

CAUSE NO. D-1-GN-11-003130

THE TEXAS TAXPAYER & STUDENT
FAIRNESS COALITION, et al;
CALHOUN COUNTY ISD, et al;
EDGEWOOD ISD, et al;
FORT BEND ISD, et al;
TEXAS CHARTER SCHOOL
ASSOCIATION, et al.

Plaintiffs

JOYCE COLEMAN, et al

Intervenors

vs.

MICHAEL WILLIAMS, COMMISSIONER
OF EDUCATION, IN HIS OFFICIAL
CAPACITY; SUSAN COMBS,
TEXAS COMPTROLLER OF PUBLIC
ACCOUNTS, IN HER OFFICIAL
CAPACITY; TEXAS STATE BOARD
OF EDUCATION,
Defendants.

IN THE DISTRICT COURT

200th JUDICIAL DISTRICT

TRAVIS COUNTY, TEXAS

SUITABILITY AND EFFICIENCY BRIEF

The Court has requested briefing from the parties on the following two issues: (1) the legal standard courts must apply when determining whether the Legislature has satisfied the “suitable provision” clause in Article VII, § 1 of the Texas Constitution; and (2) the amount of local financial supplementation the school funding system can tolerate before the system becomes “inefficient” under Article VII, § 1. In response to the Court’s requests, Defendants,

the Texas Education Agency, the State Board of Education, and Commissioner of Education Michael Williams¹, in his official capacity, provide as follows:

I. THE SUITABILITY STANDARD

Article VII, § 1 of the Texas Constitution provides that “[a] general diffusion of knowledge being essential to the preservation of the liberties and rights of the people, it shall be the duty of the Legislature to establish and make suitable provision for the support and maintenance of an efficient system of public free schools.” The Texas Supreme Court has interpreted this section to establish three legal standards that the public school system must satisfy: the public school system must be efficient, adequate, and suitable. *Neeley v. West Orange-Cove Consolidated I.S.D.*, 176 S.W.3d 746, 753-54 (Tex. 2005) (“*West Orange-Cove II*”).

With regard to the Court’s first question, the suitability standard is independent of the adequacy and efficiency standards and refers “specifically to the means chosen to achieve an adequate education through an efficient system.” *West Orange-Cove II*, 176 S.W.3d at 793. In effect, suitability is satisfied when “the public school system [is] structured, operated, and funded so that it can accomplish its purpose for all Texas school children.” *Id.* at 753. Because the Texas Constitution identifies a general diffusion of knowledge as a primary purpose of the education system, these two constitutional standards, suitability and general diffusion of knowledge, must be closely if not completely linked. *See id.* at 794 (“Neither the structure nor the operation of the funding system prevents it from efficiently accomplishing a general diffusion of knowledge.”). Accordingly, if the public education system is providing a general diffusion of knowledge, then it should be presumed that the system is necessarily suitable.

¹ Although Robert Scott served as the Commissioner of Education at the time of the filing of this action, Michael Williams now serves as the Commissioner of Education and, accordingly, submits this brief in his official capacity.

The Texas Supreme Court has repeatedly stressed that the three standards established under article VII, § 1, including suitability, “do not dictate a particular structure that a system of free public schools must have.” *West Orange-Cove II*, 176 S.W.3d at 783. Rather article VII, § 1, makes it “the duty of the Legislature” to provide for public education and allows the Legislature a large measure of discretion in determining what public education is necessary for the constitutionally required “general diffusion of knowledge” and what means shall provide that education. *Id.* at 784-85. Notably, it was out of deference to the Legislature in *West Orange-Cove II* that the Supreme Court presumed that the education system the Legislature devised was constitutional. *Id.* at 787.

To overcome the presumption that the public education system is suitable, the plaintiffs must demonstrate that the Legislature has substantially defaulted “on its responsibility such that Texas school children were denied access to that education needed to participate fully in the social, economic, and educational opportunities available in Texas.” *See id.* at 736. In this context, the Supreme Court has held that the Legislature would substantially default on this responsibility if it structured, operated, or funded the school system in an arbitrary manner. *Id.* at 784 (citing *Mumme v. Marrs*, 49 S.W.2d 31, 35-36 (Tex. 1931)); *see West Orange-Cove II*, 176 S.W.3d at 785 (“If the Legislature’s choices are informed by guiding rules and principles properly related to public education -- that is, if the choices are not arbitrary -- then the system does not violate the constitutional provision.”); *see also id.* at 790 (recognizing that the standard of arbitrariness applied is very deferential to the Legislature); *id.* at 785 (quoting *Texas Workers’ Comp. Comm’n v. Garcia*, 893 S.W.2d 504, 520 (Tex. 1995)) (“As we have said, a mere difference of opinion [between judges and legislators], where reasonable minds could differ, is

not a sufficient basis for striking down legislation as arbitrary or unreasonable.”) (internal quotations omitted).

As long as the Legislature establishes a suitable regime that provides for a general diffusion of knowledge, it may decide whether the public education system should be administered by a state agency, by the districts themselves, or by any other means. *See West Orange-Cove I.S.D. v. Alanis*, 107 S.W.3d 558, 571 (Tex. 2003) (“*West Orange-Cove I*”); *West Orange-Cove II*, 176 S.W.3d at 784 (“To achieve such a system, the Legislature has chosen to use local school districts”). Consistent with the recognition that the Legislature may satisfy the suitability clause by establishing a public education system under which local districts are required to administer a general diffusion of knowledge, the Legislature chose to structure the current public education system as a partnership between the State and its school districts, founding it on locally controlled school districts. *West Orange-Cove I*, 107 S.W.3d at 563. Under this system, the Legislature permits local communities to create school districts. TEX. EDUC. CODE § 13.001, *et seq.* Those districts have the primary responsibility for implementing the state’s system of public education and ensuring student performance. *Id.* at § 11.002. The districts are governed by an independent board of trustees and overseen by superintendents who are selected by the trustees, are responsible for implementing the board’s policies, and for ensuring that the students receive a general diffusion of knowledge as required by the Constitution. *See id.* at §§ 11.051, 11.1511, 11.201. These locally selected superintendents are also responsible for their district’s planning, organization and operations. *Id.* at §§ 11.1512(a), 11.201(d). Under this system of local control, the districts’ board of trustees and chosen superintendent must be accountable for achieving performance results because they have the greatest control over the public schools. *See id.* at §§ 11.1511(b)(4)(A), 11.1512(b)(1).

Indeed, while the Legislature established a foundation of courses that each district must offer, the districts are free to offer other courses they deem appropriate or necessary to educate their unique student populations. *Id.* at § 28.002. Moreover, the state and the districts share the responsibility for funding the public education system. *Id.* at § 42.251(b). Importantly, the Texas Education Code expressly limits state control over a multitude of functions so that local districts can independently fulfill their obligations in a manner that best serves their students. *See id.* at § 7.003. In other cases, the Education Code stipulates that certain functions fall both to the Texas Education Agency and districts thereby reflecting a shared responsibility for educating Texas school children.

Given the fact that the public education system is founded on local control, the success or failure of a school district is necessarily linked to the school district's own leadership, policies, and operations. For example, if a local school district fails to provide its students a general diffusion of knowledge, such a result, while unacceptable, does not render the entire public school system unsuitable or otherwise unconstitutional. Rather, because the system is a partnership between the state and the districts, one or more districts' failure to satisfy their responsibilities under the law need not undermine the suitability of the entire public school system because those failures may stem from the districts' local implementation. Another example can be found in the implementation of the Texas Essential Knowledge and Skills ("TEKS"), which provide state-required knowledge and skills standards. It is a district's responsibility to determine a curriculum based on these standards, including the selection of textbooks, and to teach that curriculum in the manner that best suits their unique student populations. In light of this local discretion, if a district were to fail to provide or implement the state-required standards, such failure would not render the architecture of the State's system, as

established by the Legislature, unsuitable or otherwise unconstitutional. *West Orange-Cove I*, 107 S.W.3d at 581 (“The public school system the Legislature has established requires that school districts provide both an accredited education and a general diffusion of knowledge. It may well be that the requirements are identical; indeed . . . we presume they are, giving deference to the Legislature’s choices.”).

Thus, taking into account the discretion afforded the Legislature under the Constitution, the presumption that state laws are constitutional, and the partnership structure of Texas’s education system, the districts must first prove that the public education *system* is unsuitable. Moreover, the districts must also show that they are unable to provide a general diffusion of knowledge because of the entire system’s unsuitability. Only when both tests are satisfied can the plaintiffs show that the Legislature has substantially defaulted on its responsibility to provide a suitable public education system.

II. LOCAL SUPPLEMENTATION

The Court has also asked how much local financial supplementation the school funding system can tolerate before the system becomes “inefficient” under Article VII, § 1. With regard to this question, the Education Clause requires the Legislature to create an “efficient system of public free schools.” TEX. CONST. art. VII § 1. In *Edgewood I.S.D. v. Kirby*, the Texas Supreme Court held that the term “‘efficient’ conveys effective or productive of results and connotes the use of resources so as to produce results with little waste.” 777 S.W.2d 391, 395 (Tex. 1989) (“Edgewood I”). As such, any inquiry into the efficiency of the public education system must begin with an inquiry into whether the public education system is achieving a general diffusion of knowledge. *West Orange-Cove II*, 176 S.W.3d at 753, 791. If districts are *reasonably* able to provide their students a general diffusion of knowledge, then the constitutional requirement of

efficiency has been satisfied, and the Court's inquiry need not go further. Defendants maintain that districts are reasonably able to provide a general diffusion of knowledge under the current education system.

Moreover, the Constitution does not require complete funding equity among the districts. Rather, the Texas Supreme Court has repeatedly held that "efficiency requires equivalent access to revenue only up to a point, after which a local community can elect higher taxes to 'supplement' and 'enrich' its own schools. That point . . . is the achievement of an adequate school system as required by the Constitution." *Id.* at 726. However, the Court has warned that the amount of "supplementation" in the system cannot become so great that it ultimately renders the system inefficient. *Id.* at 792.

With regard to whether the amount of supplementation has reached this level, the court should evaluate whether any "supplementation" in the system is enough to make the system unconstitutional only when there is evidence to suggest that the school finance system includes inequities similar to those present in *Edgewood I*. In *Edgewood I*, the Court held that the school finance system was inefficient based on "glaring disparities" in the districts' abilities to raise revenue. 777 S.W.2d at 392-393. For instance, the wealthiest district had over \$14,000,000 of property wealth per student, while the poorest district had only \$20,000. *Id.* at 392. Similarly, the 300,000 students in the lowest wealth schools had less than 3% of the state's property wealth, while the same number of students in the highest wealth districts had over 25% of the state's property wealth. *Id.* The average property wealth in the 100 wealthiest districts was more than twenty times greater than the average property wealth of the 100 poorest districts. *Id.* Because of these wealth disparities, local district's spending per student varied widely, ranging from \$2,112 to \$19,333 and "an average of \$2,000 more per year [was] spent on each of the 150,000

students in the wealthiest districts than [was] spent on the 150,000 students in the poorest districts.” *Id.* at 392-93. The Court held that these disparities unconstitutionally permitted “concentrations of resources in property-rich school districts that [were] taxing low when property-poor districts that [were] taxing high [could] not generate sufficient revenues to meet even minimum standards,” which allowing many districts to become “tax havens.” *Id.* at 393, 397.

Huge disparities in tax rates also existed in *Edgewood I*. “The 100 poorest districts had an average tax rate of 74.5 cents and spent an average of \$2,978 per student. The 100 wealthiest districts had an average tax rate of 47 cents and spent an average of \$7,233 per student.” *Id.* at 393. The Court characterized this tax rate disparity as a “fundamental flaw” in the system because it failed to “draw revenue from all property at a substantially similar rate.” *Edgewood I.S.D. v. Kirby*, 804 S.W.2d 491, 496 (Tex. 1991) (“Edgewood II”).

Finally, differences in the educational programs offered by the districts were dramatic. According to the Court, at least one low wealth district offered no foreign language, no pre-kindergarten, no chemistry, no physics, no calculus and no college preparatory or honors programs. *Edgewood I*, 777 S.W.2d at 393. That same district “offer[ed] virtually no extracurricular activities such as band, debate or football.” *Id.*

Unlike the system evaluated by the Supreme Court in *Edgewood I*, Defendants maintain that the current system allows districts to provide “all Texas children . . . access to a quality education” and “a meaningful opportunity to acquire the essential knowledge and skills” such that upon graduation, those students may “continue to learn in postsecondary education, training, or employment settings.” *West Orange-Cove II*, 176 S.W.3d at 787 (citing TEX. EDUC. CODE § 28.001). Because the school finance system is significantly more equitable than it was when the

Court decided *Edgewood I*, even with district supplementation, the system enacted by the Texas Legislature is not inefficient as a constitutional matter.

Respectfully submitted,

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