

CAUSE NO. D-1-GV-11-00130

TEXAS TAXPAYER & STUDENT	§	IN THE DISTRICT COURT
FAIRNESS COALITION, <i>ET AL.</i> ,	§	
	§	
Plaintiffs,	§	
	§	
EDGEWOOD INDEPENDENT SCHOOL	§	
DISTRICT, <i>ET AL.</i> , (consolidated)	§	
	§	
Plaintiffs	§	
v.	§	TRAVIS COUNTY, TEXAS
	§	
ROBERT SCOTT, in his official capacity	§	
as Commissioner of Education, <i>ET AL.</i> ,	§	
	§	
Defendants,	§	200TH JUDICIAL DISTRICT

**PLAINTIFFS’ MOTION FOR SPECIAL EXCEPTIONS AS TO INTERVENORS’
AMENDED PLEA IN INTERVENTION**

Plaintiffs Edgewood Independent School District, McAllen Independent School District, San Benito Consolidated Independent School District, La Feria Independent School District, Harlingen Independent School District, Yolanda Canales, Arturo Robles, Araceli Vasquez and Jessica Romero, *et al.*, file this receive motion specially excepting to the First Amended Plea in Intervention filed by Joyce Coleman, individually and as next friend of her minor children, Danessa Bolling, individually and as next friend of her minor child, Lee Beall and Allena Beal, individually and as next friends of their minor children, Joel Smedshammer and Andrea Smedshammer, individually and as next friends of their minor children, Darlene Menn, individually and as next friend of her minor child, Texans for Real Efficiency and Equity in Education and Texas Association of Business (“Intervenors”). Plaintiffs respectfully ask the Court to order Intervenors to replead and cure their pleading defects. In support, Plaintiffs show as follows.

Special Exceptions

1. Plaintiffs specially except to paragraphs 19, 23 and related prayers for relief in Intervenor's First Amended Plea in Intervention ("First Amended Plea") because Intervenor's pleading does not give fair notice of their article VIII claim. Throughout Intervenor's petition, they allege that there are various features in the design of the public school system with which they disagree and deem "inefficient" under article VII of the Texas Constitution. *See, e.g.*, First Am. Plea at 8, ¶11 ("The current statutory cap on the number of charter schools breeds inefficiency in the system of public free school."); *id.* at 9, ¶ 13 (complaining that the Texas Education Agency should not be evaluating financial accountability); *id.* at 15, ¶ 15 (citing inefficiencies related to personnel decisions). In contrast, there are no facts alleged supporting their article VIII claim that give Plaintiffs fair notice of this claim. *Compare id.* at 14, ¶ 19 *with id.* at 1-12. The only actual facts alleged are that "[t]he school finance system in place today is finance in large part by a local property tax system, which in practice amounts to a de facto state-wide property tax." *Id.* at 14, ¶ 19. These bare, insignificant allegations prevent Plaintiffs from ascertaining from the pleading the nature and basic issues of the controversy, as well as what testimony may be relevant and Intervenor should be required to cure their defects their allegations supporting the article VIII claim so as to give proper notice to Plaintiffs. *See Horizon/CMS Healthcare Corp. v. Auld*, 34 S.W.3d 887, 896 (Tex. 2000).

Conclusion

Accordingly, Plaintiffs ask the Court to set a hearing on this motion and, thereafter, order Intervenors to replead and cure their pleading defects related to their article VIII claim and failing appropriately to do so after opportunity to amend, to dismiss Intervenors' article VIII claim with prejudice.

DATED: May 4, 2012

Respectfully Submitted,

MEXICAN AMERICAN LEGAL DEFENSE AND
EDUCATIONAL FUND, INC.

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David G. Hinojosa

Attorneys for Plaintiffs

CERTIFICATE OF CONFERENCE

I certify that I conferred with Chris Diamond, attorney for Intervenors, on May 3, 2012 but he was unable to advise me of his clients' position on this motion.

By: s/David G. Hinojosa
David G. Hinojosa

CERTIFICATE OF SERVICE

By my signature above, I also certify that on May 4, 2012, I served the foregoing document via facsimile to Intervenor listed below and via electronic mail to the other parties listed below:

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Defendants,	§	206TH JUDICIAL DISTRICT

ORDER ON PLAINTIFFS’ MOTION FOR SPECIAL EXCEPTIONS AS TO INTERVENORS’ AMENDED PLEA IN INTERVENTION

After considering the Motion for Special Exceptions as to Intervenor’s Amended Plea in Intervention filed by Plaintiffs Edgewood Independent School District, McAllen Independent School District, San Benito Consolidated Independent School District, La Feria Independent School District, Harlingen Independent School District, Yolanda Canales, Arturo Robles, Arceli Vasquez and Jessica Romero, *et al.*, and all related pleadings and arguments, the Court makes the following rulings on exceptions that have not been agreed to by the parties:

1. Plaintiffs’ special exceptions as to paragraphs to paragraphs 19, 23 and related prayers for relief in Intervenor’s First Amended Plea in Intervention (“First Amended Plea”) because Intervenor’s pleading does not give fair notice of their article VIII claim.

SUSTAINED

OVERRULED

The Court orders Intervenors to replead and cure the defects identified by the special exceptions that were sustained. If Intervenors do not replead and cure the defects by May ___, 2012, the Court will strike each defective paragraph with prejudice.

Signed this ___ day of May 2012.

The Honorable John K. Dietz

Unofficial copy Travis Co. District Clerk Velva L. Price