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## **Judge rips bilingual program**

**Gary Scharrer** – San Antonio Express-News

AUSTIN — A federal judge's ruling that Texas is not living up to its obligation to properly educate students who struggle with the English language gives hope to many of those children with dismal academic achievement, a civil rights lawyer said Monday.

The state of Texas is not complying with the federal Equal Education Opportunity Act in that public schools are failing their obligation to overcome language barriers, Senior U.S. District Judge William Wayne Justice said in a 95-page ruling on Friday.

“The failure of secondary (limited English proficient) students under every metric clearly and convincingly demonstrates student failure, and accordingly, the failure of the (English as a Second Language) secondary program in Texas,” Justice wrote in the opinion, which reversed his July 30, 2007 ruling in the case.

Justice's ruling disappointed TEA officials.

“We're continuing to study this latest ruling, but it is likely that we will ask the attorney general to appeal it,” agency spokeswoman Debbie Ratcliffe said.

Attorneys for Attorney General Greg Abbott also are studying the ruling, “and we are weighing the prospects of an appeal,” said Abbott spokesman Tom Kelley.

More than 145,000 Texas students in grades seven through 12 are considered deficient in English. Students in those secondary grades have a dropout rate at least twice that of their peers. Their performance on the TAKS tests falls far behind other students.

For example, Justice noted the eighth-grade achievement gap for reading never got better than 48 percentage points between limited English proficient students and all students from 2003 to 2006. The 10th-grade achievement gap for mathematics never got better than 31 percentage points during that same time period. And the 11th-grade achievement gap for science never got better than 30 percentage points.

Justice's ruling noted the testimony from former State Board of Education member Joe Bernal, of San Antonio, who called the test scores “horribly bad” and also from former Education Commissioner Shirley Neely who said, “There's not anybody in their right mind that would say these are good scores.”

The court ruling is significant because “140,000-plus English language learners at the secondary level will not be forgotten, and they will not be pushed aside by the state as a matter of convenience,” said David Hinojosa, San Antonio-based staff attorney for the Mexican American Legal Defense and Educational Fund, which helped develop the case on behalf of the League of United Latin American Citizens and the American GI Forum.

“The opportunities and the expectations for those students will not be forgotten if the state lives up to its responsibilities,” Hinojosa said.

The number of children with limited English proficiency grows by at least 30,000 a year and reached 775,432 in the school year that just ended. Of those, 711,281 were Spanish-speaking students, according to the Texas Education Agency.

The state can either “own up to the facts and fix what needs to be fixed,” Hinojosa said, or “accept the facts as they are but ignore the needs of those students and try and file an appeal and bog it down in the legal process.”

The choice is clear, Hinojosa said.

“If we want a more prosperous state, let's have a much better education for these students. If we want a less prosperous state and more burdens on our state, then let's just go ahead and continue to ignore these students,” he said.

The court has kept jurisdiction over Texas' bilingual education program since 1981.

“After a quarter century of sputtering implementation, (the state has) failed to achieve result. ... Failed implementation cannot prolong the existence of a failed program in perpetuity,” Justice wrote.