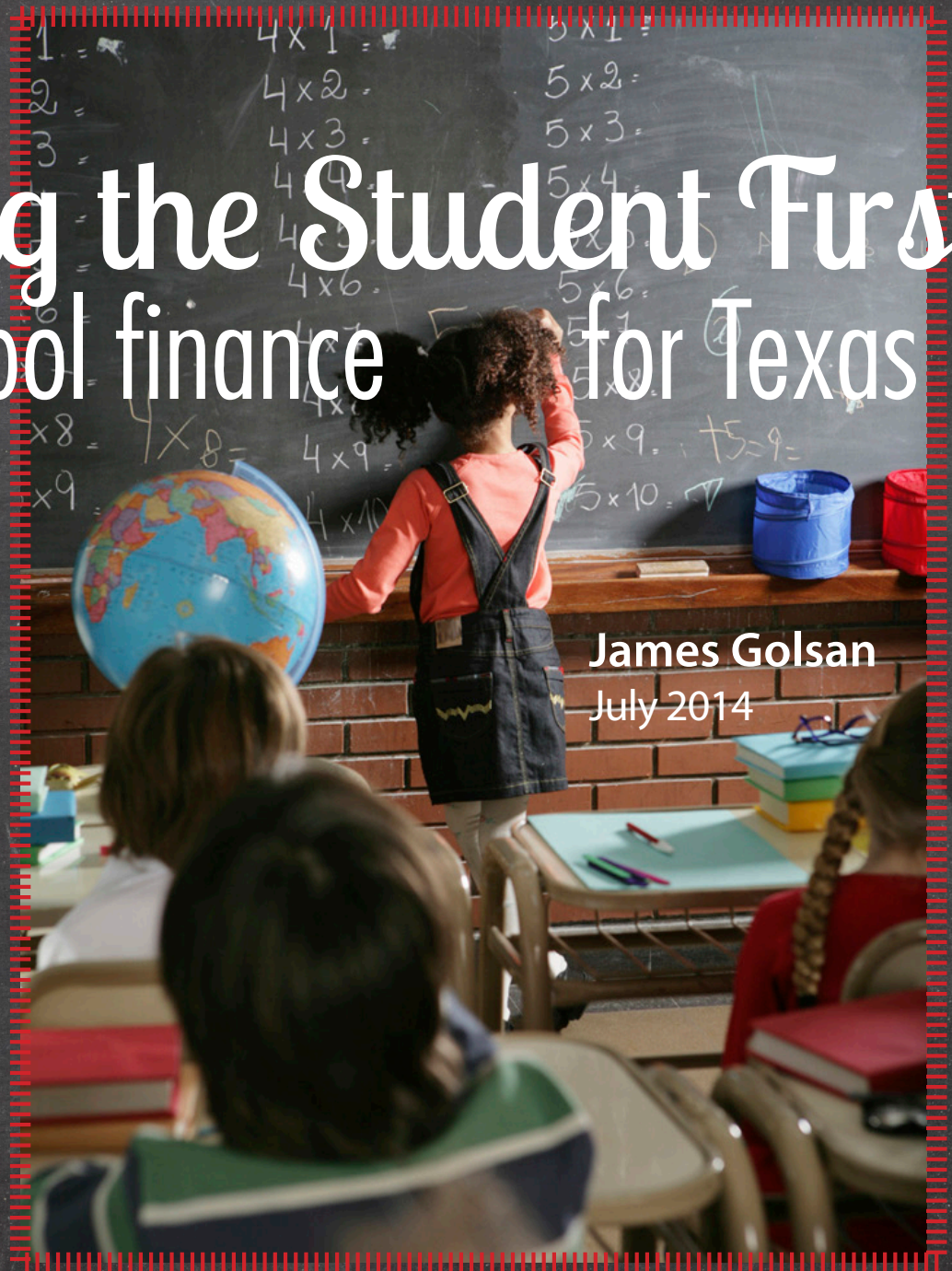


Texas Public Policy Foundation

# Putting the Student First school finance for Texas



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# Putting the Student First: School Finance for Texas

by James Golsan

## Executive Summary

After health care, public education is the largest, costliest item in the state budget. The 83rd Legislature appropriated nearly \$46 billion in general revenue for public schools, and in doing so restored much of the money “cut” from public education during the 82nd Texas Legislature in 2011.<sup>1</sup> When property tax revenue, which is also effectively distributed by the state, is added, the total expenditure exceeds \$100 billion per biennium.

School finance is a complex, contentious issue, argued in the Texas courts, repeatedly re-worked, and regularly re-designed over the last half century. Through all of this legal and political wrangling, status quo reigns. Education spending continues to rise. Academic performance remains static. Our finance system continues to leave too many students underserved and stakeholders unsatisfied.

The year 2014 finds Texas once again litigating school finance. A number of different groups, from property poor school districts that felt their funding is inequitably distributed, about two-thirds of Texas school districts who believe funding is inadequate, to a group of efficiency interveners seeking to force real efficiency into the system through school choice and other market-based reforms, sued the state in late 2011. An initial verbal ruling from 250th District Court Judge John Dietz was announced in February of 2013, declaring Texas’ school finance system unconstitutional because it failed to adequately fund Texas public schools.<sup>2</sup> Judge Dietz then reopened the case in January 2014 to consider new monies injected into public education by the 83rd Texas Legislature.<sup>3</sup> Whatever the ruling, an appeal is almost certain. A final decision on the issue is anticipated from the Texas Supreme Court in either very late 2014 or sometime in 2015.

This paper focuses on the imperative of moving toward a “student first” school finance system, one that gleans efficiency from maximizing the impact of every dollar Texas spends on education for the benefit of the students in its charge. This will require doing more than tinkering with funding mechanisms, and it will require a willingness to move away from the monopolistic model currently in place in Texas. The status quo in Texas education funding, indeed Texas education as a whole, has demonstrated its limits. It’s time to put each Texas education dollar behind the student, rather than the bureaucracy.

## Key Points

- The status quo in Texas education funding, indeed Texas education as a whole, has demonstrated its limits. It’s time to put students and parents first and allow them to choose an education that best suits their needs.
- It is imperative to move to a school finance system which gleans efficiency by maximizing the impact of every dollar Texas spends on education for the benefit of the students in its charge.
- Student based funding will require doing more than tinkering with funding mechanisms, and it will require a willingness to move away from the monopolistic model currently in place in Texas.
- Finding a school finance funding formula that satisfies everyone is historically impossible. Texas must start funding students rather than school bureaucracies.
- Costs in the Texas education system increase substantially year over year, but the Texas Supreme Court has asked for the focus to be shifted to better educational results.

## History

Article VII, Sec. 1 of the Texas Constitution, directs the Legislature “to establish and make suitable provision for the support and maintenance of an efficient system of public free schools.” This, to promote the “general diffusion of knowledge” the framers deemed “essential to the liberties and rights of the people.”<sup>4</sup> Carrying out this urgent duty has not been cheap. Until relatively recently, Texas routinely put over half its budget into the public education system. Health care, due to the increasingly burdensome cost of Medicaid and other federal programs, passed K-12 education on the state spending scale during the last decade.<sup>5</sup> Nonetheless, if one were to combine public and higher education costs, public education would still be the most expensive item in the Texas budget. Furthermore, when considering state funding in addition to taxes paid to school districts, the total bill to Texas taxpayers for education dwarfs all other budget items.

The manner in which we fund our schools today—which is to say, education funding as a shared responsibility of state and local governments—dates from the 50th legislative session in 1949. Funding systems and formulas have been changed many times since then, in large part to achieve greater equity. The greatest changes have been the result of a series of lawsuits filed by the Edgewood School District of San Antonio. Starting in July of 1968, they called for a dissolution of the existing school finance formula and the creation of a new one altogether. The suits claimed that since the central means for school funding was the property tax, school districts with significantly higher taxable property wealth could raise their property taxes, and therefore generate substantially higher revenue per pupil in their district.<sup>6</sup>

The claim was that such a system did not meet the “equal protection” requirements laid out in the Texas Constitution. In October of 1989, the Texas Supreme Court ruled instead that the system did not meet the “efficiency” standard of the Texas Constitution, declaring “There are glaring disparities in the abilities of the various school districts to raise revenues from property taxes because taxable property wealth varies greatly from district to district. This *Edgewood I* decision was the first in several Supreme Court rulings on the equity issue.

In the ensuing years the Legislature failed in several attempts to meet the new court standard. The equity issue was litigated in *Edgewood II*, *Edgewood III*, and *Edgewood IV*. In 1993, with prompting from Governor Ann Richards, the Legislature even tried to amend the constitution in order to allow it to redistribute monies from one school district to another. That proposed amendment was overwhelmingly rejected by the public.<sup>7</sup>

In response, lawmakers created a number of statutory “Edgewood Options” (the “Robin Hood” plan in action), creating a variety of means by which property wealthy school districts could share their wealth with poorer ones.<sup>8</sup> The upshot was a system disliked by all districts, irrespective of property wealth. In 1995, representatives from both wealthier and poorer districts challenged the plan in the Texas Supreme Court, but this time, in *Edgewood IV*, victory would go to the state. For six years, the state’s school finance system was constitutionally unchallenged.<sup>9</sup>

Then, in 2001, it was back to court. Multiple school districts complained that funding for the system was inadequate and that the school finance plan amounted to a state-wide property tax. This was because most districts found themselves obliged to tax at the maximum \$1.50 per \$100 of taxable property value. In 2005, the Texas Supreme Court ruled for the state and against the districts on the adequacy issue, however, they ruled the system unconstitutional in that it violated the constitutional prohibition to a state property tax (*West Orange Cove C.I.S.D. vs. Neely*). The justices held that the state gave school districts no “meaningful discretion” in setting their own tax rates.<sup>10</sup>

It is interesting to note that in each of the *Edgewood* rulings the Texas Supreme Court repeated one phrase: “Efficient’ conveys the meaning of effective or productive of results and connotes the use of resources so as to produce results with little waste; this meaning does not appear to have changed over time.”<sup>11</sup> The court made this statement in its very first opinion and then repeated it in many subsequent rulings—obviously to emphasize the importance of the citation. In order to further emphasize this point they said in “the *Edgewood IV*” case that: “While we considered the financial component [equity] of efficiency to be implicit in the Constitution’s mandate, the qualitative component [productive of results] is explicit.”<sup>12</sup>

Gov. Rick Perry called the Legislature back into special session in 2006 to fix school finance so that it would pass muster with the courts. The result was a relatively complex system of revenue targets for school districts. Tax compression likewise figured in the plan. The simple \$1.50 limit on property tax rates was reduced to \$1.00, with an option for school districts to tax up to four cents more on the dollar. With voter approval, districts may add up to 13 cents beyond that level bringing the total to \$1.17 per \$100 dollars valuation. A new business tax was put in place to finance that change. Therefore most home owners saw no substantial increase in their property tax bills from 2006-08.<sup>13</sup>

This system remained largely unchanged until 2011. The 82nd Texas Legislature faced a substantial budget shortfall of about \$15 billion,<sup>14</sup> and was forced to make numer-

ous budget adjustments across all branches of state government, including public education.

### 2011-2013: New Lawsuits

In October of 2011, it was announced that four separate groups of school districts were suing the state of Texas again over its school finance system. Additionally, the Texas Association of Business and a new group, Texans for Real Equity and Efficiency [TREE], intervened into the lawsuit on the basis of real efficiency. The Texas Charter School Association filed a separate lawsuit which was later folded into this case. By the time the trial was set to formally kick off in the fall of 2012, the total number of plaintiffs had grown to six. Per the *Texas Tribune*, the involved parties—and their respective issues—are outlined in the graphic below:

FORT BEND ISD ET AL	TEXAS TAXPAYER AND STUDENT FAIRNESS COALITION	MEXICAN AMERICAN LEGAL DEFENSE AND EDUCATIONAL FUND	TEXAS SCHOOL COALITION	TEXANS FOR REAL EFFICIENCY AND EQUITY IN EDUCATION	TEXAS CHARTER SCHOOLS ASSOCIATION
<b>WHO THEY ARE</b>					
81 school districts ranging from rural to suburban to inner city, including the state's eight largest districts.	Organized by the Equity Center, the group represents more than 400 primarily mid- to low-property wealth school districts accounting for an estimated 1.3 million students.	Districts with large portions of low-income and English-language-learning (ELL) students.	Roughly 60 property-wealthy districts, known as Chapter 41 districts, that give back to the state under the Robin Hood Law.	Six parents and a newly formed coalition that includes the Texas Association of Business, school choice advocates and former House Public Education Chair Kent Grusendorf.	Along with TCSA, the parents of five charter school students in Austin, Dallas, Houston, and San Antonio.
<b>WHAT THEY SAY</b>					
By underfunding schools the state has not given local districts enough choice in whether to raise property taxes or how to spend existing revenue – in effect, instituting an unconstitutional statewide property tax. Schools also don't have adequate resources to meet increasingly rigorous accountability standards.	Inequities in the school finance system – in which neighboring school districts can have as much as a \$7,000 difference in annual per-student state funding – hurts the districts with the least property wealth the most, leaving them with higher taxes and fewer funds.	Children who don't speak English at home are more expensive to educate. The state provides per-student allotments to districts that enroll them – but those haven't been updated since 1984.	This group is involved primarily as a defensive measure. Property wealthy districts benefited the most from state property tax cuts in 2006, because Texas lawmakers agreed to make up the difference in lost school revenue. But these districts say they still aren't adequately funded.	No one knows how much it costs to educate a Texas student, so how can the school finance system be efficient? Efficiency doesn't necessarily mean more funding. The state should lift the charter school cap and lessen regulations on public schools.	Charter schools don't receive funding for facilities like traditional school districts. The state also caps its charter contracts at 215. Both the lack of facilities funding and the cap are unfair and arbitrary, hurting charter school students.
<b>LEGAL ARGUMENT</b>					
The system is unconstitutional because it forces a de facto statewide property tax and because the state has failed to adequately fund its public schools – and because it arbitrarily and unfairly allocates funding to schools (i.e. inefficiently) without any real connection to the actual costs of educating students.	A school finance system that is so inequitable is also wildly inefficient – thus unconstitutional. This group also makes the adequacy and property tax arguments.	By underfunding ELL and economically disadvantaged students, the state has failed to adequately provide for their education – and because of this, property poor school districts do not have discretion in whether to raise their taxes. This group also makes the efficiency argument.	The system is unconstitutional because it forces a de facto statewide property tax and because the state has failed to adequately fund its public schools.	The current system is unconstitutional because it is inefficient. The court should order a study on the true costs of educating a child – whether that means more or less money for schools. This group also makes the property tax argument.	Denying charters the facilities funding available to traditional school districts and limiting their growth by way of the charter cap creates an inefficient finance system.

Source: *The Texas Tribune*

Texas' public schools are funded largely by local property tax collection. Because it is unconstitutional for Texas to have a statewide property tax, the state forces districts to act as tax collectors and then redistributes that money through a complex set of formulas.

Judge John Dietz of Texas' 250th District Court condensed the lawsuits into one trial, which took place from October 2012 to early February 2013. At that juncture, Judge Dietz issued an initial verbal ruling declaring the Texas school finance system unconstitutional on the basis that it was not adequately funding the state's public schools.<sup>15</sup>

However, as 2013—and the 83rd Texas Legislature—stretched on, no official ruling from the 250th District court was ever published. The 83rd Legislature, for its part, retroactively restored some of the formula adjustments made in 2011.<sup>16</sup> In June 2013, following the completion of the 83rd Regular Session, Judge Dietz announced that he would re-open the trial in January of 2014 to consider only new legislation passed during the 83rd.<sup>17</sup> That mini-trial, which has been concluded, is awaiting a formal ruling from Judge Dietz. The final ruling from that trial will determine when the case will be sent to the Texas Supreme Court and if, in turn, the Texas Legislature must redraw the state's school finance formula once again.

## Standing Inefficiencies, Few Changes

Through Texas' long history of school finance litigation, a few factors, to be outlined in greater detail below, are constant:

- Academic performance is static.
- Education spending increases.
- Lawsuits are constant.

All past litigation focused on more money for schools. This despite the fact that the court consistently reminded us that money was not the only issue. As the Supreme Court said back in the 1990s: "In the rough and tumble of another attempt to resolve this crisis, it is fundamen-

tally important that the legislature be mindful of all of the elements of the efficiency standard we announced in *Edgewood I*. That standard deals with more than money, it mandates educational results."<sup>18</sup>

In short, we suffer many of the same problems now as we have for several decades. Every redraw of Texas' school finance system has focused on bringing equity to the formula. History has borne out, however, that finding a satisfactorily equitable system is impossible and further, that efforts to find such an equitable system have yielded few benefits for Texas students.

## *Robin Hood and the Continuing Difficulty of Equity*

As previously mentioned, Texas' public schools are funded largely by local property tax collection. Because it is unconstitutional for Texas to have a statewide property tax, the state forces districts to act as tax collectors and then redistributes that money through a complex set of formulas. So, the effect is as if we did have a state property tax. The nickname of this system is, as previously mentioned, "Robin Hood."<sup>19</sup>

Put as simply as possible: school districts receive their money based on how many students are attending their school on a day-to-day basis multiplied by various weights for different students. The technical term for that is "WADA," or weighted average daily attendance. A district's WADA is calculated by counting the number of students who attend school each day of the school year, divided by the total number of instructional days within a school year. However, actually calculating a school's Average Daily Attendance (ADA) is slightly more complex than that. Students are summed through six week periods. The total student count of all six of the six weeks are added together, then divided by six. The resulting number, rounded to three decimal places, is a school's average daily attendance. The figure is then adjusted. How much it costs to educate students in a given region is also factored into the equation. Small and mid-sized population districts (small districts have fewer than 1,600 students in ADA, mid-districts fewer than 5,000) have their allotments adjusted for diseconomies of scale, i.e. insufficient per student funds. A district in a lightly populated region also sees upward allotment adjustments.<sup>20</sup>

If a school district generates more than its WADA calculated revenue, based on these complex state formulas, then the excess is subject to recapture. Per TEA, recapture is defined as follows:

Recapture is a mechanism in state funding formulas that ensures that a district's property wealth per student does not exceed certain levels, known as equalized wealth levels. A district that is subject to recapture is often referred to as a Chapter 41 district because the provisions governing recapture are found in the TEC, Chapter 41.<sup>21</sup>

Recapture is a significant source of friction in past and current school finance litigation. Property wealthy school districts believe they carry too heavy a burden in the Robin Hood funding structure. Property poor school districts believe that Robin Hood does not do enough to equalize funding. In short, it's a school finance system that satisfies no one.

### ***The Cost of Education Index***

Another equalization factor built into the school finance formula is the Cost of Education Index, or CEI. Per the Texas Education Agency, the history of the CEI is as follows:

The concept of adjusting education funding for variations in cost began in a 1984 special session with the creation of the Price Differential Index. The State Board of Education (SBOE) was directed to create a replacement for this temporary index and undertook this in 1987, but the study was moved to the Legislative Education Board (LEB) and the Legislative Budget Board (LBB) in 1989. The Foundation School Fund Budget Committee adopted rules based on research by LEB and LBB in 1991.

The current CEI attempts to adjust for varying economic conditions across the state, based mainly on the size of the district, the teacher salaries of neighboring districts, and the percentage of low-income students in the district in 1989–1990. *The index has not been updated since that time. (emphasis added)*<sup>22</sup>

Stated most simply, the CEI is a formula adjustment which adds greater revenue to every school district. However, some receive a greater share based on whether they meet certain population and economic metrics. The level of access to the CEI a school district has is based on a calculation more than two decades out of date. This renders the CEI almost useless per its original intent, as Texas has experienced drastic demographic shifts since 1989.<sup>23</sup>

What we do know is that the CEI increases the amount of money spent on education in Texas. According to the Texas Education Agency, the CEI added \$1,453,964,712 for school districts during the 2009-2010 school year.<sup>24</sup> Another way to look at the impact of the CEI is in terms of per pupil spending. A 2000 report by the Dana Center at the University of Texas at Austin illustrated the problems with the Cost of Education Index as follows:

A popular misunderstanding about the CEI is that it is simply a mechanism for increasing state aid to large urban school districts. Every Texas school district has a CEI value greater than 1.0, however, which means that every school district receives some adjustment to its foundation program calculations to compensate for uncontrollable variations in the costs of education.

School districts with 50,000 students or more receive, on average, \$397 out of \$1,666 in state aid per average daily attendance as a result of the CEI. School districts with 500 to 999 students receive \$295 out of \$3,761 in state aid per average daily attendance.<sup>25</sup>

In short, we have an outdated mechanism that increases revenue to virtually every school district in the state. As originally intended, the CEI had a legitimate function and value, but today it is almost as if the state flies over Texas dumping out \$1.5 billion to districts irrespective of need.

Over the years the courts have implied a desire to reflect on the broader issue of inefficiencies in the system. For example, in 2005, they said: "We are constrained by the arguments raised by the parties to address only issues of school finance. We have not been called upon to consider, for example, the improvements in education which could be realized by eliminating gross wastes in the bureaucratic administration of the system."<sup>26</sup>

### Sparsity Adjustments Formula

An ADA figure of:	If the District offers:	The prior or current year ADA is at least:	Or the number of miles to the nearest district with a high school is at least:
130 ADA is used	Grades K-12	90	30
75 ADA is used	Grades K-8	60	30
60 ADA is used	Grades K-6	40	30

Source: The Texas Education Agency

### Sparsity Adjustments

Another factor to look at as a potential cost driver in Texas school finance is the volume of small school districts that are potentially subject to the “sparsity adjustment” in the school finance formula. The sparsity adjustment is designed to fund schools that simply do not have enough students to leverage significant enough tax wealth to adequately fund their schools, and comes into play when a school’s ADA for the previous year was 130 or less.<sup>27</sup> The sparsity adjustment works as follows:

The sparsity adjustment allows for an inflated ADA in districts that in all likelihood would not otherwise have enough students to generate sufficient moneys to sustain their school. The unfortunate reality here is that this approach creates a situation in which students in small,

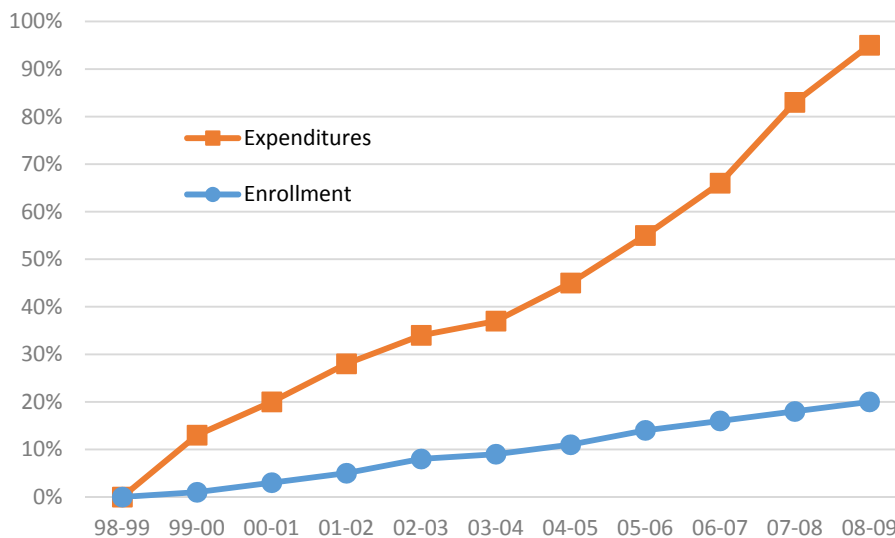
mostly rural, school districts, cost more to educate than students in larger ISDs.

### School Spending on the Rise

What is not debatable about Texas’ history of school finance litigation is that no matter what adjustments have been made to the formula through the years, costs in Texas education have continued to rise. Some of this is the natural result of inflation and population growth. Some of it is not. Texas has demonstrated a propensity to spend at a significantly higher rate than the population is growing over the last several decades. The graph below demonstrates the severity of this trend from 1998 to 2009:

As this chart indicates, spending has increased dramatically. In the last round of school finance litigation the

**Percent Increases in Spending & Enrollment (1998-99 through 2008-09)**



Source: Texas Office of the Comptroller



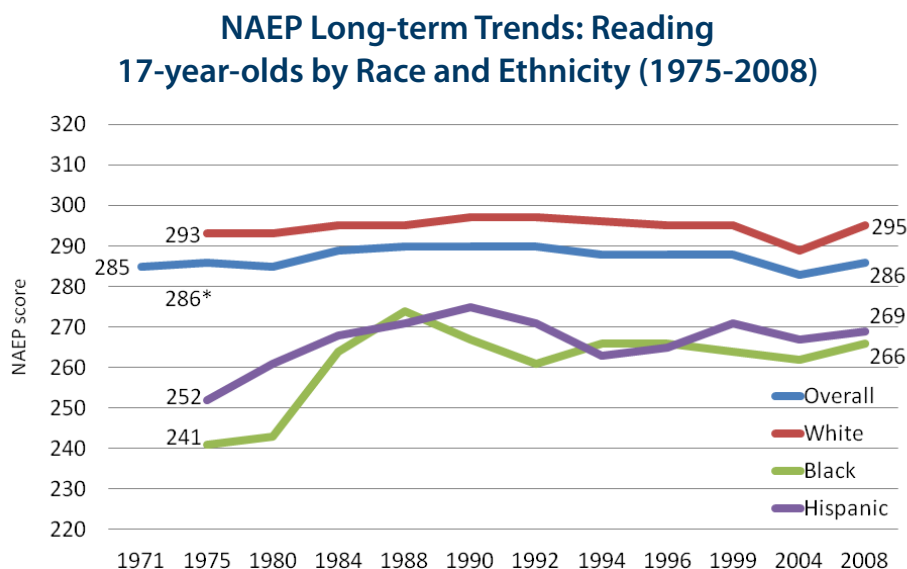
Supreme Court said: “The principal cause of continued litigation, as we see it, is the difficulty the Legislature has in designing and funding public education in the face of strong and divergent political pressures.”<sup>28</sup> The only thing on which most school districts and stakeholders agree is that they need more money. The Legislature has consistently taken the easy route and provided additional funding along with minor tweaks to the system.

In politics, at all levels, passing out the pork is always the easiest way to find consensus among stakeholders. However, a constitutionally efficient system must comply with the court’s mandate: “A focus on results is required by this court’s opinions in *Edgewood I* and *Edgewood II* and requires the legislature to articulate the requirements of an efficient school system in terms of educational results, not just in terms of funding.”<sup>29</sup> That is much more difficult to achieve politically, yet there is a clear constitutional requirement for better results.

Compression of any kind only occurs in Texas education funding when it is absolutely necessary, as it was when there was a general budget shortfall during the 82nd Legislature in 2011.<sup>30</sup> If you go back farther, looking at education spending growth in the 80s and 90s, you’ll find similar rising trajectories in the realm of per-pupil spending, as well as over-all spending. These increases have historically out-paced the inflation rate significantly. Consider the following:

- Total Texas public school expenditures increased 334.5 percent from 1987 to 2007, an increase of 142 percent when adjusted for inflation.
- Texas’ per-pupil costs increased from \$3,659 in 1987 to \$11,024 in 2007, a 66 percent increase when adjusted for inflation.
- Even with an inflation adjustment, Texas’ per-pupil spending during that two decade run out-paced the national average (66 percent against 54 percent).<sup>31</sup>

The point here is not that we are necessarily spending too much or too little on Texas students. One of the difficulties of funding education is determining what, exactly, one should spend per-pupil (this was noted in the 2011 Texans for Real Efficiency and Equity law-suit outlined above). The cost varies greatly from student to student. What has been established through research, however, is that simply spending more money does not equate to better outcomes for students. Consider, for example, that not only has Texas been drastically increasing its per-pupil spending over the last several decades, but that the United States collectively has as well, at the aforementioned 54 percent rate. The graph below shows, by ethnicity, the progress American students have made on the National Assessment for Education Progress (NAEP) from 1975 to 2008:



\* 1975 score. Race/ethnicity data is not available for 1971.

Source: Center for Public Education

A quick glance will show that what you're looking at is not a 54 percent improvement in performance, or a 66 percent one. Texas' academic outcomes have remained as static as the national trends outlined above. The point is that despite the so far endless series of lawsuits Texas has faced over the structure of its school finance system, the result at the end of the day is that more money gets pumped into a system with few academic results to show for the dollars spent.

## A Growing Monopoly: Public Education in Texas

Texas' low regulation, business-friendly environment is pushing it to the national forefront of industry and job creation. Consider a September 2013 article in *Forbes*, which declared the following regarding Texas and the Gulf Coast region:

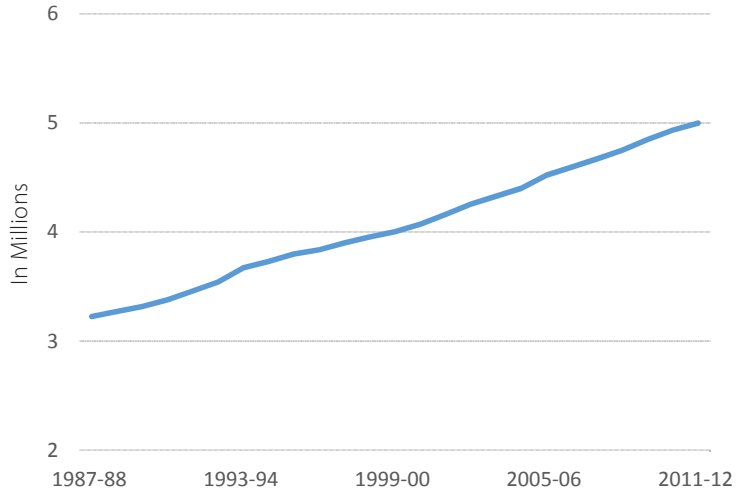
Once a sleepy, semitropical backwater, the Third Coast, which stretches along the Gulf of Mexico from south Texas to western Florida, has come out of the recession stronger than virtually any other region. Since 2001, its job base has expanded 7 percent, and it is projected to grow another 18 percent the coming decade.

The energy industry and burgeoning trade with Latin America are powering the Third Coast, combined with a relatively low cost, business-friendly climate. By 2023 its capital—Houston—will be widely acknowledged as America's next great global city. Many other cities across the Gulf, including New Orleans and Corpus Christi, are also major energy hubs. The Third Coast has a concentration of energy jobs five times the national rate, and those jobs have an average annual salary of \$100,000, according to EMSI.<sup>32</sup>

Texas' obligation is to prepare its students—all of its students, each with their own unique set of educational needs—for participation in that work force. Our current education structure is not designed to provide flexibility for students not best suited for participation in the state's public education system. Rather, in contrast to freedom that characterizes and drives innovation in Texas' business and job sector, Texas education is a monopoly.

What should also be taken into account is the degree to which Texas public schools are growing. In 24 years, we've increased the size of our public school system drastically. This paper previously mentions the degree to which spending has out-paced our enrollment growth, but the latter should not be ignored.

### Enrollment Growth, Texas Public Schools (1987-2012)



Source: Texas Education Agency

That's a 10-year growth rate of 20 percent, and a 24-year growth rate of 55 percent. Put another way, Texas averaging around 80 thousand new students entering its schools per year. That's approximately the entire student population of Wyoming.

While Texas' student body has certainly grown substantially over the last several decades, administrative and staffing numbers have grown at an even higher rate. For example, from 1987 to 2007, Texas' student body increased by 44.5 percent. Staff in Texas public schools increased by 71.5 percent during that same time frame, with the numbers of support staff and administrators growing at a faster rate than teachers (around 76 percent against 68 percent).<sup>33</sup>

These sorts of staffing numbers can in part be attributed to state level mandates that drive inefficiency. In Texas, no single mandate does so more than the K-4 class size cap, which requires a 22:1 student/teacher ratio. This mandate

## Enrollment Growth, Texas Public Schools (1987-2012)

Year	Enrollment	% Increase
1987-88	3,224,916	–
1988-89	3,271,590	1.4
1989-90	3,316,785	1.4
1990-91	3,378,318	1.9
1991-92	3,460,378	2.4
1992-93	3,541,771	2.4
1993-94	3,672,198	3.7
1994-95	3,730,544	1.6
1995-96	3,799,032	1.8
1996-97	3,837,096	1
1997-98	3,900,488	1.7
1998-99	3,954,434	1.4
1999-00	4,002,227	1.2
2000-01	4,071,433	1.7
2001-02	4,160,968	2.2
2002-03	4,255,821	2.3
2003-04	4,328,028	1.7
2004-05	4,400,644	1.7
2005-06	4,521,043	2.7
2006-07	4,594,942	1.6
2007-08	4,671,493	1.7
2008-09	4,749,571	1.7
2009-10	4,847,844	2.1
2010-11	4,933,617	1.8
2011-12	4,998,579	1.3

Source: Texas Education Agency

forces districts (unless they are granted a waiver by the Texas Education Agency) to hire more staff instead of allowing for flexibility in class size. According to 2010's Texas F.A.S.T. (Financial Allocation Study For Texas), the financial impact of this mandate is substantial:

Using the average state salary for K-4 teachers (\$46,904) [we estimated] a range of savings based on the share of classrooms that participate and the average number of students per teacher. For instance, if all Texas public schools had an average K-4 classroom size of 20 students, the state would save \$159 million annually. If all

There is no way that a one-size-fits-all classroom and spending model is going to meet the needs of all Texas students. This, in all of Texas' long history of finance litigation and re-design, has never been addressed by our lawmakers or courts.

Texas K-4 classrooms averaged 22 per class, total savings would reach \$557.5 million. These estimates do not include savings on employee benefits.<sup>34</sup>

And these numbers account only for growth in the teaching ranks, not administrative. If Texas' student body continues to grow at its current rate, Texas will be forced to add education staff correspondingly. This is a significant cost driver in a one-size-fits-all model, as low- and middle-income students flowing into Texas have few alternatives but to attend their local public school.

There is no way that a one-size-fits-all classroom and spending model is going to meet the needs of all Texas students. This, in all of Texas' long history of finance litigation and re-design, has never been addressed by our lawmakers or courts. Fortunately, this is the focus of one of the current litigants listed earlier in the paper, namely, the one brought by Texans for Real Efficiency and Equity in Education. They make the case that funding our schools, and specifically finding efficiency therein, is not simply a question of numbers, but rather a question of greater parental freedom to maximize the impact of those dollars, as well as maximal freedom for school districts to use their funds to best suit their needs.

Although the creation of a private school choice program is essential to any Texas solution, Texans should look beyond and take the lead. Other states, particularly Arizona, Utah and Florida, have taken steps toward creating "back pack funding" within their public education systems, which is to say, flexible funding programs that allow parents and students to make choices as to how their education is received.

## Looking to Other States on Student First Funding

While empowering parents to make decisions regarding their child's educational future is largely alien in Texas, a number of other states have taken steps toward giving parents power over how the public education dollars are invested in their child. Texas should look to these states for inspiration when considering how to fund its students going forward, as the laws and programs outlined below put the student—not the system—first. Texas should be a leader on this front.

### *Arizona's Education Debit Card: The Future of Education Freedom*

No state has taken a more aggressive approach to education reform in recent years than Arizona. Taking the idea of school choice and parental freedom a step beyond traditional vouchers or education tax credits, Arizona has developed the "Education Debit Card," a means by which parents can take a portion of the money their child would be educated for in traditional public schools and put those dollars toward a variety of educational tools that best support their child's needs.<sup>35</sup>

Specifically, this program allows parents to withdraw their student from a traditional public or private school and use 90 percent of the money that their child would have been educated with in the public school system for any of the following:

- private school tuition and fees;
- education therapy services and aides;
- textbooks;
- private online learning courses;
- Advanced Placement (AP) exams, norm-referenced;
- achievement tests, and college admission exams;
- tutoring;
- curriculum;
- contributions to a 529 college savings plan;
- college tuition;
- college textbooks;
- ESA management fees; or
- individual public school classes and programs.<sup>36</sup>

The Empowerment Scholarship Account is one of, if not the most flexible parental choice program in the country.

It empowers parents and removes the state almost entirely from the decision making process in regards to funding a student's education.

One of the strengths of the program is its flexibility, not only in the array of options it allows parents to choose from, but also in its enrollment procedures. While there is a restriction that students first grade and older must have attended public school for at least 100 days in the previous school year, entering kindergartners are allowed to apply for an Empowerment Scholarship Account immediately.

A 2012 survey by the Arizona Department of Education demonstrates that this flexibility is being taken advantage of. Per a report from the Friedman Foundation:

Parents in this sample are taking advantage of accounts' flexibility to meet their children's unique needs: 65 percent of respondents reported using account funds for private school tuition; 33 percent used their accounts for homeschool curriculum; 33 percent used funds to hire a tutor; 41 percent purchased education therapies; 17 percent used the accounts to buy textbooks. Twenty-seven percent—nearly one-third—of respondents used ESA for homeschool material and did not report spending any money on private school tuition.<sup>37</sup>

What is perhaps more impressive is the degree to which parents have been satisfied in the early returns of Arizona's ESAs. Again, from Friedman:

Parents using an ESA are more satisfied with their children's current education compared with their previous public school: the majority of respondents reported being "very satisfied" with the accounts (71 percent); 19 percent reported being satisfied, and 10 percent said they were "somewhat satisfied." No parent reported any level of dissatisfaction with the accounts. Those results show high levels of satisfaction even after accounting for our limited sample size and margin of error.<sup>38</sup>

The program is also particularly beneficial to special needs students, as a great many families are using the diverse options available through an ESA to tailor a unique education experience to their special needs student. Of all special needs designated students who applied for an ESA,

students experiencing “Developmental Delays” comprised the largest portion (34 percent).<sup>39</sup>

Fiscally speaking, the ESA program is a push for Arizona. Given that the Arizona department of education grants parents 90 percent of what they would be paying to educate that child in a traditional public school setting, the program’s design is not to generate significant savings at the state level. Rather, the idea behind the ESA is to generate efficiency via maximizing the dollars that are being spent by letting parents have a maximal say in what their child’s education should look like. It is an innovative and thus far unique approach, and one Texas should examine closely as it looks for ways to get more out of its education dollars.

**Utah and Digital Ed: Funding Students for the Future**

No state has taken bigger strides to make themselves a front runner in the arena of digital and blended learning in recent years than Utah. While not as comprehensive as the “student-first” model in Arizona, Utah has taken the idea of back-pack funding and injected it into their digital learning laws, laws that have, according to Digital Learning Now, made them the number one state for digital learning in the country.<sup>40</sup>

What makes the Utah model so strong? Parents and students are in the driver’s seat, at all times. Utah’s flexible environment allow numerous course providers to provide content in Utah schools, including private and non-profit providers working through Utah’s Statewide Online Education Program, as well as allowances for school districts

The Texas Virtual Schools Network is a substantial course provider, and as of the 83rd Texas Legislature in 2013, has greater flexibility to allow private and non-profit providers of content into the system.

to run their own digital learning shops, independent of the network.<sup>41</sup>

Another distinctive feature of Utah’s digital learning program is their embracing of the idea that course mastery replace seat time. One of the least flexible elements of Texas’ school finance system is our WADA-based funding structure, which is reliant on students being at their desks. For digital learners in Utah, competency is valued above all else, and the time involved is immaterial. This achieves the following:

- Allows students to advance based upon demonstrated competency.
- Open-entry, open-exit permitted based upon provider parameters.
- Provider administers required state assessments (CRTs) upon course completion—state makes assessments available at any time.<sup>42</sup>

**Utah’s Statewide Online Education Program**

Category 1	Category 2	Category 3	Category 4
\$200 / semester	\$250 / semester	\$300 / semester	\$350 / semester
Financial Literacy Health Fitness for Life Computer Literacy Drivers Education	Fine Arts CTE Uncategorized Electives	Social Studies World Languages	Core Courses: Math Science Language Arts Concurrent Enrollment Courses

Source: Presentation on Digital Learning for Texas, Utah State Senator Howard Stephenson

Of course, to operate a system with this much flexibility, a unique funding model is required. Utah has developed just such a model in the form of tiered funding for their digital education program. The nature of that structure is outlined in the table above.

- The structure was created based on such factors as course subject and difficulty and necessary level of teacher interaction.
- These new course fees were designed to provide a reasonable and fair fee to the Public School Providers of online courses while ensuring students receive the high-quality curriculum and instruction necessary to prepare them for their post-secondary goals.

Digital funding is always a slightly different animal than traditional education funding, and lends itself to a more student-centric approach, as many states have incorporated models that, in one way or another, allow funding to follow student. Utah's design is among the most flexible, as it lets the student tailor their learning experience to make greater allowances for online coursework as they progress through their high school years, including opportunities for early graduation. The rules are as follows:

- Students may enroll in up to two online courses in years one and two, beginning in the 2011-12 school year.
- In year three it expands by one course per year - expanding to six courses in year six. (based on Utah's requirement of 24 credits for graduation)
- A student may use the program to graduate early in accordance with their SEOP.<sup>43</sup>

Texas is fairly strong as far as online learning is concerned. The Texas Virtual Schools Network is a substantial course provider, and as of the 83rd Texas Legislature in 2013, has greater flexibility to allow private and non-profit providers of content into the system.<sup>44</sup> The groundwork (potentially) is there for Texas to move in Utah's direction and adopt a massively encompassing, student first online learning infrastructure.

## Florida: A Long Time Leader in Putting the Student First

Florida has long been a leader in building student-first mechanisms into their funding system. Much like Texas, Florida's schools are funded based on the number of weighted, "Full Time Equivalent" (FTE) students in attendance, similar to our WADA system.<sup>45</sup> Alongside that traditional funding mechanism, Florida has two systems in place to allow students to attend a school of their choice.

The first of these programs is the McKay scholarship for students with special needs. It is described by the Florida department of education as follows:

The McKay Scholarships for Students with Disabilities Program, originally created in 1999, provides scholarships for eligible students with disabilities to attend an eligible public or private school of their choice. Students with disabilities include K-12 students who are documented as having an intellectual disability; a speech or language impairment; a hearing impairment, including deafness; a visual impairment, including blindness; a dual sensory impairment; an emotional or behavioral disability; a specific learning disability, including, but not limited to, dyslexia, dyscalculia, or developmental aphasia; a traumatic brain injury; a developmental delay; or autism spectrum disorder.<sup>46</sup>

In 2012-2013, the McKay scholarship will serve over 26,000 special needs students, making it the largest program of its kind in the country.<sup>47</sup>

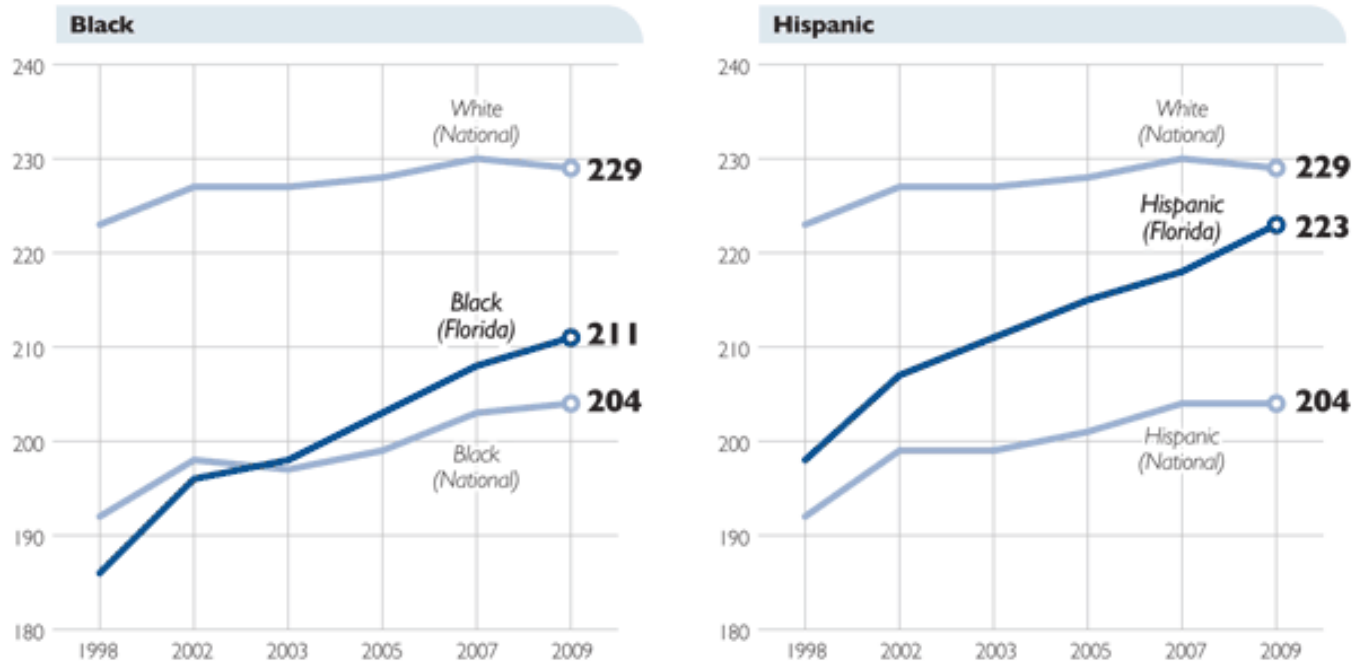
Florida's second choice mechanism that allows public school students to receive scholarships to attend a private school is the Florida Tax Credit program, created in 2001. Any student enrolled in a Florida public school is eligible to receive a tax credit scholarship. Again, from the Florida Department of Education:

These scholarships are funded directly by private voluntary contributions to nonprofit scholarship-funding organizations for students who qualify for free or reduced-price school lunches under the National School Lunch Act. In accordance with Section 1002.395, Florida Statutes (F.S.), up to \$229 million in tax credits for participating corporations is authorized for 2012-13.

## Florida's Minorities Narrow the Racial Achievement Gap

In 1998, black and Hispanic students in the U.S. lagged far behind whites in fourth-grade reading scores. While that trend largely continues today, Florida minorities have made significant strides toward narrowing the gap.

NAEP Scores for 4th-Grade Reading



Source: Heritage Foundation; National Assessment of Educational Progress, "The Nation's Report Card."

In order to be eligible for Florida tax credit scholarships, a student must have been reported for funding in a school district during the prior October and February surveys or received a scholarship from an eligible nonprofit scholarship-funding organization during the previous school year.<sup>48</sup>

As of September 2013, there were 58,985 students participating in the Florida Tax credit program.<sup>49</sup> A third program, called the Florida Opportunity Scholarship, also exists as a choice mechanism, allowing students who attend a low performing public school to transfer to a high performing public school. Originally designed to allow these students to attend either a public or a private school, the Florida Supreme Court ruled in 2006 that the private school portion of the program was unconstitutional.<sup>50</sup>

As Florida has one of the oldest choice systems in the country, it has some of the best data on what student first funding structures can do for students in such a system, as well as the positive impact student first reforms can have on an education system as a whole.

### Florida: Getting Results

Since Florida instituted its slew of education reforms beginning in the late 1990s, it has seen drastic improvement in academic performance among student populations that had traditionally underperformed in the state. Black and Hispanic students, which had lagged behind other student groups in Florida in reading performance, experienced substantial improvement in their scores between 1998 and 2009. Perhaps no metric has been more substantially impacted by the student first education reforms Florida put into place than a reduction in the racial achievement gap.

Florida demonstrates that given enough time to be effectively implemented, student first education spending reforms can yield high rates of parental satisfaction, positive academic results, and greater fiscal efficiency at a statewide level.

A 2010 study by Dr. Mathew Ladner directly attributed the gains seen in Florida's education system to the implementation of significant, student first reform. What's more exciting is that the reforms seem to have impacted Florida's public school system as a whole. According to Ladner, following the implementation of student first reforms:

The percentage of Florida children failing to master basic literacy dropped by 36 percent in less than 10 years—a remarkable achievement. Meanwhile, the percentage of fourth graders scoring “proficient” increased by 54 percent, and the percent scoring “advanced” (the highest level of achievement) doubled, from 4 to 8 percent.<sup>51</sup>

Florida's reforms were not limited to the implementation of school choice programs, but all the reforms put student first. Changes to the state's accountability system for public schools—namely, moving to a clearly understandable, A through F grading system—made it much easier for parents to understand how their student's school was performing.<sup>52</sup>

Reforming teacher compensation with emphasis on performance pay gave instructors an incentive to provide the highest quality education possible for their students. That stands in sharp contrast to Texas' salary schedule driven model, which rewards longevity over all else.<sup>53</sup>

What's more, the Florida reforms have put students first while saving the state education dollars. A 2008 study by the Office of Program Policy Analysis and Government accountability studied the fiscal impact of the business tax credit component of Florida's school choice program, and reached the following conclusion:

[W]e estimate that in Fiscal Year 2007-08, the state saved \$1.49 in education funding for every dollar loss in corporate income tax revenue due to scholarship contributions. The scholarship funding organizations collected \$79.2 million in contributions and provided scholarships to 21,493 students. We estimate that 90% of these students would have attended public school if not for the scholarship. The state avoided \$118.1 million in education spending for these students, resulting in net savings of \$38.9 million taking into account foregone corporate tax revenue.<sup>54</sup>

Florida demonstrates that given enough time to be effectively implemented, student first education spending reforms can yield high rates of parental satisfaction, positive academic results, and greater fiscal efficiency at a statewide level. The latter is particularly important in the context of Texas' long history of school finance litigation, as the state's constitutional obligation is to provide an efficient system of free public schools. Student first reforms drive such efficiency.

## Making Texas #1: Going Forward

There is no larger problem in Texas education than our state's steadfast commitment to the *status quo*. We have not only added billions in spending, we have adjusted and tinkered with our school finance system repeatedly over the last several decades, and we have very little to show for those additions and adjustments, either in terms of efficiency or academic outcomes. Therefore, it is time to fundamentally adjust the way we think about funding our schools and look beyond minor tweaks to the system.

Texas should make the following changes to ensure that we are getting the most out of every dollar we spend on education and, hopefully, make strides against the cycle of litigation that has plagued our school finance system for the last half century:

### **Recommendation: Re-Calculate the Cost of Education Index**

The Cost of Education Index is one of the most glaring inefficiencies in the means by which Texas disseminates its education dollars. It is a two decades old metric that drives billions of dollars into Texas schools with a deeply



limited sense of whether the schools receiving the money have any need for those funds, or at least to what degree those schools should be receiving it. It is therefore vital that Texas update this grossly out of date metric so that in cases in which the state does need to deliver aid, that aid is going to the right schools.

### ***Recommendation: Sunset the School Finance Formula***

Despite several changes to the school finance formula driven by legal challenges over the last several decades, Texas does not seem to be able to get out of the courtroom when it comes to funding our schools. As a means to preempt future litigation, Texas should institute a policy by which the school finance formula is subject to a sunset process every 10 years. While this may not break the cycle of litigation completely (Texas is hardly alone in its legal battle over the way it funds its schools; many states have school finance histories that are more legally contentious than ours), it will at least force the legislature to examine the school finance formula in an environment other than one of legal duress.

Determining a funding formula that satisfies everyone all the time is historically impossible. However, if the formula is being examined on a routine basis, Texas should at the very least be able to avoid problems like the glaringly out of date CEI.

### ***Recommendation: Increase School Choice in Texas***

The reality of Texas school finance is that as long as the student population keeps growing, costs in education are going to continue to rise. Rapid growth forces school districts to build new facilities, hire new personnel, and educate a population of students whose education needs become more diverse every single year.

If Texas wishes to be number one, it must meaningfully reform the way it funds Texas students. It must also look at measures by which state funding can be put in the hands of parents and students so that they may attend a school which best fits their needs. That is the way to make Texas Number One.

A properly structured school choice program would produce the following results: Texas public schools would improve,<sup>55</sup> Texas teachers would earn greater pay,<sup>56</sup> Texas taxpayers would realize substantial savings,<sup>57</sup> and Texas' overall school system would become more efficient,<sup>58</sup> all while increasing the overall quality of student education and empowering parents.

### ***Increase Access to Online Learning***

Texas has a large network of courses available through the Texas Virtual School Network, and a smattering of full time virtual schools appearing in places like Houston and Dallas. Digital learning should be expanded to enable parents maximum flexibility in meeting the educational needs of their children.

Where this network could be best leveraged is addressing challenges in Texas' many rural school districts. Districts that are geographically large and sparsely populated force an adjustment in Texas' school finance formula that makes those students cost the state more to educate than students in large districts, which are not subject to this adjustment. Texas should encourage the proliferation of online learning in those small districts, both to increase course options for students and to generate savings at the state level.

Florida demonstrates the savings potential of online education very clearly. As of 2012, Florida's average state investment per full time equivalent (FTE) student was \$6,999.38. Full time virtual students, in contrast, were educated at \$4,840.52. The savings per FTE totaled out at \$2,158.86 per FTE.<sup>59</sup>

At present, there are very few full time virtual learners in Texas. Adopting policies that encourage participation in full time learning, such as universal student eligibility and the creation of virtual charter schools (schools that could receive state funding for their students but would be privately operated) could encourage the growth of online learning in Texas. While full time virtual students in Texas are eligible to receive Foundation School Program funds in the same manner traditional brick and mortar students are, a higher number of rural students receiving full time virtual education would potentially reduce the number of students the state funds through sparsity adjustment.

### *Create Private School Choice in Texas*

The most glaring inefficiency in Texas' education system is the complete lack of private school choice. As mentioned earlier, one of the parties in the current school finance lawsuit is suing the state on the basis that a system without options for students and parents is inherently inefficient. This is a first in the history of Texas school finance litigation, and at the time of this writing, the final impact of that lawsuit remains unknown.

Were Texas to implement a private school choice program, that program could take a number of shapes. Those include:

- A traditional education scholarship program that would give Texas students the option of receiving a grant to attend a private school of their choice.
- A tax credit program, which would allow taxpayers to grant scholarships to students in exchange for a tax credit. Previous proposed legislation in Texas directed the credit at a participating business' franchise tax.
- A local option tax credit program that could be enacted on a municipality by municipality basis at voter discretion, rather than on a statewide basis.
- An Education Savings Account (ESA) program similar to the one in effect in Arizona.
- A new structure of private charter schools.

Any one of these programs would both benefit Texas students by putting their priorities first in our school finance system, as well as save the state of Texas money. During the 83rd Texas Legislature, numerous school choice proposals were considered by both the House and Senate Public Education Committees. The most "traditional" choice bill of the bunch was SB 1575, [by Campbell and Paxton] along with the companion HB 3497, [by Scott Turner] which would have established a statewide education scholarship known as the Taxpayer Savings Grant Program. Texas' Legislative Budget Board assessed CSHB 3497 as follows:

The state average per-pupil M&O expenditure based on the most recent audited actual financial data submitted to the Public Education Information Management System (PEIMS) for FY 2012 is \$8,276. Sixty per-

cent of this amount (the estimated value of the grant) would be \$4,966. The state would save the difference between the average FSP entitlement of \$7,500 and the reimbursement amount for each student in average daily attendance who left the public school system and attended a private school.<sup>60</sup>

The LBB projected substantial savings for the state based on extremely low participation rates of only one half of one percent.<sup>61</sup> Even using these low participation estimates, starting in 2016, the savings to Texas education were estimated by LBB as follows:

- 2014: \$14,172,062
- 2015: \$77,226,856
- 2016: \$205,590,877
- 2017: \$338,535,859
- 2018: \$476,185,127<sup>62</sup>

The Texas Education Agency provided a fiscal note on SB 1575 indicating a participation rate higher than those used by the LBB, and therefore estimated savings significantly higher than the LBB numbers above. The TEA savings estimates are:

- 2014: \$236,250,000
- 2015: \$283,500,000
- 2016: \$340,200,000
- 2017: \$408,240,000
- 2018: \$489,888,000<sup>63</sup>

This is all money saved based on the estimation that students would accept a scholarship and leave Texas' public school system, thus being educated at a lower cost to the state than traditional public school students.

The implementation of school choice is far and away the most important reform Texas could make to its school finance system. If we are to create an efficient school finance system which puts student first, this is the way to do it. In states where such programs have gone into effect, like Florida and Arizona, there have been demonstrable cost savings, academic gains, and high levels of parental satisfaction.

As long as we fund schools rather than students, Texas education spending will grow faster than the population grows. Aggressive reforms such as the implementation

of large scale school choice programs are the only way to stem that growth and potentially generate meaningful savings for Texas. More importantly, this is the only way to assure the system is constitutionally efficient and meets the needs of individual Texas students.

### **Recommendation: Eliminate Standing Inefficiencies in the System**

As previously mentioned, Texas' K-4 class size cap has significant impact in Texas' education spending. However, it is hardly the only inefficient spending practice in Texas schools. Another significant problem is the manner in which we compensate our teachers, which is to say on a minimum salary schedule model.<sup>64</sup> A salary schedule model means that teachers are compensated based almost entirely on experience, rather than their quality as an educator. They receive an automatic annual pay raise every year, regardless of how they performed during the previous year.

If Texas is to put the student first when it comes to education funding, it must move away from this model and toward a performance pay based system. Performance pay has been shown to increase retention rates in high quality educators and serves as a natural incentive for struggling teachers to improve their performance.<sup>65</sup> Quality teaching is the most important factor impacting a child's education outside of their home environment. Improving teacher quality, therefore, must be a key consideration when considering how Texas funds its public schools and compensates educators.

## **Conclusion**

No adjustment Texas has ever made to its school finance formula has brought long term stability to its education system. The reality is that finding a funding system that keeps all stakeholders happy at all times—wealthy school districts, poorer districts, parents, education administration, and teachers—is impossible. Tinkering with the funding mechanism and levels has through the years produced dissatisfaction and more lawsuits.

Going forward, Texas must change three things about the way it funds its schools: First, it must iron out glaring inefficiencies by implementing school choice and other market-based reforms. Second, it must attempt to prevent future lawsuits as best it can by designing a constitutionally efficient system. Lastly, it *must* fund the student first—while updates to the CEI and adjustments to the way we compensate educators and regulate our school districts are important—creating an education environment in which funding follows the student. This is the best step Texas could take toward improving the way it funds education.

Doing so will give students a chance at an opportunity to choose an education that best suits their needs. If the numbers from Florida, Utah, and Arizona are any indicator, we can expect such changes to improve academic performance, parental satisfaction, and economic efficiency in Texas education. These are reforms that will impact our school system as a whole positively, but most importantly, they will impact our students positively.

Minor reform in Texas education has yielded stagnant education outcomes. It's time to rethink the way we allocate the money we spend on schools. As the Texas Supreme Court said in the *West Orange* decision: "Perhaps, as the dissent contends, public education could benefit from more competition, but the parties have not raised this argument, and therefore we do not address it."<sup>66</sup>

There is no way to determine an exact dollar amount required to educate a child, but it is possible to make sure the funding Texas invests in education allow students to choose an education that best suits their needs. It's time to put the student first.★

## Endnotes

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<sup>61</sup> LBB Fiscal Note CSHB 3497, dated May 18, 2013.

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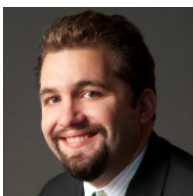
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## About the Author



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## About the Texas Public Policy Foundation

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