

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2007-011100

08/06/2007

JUDGE ROBERT E. MILES

CLERK OF THE COURT  
K. Ballard  
Deputy

BASIS SCHOOL INC, et al.

CLINT BOLICK

v.

TOM HORNE, et al.

SUSAN PLIMPTON SEGAL

HEARING

11:00 a.m. This is the time set for Oral Argument re: Plaintiffs' Application for Preliminary Injunction. Plaintiffs are represented by counsel, Clint Bolick. Defendants are represented by counsel, Chad B. Sampson (appearing for Susan Plimpton Segal). Also present are Tom Horne, a named Defendant in his capacity as Arizona's Superintendent of Public Instruction, and Vincient Yanez, Executive Director of the Arizona State Board of Education.

Court Reporter, Judie Bryant, is present.

Oral argument is presented.

**IT IS ORDERED** taking this matter under advisement.

12:08 p.m. Matter concludes.

**LATER:**

An injunction is an equitable remedy, and it is well established that one who seeks equity must do equity. Delay by a Plaintiff in seeking injunctive relief is a factor to be considered in the

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determination of whether an injunction should issue. In this case, the fact that the State intended to impose grade-level requirements relating to social studies commencing with the 2007-2008 school year has been known by Plaintiffs for more than two years. Plaintiffs did not take the opportunities provided by Defendants to comment on or seek changes to the proposed requirements, nor did they seek this Court's intervention until less than two months before the requirements would take effect. Plaintiffs' explanation for this lack of diligence is that they simply did not focus on the impact of the new requirements until recently. That explanation is insufficient. Had Plaintiffs acted sooner, the substantive issues presented by their Complaint could have been resolved in the normal course, perhaps even at the appellate level, without the necessity of seeking the extraordinary remedy of injunction.

Furthermore, Plaintiffs have not demonstrated that they are under any threat of immediate harm if they do not comply with the new social studies requirements, particularly since the named Defendants conceded at oral argument that they have no authority to take any action against the Plaintiffs if they do not comply. Thus, Plaintiffs have not established any irreparable harm that would be remedied by issuance of an injunction against the presently named Defendants.

For the foregoing reasons,

**IT IS ORDERED** denying Plaintiffs' Motion for Preliminary Injunction.

**IT IS FURTHER ORDERED** setting this matter for a **telephonic** Rule 16 Pretrial Conference on **August 22, 2007 at 9:30 a.m.** Plaintiffs' counsel shall arrange and initiate the conference call.

Judge ROBERT E. MILES  
Maricopa County Superior Court  
Old Courthouse  
125 W. Washington, Courtroom 303  
Phoenix, Arizona 85003  
(602) 372-0754

**COUNSEL PARTICIPATING IN THE CONFERENCE SHALL BE KNOWLEDGEABLE ABOUT THE CASE AND ITS STATUS, AND SHALL HAVE AUTHORITY TO MAKE DECISIONS ABOUT SCHEDULING AND OTHER MATTERS RELATED TO THE CASE.**

All counsel and any unrepresented parties are to meet personally before the Pretrial Conference to discuss what further proceedings are necessary to resolve the substantive issues

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raised by the Complaint in an expedited manner. Counsel and/or the parties shall prepare and file a Joint Pretrial Conference Memorandum **no later than three judicial days before the conference** addressing all applicable subjects listed under Rule 16(b). Suggested dates in the memorandum shall be stated as **dates certain** and not, for example, as “\_\_\_ days before trial”.

If counsel are unable to agree on any of the items in the Joint Pretrial Conference Memorandum, the reasons for their inability to agree shall be set forth in the memorandum.

Counsel are reminded that the Court may impose sanctions against counsel and/or the parties for failure to participate in good faith in the Joint Pretrial Conference Memorandum or the Pretrial Conference.

Counsel are advised that the Court is available to discuss, by joint telephone call, discovery disputes or any other matter that may impact the parties' ability to resolve this case in a just, speedy and inexpensive manner. See Rule 1, Ariz. R. Civ. P.

With respect to discovery disputes, counsel are also advised that, as the Court interprets Civil Rule 37(a)(2)(c), an exchange of correspondence between counsel is not sufficient to satisfy the “personal consultation” requirement of the Rule, except in extraordinary circumstances. At a minimum, counsel must speak to each other by telephone to attempt to resolve the dispute in good faith before involving the Court.