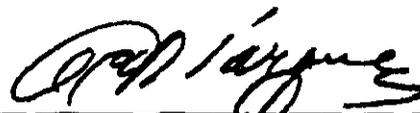
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ALFREDO C. MARQUEZ
Senior U.S. District Judge