

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

THE TEXAS TAXAPAYER AND STUDENT  
FAIRNESS COALITION, *ET AL.*,

IN THE DISTRICT COURT

*Consolidated Case:*

EDGEWOOD INDEPENDENT SCHOOL  
DISTRICT, MCALLEN INDEPENDENT  
SCHOOL DISTRICT,  
SAN BENITO CONSOLIDATED  
INDEPENDENT SCHOOL DISTRICT,  
LA FERIA INDEPENDENT SCHOOL DISTRICT,  
HARLINGEN CONSOLIDATED  
INDEPENDENT SCHOOL DISTRICT,  
YOLANDA CANALES, INDIVIDUALLY AND  
AS NEXT FRIEND FOR HER MINOR  
CHILD, EK. CANALES,  
ARTURO ROBLES, INDIVIDUALLY  
AND AS NEXT FRIEND FOR HIS MINOR  
CHILD, A. ROBLES, ARACELI VASQUEZ,  
INDIVIDUALLY AND AS NEXT FRIEND  
FOR HER MINOR CHILDREN,  
J.L. AND A.L. AND A.D. VASQUEZ,  
JESSICA ROMERO, INDIVIDUALLY AND AS  
NEXT FRIEND FOR HER MINOR CHILDREN,  
B. AND G. ROMERO

Plaintiffs,

v.

MICHAEL WILLIAMS, in his Official Capacity  
as the COMMISSIONER OF EDUCATION,  
THE STATE OF TEXAS BOARD OF  
EDUCATION, AND SUSAN COMBS,  
in her Official Capacity as the TEXAS  
COMPTROLLER OF PUBLIC  
ACCOUNTS

Defendants,

TRAVIS COUNTY, TEXAS

200<sup>th</sup> JUDICIAL DISTRICT

**PLAINTIFFS' THIRD AMENDED PETITION**

COME NOW, Plaintiffs Edgewood Independent School District, McAllen Independent School District, San Benito Consolidated Independent School District, Harlingen Consolidated

Independent School District, La Feria Independent School District,<sup>1</sup> Yolanda Canales, Arturo Robles, Araceli Vasquez, and Jessica Romero, individually and on behalf of their minor children, in the above-styled action and file this Third Amended Petition against Defendants Michael Williams in his official capacity as Commissioner of Education, the State of Texas Board of Education and Susan Combs in her official capacity as the Texas Comptroller of Public Accounts, challenging the constitutionality of the Texas public school finance system. Since the passage of House Bill 1 in 2006, the Texas Legislature has retreated from its obligation to provide an efficient public school finance system. At the same time, Defendants have continued to ratchet up accountability and curriculum standards for individual students and school districts.

Following a trial on the merits in this case, which began on October 22, 2012, the Court ruled in favor of the Plaintiffs on February 4, 2013, holding the current school finance system unconstitutional under article VII, Section 1 and article VIII, Section 1-e of the Texas Constitution. More specifically for the Edgewood Plaintiffs, the Court held the system financially inefficient, inadequate for the provision of a general diffusion of knowledge for low income and English Language Learner (“ELL”) students, unsuitable, and unconstitutional by failing to provide the low property wealth Plaintiff districts meaningful discretion in setting their local tax rates.

The Texas Legislature reacted, in part, to the lawsuit by taking action in the 83<sup>rd</sup> Session. The legislature’s efforts to reduce high-stakes testing and alter graduation requirements in the coming years do not materially change the outcome of this case. And despite the restoration of some education funding, the arbitrary system remains financially inefficient for low-wealth school districts, forcing Plaintiff districts to tax higher but yield less revenue compared to higher-wealth school districts. In addition, Plaintiffs complain of the arbitrary and inadequate funding

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<sup>1</sup> Herein, collectively referred to as “the Plaintiff districts.”

for low income and ELL students, as well as the overall insufficient funding for lower-wealth school districts which has stripped Plaintiff school districts from exercising meaningful local control, forcing them to make unnecessary cuts to their educational programs and tax at or near the \$1.17 cap simply to satisfy State mandates. The legislation passed in 2013 did not alter the unconstitutionality of the system. In support, Plaintiffs would respectfully show the Court the following:

**I. DISCOVERY CONTROL PLAN**

1. Discovery in this case is intended to be conducted under Level 3 pursuant to Texas Rules of Civil Procedure 190 and 190.4.

**II. PARTIES**

2. Plaintiff Edgewood Independent School District is a public independent school district located in Bexar County, Texas.
3. Plaintiff McAllen Independent School District is a public independent school district located in Hidalgo County, Texas.
4. Plaintiff San Benito Consolidated Independent School District is a public independent school district located in Cameron County, Texas.
5. Plaintiff La Feria Independent School District is a public independent school district located in Cameron County, Texas.
6. Plaintiff Harlingen Consolidated Independent School District is a public independent school district located in Cameron County, Texas.
7. Plaintiff Yolanda Canales is an individual and parent and natural guardian of minor plaintiff child, Ek. Canales, and pays local property taxes in the Pasadena Independent School District.

8. Plaintiff Arturo Robles is an individual and parent and natural guardian of minor plaintiff child, A. Robles, and pays local property taxes in the Pasadena Independent School District.
9. The minor plaintiff children of Ms. Canales and Mr. Robles, presently attend, or will soon attend, public schools in the Pasadena Independent School District.
10. Plaintiff Araceli Vasquez is an individual and parent and natural guardian of minor plaintiff children, J.L. Vasquez, Al. Vasquez, and Ad. Vasquez, and pays local property taxes in the Amarillo Independent School District.
11. Plaintiff Jessica Romero is an individual and parent and natural guardian of minor plaintiff children, B. and G. Romero, and pays local property taxes in the Amarillo Independent School District.
12. The minor plaintiff children of Ms. Vasquez and Ms. Romero presently attend, or will soon attend, public schools in the Amarillo Independent School District.
13. Defendant Michael Williams is the Commissioner of Education. He is the chief executive of the Texas Education Agency, which oversees the state's 1,200 school districts and charter schools, and can be served with process at his place of business located at 1701 North Congress Avenue, Austin, Texas 78701.
14. Defendant State of Texas Board of Education is an elected 15 member board, and together with the Commissioner of Education, oversees the public education system of Texas in accordance with the Texas Education Code, and can be served with process by serving its Chair, Barbara Cargill, at her place of business located at 1701 North Congress Avenue, Austin, Texas 78701.

15. Defendant Susan Combs is the Texas Comptroller of Public Accounts. She is chief steward of the state's finances, acting as tax collector, chief accountant, chief revenue estimator and chief treasurer for all of state government, and can be served with process at her place of business located at 111 East 17<sup>th</sup> Street, Austin, Texas 78774.
16. The Honorable Greg Abbott, Attorney General of the State of Texas, has been served with notice in accordance with Section 37.006(b) of the Texas Civil Practice and Remedies Code and can be served with appropriate notice at the Texas Supreme Court Building, 209 West 14th Street, Austin, Texas 78701.

### **III. JURISDICTION & VENUE**

17. Jurisdiction is proper in this Court because the petition questions the legal relations affected by “statute, municipal ordinance . . . or franchise” and the validity of those statutes, municipal ordinances, or franchises. TEX. CIV. PRAC. & REM. CODE § 37.002(b).
18. Venue is proper in Travis County pursuant to §37.006(b) of the TEX. CIV. PRAC. & REM. CODE because the relevant governmental entities must be made parties when a claim challenges the validity of ordinances or statutes.

### **IV. BACKGROUND**

19. Article VII, section 1 of the Texas Constitution (“the Education Clause”) mandates 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 of the State to establish and make suitable provision for the support and maintenance of an efficient system of public free schools.”
20. The Education Clause is a judicially enforceable constitutional mandate to the Legislature to provide an adequate, suitable and equitable system of free public education.

21. Pursuant to its authority to enforce the Education Clause, the Supreme Court of Texas ordered the defendants in *Edgewood I* and its progeny<sup>2</sup> to remedy the glaring inequities in the school finance system resulting from 1) the system's reliance on local property tax revenue and 2) the wide disparities between districts in property wealth and the unequal access to the revenue derived therefrom. The Court declared that unequal access to similar revenue per pupil at similar levels of local tax effort rendered the system inefficient under the Education Clause.
22. Following *Edgewood III*, in 1993 the Legislature enacted Senate Bill 7 ("SB 7"). With SB 7, the Legislature continued to anchor the Texas school finance system in local property tax revenue but introduced a revenue-sharing feature, known as "recapture," in which high-wealth school districts were required to return a small portion of their local property taxes in order to help equalize the system.
23. Despite a \$600 funding gap per student between low-wealth and high-wealth school districts taxing at the maximum rates under the then-current school funding formulas, the Supreme Court of Texas ignored that analysis in *Edgewood IV*. See *Edgewood IV*, 917 S.W.2d at 726. The Court, instead, analyzed the financial efficiency of the system between groups of 15% of students by weighted average daily attendance, or "WADA," in the lowest wealth and highest wealth districts, noted a 9-cent gap in attempting to generate an amount needed to provide a general diffusion of knowledge, and found the system to be "minimally acceptable," primarily when viewed against the historical inequity and inefficiency. *Id.*

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<sup>2</sup> *Edgewood Indep. Sch. Dist. v. Kirby*, 804 S.W.2d 491 (Tex. 1991) ("*Edgewood II*"); *Carrollton-Farmers Branch Indep. Sch. Dist. v. Edgewood Indep. Sch. Dist.*, 826 S.W.2d 489 (Tex. 1992) ("*Edgewood III*"); *Edgewood Indep. Sch. Dist. v. Meno*, 917 S.W.2d 717 (Tex. 1995) ("*Edgewood IV*").

24. Following *Edgewood IV*, the Supreme Court of Texas heard the *West Orange-Cove*<sup>3</sup> case, and held that State mandates forced school districts to tax at or near the cap of \$1.50 on property taxes in order to provide only a minimally adequate education, stripping school districts of meaningful local control.
25. Consequently, the *West Orange-Cove II* Court held that the tax cap, which became a floor and a ceiling, operated as a State *ad valorem* tax in violation of Article VIII, Section 1-e of the Texas Constitution.<sup>4</sup> *See id.* at 794. The Court further noted, however, that simply lifting the cap would not be an option so long as the State continued to rely substantially on local property taxes because of the inequities that would result from such action. *See id.* at 798.
26. While *West Orange-Cove II* required the school finance formulas be changed so as not to constitute a State *ad valorem* tax, it reaffirmed many of the essential constitutional mandates articulated in the *Edgewood* cases. The Court held that the public school system must be “efficient,” requiring that “children who live in poor districts and children who live in rich districts must be afforded a substantially equal opportunity to have access to educational funds;” it must be “adequate” so that a public education achieves a “general diffusion of knowledge,” and it must be “suitable” so that the system is structured, operated, and funded to accomplish its purpose for all Texas children. *Id.* at 752-53 (quoting *Edgewood I*, 777 S.W.2d at 395, 397).
27. Despite finding that the evidence presented failed to support an equity claim, the *West Orange-Cove II* Court maintained that Defendants must afford all public school districts

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<sup>3</sup> *West Orange-Cove Consol. Indep. Sch. Dist. v. Alanis*, 107 S.W.3d 558 (Tex. 2003) (“*West Orange-Cove I*”); *Neeley v. West Orange-Cove Consol. Indep. Sch. Dist.*, 176 S.W.3d 746 (Tex. 2005) (“*West Orange-Cove II*”).

<sup>4</sup> This provision states: ABOLITION OF AD VALOREM PROPERTY TAXES. No State ad valorem taxes shall be levied upon any property within this State.

with “substantially equal access to similar revenues per pupil at similar tax effort.” *Id.* at 790 (citing *West Orange-Cove I*, 107 S.W.3d at 566 (quoting *Edgewood I*, 777 S.W.2d at 397)).

## V. FACTS

### Current School Finance System

28. Texas school finance law states:

It is the policy of this state that the provision of public education is a state responsibility and that a thorough and efficient system be provided and substantially financed through state revenue sources so that each student enrolled in the public school system shall have access to programs and services that are appropriate to the student's educational needs and that are substantially equal to those available to any similar student, notwithstanding varying local economic factors.

*See* TEX. EDUC. CODE ANN. § 42.001 (Vernon Supp. 2002).

29. State law further provides:

(b) The public school finance system of this state shall adhere to a standard of neutrality that provides for substantially equal access to similar revenue per student at similar tax effort, considering all state and local tax revenues of districts after acknowledging all legitimate student and district cost differences.

*Id.*

30. Local property tax revenue currently provides approximately 50% of the State/local revenue in the system. Insofar as disparate property values remain a source of revenue in the system, constitutional efficiency requires equalization measures to ensure substantially equal access to similar tax revenue for similar tax effort across district lines.
31. The equalized measures under Chapter 41 of the Texas Education Code include: 1) equalized access to revenue for lower wealth school districts in the form of guaranteed allotments or yields for tax effort; 2) an equalized wealth level for property-wealthy school districts to bring taxable property and property-rich districts efficiently into the

system as a whole; 3) recapture and distribution of revenue from property wealth above the equalized level; and 4) a cap on local tax rates meant to ensure that low property wealth and high property wealth school districts remain within the equalized structure as a whole.

32. Following the Court's remand in *West Orange-Cove II*, the Governor called a special session in 2006. The Texas Legislature sought to remedy the legal deficiency in the school finance system with the passage of House Bill 1 ("HB 1"), but also sought to provide property tax relief. Consequently, HB 1 essentially compressed the property tax rates for maintenance and operations ("M&O") from \$1.50 to \$1.33 for the 2006-07 school year. The compressed rates for those taxing at \$1.50 in 2005-06 eventually went down to \$1.00 for the 2009-10 school year and beyond.
33. For school districts that were not taxing at the \$1.50 cap in 2005, their tax rates were similarly compressed down by approximately one-third.
34. Following the enactment of HB 1, the Legislature authorized school districts to tax up to \$1.17 (with a few exceptions in which a select group of districts are allowed to tax above \$1.18), adding seven cents intended for local enrichment for those districts which had been compressed down to \$1.00.
35. The first four pennies above the 2006 compressed tax rate for those districts compressed down to \$1.00 can be raised without a local election by the voters and are not subject to recapture. Low wealth districts, like the Plaintiff districts and the districts in which individual Plaintiffs reside, are guaranteed a yield at the Austin rate for each of these pennies, which was approximately \$59.97 per student in weighted average daily attendance ("WADA") in 2012-2013.

36. The next two pennies are also not subject to recapture and are equalized up to the Austin yield for lower wealth districts, but those pennies cannot be raised without a local voter election, known as a Taxpayer Ratification Election. The election requirement does not apply to school districts unless those pennies are above \$1.04. The six cents of tax effort (Tier II-A) are commonly referred to as "golden" pennies.
37. For those districts compressed down to \$1.00, the remaining eleven cents in Guaranteed Yield, referred to as Tier II-B, are guaranteed at a rate of only \$31.95 per WADA for each of those pennies, with exceptions for some high wealth districts that are able to yield in excess of \$31.95. This same yield applies to all pennies of tax effort above Tier II-A. Any district whose property wealth yields revenue in excess of \$31.95 is subject to having most of that excess revenue recaptured.
38. Since 2006, the State has not fully funded the formulas existing in statute for many districts. Instead, many districts are funded at 2005-06 or 2006-07 levels based on an arbitrary, alternative funding mechanism known as "Target Revenue."
39. Target Revenue is a specific amount of funding, based on a certain amount of money per WADA, that the State guarantees a school district in exchange for the mandatory reduction of the district's M&O tax rate. The target revenue amount is based on the state and local M&O revenue a district would have earned had it not lowered its tax rate, and is different for each school district.
40. During a special session held in June 2011, the Texas Legislature cut approximately \$5.4 billion dollars from the education budget and passed more severe, disproportionate cuts to low-wealth school districts during the first biennium. Included in these cuts was approximately \$1.4 billion in funding for programs that primarily focused on the needs of

at-risk students, such as the Student Success Initiative (which helps fund before/after school tutoring and summer school) and full-day prekindergarten. These special program cuts disproportionately affected low-wealth districts like the Plaintiff districts, which tend to serve larger percentages of at-risk students compared to high-wealth districts. These arbitrary, substantial cuts occurred despite Texas ranking as one of the wealthiest states but only 47<sup>th</sup> in revenue raised per capita and 43<sup>rd</sup> in funding per student.

41. During the most recent 2013 legislative session, the special program funding was largely not restored. Altogether, only an estimated \$3.4 billion of the total \$5.4 billion in cuts was restored through Senate Bill 1 and House Bill 1025.
42. The budget cuts had, and continue to have, a dramatic negative impact on the Plaintiff districts, which are not reasonably able to provide all of their students access to educational opportunities to acquire a general diffusion of knowledge. The cuts further limit their ability to pay for reduced class sizes, high quality prekindergarten programs, high quality teachers and effective professional development, necessary research-based intervention programs, instructional materials, technology, and other resources crucial to educate adequately their low income and ELL student populations.
43. As a result of the budget cuts and the current structure of the school finance system, and the continuing reliance on disparate property values, the equity gaps have increased to their highest levels since the early 1990s.
44. For example, in the Rio Grande Valley, Plaintiff McAllen I.S.D. taxes at \$1.165 for maintenance and operations (M&O) but after the budget cuts yielded only \$5,816<sup>5</sup> in the 2011-2012 school year; Plaintiff San Benito I.S.D. taxes at the maximum of \$1.17 but

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<sup>5</sup> The revenues per WADA reported in this petition reflect those amounts identified by the district court as the most reliable and accurate data compiled by the state during trial.

yielded only \$5,835 per WADA; La Feria I.S.D. also taxes at the maximum of \$1.17 but yielded only \$5,568 per WADA. In contrast, property-wealthy Point Isabel I.S.D., also located in the Valley, taxes at \$.98 but yielded \$6,289 per WADA and Kenedy Countywide C.I.S.D. taxes at \$1.06 but yielded \$11,216 per WADA.

45. In Bexar County, Edgewood I.S.D. taxes at \$1.17 but yielded only \$5,808 per WADA in the 2011-12 school year; meanwhile, property-wealth Alamo Heights I.S.D., also located in Bexar County, taxes at \$1.04 but yielded \$6,666 per WADA.
46. In the Harris County area, Pasadena I.S.D. taxes individual Plaintiffs at \$1.07 but yielded only \$5,359 per WADA in the 2011-12 school year; Cypress Fairbanks I.S.D. taxes at \$1.04 but yielded only \$5,157 per WADA and Galena Park I.S.D. taxes at \$1.18 but yielded only \$5,715 per WADA. In contrast, neighboring Tomball I.S.D. taxes at \$1.01 but yielded \$6,512 per WADA and nearby Sheldon I.S.D. taxes at \$1.09 and yields \$7,040 per WADA.
47. In the Texas Panhandle region, Amarillo I.S.D. taxes individual Plaintiffs at \$1.08 but yielded only \$5,516 per WADA in the 2011-12 school year and Canyon I.S.D. taxes at \$1.04 but yielded only \$5,453. In contrast, neighboring property-wealthy Sudan I.S.D. taxes at \$.96 but yielded \$6,255 per WADA, Gruver I.S.D. taxes at \$1.04 and yielded \$7,722 per WADA, and Pringle Morse I.S.D. taxes at \$1.04 and yields \$7,940 per WADA.
48. Similar revenue and tax gaps exist across Texas, from West Texas to Central and East Texas.

49. School districts, including Plaintiff school districts and districts in which individual Plaintiffs reside, have been forced to make changes to their educational programs, including increases in class sizes and reductions in services and staff.
50. The gap in tax rates between the lowest wealth and highest wealth school districts needed to generate revenue to provide a general diffusion of knowledge well exceeds the amounts the Supreme Court of Texas previously held allowable (9-cents in a \$1.50 system). In addition, given the rising State standards and expectations applicable to all students and school districts, coupled with the extensive budget cuts, even a \$600 advantage for the wealthier school districts taxing at similar rates could be deemed in violation of the mandate to provide “substantially equal access to similar revenue at similar tax effort.”
51. The Texas school finance system under Chapter 42 of the Texas Education Code is no longer financially efficient and the low wealth school districts, including Plaintiff districts and the districts in which individual Plaintiffs reside, should be “leveled up.” This remains true despite the legislative changes enacted in 2013.
52. SB 1 and HB 1025 are expected to add up to a few hundred dollars per ADA in the 2013-14 school year in the Plaintiff districts but barely restores some of the Plaintiff districts to 2011 levels. The legislation also raised the reduction factor applied to target revenue from 92.35% to 92.63%, which essentially allowed the largely property-wealthy districts that benefit from target revenue to maintain increase their revenue and maintain a significant tax advantage over low wealth districts. The legislation did not alter the tax credits retained by property-wealthy Chapter 41 districts subject to recapture nor did it alter the ability of Chapter 41 districts to generate and use unrecaptured funds acquired

through Interest and Sinking (“I&S”) tax rates. Together, these factors demonstrate that system remains financially inefficient between property-wealthy and low wealth districts in the State of Texas.

53. The additional funds still fall far short of funding the costs of providing opportunities to acquire a general diffusion of knowledge for low income and ELL students and do not allow the Plaintiff districts to exercise meaningful discretion over their tax rates. This is especially true for low-wealth districts like the Plaintiff districts and the districts in which individual Plaintiffs reside, which generate substantially less revenue at similar tax rates compared to high-wealth districts.

**Student and School Accountability**

54. At the same time that the school finance budget has been cut and the arbitrary “Target Revenue” system has strangled funding for many low wealth school districts, additional State mandates and the standards and expectations for students, including Plaintiff children, and school districts, like the Plaintiff districts, have increased.
55. The Texas Education Agency (“TEA”) is tasked with assessing public school students on what they have learned and determining district and school accountability ratings. Defendant State Board of Education has devised a system that prescribes an education curriculum and, by means of accreditation standards, is intended to hold schools and districts accountable for teaching it. All schools and students, with few exceptions, are held to the same accountability and accreditation standards.
56. HB 5 changed graduation requirements and options for endorsements, state standardized testing requirements, and the state accountability system, but none of these changes will save the Plaintiff districts any funds.

57. The TEA holds school districts accountable, in part, by using standardized tests. The Texas Assessment of Knowledge and Skills (“TAKS”) assessments are being phased out and supplanted by more rigorous exams known as State of Texas Assessments of Academic Readiness (“STAAR”). Like the TAKS tests, the new STAAR exams are designed to measure the extent to which a student has learned and is able to apply the defined knowledge and skills at each tested grade level (or in the case of end-of-course exams, at each subject tested). Like TAKS scores, a school’s STAAR test scores are used in rating both the individual school and the entire district under the State’s accountability ratings.
58. Additionally, in 2009 the Legislature enacted House Bill 3 (HB3) and made sweeping amendments to public school curriculum and graduation requirements. Notably, the legislation amended Section 28.025 of the Texas Education Code by modifying the graduation requirements for the minimum, recommended, and distinguished achievement graduation programs.
59. HB3 also integrated college readiness performance standards into the K-12 accountability system and these have not been altered under any new legislation. Even under House Bill 5 (“HB 5”) passed during the 83<sup>rd</sup> Session, school districts are expected to prepare their students to enroll and succeed in entry-level English language and mathematics courses in baccalaureate or associate degree programs without remediation.
60. In the 2011-12 school year, Defendants began administering new STAAR exams for grades 3-8 and began incorporating more rigorous STAAR end-of-course exams (EOCs), in four different subjects for grades 9-12. STAAR covers the same subjects in elementary and middle school as the previous testing program.

61. Texas high schools were previously required to administer fifteen EOCs as part of the STAAR program, instead of the four high school exit-level tests administered under TAKS. The only provision of HB 5 that goes into effect during the 2013-14 school year is a reduction in the number of State-mandated EOCs required for graduation from fifteen to five (the formerly separate reading and writing exams will be combined into English Language Arts I and English Language Arts II).
62. The TEA set phase-in and final satisfactory score requirements that applied to students in all districts. The State's phase-in standards do not reflect a level equal to a general diffusion of knowledge, but instead reflect an arbitrary decision to lower the bar and ensure higher passage rates.
63. The STAAR results for 2012 and 2013 for the Plaintiff districts and the districts in which individual Plaintiffs reside, as well as the results for low income and ELL students, further reflect a constitutionally inadequate and unsuitable school finance system.
64. The 2013 STAAR English I Writing EOC showed only 35% of economically disadvantaged students achieving the Phase-In 1 Standard, Level II Satisfactory score compared to 65% of non-economically disadvantaged students; and only 18% of economically disadvantaged students achieving the Final Recommended Level II Standard compared to 46% of non-economically disadvantaged students. For the same exam, 51% of non-ELL students achieved the Phase-In 1 Standard compared to only 9% of ELL<sup>6</sup> students; and 32% of non-ELL students achieved the Final Recommended Level II Standard compared to only 6% of ELL students.

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<sup>6</sup> "ELL" connotes the same meaning as limited English proficient, or LEP, defined under the Texas Education Code as a student whose primary language is other than English and whose English language skills are such that the student has difficulty performing ordinary classwork in English. TEX. EDUC. CODE § 29.052.

65. The 2013 STAAR English II Writing EOC showed similar dismal results, which only increased required remediation, with only 39% of economically disadvantaged students achieving the Phase-In 1 Standard, Level II Satisfactory score compared to 67% of non-economically disadvantaged students; and only 18% of economically disadvantaged students achieving the Final Recommended Level II Standard compared to 42% of non-economically disadvantaged students. For the same exam, 55% of non-ELL students achieved the Phase-In 1 Standard compared to only 10% of ELL students; and 31% of non-ELL students achieved the Final Recommended Level II Standard compared to only 2% of ELL students.
66. The 2013 STAAR Algebra I EOC showed only 71% of economically disadvantaged students achieving the Phase-In 1 Standard, Level II Satisfactory score compared to 87% of non-economically disadvantaged students; and only 25% of economically disadvantaged students achieving the Final Recommended Level II Standard compared to 50% of non-economically disadvantaged students. For the same exam, 80% of non-ELL students achieved the Phase-In 1 Standard compared to only 51% of ELL students; and 38% of non-ELL students achieved the Final Recommended Level II Standard compared to 10% of ELL students.
67. HB 5 also has a number of provisions that will not go into effect until after the 2014-15 school year. It creates a foundation plan of 22 credits for graduation, requires students to select one of five endorsement areas, and requires school districts to develop rigorous courses that are intended to address workforce needs.

68. HB 5 also eliminates the 15% course grade requirement for EOCs (which was never implemented statewide), and allows Advanced Placement (“AP”), SAT, and ACT exams to satisfy testing requirements.
69. Regarding the accountability system, HB 5 requires multiple measures of student academic performance, not just standardized test scores. It establishes a rating system to evaluate schools on academic performance, financial performance, and community and student engagement.
70. HB 5 did not solve the many failings of the Texas school finance system. It does not lower school district standards and expectations or alter the Court’s definition of a general diffusion of knowledge. It does not change the State’s definition of college readiness as entering college without the need for remediation.
71. Although HB 5 eliminates some EOCs required for graduation, four of the five EOCs typically taken by 9th grade students in 2011-12 and 2012-13 are still required for graduation (English I Reading and Writing-combined now, Algebra I, and Biology).
72. As the evidence already has shown, after three administrations, over 122,000 students who took EOCs in Spring 2012 failed one or more EOCs, including 47% of the economically disadvantaged students.
73. For the Plaintiff districts and the districts in which individual Plaintiffs attend, the increased rigor placed significant additional demands on professional and curriculum development for teachers, support staff and administrators, as well as an expansion of remedial and accelerated programs and other services for students not meeting the minimum college-readiness standards. Even after the passage of HB 5, the number of

students who are off-track for graduation and the amount of remediation that districts must provide and pay for are still formidably high.

74. Factors showing that HB 5 and other legislation will not impact the Court's prior decision include: performance on the ninth grade end-of-course exams remained relatively flat in the Plaintiff districts for 2013; English Language Arts II EOC was first administered during the 2012-13 school year as a subject requiring remediation for those not achieving the Phase-In 1, Level II Satisfactory score and remains a high-stakes exam under the current assessment system; U.S. History EOC will be first administered for the 2013-14 school year as a subject requiring remediation for those not achieving the Phase In 1, Level II Satisfactory score; and remediation is required for those students not achieving minimum scores on the STAAR reading and math exams for grades 5 and 8.
75. TEA sent the Plaintiff districts a letter regarding remediation in 2013, recommending that they offer summer remediation at a pupil-teacher ratio of 10:1 and the Plaintiff districts either incurred substantial costs meeting these demands or offered remediation in much higher pupil-teacher ratios.
76. The substantial uptick in required remediation resulting from the new STAAR tests is particularly acute in the low-wealth Plaintiff districts and the districts in which individual Plaintiffs attend, which on average enroll substantially higher percentages of high-need students such as ELL and low income students and receive substantially less state and local funding as a result of being low-property wealth school districts.
77. For example, in 2013, approximately 49% of Grade 9 students in San Benito C.I.S.D. *failed* to achieve the Phase-In 1, Level II Standard on the English I Reading EOC, including 51% of economically disadvantaged students and 82% of ELL students. In

McAllen I.S.D., approximately 57% of all students *failed* to achieve the Phase-In 1, Level II Standard on the English I Writing EOC, including 67% of economically disadvantaged students and 93% of ELL students.

78. HB 5 is also expected to increase costs for school districts, including the Plaintiff districts and the districts in which individual Plaintiffs attend, for required courses under the new endorsement tracks, which they do not presently offer such as rigorous courses for the new Business and Industry endorsement.

**Low Income and English Language Learner Students**

79. During the 2011-12 school year, the TEA reported 4,978,120 million students attending public schools in Texas. Of this number, 69.5% are non-white, including 50.8% Latino and 12.8% African American.
80. The number of low income, or economically disadvantaged, students and ELL students in Texas public schools has continued to increase over the years. Of the 4,978,120 million public school students enrolled in the 2011-12 school year, low income students constituted three out of every five (60.4%) Texas public school students and ELL students accounted for more than one out of every six (16.8%) Texas students.
81. Defendants recognize that school districts require additional resources to provide a quality education to low income and ELL students, including Plaintiff children, 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.” TEX. EDUC. CODE § 4.001(a). School districts must be able to reasonably provide all of their students, including all ELL and low income students, “with a meaningful opportunity to acquire

the essential knowledge and skills reflected in the curriculum. . .” *West Orange Cove II*, 176 S.W.3d at 787.

82. Consequently, Defendants provide a compensatory education allotment (also known as a “weight”) equal to the adjusted basic allotment multiplied by .2 for each student identified on the free-and-reduced priced lunch program under the National School Lunch Act, or according to regulation if no such students are served under the Act. *See* TEX. EDUC. CODE § 42.152.
83. The compensatory allotment is meant to provide funding for the additional costs incurred with educating educationally disadvantaged students, including Plaintiff children, such as supplemental programs and services designed to eliminate any disparity in performance on assessment instruments, program and student evaluation, instructional materials and equipment and other supplies required for quality instruction, supplemental staff expenses, salary for teachers of at-risk students, smaller class size, and individualized instruction. However, the allotment falls far short of its intended and necessary purpose.
84. For ELL students, Defendants provide a bilingual education allotment for each student in average daily attendance in a bilingual education or special language program under Subchapter B, Chapter 29, in an amount equal to the adjusted basic allotment multiplied by 0.1. *See* TEX. EDUC. CODE § 42.153.
85. The bilingual allotment is meant to provide funding for the additional costs incurred with educating ELL students, including program and student evaluation, instructional materials and equipment, staff development, supplemental staff expenses, salary supplements for teachers, other supplies required for quality instruction, and smaller class size. However, the allotment falls far short of its intended and necessary purpose.

86. Low income and ELL students, including Plaintiff children, are held to the same expectations as all other Texas students and can achieve on par with non-low income and non-ELL students if their school districts have sufficient funds for quality education programs.
87. The weights for compensatory education and bilingual/special language programs were arbitrarily set in 1984 and have not been adjusted since that time, even in light of the growing rigor in curriculum and testing.
88. In 2013, the Legislature did nothing to review or address the inadequacy of the formula weights meant to address the additional needs of low income and ELL students.
89. The funding for quality preschool programs, which would help adequately prepare ELL and low income students, including Plaintiff children, to achieve their fullest potential, is also arbitrary and inadequate.
90. The current school finance system under Chapter 42 of the Texas Education Code for low income and ELL students, including Plaintiff children, is arbitrarily structured and funded so that school districts are not reasonably able to afford all students, especially low income and ELL students, access to the educational opportunity necessary to accomplish a general diffusion of knowledge.
91. The funding for low income and ELL students, including Plaintiff children, under the Texas school finance system, even when coupled with the basic allotment and guaranteed yields, is arbitrary, inefficient and unsuitable.
92. In addition, the increasing mandates, coupled with the decrease in revenue, force lower wealth districts like the Plaintiff districts to tax at or near the \$1.17 cap on M&O taxes,

preventing them from exercising meaningful discretion over their local programs and taxes.

93. For example, Plaintiffs Edgewood I.S.D. and San Benito C.I.S.D. are forced to tax at the \$1.17 cap and have no means to raise additional revenue to finance their maintenance and operations, which they need to do. Plaintiff McAllen I.S.D. is taxing at just half a cent under the statutory maximum at \$1.165, and has no means to raise additional revenue to adequately finance its maintenance and operations.
94. Low wealth districts like Plaintiffs cannot lower their rates without compromising their ability to meet the educational needs of their students, nor do they have the ability to provide their students with a constitutionally adequate education while taxing at or near the cap.

### **Outputs**

95. The *West Orange-Cove II* Court held that the constitutional standard for an adequate education “depends entirely on ‘outputs’ – the results of the educational process measured in student achievement.” 176 S.W.3d at 788.
96. Outputs related to performance on the STAAR identified above, particularly for low income and ELL students and for the low-wealth Plaintiff districts and the districts in which individual Plaintiffs reside, reflect a system that is not created to afford a general diffusion of knowledge to all students.
97. Outputs related to college-readiness, the new standard in Texas, further reflect a system that is neither suitable nor adequate to provide a general diffusion of knowledge to all students, especially more challenging students such as low income and ELL students and for the low-wealth Plaintiff districts and the districts in which individual Plaintiffs reside.

98. Defendants identify a number of indicators purportedly representative of college-readiness in the Texas Education Agency's Academic Excellence Indicator System ("AEIS"). Without conceding that such criteria are indeed indicative of college-readiness, the results in the 2010-11 and 2011-12 AEIS State Performance Report reflect great challenges for Texas.
99. For example, on the SAT and ACT college entrance exams, only 26.9% of all students statewide in the Class of 2010 taking those tests satisfied the college-ready criteria, including less than 13% of Latino students and less than 9% of African American students. Data was not reported for low income and ELL students, although, on information and belief, performance of those groups would lag behind the statewide average.
100. The results for the Class of 2011 (the latest results reported by the State) are even worse. Only 25.7% of all students taking the SAT and ACT exams satisfied the college-ready criteria, including 12.1% of Latino students and 8.1% of African American students.
101. Results for the low-wealth Plaintiff districts and the districts in which individual Plaintiffs reside are even more dismal. For the Class of 2011, only 8.6% of students taking the SAT and ACT exams in La Feria I.S.D. satisfied the college-ready criteria; 3.3% in Edgewood I.S.D.; 7.7% in San Benito C.I.S.D.; 13.2% in Harlingen C.I.S.D.; and 17.2% in McAllen I.S.D.; 15.6% in Pasadena I.S.D.; and 25.5% in Amarillo I.S.D. (including only 10.4% for African American students and 10.1% for Latino students).
102. Under the State's measure of "College-Ready Graduates" in English Language Arts and Mathematics (Class of 2011), which considers performance on the TAKS exit-level tests, only 52% of all students across the state satisfied this criteria, including only 38% of low

income students, and 6% of ELL students. Aside from a 1% increase in ELL students, performance remained flat for these groups of students compared to the Class of 2010.

103. Results for the low-wealth Plaintiff districts and the districts in which individual Plaintiffs reside are equally dismal. For the Class of 2011, only 37% in La Feria I.S.D. met the TAKS college-readiness standard; 27% in Edgewood I.S.D.; 40% in San Benito C.I.S.D.; 44% in Harlingen C.I.S.D.; 54% in McAllen I.S.D.; 44% in Pasadena I.S.D.; and 46% in Amarillo I.S.D.
104. According to a Complete College America report published in September 2011, over one-half of all freshmen (51%) enrolled in two-year public colleges in Texas required remediation and over one out of every five freshmen (22.5%) enrolled in four-year public colleges in Texas required remediation.
105. In addition, a substantial number of Texas students continue to leave school. For the Class of 2011, Defendants reported in the State's AEIS report that nearly one out of every four ELL students (23.7%) dropped out of school and nearly half failed to graduate in four years (57.6%). For the same year, nearly one out of every twelve low income students dropped out of school (7.7%) and approximately one out of every six low income students failed to graduate in four years (83.7% graduated). This compared to 3.4% dropping out and 92% graduating for White students. Even for those students that do graduate, the State's data, as exemplified above, evidences students not prepared to enter college and not acquiring a general diffusion of knowledge.

## VI. CAUSES OF ACTION

### **Uniform Declaratory Judgment Act, Tex. Civ. Prac. & Rem. Code § 37.0001, *et seq.***

106. Plaintiffs repeat and re-allege all paragraphs above as if fully set forth herein.
107. Plaintiffs seek declaratory relief pursuant to the Texas Uniform Declaratory Judgments Act in order to settle and to receive relief from uncertainty and insecurity with respect to their rights, status, and other legal relations under Article VII § 1 and Article VIII, § 1-e of the Texas Constitution and under the applicable statutes of the Education Code.

#### **1. Article VII, Section 1- Quantitative/Financial Efficiency (Equity)**

108. The gap in funding and tax rates required to provide a general diffusion of knowledge between low wealth school districts, including Plaintiff districts and those districts in which individual Plaintiffs reside, and high wealth school districts, and produced by the current Texas school finance system, violates the efficiency provision of article VII § 1 of the Texas Constitution. More specifically, Plaintiffs refer the Court to paragraphs 19-23 and 25-105 and fully incorporate the same as if fully set forth herein.

#### **2. Article VII, Section 1- Adequacy and Suitability**

109. The arbitrary and inadequate funding for ELL and low income students, in conjunction current funding limitations, violates the efficiency and suitability provisions of article VII § 1 of the Texas Constitution. More specifically, Plaintiffs refer the Court to paragraphs 19, 20, 24-26, 28-30, 32-42, 49, 50, 53-105 and fully incorporate the same as if fully set forth herein.
110. The public school finance system is further arbitrary and unsuitable because low-wealth districts like La Feria I.S.D. and Harlingen I.S.D. do not have access to the funds

necessary to provide a general diffusion of knowledge at \$1.04 and cannot afford to pass a TRE to raise additional needed funds.

### **3. Article VIII, Section 1-e- Local Discretion**

111. The current funding capacity of the Texas school finance system, in conjunction with the inequitable access to revenue in the system, has forced lower wealth school districts, including Plaintiff districts and those districts in which individual Plaintiffs reside, to tax at or near the \$1.17 cap. Their current tax rates serve as a floor because low wealth districts cannot lower taxes further without compromising their ability to meet state standards and requirements and their attempt to provide a general diffusion of knowledge to all of their students.
112. Those Plaintiff districts that currently tax below the cap would not have the discretion to use the additional local tax dollars raised for local enrichment beyond the level required for a constitutionally adequate education, in violation of the prohibition on state ad valorem taxes.
113. These factors have caused low wealth districts like Plaintiffs to lose meaningful discretion in setting their tax rates, in violation of article VIII §1-e of the Texas Constitution. More specifically, Plaintiffs refer the Court to paragraphs 19, 20, 24-26, 28-30, 32-42, 49, 50, 53-105 and fully incorporate the same as if fully set forth herein.

### **4. Equalization Provisions**

114. Plaintiffs further seek a declaration that, insofar as Defendants continue to rely on disparate property values and accompanying taxes to fund public schools, equalization provisions such as recapture and a cap on maximum tax rates, remain essential for an efficient public school system under Article VII, § 1 of the Texas Constitution. More

specifically, Plaintiffs refer the Court to paragraphs 19-23 and 25-53 and fully incorporate the same as if fully set forth herein.

#### **VI. ATTORNEYS' FEES**

115. Plaintiffs were required to retain attorneys to prosecute this case and seek recovery of reasonable and necessary attorneys' fees and costs and expenses incurred in this case as provided by Section 37.009 of the Texas Civil Practice and Remedies Code and as otherwise allowed by law.

#### **VII. PRAYER FOR RELIEF**

Plaintiffs respectfully ask this Court to:

116. Declare that the current public school finance system is financially and quantitatively inefficient under Article VII, § 1 of the Texas Constitution.
117. Declare that the current public school finance system is inadequate and unsuitable for the provision of a general diffusion of knowledge for low income and English Language Learner students under Article VII, § 1 of the Texas Constitution.
118. Declare that the current public school finance system is inadequate and unsuitable for the provision of a general diffusion of knowledge for the Plaintiff districts and the districts in which individual plaintiffs reside at a tax rate of \$1.04.
119. Declare that the Plaintiff districts and the districts in which individual plaintiffs reside, individually and collectively, have been forced to tax at or near the cap of \$1.17 merely to fulfill State mandates and no longer have meaningful discretion in setting their tax rates, so as to constitute a statewide *ad valorem* tax.
120. Declare that the equalization provisions built into the public school finance system, including the cap on tax rates and the recapture provisions, remain essential so long as the

Legislature continues to rely on local property values as the basis for funding the school finance system.

121. Enjoin Defendants from giving force and effect to any school finance system and retain jurisdiction of this case until Defendants' system satisfies the principles established under Texas law and remedies the constitutional violations identified in the declaratory relief requested above.
122. Grant reasonable attorneys' fees and costs as allowed by Chapter 37 of the Texas Civil Practice and Remedies Code or as otherwise provided by law.
123. Grant any and all such other relief to Plaintiffs as so entitled.

DATED: August 7, 2013

Respectfully Submitted,

**MEXICAN AMERICAN LEGAL DEFENSE AND  
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**CERTIFICATE OF SERVICE**

I certify that on August 7, 2013, a true copy of *Edgewood I.S.D. Plaintiffs' Third Amended Petition* was filed with the Travis County District Court's electronic filing system and have served a true copy of the foregoing document via electronic mail to:

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