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An Overview of School Finance Policy: Key Federal and Texas Litigation

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Since Brown (1954), educational finance inequity has taken center stage on national and state level reform platforms. We begin with an overview of the three waves of federal school finance litigation and argumentation concerning equity, adequacy, accountability, and transparency in public schooling. We then outline key school finance legislative and judicial history within the Texas context. We conclude our review with a discussion of policy implications for public education in Texas and beyond.

The Supreme Court's unanimous *Brown v. Board of Education, Topeka Kansas* (1954) decision held "in the field of public education the doctrine of 'separate but equal' has no place" (347 U.S. 483). Following a decade of state resistance to *Brown*, *Green v. County School Board of New Kent County* (1968) ushered in the desegregation era when the Court held that each school district had an "affirmative duty to take whatever steps might be necessary to convert to a unitary system in which racial discrimination would be eliminated root and branch" (391 U.S. 430). This era was characterized by federal suits against local municipalities and school districts to force compliance with *Brown*, as well as a host of legislation that sought to bring states into line with federal aims including the Civil Rights Act (1964) and the Elementary and Secondary Education Act (1965) (Raffel, 2002).

The desegregation era was partially successful in integrating public school districts across the nation. Yet, resistance continued locally through segregationist efforts. Resistance also came at the federal level. President Richard M. Nixon for example, "raised questions about civil rights policies and directed his executive branch appointees to go slow on forcing desegregation" (Raffel, 2002, p. 30). The slow pace of desegregation and the prospect of re-segregation prompted lawyers and activists to shift the conversation from race-based educational resource inequity to state level school finance litigation (Glenn, 2006). Here, *equity* concerned whether or not funding sources [local, state, federal revenues, or exceptional revenues lottery proceeds] were fairly distributed between property poor and property rich districts (Cummins, 2006). This first wave of school finance reform was characterized by relief founded on the equal protection clause of the Fourteenth Amendment to the U.S. Constitution.

In the landmark case, *San Antonio Independent School District v. Rodriguez* (1973), the Supreme Court held that education was not a fundamental interest because it is not an explicit right. The Court rejected the idea that wealth be treated as a "suspect classification" as was the case with race (411 U.S. 1). The Court argued that convincing evidence had not been presented demonstrating property poor districts could not provide the skills necessary for students to participate politically. Moreover, given the plaintiffs' main claims relied on discrimination due to district and not personal wealth, and because student poverty and school district property wealth were not strongly correlated, the Court held that Texas' school finance system did not discriminate against poor children. The Court concluded that local control over education was a "compelling" reason for Texas to maintain its education finance system (411 U.S. 1).

The implications of *Rodriguez* were profound as the Court effectively stymied challenges to state school finance systems based on Fourteenth Amendment equal protection claims. All challenges to school finance systems therefore needed to be based on violations of individual state constitutions, ushering in the second wave of school finance reform (Cardenas, 1997; Dinan, 2009; Odden & Picus, 2008). Given this constitutional turn, legal strategy of the second wave argued that inequitable public school resource inputs would lead to unequal chances of success in school, and therefore create unequal adult life outputs. Such an argument was difficult to prove, leading to plaintiffs losing more cases than they won between 1973 and 1990 (Dinan, 2009).

This losing trajectory prompted prosecutors to seek a new legal strategy, ushering in the third wave of school finance litigation that has continued to the present day. Legal strategy since the 1990s has challenged the adequacy of school financing on the basis of state constitutions' education clauses. Here, *adequacy* means that schools have enough resources to do their job as educators (Cummins, 2006). This strategy does not assume that inequitable resources lead to inequitable odds of success. Rather, it utilizes standardized test scores to focus on accountability and transparency. *Accountability* connotes whether or not schools can deliver a reasonable educational outcome given allocated funds, while *transparency* implies stakeholder accessibility to school finance documentation (Cummins, 2006).

Since *Rodriguez*, school finance reformers have filed 139 lawsuits in all but five states, and state courts have found school finance systems unconstitutional in twenty-eight of those states (Berry & Wysong, 2010). Plaintiffs regularly prevail in adequacy litigation, winning much more regularly when equity is the primary issue (Glenn, 2006). Yet, the relationship between educational inputs and outputs remains complicated to measure, evaluate, and understand given “comparing resource levels across schools is very complicated” and “no standard definitions for financial reporting in public education” currently exist (Thomas B. Fordham Institute, 2006, p. 20).

History of Texas School Finance

Evolving from a shared Mexican-Texan history, the first Anglo-American public school law in Texas was enacted in 1840, designating county land for public schools. The Texas Constitution of 1845 provided that one-tenth of annual state tax revenue be allocated as a perpetual fund to support free public schools (Texas Education Agency [TEA], 2014). In 1845 a Permanent School Fund (PSF) also was established with two-million dollars from a ten-million dollar settlement Texas received from boundary claims against the United States. The 1876 Texas Constitution established the legal basis for Texas public schools and vested forty-five million acres of land for their use, also stipulating that income from the PSF be invested in bonds. The State *ad valorem* tax was affirmed and the PSF was invested in county and other bonds to increase income in 1884.¹ By 1983 a constitutional amendment guaranteed school district bonds by the PSF, providing approximately \$765 million each year to public schools (TEA, 2014).

The common school movement and rural school reform came to Texas in the late nineteenth century (Tyack, 1974). During this time legislation granted municipalities more autonomy over school administration and by the turn of the twentieth century 526 independent districts existed in Texas. Because schools and districts were growing rapidly, policymakers sought to ensure rural schools were politically and fiscally equal with urban schools. They did

so by creating county boards of education and rural high schools, consolidating common school districts, and increasing aid to rural schools. This included state support for teacher salaries (TEA, 2014).

During the second half of the twentieth century, issues involving equity, adequacy, and accountability dominated the Texas legislature and state court system. In 1949 the 51st Texas Legislature enacted a series of educational reform laws known as the Gilmer-Aikin legislation. Among other provisions, the Gilmer-Aikin legislation required eighty percent of school funding come from the state and created the Minimum Foundation Program to apportion state funds to local school districts (TEA, 2014). This legislation also established minimum education requirements for Texas children, created the Texas Education Agency (TEA), appointed a commissioner of education, created minimum teacher salaries based on experience, and permitted the elimination of dormant school districts (Cardenas, 1997).

Court Challenges and Legislative Responses

Akin to the first wave school finance litigation in other states, the Edgewood Concerned Parents Association filed suit in a Texas federal district court in 1968 challenging Texas' public school funding for students living in property poor districts. The plaintiffs claimed that reliance on local property taxes to fund public schools denied them equal protection under the Fourteenth Amendment to the U.S. Constitution. The plaintiffs based their argument on the principle of *fiscal neutrality*, or that educational opportunity cannot be based on district property wealth (Cummins, 2006). Although the plaintiffs won, *Rodriguez* (1973) trumped this ruling four years later.

The Texas legislature took limited steps to reduce fiscal inequalities among property poor and property wealthy districts after *Rodriguez*. In 1984 the 68th Texas Legislature passed House Bill 72, which provided a teacher pay raise, channeled more money to property poor districts, and established additional protocols aimed at improving student achievement (Cardenas, 1997). Unsatisfied with the legislation, the Mexican American Legal Defense and Education Fund (MALDEF) filed suit in *Edgewood Independent School District et al. v. Kirby et al.* or *Edgewood I* (1989) challenging Texas public school funding under the equal protection and education clauses of the Texas Constitution. The education clause established that Texas "make suitable provision for the state support and maintenance of an *efficient* system of free public schools" (Texas Constitution, Article VII, Section I, 1876). MALDEF held that the system's reliance on property taxes and the substantial variation in per student property values created incongruence in per student district spending. If property taxes were levied, districts with little property wealth per student would be incapable of raising adequate revenue to finance education programs in accordance with Texas' minimum education requirements (*Edgewood Independent School District v. Kirby*, 1989).

In 1987, a Texas District Court ruled in favor of the plaintiffs, but this was reversed by the Texas Third Court of Appeals. Recognizing the chasm between property poor and property wealthy school districts, in a 9-0 decision the Texas Supreme Court affirmed the District Court Ruling in *Edgewood I* (1989). The Texas Supreme Court recognized that there were vast discrepancies in a public school finance system that designated forty-two percent of school funding from state and local revenue, with the other fifty percent coming from district *ad valorem* property taxes. Moreover, per student spending varied from \$2,112 in property poor districts to \$19,333 in property wealthy districts, and a 700:1 ratio existed between taxable

property value in wealthy versus poor districts (Guthrie, Matthew, Springer, Rolle, & Houck, 2007).

After being ordered to develop an equitable system of school finance for the 1990-1991 school year (Odden & Picus, 2008), the 71st Texas Legislature enacted Senate Bill 1 (1990), which created a two-tier school finance system and increased state funding for public schools by \$528 million. Known as the Foundation School Program, Tier I established a guaranteed base level of funding through state and local revenue per student average daily attendance for districts that tax themselves at or above a state-determined minimum; Tier II was a guaranteed yield system, which secured revenue per weighted student for each penny of local tax revenue above Tier I. Texas funded the difference between guaranteed and local tax revenue, but if a district was so well-off that each penny generated more than the guaranteed rate, then the district received no state revenue (*Edgewood Independent School District v. Kirby*, 1991).

Unsatisfied with the new legislation, the constitutionality of the school finance system was challenged again in *Edgewood Independent School District v. Kirby* (1991). In what became known as *Edgewood II*, the Texas Supreme Court ruled that Senate Bill 1 effectively left a failed system in place. The Texas Legislature had not addressed the fact that half of all education funds came from local taxes. Moreover, the system as a whole still violated the efficiency standard set up by Article VII, Section 1. Responding to the Court's critique, the 72nd Texas Legislature passed Senate Bill 351 (1991), which merged 1,058 independent school districts into 188 County Education Districts. Senate Bill 351 also allowed these districts to levy a state-controlled property tax that would be distributed on an equal per student basis within each district (Cardenas, 1997).

In *Carrollton-Farmers Branch School District v. Edgewood Independent School District* or *Edgewood III* (1992), a group of wealthy school districts filed suit, arguing that Senate Bill 351 violated the Texas Constitution. The Texas Supreme Court agreed, holding that it violated Article VII, Section 1-e, which prohibits levying a statewide *ad valorem* property tax and requires voter approval for such a measure. In turn, the 73rd Texas Legislature enacted Senate Bill 7 (1993), which left the Foundational School Program in place and aimed to level district funding disparities by mandating a set amount of property wealth per student. Tier I provided a basic \$2,300 allotment for students in average daily attendance. Districts needed to raise their local share at a tax rate of \$0.86. However, if they failed to do so at this rate, then Texas funded the difference. At Tier II, for each penny over this rate Texas guaranteed a yield of \$20.55 per weighted student (Minorini & Sugarman, 1999). Any district exceeding the established limit of \$280,000 per student was given five options to decrease resources including: merge tax bases with property poor districts; return excess money to the state; contract to work with students from other districts; voluntarily merge with other districts; or move taxable property to the tax rolls of other districts (Jordan & Lyons, 1992). These options, which involved "recapturing" and "transferring" funds from wealthier to poorer districts earned Senate Bill 7 the nickname "Robin Hood."

The constitutionality of Senate Bill 7 was upheld by the Texas Supreme Court in *Edgewood Independent School District v. Meno* or *Edgewood IV* (1995). In this case, the Court discussed its concern for inequities in financing school facilities in which the burden of funding fell almost entirely on local districts. The 74th Texas Legislature responded with additional Tier I and II funding and by increasing funding for school facilities and debt (Cardenas, 1997). In 2004 over 300 school districts further challenged the constitutionality of the Texas school finance system. Plaintiffs argued the operational funding of local school districts was

insufficient to permit quality instruction and to ensure students meet state accountability standards—an inefficiency that burdened local districts with more spending. Moreover, they argued the system was unconstitutional because the statewide \$1.50 statutory property tax cap established by Senate Bill 7, failed to provide the majority of districts with access to sufficient resources. The plaintiffs argued that since many districts reached the \$1.50 cap, the tax became a *de facto* state *ad valorem* property tax prohibited by the Texas Constitution (Imazeki & Reschovsky, 2006). The Travis County District Court ruled in favor of the plaintiffs.

The District Court ruling partially was upheld by the Texas Supreme Court in *Shirley Neeley, Texas Commissioner of Education, et al. v. West Orange-Cove Consolidated Independent School District, et al.* (2005). In a 7-1 vote, the Court held the \$1.50 property tax cap was unconstitutional because it inhibited most districts from having meaningful discretion in setting their local property tax rates. It also reversed the lower court's ruling that the Texas school finance system was inadequate. Although the 79th Texas Legislature (2005-2006) met for three special sessions on public school funding, real per student spending actually fell from \$1.50 to \$1.04 with a potential maximum set at \$1.17 (Imazeki & Reschovsky, 2006).

Passed in 2008, Texas House Bill 3646 provided additional resources to school districts, and in 2009 the 81st Texas Legislature passed House Bill 3 amending the Texas Education Code to allow TEA to monitor compliance with financial accountability. If districts or schools are not in compliance, Section 6 of House Bill 3 allows the commissioner of education to require districts to enter a cooperative arrangement for administrative services. Section 7 charged the Texas State Board of Education (SBOE) with monitoring fiscal performance goals, held superintendents responsible for meeting such goals, and aimed to increase transparency through an annually published financial report. Subchapter D, Financial Accountability also obliged the commissioner of education and comptroller to create a financial accountability and oversight system that looks at per student operational and staffing costs (House Bill 3, 2009).

Despite the appearance of addressing the Texas school finance system through monitoring and increased transparency, in 2011 the 82nd Texas Legislature cut a staggering \$5.4 billion from public education—and even as 170,000 new students were expected to enroll in Texas public schools in the following two years (Texas State Teachers Association, 2011). These cuts interrupted a number of basic school services including busing and maintenance, as well as resulted in 11,000 staff reductions across the state (Goff, 2013). School districts, parents, and organizations initially filed six separate law suits citing inadequate funding for increased testing mandated by House Bill 3, as well as inequitable distribution of funds based on the inability of property poor districts to collect the funds needed through taxes. Having grown to include nearly two-thirds of Texas school districts, the plaintiffs were consolidated into one school finance trial that began in October 2012. In August 2014, a District Court ruled that Texas' school finance system is “constitutionally inadequate, unsuitable, and financially inefficient” (*Texas Taxpayer, et al., vs. Williams, et al.*, p. 4). The case is expected to head to the Texas Supreme Court.

Discussion

Since the 1960s, legal scholars and advocates have brought attention to the reality that school spending varied significantly between school districts within most states—the result being vastly different and unequal educational experiences for U.S. students. Reliant on the Fourteenth Amendment equal protection clause, scholars offered remedies to problematic school finance

student classifications and funding schemes. Such remedies include Arthur Wise's (1967) focus on public education as a fundamental government interest and per student equity spending or *horizontal equity*. A needs-based, *vertical equity* approach proposed by Stanley Horowitz held that poor students should have their needs equally met even if it meant spending more on their educational programming (Koski & Hanel, 2008). David Kirp called for redistricting and reallocation of resources to create *effective equity*—conditions that would permit all students an equal chance at attaining equal educational outcomes. Finally, taking a less aggressive Fourteenth Amendment posture, Jack Coons, William Clune, and Stephen Sugarman developed the concept of *fiscal neutrality*, or the idea that the state could not discriminate against students on the basis of wealth (Koski & Hanel, 2008).

Despite what these ideas contributed to school finance reform litigation, state legislatures and courts largely have failed to ensure equitable student educational opportunity to date. Moreover, the question of whether adequacy and accountability reforms increase real equity remains the subject of much debate. How adequacy reforms affect student performance has been hard to study with little existent consensus (Dinan, 2009). Peevely and Ray (2001) for example, studied the effects of the *Tennessee Small School System v. McWherter* (1993) reforms on student achievement and found the following:

Data from mathematics scores for litigants and non-litigants present a mixed set of results, data from reading scores showed several higher achievement for the litigant group for some grades and some years, while a similar set of results favored the non-litigant group in 1994 and 1996. (p. 329)

Coate and VanderHoff (2009) reported similar findings after analyzing the effects of adequacy reform on student achievement brought about by the 1985 New Jersey case *Abbott v. Burke*. They compared the academic performance of students within *Abbott* school districts to that of students in non-*Abbott* districts and found no relationship between expenditures and student performance.

Compared with state studies, national studies demonstrate a small, positive relationship between student achievement and school finance litigation. Downes and Figlio (1998) found that court-mandated adequacy reforms correlated with an increase in student performance. They also determined that legislative adequacy reforms correlated with even greater gains in student achievement than did judicially-based reforms. Similarly, Glenn (2009) found “students from areas with successful litigation had the highest mean score on 5 of the 9 assessments, and a statistically significant positive effect for reading performance of children in the low-[socioeconomic status] category . . . the same with science” (p. 260).

Since a large amount of school funding is acquired through property taxes, school districts in areas of concentrated poverty with low property tax wealth struggle to generate resources. It is because of these struggles—struggles that result from concentrated poverty—that plaintiffs continually challenge school finance systems. Moreover, racial and ethnic minorities disproportionately populate areas of concentrated poverty. Thus, though *Brown* declared racially separated public schooling unconstitutional, many school finance systems, including the one in Texas, continue to miss the mark.

The latest ruling in Texas is an important step towards addressing many of the financial inequities lawmakers fail to consider when passing school finance reform. Yet, historically Texas has lacked comprehensive reform that addresses the problem of concentrated race-based student poverty and school funding inequity. The District ruling notably reflects on how funding disparities disproportionately impacts districts with greater concentrations of English Language

Learners and economically disadvantaged students. However, the continued failure to examine race and poverty alongside funding disparity renders the aim of Texas legislative policy to making schools separate, but equal [or rather separate, but adequate], since *adequacy*, *accountability*, and *transparency* reforms do nothing to ensure *fiscal equality*. Instead, the level of funding determined to be *adequate* to meet the standards of accountability is merely the minimum level of funding a district must acquire. Districts that can garner more funding are free to do so, providing already advantaged districts with an educational leg up. As they currently stand, adequacy reforms do little to address the inequality *Brown I* sought to eradicate.

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Katie Jackson has a Master's in Education Policy and Planning from The University of Texas at Austin, and another in Urban Education from Boston College. She previously was a Donovan Urban Teaching Scholar, and her research focused on issues of equity and access in urban public education. Katie currently works in the areas of youth advocacy and Texas gubernatorial politics.

Meghan D. Lehr is a student in Educational Policy and Planning PhD Program and is founding and former Coordinating Editor of the *Texas Education Review*. She has been a part of several research teams which have focused on data use in schools, and on principals and their preparation, particularly as both relate to issues of social justice. Meghan's own dissertation will examine how leadership, shaped by principal preparation, might impact both principal and teacher turnover in schools.

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¹ *Ad valorem* taxes are based on an assessed value of real estate or personal property, and are a main source of income for state and local governments. Such taxes also can be placed on imports.