



The Justification for School Finance Litigation

August 26, 2011

Actions taken during the regular and special sessions of the 82nd Legislature put public education in an untenable financial position. And, there are clear indicators that this is not a short-term problem, necessary only to deal with a temporary budget shortfall, but what members of the leadership have termed “the new normal.”

We believe these legislative actions regarding the funding of Texas public schools are just cause for those committed to an efficient and adequate funding system for children in Texas schools, fair treatment for Texas taxpayers, and a return to local control of public schools to take necessary action to stop the erosion of these principles.

You are invited to join together with other Texas public schools, business owners, parents and other taxpayers for the purpose of speaking with one voice in the litigation of public school finance matters essential to the fair treatment of Texas taxpayers and public school children.

The following are particularly concerning, and represent a call to action:

- The Legislature’s failure to fund enrollment growth for the first time since at least 1949, even to the extent of opposing using *windfall* Rainy Day Funds (any money that comes in over the comptroller’s revenue estimate) to at least partially fund enrollment growth;
- The Legislature’s insistence on keeping the Regular Program Adjustment Factor (RPAF) in the calculation of Tier 1 Regular Program allotment, showing an intent to continue cutting every district’s regular program allotment well after next biennium;
- The Legislature’s attempt—which we helped block—to allow permanent reductions in public education funding in the appropriations bill through proration without the currently-required payback in the following school year;
- The Legislature’s opposition to a schedule of reducing Target Revenue and using the savings to increase the Basic Allotment.

Additionally,

- The Legislature’s continued refusal to address the \$10 billion structural deficit that will continue to plague us each biennium.
- The Legislature’s choice to avoid closing unjustified tax loopholes to fund public education when the alternative is a \$5.1 billion reduction in current funding levels (\$4 billion in FSP plus \$1.1 billion in grants).

These are all symptomatic of an overall new problem of tremendous significance, the Legislature’s change in philosophy—going from a commitment to maintaining current service levels of public education as a budget priority to using public education as a budget-balancing tool.

During the legislative session, these new issues overshadowed the Legislature's habitual complicity in maintaining a system that requires many districts to tax at the absolute highest levels in order to spend at levels that are below the state average. Although not discussed during the legislative sessions, the existing problems with the finance system were merely exacerbated. They include:

- The Legislature's failure to increase the Basic Allotment to a legitimate level, causing the percent of districts actually funded through the formula system to range from 0% (2007-08 and 2008-09) to less than 25% (2009-10 and 2010-11; estimated for 2011-12);
- The Legislature's continued refusal to update weights and formulas that the Legislature's own studies have determined to be seriously inadequate or based on hopelessly outdated data;
- The Legislature's failure to fund new applications for the Instructional Facilities Allotment next biennium ;
- The Legislature's failure to increase the guaranteed level for the Existing Debt Allotment for over a decade, even though building costs have more than doubled in many places;
- The Legislature's failure to eliminate the biennium lag of state equalization funding for facilities;
- The Legislature's failure to establish equalized funding above 29¢ of I&S tax rate even though the low equalization level has forced a significant number of districts above that rate;
- The Legislature's continued insistence upon maintaining arbitrary and inefficient hold-harmlesses like the Target Revenue funding system rather than raising all districts to appropriate levels of funding.

For these and other reasons, we believe litigation is the only way to ensure taxpayer equity and a quality education for Texas children. We must litigate for a school finance system that makes sense and is fair to all children, taxpayers, and districts.

Please review our entire litigation packet as your district makes its decision to get involved. We believe we have made the case for it. Please call me at 512-478-7313 if you have questions.

Thank you for all you do for Texas children and the future of our state.



Wayne Pierce, EdD
Executive Director

Litigation Talking Points

Why is a lawsuit necessary?

A lawsuit is necessary because:

- Texas school children and taxpayers are being treated unfairly by the current public school finance system.
- The Texas Legislature has had many recent opportunities, but has failed to address our broken school finance system and fund public schools in an efficient, equitable and adequate manner, as required by the Texas Constitution.

How will districts be represented by the Equity Center litigation effort?

All districts, taxpayers, parents and businesses that join this effort will be a part of the **Texas Taxpayer & Student Fairness Coalition**. This coalition will lead all efforts relating to legal strategy, education, media and outreach.

Does the coalition represent just one type of district?

No, districts that have joined and continue to join the coalition range from urban, rural, large, small and everything in between. The common characteristic that all these districts share is that they are chronically underfunded by the Texas school finance system, and their taxpayers and students are not being treated fairly.

Will the legal claim focus only on equity?

No, the legal grounds for the suit are comprehensive and this coalition represents the only known group of plaintiffs that will focus on *all* legal issues: adequacy, suitability, equal protection, meaningful discretion, statewide property tax, efficiency, student equity and taxpayer equity.

Why must equity be a key component of school finance litigation?

- **Student Inequity:** Per weighted student¹ revenues for the basic education program, including both state and local, across Texas will range from less than \$5,000 per student to more than \$12,000 per student for the 2011-12 school year.
 - Even within the same city, revenues range greatly—even at the same property tax rate. For example, at \$1.04 M&O Tax Rate, San Antonio ISD is funded at \$5,313 per student for 2011-12, while Alamo Heights is funded at \$6,682.
 - It's important to note that the children in these districts are held to the same accountability and graduation standards—and will be expected to compete with one another in colleges, universities, and in the workforce.

(continued)

¹ The state uses a weighted student count for school funding purposes that takes into account extra student costs, such as in special education. "Student" will have this meaning throughout this document.

- **Taxpayer Inequity:** M&O tax rates range across the state from \$.70 to \$1.17 per \$100 of property valuation. Taxpayers in the districts currently at the maximum M&O rate of \$1.17 are able to generate only \$49.80 per student per penny of adopted tax rate. The same number of districts with the lowest tax rates are able to generate \$68.89. This is unfair to taxpayers and businesses.

Has the lawsuit been filed yet?

Yes, the lawsuit was officially filed on October 10, 2011 in Travis County district court. A copy of the official petition may be found [here](#).

Why was it important for the Coalition to file its claim before any other group?

The Texas Taxpayers & Student Fairness Coalition is the only known plaintiff group that will challenge the current school finance system on *all* grounds. For that reason, it is important that the group with the most comprehensive claim lead the way. What's more, districts don't have any time to lose. The Texas Legislature has had years to fix our broken system, but they haven't. They must be held accountable as soon as possible, because the school children and taxpayers of Texas simply can't wait any longer to be treated fairly.

Who is representing the Coalition in court?

Our lead counsel is Rick Gray of Gray & Becker, PC. He was the successful litigator in the Edgewood I & II school finance lawsuits. Also from Gray & Becker is Toni Hunter. She actually argued the West Orange Cove cases on behalf of the Attorney General's office and offers a unique perspective. Also part of the legal team are Buck Wood and Doug Ray of Ray & Wood, PC. They have many years of experience and have been involved in every school finance case.

What outcome will the lawsuit seek?

The goal of this lawsuit is to achieve a funding system that treats all Texas children and taxpayers fairly, and provides each child the opportunities for a world-class education.

How can a district, taxpayer, parent or business owner join the coalition? Is there a deadline to join?

They may contact the Equity Center office at 512/478-7313. There is no deadline to join. A school district's board must pass a resolution to officially join the group. The Equity Center has template language that districts may use for their agenda. Districts are asked to contribute \$1/WADA to join the coalition.

Board Resolution #1103

The S&S Consolidated ISD Board of Education authorizes a one-time only expenditure not to exceed \$1 per WADA to join together with other Texas public schools, taxpayers and parents as the Texas Taxpayer and Student Fairness Coalition for the purpose of speaking with one voice in the litigation of public school finance matters essential to the fair treatment of Texas taxpayers and public school children.

Board President

Date

Superintendent

Date