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of Travis County, Texas

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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

TRAVIS COUNTY, TEXAS

200th JUDICIAL DISTRICT

FINAL JUDGMENT

On October 22, 2012, this consolidated case was called for trial. All parties appeared and announced that they were ready for trial, including the Texas Taxpayer and Student Fairness Coalition Plaintiffs (the "TTSFC Plaintiffs"),¹ the Calhoun County ISD Plaintiffs,² the Fort Bend ISD Plaintiffs,³ the Edgewood ISD Plaintiffs,⁴ the Charter School Plaintiffs,⁵ the Intervenors,⁶

¹ The TTSFC Plaintiffs are those plaintiffs listed in paragraphs 2-8 of their Ninth Amended Petition filed with the Court on October 11, 2013.

² The Calhoun County ISD Plaintiffs are those districts listed in paragraphs 2-7 of their Third Amended Petition filed with the Court on October 11, 2013.

³ The Fort Bend ISD Plaintiffs are those districts listed in paragraphs 2-83 of their Seventh Amended Petition filed with the Court on October 11, 2013.

Unofficial copy Travis Co. District Clerk Velda L. Price

and the State Defendants.⁷ The case was tried to the Court over the course of forty-five trial days.

On the final day of trial, this Court orally announced its ruling on the plaintiffs' claims, finding the Texas school finance system unconstitutional in several respects. Before this Court entered its findings of fact and a final judgment, the 83rd Legislature passed several bills that potentially affected the claims in this case. On June 19, 2013, the Court granted a motion to reopen the evidence to consider the impact of the 2013 legislation, and held a ten-day evidentiary hearing beginning on January 21, 2014.

Based upon the competent evidence admitted at trial (both the main trial and upon the reopening of evidence), the arguments of counsel, and this Court's contemporaneously-entered Findings of Fact and Conclusions of Law (incorporated herein by reference),⁸ the Court finds that the Texas school finance system effectively imposes a state property tax in violation of Article VIII, Section 1-e of the Texas Constitution because school districts do not have meaningful discretion over the levy, assessment, and disbursement of local property taxes. The Court further finds that the Legislature has failed to meet its constitutional duty to suitably provide for Texas public schools because the school finance system is structured, operated, and funded so that it cannot provide a constitutionally adequate education for all Texas

⁴ The Edgewood ISD Plaintiffs are those plaintiffs listed in paragraphs 2-12 of their Third Amended Petition filed with the Court on August 7, 2013.

⁵ The Charter School Plaintiffs are those plaintiffs listed in paragraphs 2-7 of their Fifth Amended Original Petition and Request for Declaratory Judgment filed with the Court on November 21, 2013.

⁶ The Intervenors are those parties listed in paragraph 1 of their Third Amended Plea in Intervention filed with this Court on August 7, 2013.

⁷ The State Defendants are Michael Williams, in his official capacity as Texas Commissioner of Education; the Texas Education Agency; Susan Combs, in her official capacity as the Texas Comptroller of Public Accounts; and the Texas State Board of Education.

⁸ The Court incorporates its Findings of Fact and Conclusions of Law in support of this Final Judgment. The Declarations, herein, summarize or restate those found in the Findings of Fact and Conclusions of Law.

schoolchildren. Further, the school finance system is constitutionally inadequate because it cannot accomplish, and has not accomplished, a general diffusion of knowledge for all students due to insufficient funding. Finally, the school finance system is financially inefficient because all Texas students do not have substantially equal access to the educational funds necessary to accomplish a general diffusion of knowledge. Consequently, the Court enjoins further funding under the system until the constitutional infirmities are corrected.

THE CONSTITUTIONAL STANDARDS

State Property Tax Prohibition.

Because the TTSFC Plaintiffs, the Calhoun County ISD Plaintiffs, the Fort Bend ISD Plaintiffs, and the Edgewood ISD Plaintiffs (collectively, the "ISD Plaintiffs") must tax at or near the maximum allowed tax rate to fund maintenance and operations for an adequate education, they contend that the State, through the school finance system, improperly controls local property taxation in violation of Article VIII, Section 1-c of the Texas Constitution: "No State ad valorem taxes shall be levied upon any property within this State." TEX. CONST. art. VIII, § 1-c. "An ad valorem tax is a state tax when it is imposed directly by the State or when the State so completely controls the levy, assessment and disbursement of revenue, either directly or indirectly, that the authority employed is without meaningful discretion." *West Orange-Cove Cons. I.S.D. v. Neeley*, 176 S.W.3d 746, 751 (Tex. 2005) ["*WOC II*"] (quoting *Carrollton-Farmers Branch I.S.D. v. Edgewood I.S.D.*, 826 S.W.2d 489, 502 (Tex. 1992)) ["*Edgewood III*"]. The evidence clearly establishes that local districts do not have meaningful discretion in the levy, assessment, and disbursement of property taxes; therefore, the Texas school finance system imposes an unconstitutional state property tax.

The Education Clause – Adequacy, Suitability, and Financial Efficiency.

Like the Texas Supreme Court, this Court measures the conduct of the Legislature by its constitutional duty:

A general diffusion of knowledge being essential to the preservation of 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.

TEX. CONST. art. VII, § 1 (emphasis added). As applied in this case and described by the Supreme Court, the Constitution first requires the Legislature to establish a public school system that is “adequate,” i.e., one that “achieve[s] [a] **general diffusion of knowledge** . . . essential to the preservation of liberties and rights of the people.” *WOC II*, 176 S.W.3d at 753 (quoting TEX. CONST. art. VII, § 1) (emphasis added). Second, the Legislature must make “suitable provision” to achieve the general diffusion of knowledge. That is, the Legislature must **structure, operate, and fund** the public school system “so that it can accomplish its purpose for all Texas children.” *Id.* (emphasis added). Third, in funding the public school system, the Legislature must be “financially efficient.” “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.**” *Id.* (quoting *Edgewood I.S.D. v. Kirby*, 777 S.W.2d 391, 397 (Tex. 1989)) [*“Edgewood I”*] (emphasis added). In the context of a finance system that is heavily dependent upon property tax revenues and there exists a vast disparity in property values among the school districts, “[t]here must be a direct and close correlation between a district’s tax effort and the educational resources available to it. . . .” *Edgewood I.S.D. v. Meno*, 917 S.W.2d 717, 729 (Tex. 1995) [*“Edgewood II”*], (quoting *Edgewood I*, 777 S.W.2d at 397). The Texas school finance system is constitutionally inadequate, unsuitable, and financially inefficient.

STANDARD OF REVIEW

This Court is mindful that its role differs from that of the Legislature.

[T]he Legislature has discretion under article VII, section 1 to determine how to structure and fund the public education system to achieve a general diffusion of knowledge. However . . . governmental discretion is circumscribed by the Constitution. Article VII, section 1 requires that public school finance be efficient and adequate [and suitable] to provide a general diffusion of knowledge.

WOC II, 176 S.W.3d at 775. The Legislature's "affirmative duty to establish and provide for the public free schools" is accompanied by "express constitutional mandate" by which this Court must "measure the constitutionality of the Legislature's actions." *Id.* at 776. That provision does not allow the Legislature to structure a public school system that is inadequate, inefficient, or unsuitable, **regardless of whether it has a rational basis or even a compelling reason to do so.** *Id.* at 784 (emphasis added).

The Legislature is entitled to determine what public education is necessary for the constitutionally required "general diffusion of knowledge", and then to determine the means for providing that education. But the Legislature does not have free rein at either level.

* * *

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.

Id. at 784-85.

In assessing challenges to the public education system under article VII, section 1, courts must not on the one hand substitute their policy choices for the Legislature's, however undesirable the latter may appear, but must on the other hand examine the Legislature's choices carefully to determine whether those choices meet the requirements of the Constitution. By steering this course, the Judiciary can assure that the people's guarantees under the Constitution are protected without straying into the prerogatives of the Legislature.

Id. at 785.

Though the Court recognizes the Legislature's discretion in crafting the public school system, "the final authority to determine adherence to the Constitution resides with the judiciary." *Id.* While the parameters are not clear, the constitutional limits are.

[A]rticle VII, section 1 dictates what the system *cannot* be: it cannot be so inadequate that it does not provide for a general diffusion of knowledge, or so inefficient that districts which must achieve this general diffusion of knowledge do not have substantially equal access to available revenues to perform their mission, or so unsuitable that it cannot because of its structure achieve its purpose.

Id. at 783. The Court finds the Legislature has failed to meet its constitutional mandate and has acted arbitrarily in structuring and funding the Texas school finance system.

Based upon the Court's Findings of Fact and Conclusions of Law, the Court GRANTS the ISD Plaintiffs' requests for declaratory and injunctive relief and makes the following declarations.

I. Declaratory relief relating to Article VIII, Section 1-e state property tax claims

This Court GRANTS FINAL JUDGMENT to the ISD Plaintiffs on their requests for declaratory relief in connection with their Article VIII, Section 1-e state property tax claims.

Accordingly, the Court makes the following declarations:

1. The ISD Plaintiffs have lost meaningful discretion to set their M&O tax rates, as their current rates effectively serve as a floor (because they cannot lower taxes without further compromising their ability to meet state standards and requirements) and a ceiling (because they are either legally or practically unable to raise rates further). Further, to the extent any of the ISD Plaintiff districts could raise their M&O tax rate to the statutory maximum rate of \$1.17 (and have not already done so), the districts would still remain unable to meaningfully use local tax dollars for local enrichment beyond the level required for a constitutionally adequate education, in violation of the prohibition on state ad valorem taxes. Thus, THIS COURT DECLARES that the ISD Plaintiffs have established an Article VIII, Section 1-e violation as to their districts.
2. Because the ISD Plaintiffs collectively have also established a systemic violation, THIS COURT DECLARES that the Texas school finance system is presently in violation of Article VIII, Section 1-e of the Texas Constitution.

II. Declaratory relief relating to Article VII, Section 1 suitability claims

This Court GRANTS FINAL JUDGMENT to the ISD Plaintiffs on their requests for declaratory relief in connection with their Article VII, Section 1 suitability claims. Accordingly, the Court makes the following declarations (which summarize or restate those made in the accompanying Findings of Fact and Conclusions of Law):

1. The ISD Plaintiffs have shown that the State has made no effort to determine the costs of meeting its own standards or of bridging the performance gaps. The ISD Plaintiffs have further shown that the costs of providing a general diffusion of knowledge exceed the funding provided through the current system, and that multiple defects in the current design of the school finance system – including inadequately funded weights for economically disadvantaged and English Language Learner students – cumulatively prevent districts from generating sufficient resources to accomplish a general diffusion of knowledge for all students, and particularly with respect to the State’s economically disadvantaged and English Language Learner students. Accordingly, THIS COURT DECLARES that the Texas school finance system violates the “make suitable provision” clause in Article VII, Section 1 of the Texas Constitution, because the system is not “structured, operated, and funded so that it can accomplish its purpose [of providing a general diffusion of knowledge] for all Texas children.” *WOC II*, 176 S.W.3d at 753.
2. The Edgewood ISD Plaintiffs have further shown that the costs of providing a general diffusion of knowledge to economically disadvantaged and English Language Learner students exceed the funding provided through the current system, due to the arbitrarily designed and insufficient weights for those students. This defect coupled with the arbitrarily designed and insufficient Foundation School Program funding made available to districts like the Edgewood ISD Plaintiffs cumulatively prevent those districts from generating sufficient resources to accomplish a general diffusion of knowledge for the State’s economically disadvantaged and English Language Learner students. Accordingly, THIS COURT DECLARES that the Texas school finance system violates the “make suitable provision” clause in Article VII, Section 1 of the Texas Constitution because the system is not “structured, operated, and funded so that it can accomplish its purpose [of providing a general diffusion of knowledge] for [economically disadvantaged and English Language Learner] children.” *WOC II*, 176 S.W.3d at 753.
3. THIS COURT DECLARES the State’s school finance system fails to satisfy the “make suitable provision” requirement because Texas school children, particularly the economically disadvantaged and English language learners, are denied access to that education needed to participate fully in the social, economic, and educational opportunities available in Texas. Moreover, the failure of the Texas school finance system to fully pay the costs of a constitutionally adequate education, whether at the maximum tax rate available without a Tax Ratification Election [“TRE”], \$1.04, or at the maximum tax rate with voter approval, \$1.17, means that the structure, operation, and

funding make it impossible for Texas public schools to accomplish a general diffusion of knowledge.

4. The TTFSC Plaintiffs, the Fort Bend ISD Plaintiffs, and the Edgewood ISD Plaintiffs have shown that the Texas school finance system is structured, operated, and funded so that it cannot accomplish financial equity. Property wealthy districts are able to access substantially more funding at all levels of the system. Further, the use of two separate funding mechanisms for M&O, formula funding and target revenue, makes it impossible for the finance system to be equalized to accomplish financial efficiency. THIS COURT DECLARES that the Texas school finance system fails to satisfy the "make suitable provision" requirement because it is structured, operated, and funded so that it is impossible to achieve a general diffusion of knowledge in a financially efficient manner.

III. Declaratory relief relating to Article VII, Section 1 adequacy claims

This Court GRANTS FINAL JUDGMENT to the ISD Plaintiffs, as well as the Charter School Plaintiffs, on their requests for declaratory relief in connection with their Article VII, Section 1 adequacy claims. Accordingly, the Court makes the following declarations (which summarize or restate those made in the accompanying Findings of Fact and Conclusions of Law):

1. All performance measures considered at trial, including STAAR tests, EOC exams, SATs, the ACTs, performance gaps, graduation rates, and dropout rates among others, demonstrated that Texas public schools are not accomplishing a general diffusion of knowledge due to inadequate funding. Accordingly, THIS COURT DECLARES that the school finance system is constitutionally inadequate.
2. The ISD Plaintiffs have shown that the cost of meeting the constitutional mandate of adequacy (the "general diffusion of knowledge") exceeds the maximum amount of funding that is available to them at the \$1.04 M&O tax rate (the highest rate accessible without a TRE). Accordingly, THIS COURT DECLARES the State's school finance system fails to satisfy the Article VII, Section 1 adequacy requirement as to the ISD Plaintiffs districts. The ISD Plaintiffs also have shown that the cost of meeting the constitutional mandate of adequacy exceeds the amount of funding that is or would be available to them at the maximum \$1.17 M&O tax rate. Accordingly, THIS COURT DECLARES the State's school finance system fails to satisfy the Article VII, Section 1 adequacy requirement as to the ISD Plaintiffs districts.
3. Because the ISD Plaintiffs collectively have also established a systemic/statewide "adequacy" violation, THIS COURT DECLARES that the Texas school finance system is presently in violation of Article VII, Section 1 of the Texas Constitution. Stated another way, this Court finds that the Legislature violated the "arbitrary" standard described in *West Orange Cove II* by "defin[ing] the goals for accomplishing the

constitutionally required general diffusion of knowledge," and then providing "insufficient means for achieving those goals." *WOC II*, 176 S.W.3d at 785. The current structure of the school finance system is such that districts cannot generate sufficient revenues to fund and provide an adequate education.

4. The Edgewood ISD Plaintiffs, the TTSEFC Plaintiffs, and the Fort Bend ISD Plaintiffs have further shown that economically disadvantaged students and English Language Learner students are not achieving a general diffusion of knowledge and that the cost of providing a general diffusion of knowledge to these students exceeds the amount of funding made available for their education under the current school finance system. The Court concludes the funding for economically disadvantaged and English Language Learner students is inadequate and arbitrary. Accordingly, THIS COURT DECLARES the current public school finance system is inadequate for the provision of a general diffusion of knowledge for economically disadvantaged and English Language Learner students under Article VII, Section 1 of the Texas Constitution.
5. The ISD Plaintiffs have further shown that the current facilities funding is constitutionally inadequate to suitably provide sufficient support for districts to maintain, build, and renovate the classrooms necessary for an adequate education. This constitutional infirmity exacerbates the problems resulting from inadequate M&O funding because many districts are forced to use those scarce funds to make up for unfunded facilities needs. Accordingly, THIS COURT DECLARES that considered separately, and as part of the total school finance system, facilities funding is arbitrary and inadequate in providing Texas school children with the constitutional mandate of adequacy.
6. The ISD Plaintiffs have shown that the M&O and U&S funding available under the school finance system as a whole is insufficient to achieve a general diffusion of knowledge. Accordingly, THIS COURT DECLARES that the school finance system is arbitrary and inadequate in violation of Article VII, Section 1 of the Texas Constitution.
7. Because the school finance system for independent school districts under the statutory formulas is constitutionally inadequate and because charter schools are financed based on state averages of school district M&O funding levels, THIS COURT DECLARES that funding for open-enrollment charter schools also is inadequate.

IV. Declaratory relief relating to Article VII, Section 1 financial efficiency (equity) claims

This Court GRANTS FINAL JUDGMENT to the TTSEFC Plaintiffs, the Fort Bend ISD Plaintiffs, and the Edgewood ISD Plaintiffs on their requests for declaratory relief in connection with their Article VII, Section 1 financial efficiency or equity claims. Accordingly, the Court makes the following declarations:

1. The TTSFC, Edgewood ISD, and Fort Bend ISD Plaintiffs have shown that, in the current system, there is not a direct and close correlation between a district's tax effort and the educational resources available to it, as required under Article VII, Section 1, and, as a result, there are large gaps in funding levels and tax effort between low property wealth and high property wealth districts. Plaintiffs have shown that these gaps disadvantage the students in their districts in acquiring a general diffusion of knowledge and are incompatible with a system that requires that "children who live in poor districts and children who live in rich districts . . . be afforded a substantially equal opportunity to have access to educational funds." *WOC II*, 176 S.W.3d at 753. Instead, the system arbitrarily funds districts at different levels below the constitutionally required level of a general diffusion of knowledge. Plaintiffs have further shown that the school finance system violates the "efficiency" provisions of Article VII, Section 1 of the Texas Constitution in that a) it fails to provide substantially equal access to M&O and I&S tax revenues necessary to provide a general diffusion of knowledge at similar tax effort, and b) it permits an amount of unequal local supplementation in the system that is so great as to destroy the efficiency of the system. Plaintiffs have also shown that insofar as the State Defendants continue to rely on disparate property values and accompanying property taxes to fund public schools, equalization provisions such as equalized wealth levels, guaranteed yields, recapture and caps on maximum tax rates, remain essential for a financially efficient and equitable public school system under Article VII, Section 1 of the Texas Constitution. The State's failure to make facilities funding a statutorily permanent part of the Texas school finance system and failure to update the equalized wealth level/guaranteed yield (coupled with the lack of recapture) mean that low property wealth and high property wealth districts have vastly different access to facilities funding contributing to the inefficiency of the system as a whole.
2. THIS COURT DECLARES that the school finance system violates the "efficiency" provisions of Article VII, Section 1 of the Texas Constitution in that it fails to provide substantially equal access to revenues necessary to provide a general diffusion of knowledge at similar tax effort, and instead arbitrarily funds districts at different levels below the constitutionally required level of a general diffusion of knowledge.
3. Because the TTSFC Plaintiffs, the Edgewood ISD Plaintiffs, and the Fort Bend ISD Plaintiffs collectively have established a systemic/statewide violation, THIS COURT DECLARES that the Texas school finance system is presently in violation of Article VII, Section 1 of the Texas Constitution with respect to both maintenance and operations funding and facilities funding separately and as complementary aspects of the school finance system.
- V. **This Court denies the TTSFC Plaintiffs' request for declaratory relief relating their Article VIII, Section 1(a) "taxpayer equity" claim.**

For the reasons set forth in its Findings of Fact and Conclusions of Law, this Court declines to grant the relief sought by the TTSFC Plaintiffs in connection with their Article VIII, Section 1(a) "taxpayer equity" claim. THIS COURT DECLARES that the Texas school finance

system does not violate Article VIII, Section 1(a) and GRANTS FINAL JUDGMENT to the State Defendants on this claim.

VI. This Court denies all pleas to the jurisdiction.

This Court finds that it has jurisdiction to rule on the merits of all claims in this case. Accordingly, THIS COURT DENIES all pending pleas to the jurisdiction.

VII. This Court denies the Intervenors' request for declaratory relief relating to their Article VII, Section 1 "qualitative efficiency" claim.

For the reasons set forth in its Findings of Fact and Conclusions of Law, this Court declines to grant the relief requested by the Intervenors on their Article VII, Section 1 "qualitative efficiency" claim. THIS COURT DECLARES that the Intervenors failed to establish a "qualitative efficiency" violation of Article VII, Section 1 and GRANTS FINAL JUDGMENT to the State Defendants on this claim.

VIII. This Court denies the Charter School Plaintiffs' request for declaratory relief relating to their claims (other than their adequacy claim).

As noted in Part I above, this Court GRANTS FINAL JUDGMENT to the Charter School Plaintiffs on their Article VII, Section 1 adequacy claim as derived from the Court's ruling on the ISD Plaintiffs' adequacy claims. For the reasons set forth in its Findings of Fact and Conclusions of Law, this Court DENIES the remaining relief requested by the Charter School Plaintiffs in connection with their other claims and GRANTS FINAL JUDGMENT to the State Defendants on these claims.

IX. Injunctive relief

This Court GRANTS FINAL JUDGMENT in favor of the TTSFC Plaintiffs, Calhoun County ISD Plaintiffs, Fort Bend ISD Plaintiffs, Edgewood ISD Plaintiffs, and the Charter School Plaintiffs on their claims for injunctive relief. Accordingly, this Court:

1. ENJOINS the State Defendants from giving any force and effect to the sections of the Education Code relating to the financing of public school education (Chapters 41 and 42 and Section 12.106 of the Education Code) and from distributing any money under the current Texas school financing system until the constitutional violations are remedied. The effect of this injunction shall be stayed until July 1, 2015, in order to give the Legislature a reasonable opportunity to cure the constitutional deficiencies in the finance system before the foregoing prohibitions take effect.
2. This injunction shall in no way be construed as enjoining the State Defendants, their agents, successors, employees, attorneys, and persons acting in concert with them or under their direction, from enforcing or otherwise implementing any other provisions of the Education Code.
3. This injunction shall not bar suits for collection of delinquent taxes, penalties, and interest.
4. This injunction does not impair any lawful obligation created by the issuance or execution of any lawful agreement or evidence of indebtedness before July 1, 2015, that matures after that date and that is payable from the levy and collection of ad valorem taxes, and a school district may, before, on, and after July 1, 2015, levy, assess, and collect ad valorem taxes, at the full rate and in the full amount authorized by law necessary to pay such obligations when due and payable. A school district that, before July 1, 2015, issues bonds, notes, public securities, or other evidences of indebtedness under Chapter 45 of Education Code, or other applicable law, or enters into a lease-purchase agreement under Subchapter A, Chapter 271 of the Local Government Code, may continue, before, on, and after July 1, 2015, to receive state assistance with respect to such payments to the same extent that the district would have been entitled to receive such assistance under Chapter 42 or 46 of the Education Code, notwithstanding this injunction.
5. This injunction does not limit, modify, or eliminate the authority of a school district to issue or execute bonds, notes, public securities, or other evidences of indebtedness under Chapter 45 of the Education Code, or other applicable law, before, on, or after July 1, 2015, or to levy, assess, and collect, before, on, or after July 1, 2015, ad valorem taxes at the full rate and in the full amount authorized by Section 45.002 of the Education Code or other applicable law, necessary to pay such bonds, notes, public securities, or other evidences of indebtedness when due and payable.

6. This injunction does not limit, modify, or eliminate the authority of the commissioner of education, before, on, or after July 1, 2015, to grant assistance to a school district under Chapter 42 or 46 of the Education Code, in connection with bonds, notes, public securities, lease-purchase agreements, or evidences of indebtedness, including those described by Subchapter A, Chapter 271 of the Local Government Code.

X. Attorneys' fees and costs

In response to an agreed motion by all parties, this Court bifurcated the issue of attorneys' fees from the trial on the merits of the plaintiffs' claims in an order dated August 29, 2012. The parties agreed to try the attorneys' fees issues by submissions of expert affidavits to this Court. This Court is of the opinion that the TTSFC Plaintiffs, Calloun County ISD Plaintiffs, Fort Bend ISD Plaintiffs, and Edgewood ISD Plaintiffs are entitled to reasonable and necessary attorneys' fees as set forth below, and that such an award of fees would be equitable and just, subject to the Court's rulings on the State's objection. The Court finds that it is equitable and just to deny the attorneys' fees requests of the State, the Intervenor, and the Charter School Plaintiffs because they were predominantly non-prevailing parties and, while they contributed to the public debate on school finance law through this lawsuit, those contributions were not so significant as to warrant an award of fees.

Following the conclusion of the initial trial on the merits, the ISD Plaintiffs each submitted their initial fee requests and affidavits to the Court in late February and early March 2013. The State then filed objections to these fee requests. In a communication to counsel in September 2013, the Court informed the parties of its tentative rulings on these objections, reducing each of the ISD Plaintiffs' Initial Fee Requests by varying amounts. In summary, given the extensive number of parties, witnesses, exhibits, and preparation necessary for the trial, the Court declined the State's invitation to rule that only one attorney could effectively represent each Plaintiffs' group each day during trial. Likewise, the Court declined the State's invitation to rule that any attorneys' fees related to the Intervenor's or the Charter School Plaintiffs' claims

were unnecessary. The Court further declined to strike fees for expert witnesses who were subsequently withdrawn when that decision had not been made when the fees were incurred. In general, the Court adjusted the attorneys' fee awards for amounts the Court has deemed inequitable or unjust to recover, such as time directed at recruiting districts, public relations, or technology training or time that is insufficiently described. The Court noted favorably the ISD Plaintiffs' efforts to submit fee requests that have been stripped of extraneous time. As a result, the adjustments by the Court were *de minimis* in comparison to the overall attorneys' fees the Court found to be equitable and just.

After the reopening of the evidence and the completion of the second phase of the trial, the ISD Plaintiffs submitted updated fee requests and supporting affidavits for time incurred from March 2013 forward. The ISD Plaintiffs did not challenge the Court's prior rulings on the State's objections, and each plaintiff group reduced their fee requests (for the initial phase of trial) to correspond with the Court's rulings. The State filed a second set of objections to the requests for the fees incurred from March 2013 forward. After careful review of the State's objections and the evidence related to attorneys' fees, the Court favorably notes the ISD Plaintiffs' effort to adjust their fees in response to the Court's previous rulings and to eliminate time the Court found objectionable. The Court again declines the State's invitation to rule that only one attorney could effectively represent each Plaintiffs' group each day during trial and that billable time be limited to actual time during trial. The associated time entries clearly indicate that the ISD Plaintiffs' attorneys were engaged in trial preparation when not in court. With respect to non-trial time, the Court declines to rule that only one attorney could effectively represent each plaintiffs' group and respectfully notes that the State was aptly and appropriately represented by a team of attorneys in all proceedings before the Court. The complexity of this

matter necessarily required team representation, and the Court overrules the State's objections on that basis. Likewise, the Court again declines the State's invitation to rule that any attorneys' fees related to the Intervenor's or the Charter School Plaintiffs' claims were unnecessary. The Court further declines to strike fees related to expert witnesses who were subsequently withdrawn when that decision had not been made when the fees were incurred.

The State also generally objects to attorney charges for travel time. The Court overrules these objections. The litigation involves districts from across the state with different interests and perspectives. It is entirely predictable and necessary that plaintiffs' counsel would be drawn from around the state. The charged travel time was not excessive and was linked to travel for litigation matters.

A. TTSFC Plaintiffs' attorneys' fees

The Court SUSTAINS the State's objections to time billed on 3/23/13, 4/5/13, 7/23/13, 7/24/13, 7/25/13, 7/26/13, and 9/27/13. The identified time entries include references to legislative matters and conferences that do not appear directly related to the litigation. Accordingly, the Court reduces the charged time by 11.3 hours and an amount of \$1,977.50. Otherwise, the State's objections to TTSFC Plaintiffs' attorneys' fees are OVERRULED.

IT IS THEREFORE ORDERED that under Section 37.009 of the Texas Civil Practice and Remedies Code, the TTSFC Plaintiffs shall recover from the State Defendants attorneys' fees in the sum of \$1,888,705.91, an amount that this Court finds to be both reasonable and necessary and equitable and just.

IT IS FURTHER ORDERED that the sum awarded to the TTSFC Plaintiffs shall bear post-judgment interest at the rate of five percent (5%), compounded annually, from the date the judgment is signed until the judgment is paid in full.

IT IS FURTHER ORDERED that the TTSFC Plaintiffs shall recover from the State Defendants appellate attorneys' fees in the following amounts that the Court also finds to be reasonable and necessary and equitable and just:

- (A) \$325,000 if the State Defendants seek and obtain direct review in the Texas Supreme Court, with post-judgment interest to accrue on said amount at the rate of five percent (5%), compounded annually, from the date the direct appeal is perfected in the Texas Supreme Court, with all such post-judgment interest to run until the judgment against the State Defendants is paid in full; or
- (B) (1) \$325,000 if the State Defendants perfect an appeal from this Final Judgment to the Court of Appeals, with post-judgment interest to accrue on said amount at the rate of five percent (5%), compounded annually, from the date of the notice of appeal in the Court of Appeals; plus (2) \$100,000 if the State Defendants seek review in the Texas Supreme Court, with post-judgment interest to accrue on said amount at the rate of five percent (5%), compounded annually, from the date a petition for review is filed with the Supreme Court of Texas; with all such post-judgment interest to run until the judgment against the State Defendants is paid in full.

IT IS FURTHER ORDERED that if, following an appeal, the TTSFC Plaintiffs do not prevail on one or more of their claims, the Court finds that this award of attorneys' fees would still be equitable and just under Section 37.009 of the Texas Civil Practice and Remedies Code, because they have made significant contributions to the public debate on school finance law through this lawsuit.

B. Calhoun County ISD Plaintiffs' attorneys' fees

The State's objections to Calhoun County ISD Plaintiffs' attorneys' fees are OVERRULED.

IT IS THEREFORE ORDERED that under Section 37.009 of the Texas Civil Practice and Remedies Code, the Calhoun County ISD Plaintiffs shall recover from the State Defendants attorneys' fees in the sum of \$2,609,642.57, an amount that this Court finds to be both reasonable and necessary and equitable and just.

IT IS FURTHER ORDERED that the sum awarded to the Calhoun County ISD Plaintiffs shall bear post-judgment interest at the rate of five percent (5%), compounded annually, from the date the judgment is signed until the judgment is paid in full.

IT IS FURTHER ORDERED that the Calhoun County ISD Plaintiffs shall recover from the State Defendants appellate attorneys' fees in the following amounts that the Court also finds to be reasonable and necessary and equitable and just:

- (A) \$500,000 if the State Defendants seek and obtain direct review in the Texas Supreme Court, with post-judgment interest to accrue on said amount at the rate of five percent (5%), compounded annually, from the date the direct appeal is perfected in the Texas Supreme Court, with all such post-judgment interest to run until the judgment against the State Defendants is paid in full; or
- (B) (1) \$400,000 if the State Defendants perfect an appeal from this Final Judgment to the Court of Appeals, with post-judgment interest to accrue on said amount at the rate of five percent (5%), compounded annually, from the date of the notice of appeal in the Court of Appeals; plus (2) \$325,000 if the State Defendants seek review in the Texas Supreme Court, with post-judgment interest

to accrue on said amount at the rate of five percent (5%), compounded annually, from the date a petition for review is filed with the Supreme Court of Texas; with all such post-judgment interest to run until the judgment against the State Defendants is paid in full.

IT IS FURTHER ORDERED that if, following an appeal, the Calhoun County ISD Plaintiffs do not prevail on one or both of their claims, the Court finds that this award of attorneys' fees would still be equitable and just under Section 37.009 of the Texas Civil Practice and Remedies Code, because they have made significant contributions to the public debate on school finance law through this lawsuit.

C. Fort Bend ISD Plaintiffs' attorneys' fees

The State's objections to Fort Bend ISD Plaintiffs' attorney fees are OVERRULED.

IT IS THEREFORE ORDERED that under Section 37.009 of the Texas Civil Practice and Remedies Code, the Fort Bend ISD Plaintiffs shall recover from the State Defendants attorneys' fees in the sum of \$1,733,676.75, an amount that this Court finds to be both reasonable and necessary and equitable and just.

IT IS FURTHER ORDERED that the sum awarded to the Fort Bend ISD Plaintiffs shall bear post-judgment interest at the rate of five percent (5%), compounded annually, from the date the judgment is signed until the judgment is paid in full.

IT IS FURTHER ORDERED that the Fort Bend ISD Plaintiffs shall recover from the State Defendants appellate attorneys' fees in the following amounts that the Court also finds to be reasonable and necessary and equitable and just:

- (A) \$400,000 if the State Defendants seek and obtain direct review in the Texas Supreme Court, with post-judgment interest to accrue on said amount at the rate of five percent (5%), compounded annually, from the date the direct appeal is

perfected in the Texas Supreme Court, with all such post-judgment interest to run until the judgment against the State Defendants is paid in full; or

- (B) (1) \$300,000 if the State Defendants perfect an appeal from this Final Judgment to the Court of Appeals, with post-judgment interest to accrue on said amount at the rate of five percent (5%), compounded annually, from the date of the notice of appeal in the Court of Appeals; plus (2) \$250,000 if the State Defendants seek review in the Texas Supreme Court, with post-judgment interest to accrue on said amount at the rate of five percent (5%), compounded annually, from the date a petition for review is filed with the Supreme Court of Texas; with all such post-judgment interest to run until the judgment against the State Defendants is paid in full.

IT IS FURTHER ORDERED that if, following an appeal, the Fort Bend ISD Plaintiffs do not prevail on one or more of their claims, the Court finds that this award of attorneys' fees would still be equitable and just under Section 37.009 of the Texas Civil Practice and Remedies Code, because they have made significant contributions to the public debate on school finance law through this lawsuit.

D. Edgewood ISD Plaintiffs' attorneys' fees

The State's objections to Edgewood ISD Plaintiffs' attorneys' fees are OVERRULED.

IT IS THEREFORE ORDERED that under Section 37.009 of the Texas Civil Practice and Remedies Code, the Edgewood ISD Plaintiffs shall recover from the State Defendants attorneys' fees in the sum of \$2,194,027.92, an amount that this Court finds to be both reasonable and necessary and equitable and just.

IT IS FURTHER ORDERED that the sum awarded to the Edgewood ISD Plaintiffs shall bear post-judgment interest at the rate of five percent (5%), compounded annually, from the date the judgment is signed until the judgment is paid in full.

IT IS FURTHER ORDERED that the Edgewood ISD Plaintiffs shall recover from the State Defendants appellate attorneys' fees in the following amounts that the Court also finds to be reasonable and necessary and equitable and just:

- (A) \$325,000 if the State Defendants seek and obtain direct review in the Texas Supreme Court, with post-judgment interest to accrue on said amount at the rate of five percent (5%), compounded annually, from the date the direct appeal is perfected in the Texas Supreme Court, with all such post-judgment interest to run until the judgment against the State Defendants is paid in full; or
- (B) (1) \$325,000 if the State Defendants perfect an appeal from this Final Judgment to the Court of Appeals, with post-judgment interest to accrue on said amount at the rate of five percent (5%), compounded annually, from the date of the notice of appeal in the Court of Appeals; plus (2) \$100,000 if the State Defendants seek review in the Texas Supreme Court, with post-judgment interest to accrue on said amount at the rate of five percent (5%), compounded annually, from the date a petition for review is filed with the Supreme Court of Texas; with all such post-judgment interest to run until the judgment against the State Defendants is paid in full.

IT IS FURTHER ORDERED that if, following an appeal, the Edgewood ISD Plaintiffs do not prevail on one or more of their claims, the Court finds that this award of attorneys' fees would still be equitable and just under Section 37.009 of the Texas Civil Practice and Remedies

Code, because they have made significant contributions to the public debate on school finance law through this lawsuit.

XI. Continuing jurisdiction

This Court will retain continuing jurisdiction over this matter until the Court has determined that the State Defendants have fully and properly complied with its judgment and orders.

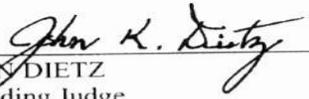
XII. Miscellaneous

IT IS FURTHER ORDERED that all costs of court expended or incurred in this cause by the TTSFC Plaintiffs, the Calhoun County ISD Plaintiffs, the Fort Bend ISD Plaintiffs, and the Edgewood ISD Plaintiffs are taxed against the State Defendants.

IT IS FURTHER ORDERED that all writs and processes for the enforcement and collection of this judgment or the costs of court may issue as necessary.

This Judgment finally disposes of all parties and all claims and is appealable. All other relief not expressly granted is denied.

SIGNED this 28th day of August, 2014.



JOHN DIETZ
Presiding Judge