

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

TEXAS TAXPAYER & STUDENT
FAIRNESS COALITION, *ET AL.*,

Plaintiffs,

EDGEWOOD INDEPENDENT SCHOOL
DISTRICT, *ET AL.*, (consolidated)

Plaintiffs

v.

MICHAEL WILLIAMS, in his
official capacity as
Commissioner of Education, *et al.*,

Defendants,

IN THE DISTRICT COURT

TRAVIS COUNTY, TEXAS

200TH JUDICIAL DISTRICT

**EDGEWOOD PLAINTIFFS' RESPONSE TO INTERVENORS' PLEA TO THE
JURISDICTION AND MOTION FOR ENTRY OF FINAL JUDGMENT**

Plaintiffs Edgewood I.S.D., McAllen I.S.D., San Benito C.I.S.D., Harlingen C.I.S.D., La Feria I.S.D., Yolanda Canales, Arturo Nobles, Araceli Vasquez, and Jessica Romero, individually and on behalf of their minor children (collectively, "Edgewood Plaintiffs"), file this response in opposition to the Plea to the Jurisdiction and Motion for Entry of Final Judgment ("Plea") filed by Joyce Coleman, *et al.*, Intervenor, and joined by Defendants. First, Intervenor's plea is based on the false premise that a new trial has been granted; the Court merely reopened the evidence to consider the effects of legislative changes on the claims and thus, Intervenor's argument fails outright. Second, Intervenor ignores the fact that the Edgewood Plaintiffs amended their pleadings to reflect that the new legislation has not changed the ongoing unconstitutional deficiencies in the educational system; therefore, the Edgewood Plaintiffs' claims are neither moot nor unripe. Indeed, it is surprising that Intervenor can even participate in the proceedings today, having not prevailed on their prior claims and having not argued

whether the 2013 legislation changes the outcome of their claims. Third, Defendants' argument that Plaintiffs' claims are not "prudentially ripe" fails because their argument rests on their bare assertions that the 83rd Legislature "*significantly and materially* altered the funding, testing, accountability, tax and other provisions of the Texas public education system starting in the 2014-15 school year" and that output data under the "new system" is not currently available. These are obviously disputed factual issues making dismissal inappropriate. Lastly, Intervenor's averment that the Edgewood school district plaintiffs lack standing is nearly, if not entirely, frivolous, because the Supreme Court of Texas has settled that issue, and Intervenor has not established their burden of overturning such precedent. Nevertheless, the Edgewood individual parent and child plaintiffs in the case have standing, and consequently, it is unnecessary for the Court to revisit the school district plaintiffs' standing. In support, Plaintiffs show as follows:

Background

On June 29, 2013, the Court entered its order granting the Motion to Reopen the Evidence filed by Calhoun County ISD Plaintiffs, Fort Bend ISD Plaintiffs and the Texas Taxpayers and Student Fairness Coalition Plaintiffs.¹ The Court granted the motion under Tex. R. Civ. P. 270 to consider the effect of changes to the public school finance and accountability systems made by the Texas Legislature in the 83rd Regular Session and asked the parties to identify "all changes to the law affecting school finance and accountability (including assessment

¹ The Edgewood Intervenor's opposed that motion, arguing that they were entitled to judgment based on the three-month trial demonstrating the unconstitutionality of the then-current, existing system. *See* Edgewood Plfs.' Resp. to Calhoun Co. Plfs.' Mot. to Reopen the Evidence and Mot for Issuance of Declaratory Judgment (June 18, 2013). Edgewood Plaintiffs argued, however, that if the Court decided to reopen the evidence, the Court should allow ample time for discovery and presentation of evidence after some of the new legislation went into effect on September 1, 2013. *Id.* at 10-13.

and curriculum requirements) that will be at issue in subsequent proceedings in this case.” Order on Mot. to Reopen the Evidence (June 19, 2013).

Thereafter, and in response to Defendants’ request that the parties give Defendants notice of their complaints specific to the legislation passed during the 83rd Regular Session, the Edgewood Plaintiffs filed their Third Amended Petition on August 7, 2013. Among their allegations, the Edgewood Plaintiffs pled that “[t]he 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.” Third Am. Pet. at 2.

The Edgewood Plaintiffs maintained their position that nothing material has changed in their response filed pursuant to the Court’s reconsideration of reopening the evidence, arguing that “none of the new legislation has impacted the Court’s prior decision” and that the Court need not reopen the evidence. Edgewood ISD Plfs.’ Resp. Br. to Calhoun Co. ISD Plfs., Fort Bend ISD Plfs., and TTSFC Plfs.’ Br. in Support of Reopening the Evid. (Sept. 12, 2013). The Edgewood Plaintiffs further urged the Court that, if the Court did reopen the evidence, the Court should not rely on projections of school finance data related to the financial efficiency claims beyond the 2013-14 school year because such data was not reliable and such claim would not be ripe. *See id.* at 1. The Edgewood Plaintiffs never averred that the new legislation mooted their claims. And contrary to Intervenor’s allegations, the Edgewood Plaintiffs neither alleged directly or impliedly that at the time of trial in this case, “there will not be any non-speculative,

reliable evidence that could be presented at a January 2014 trial” related to their claims. *See* Plea at 3.

Argument

I. The Court Never Granted a New Trial and, Thus, Intervenors’ Misplaced Use of the Standards for New Trial Fails.

No motion for new trial was ever filed by any party in this case. Rather, the Calhoun County ISD Plaintiffs filed a motion to reopen the evidence under Rule 270 and, following a hearing, the Court granted the motion for the limited determination of whether the legislative changes made during the 83rd Legislature changed the outcome of the trial. Neither Intervenors nor Defendants filed pleadings supporting or opposing the motion. Nevertheless, Intervenors and Defendants (by way of joinder filed on October 3, 2013) now argue that the Court “essentially grant[ed] a new trial.” The Court made clear in its Order that it was not reopening the evidence to try the claims anew and that the record would merely be supplemented to consider evidence of the impact of the legislative changes. Indeed, under Rule 270, parties are not allowed to re-litigate questions settled by the Court. *See Moore v. Jet Stream Investments, Ltd.*, 315 S.W.3d 195, 203 (Tex. App. – Texarkana 2010). Because Intervenors’ and Defendants’ plea to the jurisdiction is falsely premised on the law concerning motions to grant a new trial, the plea should be denied.

II. Pleadings Control Pleas to the Jurisdiction and the Edgewood Plaintiffs’ Amended Pleadings Demonstrate Their Case is Neither Moot Nor Unripe.

A plea to the jurisdiction challenges the court’s subject-matter jurisdiction. *See Tex. Dep’t of Parks & Wildlife v. Miranda*, 133 S.W.3d 217, 225–26 (Tex. 2004); *Bland Indep. Sch. Dist. v. Blue*, 34 S.W.3d 547, 554 (Tex. 2000); *State v. Holland*, 221 S.W.3d 639, 642-43 (Tex. 2007). Whether a court has subject-matter jurisdiction is a question of law. *See Miranda*, 133

S.W.3d at 226. The purpose of a plea to the jurisdiction is to “defeat a cause of action without regard to whether the claims asserted have merit.” *Bland Indep. Sch. Dist.*, 34 S.W.3d at 554. The determination of whether a trial court has subject-matter jurisdiction begins with the pleadings. *Id.* The pleader has the initial burden of alleging facts that affirmatively demonstrate the trial court’s jurisdiction to hear the cause. *Id.* A court may also consider any evidence presented by either party when necessary to resolve a fact issue related to the jurisdictional challenge. *Miranda*, 133 S.W.3d at 227.

A. The Claims are not Moot.

Under the mootness doctrine, legislative amendments and revisions to government policies do not moot declaratory and injunctive challenges to prior statutes and policies where they do not eliminate the threats of a live controversy. *See Heckman v. Williamson Cty.*, 369 S.W.3d 137, 162 (Tex. 2012). Here, the allegations made by the Edgewood Plaintiffs in their Third Amended Petition demonstrate that the controversy over the constitutionality of the system under articles VII and VII of the Texas Constitution remains live and has not been mooted by the 2013 legislation.

Following the reopening of the evidence on June 19, 2013, and in response to Defendants’ concern that they lacked sufficient notice of Plaintiffs’ complaints related to the 2013 legislative changes, the Edgewood Plaintiffs amended their complaint to give Defendants notice of the ongoing constitutional violations and to invoke the jurisdiction of the Court. *See generally* Third Am. Pet. At the heart of their amended petition, the Edgewood Plaintiffs complain that “[t]he legislation passed in 2013 did not alter the unconstitutionality of the system.” *Id.* at 3. More specifically, the Edgewood Plaintiffs allege that the partial restoration of funding did not alleviate “the 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.” *Id.* at 11, ¶¶ 41-42.

Regarding curriculum, assessment, accountability, and graduation changes made during the 83rd Legislature, the Edgewood Plaintiffs allege “that none of these changes will save the Plaintiff districts any funds.” *Id.* at 14, ¶ 56. To begin, the State of Texas did not alter its educational expectation of all students that they graduate college and career ready during the 2013 83rd Legislative Session. *See* Tex. Educ. Code § 39.024(a); *see also* Third Am. Pet. at 15, ¶ 59 (noting the college readiness standards integrated into K-12 curriculum and the expectation that schools prepare their students to succeed in college-level courses without remediation have not been altered under the legislation). This is the same state standard used in the three-month trial as a benchmark for an adequate education and remains unchanged.

The Edgewood Plaintiffs provide significant detail demonstrating that the burdens and costs imposed on school districts under the new curriculum and STAAR assessment, as evidenced in the three-month trial, have not changed with the 83rd Legislature. For example, STAAR exams administered to grades 3-8 remain unchanged. *See id.* at 15, ¶ 60. Regarding end-of-course (EOC) exams, the Edgewood Plaintiffs allege that “[a]lthough HB 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. . . .” *Id.* at 18, ¶ 71.

The Edgewood Plaintiffs also updated their petition with the latest STAAR performance results and resulting remediation numbers evidencing the continuing challenges to English Language Learner and economically disadvantaged students both statewide and in the Edgewood Plaintiff districts. *See, e.g., id.* at 16-20. The Edgewood Plaintiffs also included the most recent output data produced by the Texas Education Agency, which shows continuing trends of

significant achievement gaps between ELL and economically disadvantaged students and other students both statewide and in the Edgewood Plaintiff districts. *See id.* at 23-25.

Regarding equity, the Edgewood Plaintiffs added facts detailing the disparate revenue generated at various tax rates for an assortment of property-poor school districts (including the Edgewood Plaintiff districts) and property-wealthy districts as presented during trial and allege that the unconstitutionality of the financial efficiency of the system remains “despite the changes enacted in 2013.” *Id.* at 11-13. The Edgewood Plaintiffs go on to allege that “SB 1 and HB 1025 are expected to add [only] up to a few hundred dollars per ADA in the 2013-14 school year in the Plaintiff districts. . .” and that other factors contributing to the financial inefficiency of the system remained unchanged. *Id.* at 13-14, ¶¶ 51-52. The other factors included an increase in target revenue (which tends to benefit property-wealthy districts), the allowance for property-wealthy districts to use Interest and Sinking funds to purchase items essential for providing a general diffusion of knowledge, and the continuation of the unrecaptured golden pennies. *Id.*

Defendants’ and Intervenors’ averment that the 2013 legislative changes have changed substantially the landscape of the Texas educational system merely demonstrates that material facts remain hotly-contested, as evidenced by the Edgewood Plaintiffs’ allegations in their Third Amended Petition. Because Intervenors’ and Defendants’ plea merely highlights the Court’s need to receive evidence on these disputed factual issues, their plea should be denied. *See Miranda*, 133 S.W.3d at 226 (holding that if the facts are disputed, the court cannot grant the plea to the jurisdiction, and the issue must be resolved by the factfinder).

B. The Claims are Ripe.

Ripeness addresses the issue of when an action may be brought. *See Patterson v. Planned Parenthood*, 971 S.W.2d 439, 442 (Tex. 1998). Intervenors’ and Defendants’ challenge

to the ripeness of the Edgewood Plaintiffs' claims is premised on their false notion that the 2013 legislative changes ushered in a whole new public educational system and that the ELL and economically disadvantaged students who are harmed by the unconstitutionality of present education system must wait out the full implementation of meaningless reform. However, as demonstrated above, their allegation that the legislative changes "fundamentally, substantially and materially alter" the educational system is hotly contested. As the Edgewood Plaintiffs allege, and intend to prove in this case, the legislative changes only marginally change the system but they certainly do not change the crux of the unconstitutionality of the system: required K-12 curriculum integrated with college-readiness standards remains; the more rigorous STAAR testing remains, accountability ratings remain; the inadequate weights for ELL and low income students remain; inadequate pre-K programs remain; outputs remain dismal; partial funding for all school districts in Texas did not permanently change the school finance formulas and it did not create a system that provides substantially equal access to similar revenue at similar tax effort to provide a general diffusion of knowledge for the Edgewood Plaintiff districts; and despite the partial restoration in funding, the Edgewood Plaintiff districts remain without the meaningful discretion to set their local tax rates. *See generally*, Third Am. Pet.; *see also* Edgewood ISD Plaintiffs' Response Brief to Calhoun County ISD Plaintiffs, Fort Bend ISD Plaintiffs and the Texas Taxpayer and Student Fairness Coalition Plaintiffs' Brief in Support of Reopening the Evidence (fully incorporated herein by reference, along with attached exhibits). Ultimately, the changes did not extinguish the live, ongoing controversy over the constitutionality of the system between Plaintiffs and Defendants.

Defendants also wrongly aver that the "new" system cannot be judged by "output data from the 2012-13 or earl[ier] school years" and that Plaintiffs' claims are not "prudentially ripe."

Defs. Joinder of Intervenors' Plea to the Jurisdiction at 1-2. First, as alleged by the Edgewood Plaintiffs, there is no "new" education system that wholly replaced the old system, only a system that has marginally changed.

Second, it is quite astonishing that Defendants would now posit that Plaintiffs cannot rely on prior years' data to judge the constitutionality of the current system when Defendants presented evidence of TAKS performance during trial in defense of the educational system, although that test was being replaced by the more rigorous STAAR. *See, e.g.*, Tr. Ex. 11241 at 3-18 (Dr. Zyskowski listing history of disaggregated test scores for certain grade levels and TAKS tests). Defendants also presented evidence of past performance on the SAT/ACT among other factors. *See* Defs.' Tr. Ex. 11,300 (Dr. Roska presenting historical data through 2011 on SAT/ACT participation and performance; Advanced Placement, etc.).

Third, both plaintiff and defendants parties have previously presented performance data based on prior years in adequacy cases and Texas courts have relied on such data in order to gauge the constitutionality of the system. In *Neeley v. West Orange-Cove Consol. Indep. Sch. Dist.*, the Supreme Court of Texas similarly noted prior TAAS scores and updated TAKS data presented by both parties in the case in rendering its opinion of the constitutionality of the system at that time. *See* 176 S.W.2d 746, 765-769 (Tex. 2005). The Edgewood Plaintiffs intend to present updated output data demonstrating the continuing constitutional violations of the current Texas school finance system, which are unaffected by the 2013 legislative changes. This evidence will be presented "with clarity, precision, and certainty," and is expected to detail the ongoing constitutional violations. In turn, the Court will be able to weigh the merits of that evidence as presented. At best, Defendants' and Intervenors' allegations merely raise fact questions on whether the 2013 legislative changes materially change the outcome of the case—

an issue which the Court has already stated it intended to address when reopening the evidence in a limited hearing in this case.

III. The Edgewood Plaintiffs have Standing and Intervenor Provide No Legal Authority Suggesting Otherwise.

The general test for standing is whether there is a real controversy between the parties that will be actually determined by the judicial declaration sought. *See Tex. Ass'n of Bus. v. Tex. Air Cntl. Bd.*, 852 S.W.2d 440, 446 (Tex. 1993). Intervenor argue summarily that “the School District Plaintiffs do not have standing to challenge the constitutionality of the public school system under article VII of the Texas Constitution.” *See* Plea at 9. As Intervenor concede, the Supreme Court of Texas has conclusively decided this issue² and Intervenor fail to provide any legal authority in support that this Court should overturn the legal precedent. Furthermore, the Edgewood Plaintiffs include individual plaintiff children and parents, who bring the same claims as the Edgewood school district plaintiffs, and Intervenor do not challenge the individuals’ standing. Where many individual parties seek the same declaratory and injunctive relief, Texas courts have declined to address the individual standing of each plaintiff. *See, e.g., Mitz v. Tex. State Bd. of Veterinary Med. Exam'rs*, 278 S.W.3d 17, 27 (Tex. App.-Austin 2008); *Texas Workers' Camp. Comm'n v. Garcia*, 893 S.W.2d 504,519 (Tex. 1995).

Conclusion

WHEREFORE, Plaintiffs respectfully request that this Court deny Intervenor’s and Defendants’ plea to the jurisdiction and motion for entry of judgment, and grant any other relief that this Court deems proper.

² *See id.* at 9 (citing *Neeley v. West-Orange Cove. Consol. Indep. Sch. Dist.*, 176 S.W.3d at 772-776).

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Respectfully Submitted,

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Certificate of Service

I also certify that on October 4, 2013, I served the foregoing document via electronic mail

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