

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

THE TEXAS TAXPAYER & STUDENT	§	IN THE DISTRICT COURT
FAIRNESS COALITION, et al.	§	
Plaintiffs	§	
	§	
vs.	§	200 th JUDICIAL DISTRICT
	§	
ROBERT SCOTT, COMMISSIONER	§	
OF EDUCATION, IN HIS OFFICIAL	§	
CAPACITY, et al.	§	
Defendants.	§	TRAVIS COUNTY, TEXAS

**EFFICIENCY INTERVENORS' RESPONSE TO
THE TEXAS SCHOOL DISTRICT SYSTEM PLAINTIFFS'
PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW**

The proposed Findings of Fact and Conclusions of Law as filed by the Texas School District System Plaintiffs ("System Plaintiffs") contain inconsistencies and errors as pointed out below. The Efficiency Intervenors urge the Court not to enter those Findings of Fact and Conclusions of Law, to enter Findings and Conclusions that are consistent as to each claim of each party, and to enter the Findings of Fact proposed by the Efficiency Intervenors.

**I.
EFFICIENCY CANNOT BE DISSECTED FROM ADEQUACY**

The Texas Supreme Court admonishes that to be constitutionally sound, the Texas School District System ("the System") must be:

- a. Adequate: that it can accomplish a general diffusion of knowledge;
- b. Suitable: that it is structured, operated, and funded to accomplish its purpose;
and
- c. Efficient: that it uses resources to produce results with little waste.¹

¹ *Edgewood Indep. Sch. Dist. v. Kirby*, 777 S.W.2d 391, 395 (Tex. 1989) (*Edgewood I*); see also *Neeley v. W. Orange-Cove Consol. Indep. Sch. Dist.*, 176 S.W.3d 746, 753 (Tex. 2005) (*W. Orange Cove I*) (citing *Edgewood Indep. Sch. Dist. v. Meno*, 917 S.W.2d 717, 736-37 (Tex. 1995) (*Edgewood IV*)).

These three elements are descriptive, not severable independent claims. They are intertwined and together determine whether the Texas system of free public schools meets the constitutional requirements of Article VII, Section 1. "Adequacy," which is not an explicit constitutional term, is a way of describing the ability of the system to accomplish the desired results of a "general diffusion of knowledge." "Efficiency," which is an explicit constitutional term, describes whether the system is "effective or productive of results" while making "use of resources so as to produce results with little waste." *Edgewood I*, 777 S.W.2d at 395. Thus, the definition of "efficiency" is directly linked to the "general diffusion of knowledge" element (i.e., adequacy), in that "efficiency," properly defined, is "accomplishing a general diffusion of knowledge (productive of results) with little waste."

The System Plaintiffs' claim in their proposed Finding 10 that the "Intervenors assert a 'qualitative efficiency' claim that . . . is distinct from the adequacy claim." That is a false dichotomy. The Efficiency Intervenors' primary claim is that the system is not "productive of results, i.e., not accomplishing a general diffusion of knowledge, with little waste." That is inadequacy. Further, the Efficiency Intervenors challenged the design and structure of the Texas School District System, including challenging allocation of education resources. That is unsuitability. In short, the Efficiency Intervenors challenged that, as designed, the Texas School District System deprives Texas school children of an adequate, suitable, and efficient system of public free schools—the terms, while descriptive, are not independently distinct.

The concept of "adequacy" is not a separable, but an integral part of any constitutional challenge to the Texas School District System, and it has been a part of the

Efficiency Intervenors' constitutional challenge since they filed their case. Paragraph 24 of the Efficiency Intervenors' Third Amended Plea in Intervention states:

For the reasons stated above, the Efficiency Intervenors request that the Court render judgment declaring that the current system of public free schools violates article VII, section 1 of the Texas Constitution in that it is *not efficient in providing for the general diffusion of knowledge* in order to preserve the liberties and rights of the people. The evidence will show that the system fails the qualitative efficiency test. (emphasis added).

It is important to note that in the first sentence the constitutional concept of "efficiency" is raised—including both components qualitative *and* quantitative. The last sentence refers separately and specifically to "qualitative efficiency," a component of the Article VII, Section 1 constitutional test—not a separate cause of action, as has been suggested.

II. THE EFFICIENCY INTERVENORS PROVED THE SYSTEM IS NOT PRODUCTIVE OF RESULTS

The Efficiency Intervenors set out to prove that the system is not producing results, i.e., that it is not accomplishing a general diffusion of knowledge. This is the exact same thing the System Plaintiffs set out to prove. And the Efficiency Intervenors were instrumental in proving this constitutional violation at trial.

Many of the Findings proposed by the System Plaintiffs were also proven at trial by the Efficiency Intervenors. For instance, the System Plaintiffs seek Findings that:

- Increasing segments of the Texas student population are experiencing "significant performance gaps," i.e., a general diffusion of knowledge is not being accomplished such that "*all Texas children have access to a quality education* that enables them to achieve their potential and fully participate now and in the future in the social, economic, and educational opportunities of our state and nation." *See* the System's proposed Findings 11-16, 18-22, and 25 and Conclusion 10; *see also* TEX. EDUC. CODE § 4.001(a) (emphasis added).
- The Texas School District System is not meeting the current standards for college and career readiness. Because this is the fundamental requirement of

the system—to get students prepared for the "real world," whether that takes the form of college or career—again, the System is not productive of results/accomplishing a general diffusion of knowledge. *See* the System's proposed Findings 122-130, 132, 133, 135-140, 142, 144-149, 153, 158, 160-162, 164, 172, 174, 180, 181, 183-185, 188-190, 199-202, 204, 206-210, 212, 219, 233, 234, and 238.

- Particular districts within the System were not producing results/accomplishing a general diffusion of knowledge. *See* the System's proposed Findings 536-37, 545-46, 559-60, 561, 570, 571, 581, 582, 595, 604-05, 617-18, 627-28, 639-40, 658, 672-73, 689, 704, 717, 735, 745, 747, 758-59, 770, 772, 782, 783, 797-98, 805-07, 809, 816-17, 829-30, 839, 841, 854, 856, 870, 872-73, 881-82, 889, 892, 903-09, 919-23, 933-33, 951-55, and 965-69.

These findings are remarkably similar to the Efficiency Intervenors' proposed Findings 41 to

75. The Efficiency Intervenors also seek Findings, for example, that:

- The Texas School District System deprives Texas school children of an adequate, suitable, and efficient system of public free schools because its design assures low-income Texas students receive the worst teachers and education in general. *See* Efficiency Intervenors' proposed Finding 71.
- "The Texas School District System is not adequate" for numerous reasons, including because the system is not producing college ready students and numerous superintendents conceded their districts were not producing results/accomplishing a general diffusion of knowledge. *See* Efficiency Intervenors' proposed Finding 41.

The Efficiency Intervenors' proposed Findings cite to extensive evidence presented by the Efficiency Intervenors and solicited by their counsel on cross-examination. To find that the System Plaintiffs have prevailed on their claim that the public school system is not adequately accomplishing a general diffusion of knowledge, while finding that the Efficiency Intervenors have not prevailed on their same claim that the public school system is not adequately accomplishing a general diffusion of knowledge, would not only be illogical but is belied by the trial evidence.

Indeed, unless the Court's judgment that the public school system is unconstitutional under Article VII, Section 1 is based on a finding of a systemic failure to accomplish a general diffusion of knowledge—a claim also alleged and proved by the Efficiency Intervenors—then the Court cannot render judgment in favor of the property wealthy school districts. The System Plaintiffs place much emphasis on the fact that the Efficiency Intervenors do not prevail on "financial efficiency" (i.e., that school districts are not given substantially equal access to funding up to the level that achieves a general diffusion of knowledge). But neither can the property wealthy districts prevail on that claim.

The Efficiency Intervenors are not asking the Court to change its rulings. The Efficiency Intervenors are requesting that the Court apply its rulings consistently across concomitant claims. In doing so the Court will conclude the Efficiency Intervenors are a "prevailing party" on the Article VII, Section 1 claim.

III.
THE TEXAS SCHOOL DISTRICT SYSTEM PLAINTIFFS
MISCHARACTERIZE THE EFFICIENCY INTERVENORS' CASE

The Efficiency Intervenors' case is grossly mischaracterized in the "Executive Summary," subsection F, and Finding 10 of the System Plaintiffs' proposed Findings and Conclusions. The System Plaintiffs' seem bent on re-defining the Efficiency Intervenors' case so that the System can shoehorn the above inconsistencies into the ultimate Findings of this Court. The Efficiency Intervenors' case is made clear not only in their Third Amended Plea in Intervention, but also in their proposed Findings filed with this Court.

Moreover, the System Plaintiffs gravitate toward the strange argument that the Efficiency Intervenors' case calls for the Legislature to make "policy changes," yet the System Plaintiffs' case does not call for legislative policy changes. *The issue of funding is no*

different than any other policy issue in the education system. The Efficiency Intervenors request that the Court ignore the inaccurate and inconsistent "findings" that mischaracterize the Efficiency Intervenors' case and rely instead on the Efficiency Intervenors' own pleadings, the evidence and arguments presented at trial, and the Efficiency Intervenors' proposed Findings of Fact stating their ultimate position in this case.

IV. OBJECTIONS

The Efficiency Intervenors object to the System Plaintiffs' proposed Findings 222-230, 465, 470-483, 1048-1074 and Conclusions 58-61 and 88-89, in that these Findings and Conclusions are:

- contrary to the evidence put on at trial, as more expressly explained in the proposed Findings submitted by the Efficiency Intervenors;
- contrary to the Court's rulings announced in court on February 4, 2013 and subsequently clarified on February 13, 2013; and
- contrary to the Court's email on March 6, 2013 denying all pleas to the jurisdiction (attached as Exhibit "A").

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that, on March 25, 2013 a true and correct copy of the above has been served on the following:

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Subject: GN-11-003130; TTSFC, et al v. Williams - Pleas to the Jurisdiction

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Dear Counsel,

I have reviewed the pleas to the jurisdiction filed by Defendants and Plaintiffs. For the same reasons stated by the Court in its Order signed September 19, 2012, the Court DENIES all pleas to the jurisdiction and finds that all claims will be decided on the merits. Plaintiffs and Intervenors have sufficiently pleaded and proven facts which support the jurisdiction of the Court.

The Court will rule on the pleas to the jurisdiction by separate order that will be signed at the same time as the final judgment and findings of fact and conclusions of law.

Sincerely,
John K. Dietz
250th District Court Judge