

Funding Public Schools in Texas: Adjusting the Current System or Promoting Systemic Change?

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Abstract

Keller (2004) stated, “After a decade of relative calm, school finance is again at the top of the Texas legislative agenda” (p. 93). Not only is it at the top of the agenda, it is the “talk of the town” due mainly to the latest court decision declaring the Texas Public School Funding Mechanism unconstitutional. This article will address the current state of school finance in Texas, the two different thoughts on how the current situation is being dealt with, and some observations relating to these matters.

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On Wednesday, September 15, 2004, State District Judge John Deitz in the *West Orange Case*, declared the Texas' system for funding its public schools to be unconstitutional. Judge Deitz said that the \$30 billion-a-year system was both inequitable and inadequate. (Stutz, Sept. 16, 2004)

The court decision seems to support those who contend that the current system is inadequate, inequitable, denies sufficient local control over per-pupil spending, and begs for a restructuring of the tax system necessary to support it. The tone of Judge Deitz's ruling appears to mitigate against those who propose more sweeping changes that are focused on methods of delivery of instruction, allocation of resources, and management and less on the need for more funds.

A review of newspaper articles, press releases, and reports on meetings being held around the state regarding public school finance would indicate that Texas is on the verge of "plowing new ground" in school finance. If it is as Keller proposes, ". . . every Texas school will be accountable for closing achievement gaps among subpopulations of students as a result of *The No Child Left Behind Act of 2001*," and ". . . nearly three-quarters of Texas public school students live in districts that levy property taxes at or near the statutory cap of \$1.50 per \$100 of valuation" (p. 93) then the challenge becomes reviewing every aspect of school financing and available resources in hopes that this review might yield an appropriate approach to meet equity and adequacy issues. These contentions have become obvious in light of the District Court's ruling.

In review, there are two rather diverse groups and each reflects a purposeful approach in dealing with the problems and issues associated with proposed changes in the manner in which the state of Texas funds its schools. An easy, but not totally accurate, description of these two groups would be to note that they are represented by people who believe that the current system can be appropriately adjusted and those who believe that the entire system of public education is in need of total revision of the funding system.

Background

Historically, the development of a funding system for Texas public schools has been characterized by a series of starts and stops primarily driven by economic conditions and political considerations. Though this has largely been an evolutionary process, it became more revolutionary in nature with the filing in the federal court system of *Rodriquez v. San Antonio ISD* (1971) which challenged the constitutionality of the Texas public school funding system. This effort was unsuccessful and was followed by *Edgewood v. Bynum* (1984) which challenged the Texas system in state court. This case was refiled as *Edgewood v. Kirby* (1985) and in 1989 the Texas Supreme Court reversed the appeals court decision and affirmed the trial court's decision that found the Texas system of public school finance unconstitutional (Walker & Casey, 1996). The basis of the ruling was that the Constitution calls for an "efficient system" and the Court found "an implicit link between efficiency and equality" (*Edgewood v. Kirby*, 1989). Not unlike other states, this ruling was followed by a series of legislative attempts to remedy the problems within the system and subsequent, successful legal challenges to those legislative proposals. Finally, in 1993 with the passage of Senate Bill 7, the legislature

was able to pass a funding bill that met constitutional muster. Senate Bill 7 provided the framework for the Texas system, which is called the Foundation School Program.

The method provided in Senate Bill 7 for funding maintenance and operations consists of a two-tiered system. Tier 1 is a Minimum Foundation Program and Tier 2 is a Guaranteed Yield component. This system is built on a partnership between the local district and the state and relies heavily on local property taxation. The unique and controversial feature of this system is the provision for recapture of all local property taxes collected above a legislatively determined cap, called the Equalized Wealth Level (Texas Education Code, Title 2, Chapter 41, 42, and 46) and is commonly referred to as a “Robin Hood” plan because, in asents, it pulls funds from wealthy districts and reroutes that funding indirectly to poor districts.

Within the recent Foundation School program, Tier 1 required that local districts levy a \$0.86/\$100 valuation tax rate to provide the local share of the total cost of Tier 1 and guaranteed that the district would be able to access funds at the wealth level of \$295,000 per weighted student. Tier 2 allowed districts to levy an enrichment tax rate of up to \$0.64/\$100 valuation (M&O rates are legislatively limited to \$1.50/\$100 valuation) and ensures access to a wealth level of \$271,400 per student in Weighted Average Daily Attendance (WADA). The Equalized Wealth Level was set at \$305,000 property wealth per WADA. Also built into the Foundation School Program are adjustments for differing educational needs of students through a weighted pupil approach and for varying local economic conditions by way of a Cost of Education index.

A major addition to the original Senate Bill 7 relating to state school finance has been the addition of assistance for funding for instructional facilities. This assistance is

comprised of two parts. The first being the Instructional Facilities Allotment (IFA). It requires application for assistance in the building of proposed new facilities and applications are approved based on greatest need (determined by per pupil local property wealth) until allocated funds are expended. The second part consists of the Existing Debt Allotment (EDA) and is used to assist districts with debt retirement requirements on old debt. The allotment for both IFA and EDA is a guaranteed yield at \$35 per ADA per penny on the debt service tax rate. The provision of recapture does not apply to local funds for building new facilities or to the retirement of current debt (Texas Education Code, Title 2, Chapter 46).

This recent version of the Foundation School Program has been a large step forward in the equalization of funding for public school students in Texas. However, areas of contention continue to surface. The most divisive area appears to be the concept of recapture. Local districts that have property wealth above the cap are sending large amounts of local revenue back into the system to be accessed by districts with less local property wealth per student. The existence and degree of contention in regard to this matter is largely a matter of perspective. The less contentious, but more pervasive area is that of capacity. The maximum tax rate for Texas school districts for funding current year operations is \$1.50 per \$100 valuation. For fiscal year 2004, 60% of the districts had M&O tax rates of \$1.46 to \$1.50 (Thompson, 2004). At this point, under the above situation, there is no place to go to deal with inflation or other uncontrollable increases in costs.

Judge Deitz's ruling of September 15, 2004 has assured that the issues mentioned above will be dealt with either by the legislature or by the State Supreme Court. The probability seems high that they will receive considerable attention from both.

Judge Deitz gave the legislature one year to replace the system with one that is constitutionally acceptable and the Attorney General of the State of Texas said that the state would appeal the ruling directly to the Texas Supreme Court. Therefore the stage is set for continued discussion and maneuvering.

The immediate reaction to this ruling typifies the division between those who believe that the current system can be remedied in pursuit of Judge Deitz's ruling and those who believe that the entire system of public education is in need of revision.

Dr. Wayne Pierce, Executive Director of the Equity Center, said, "Everybody wins when children win, and today the children of Texas have won a great victory". (Pierce, September 16, 2004)

Byron Schломach, Ph.D., chief economist for the Texas Public Policy Foundation stated,

Judge Deitz, like so many others has only considered the amount of money spent and not considered how it is being spent. Research has shown time and again that how much money schools spend matters far less than how they spend it. After all, we have tripled per-student school spending without any effect on high school completion or educational proficiency". (Scholmack, September 16, 2004)

The Group that Favors Adjustment Within the Current System

This group consists of those who tend to favor some measure of, more or less, substantive change to the current system. Those identified with this approach tend to be current and former school administrators and other experts who have been identified with the issue of Texas school finance for some time.

The current rhetoric coming from this group, favoring revision of the current system, reveals six easily definable issues that are of major concern: 1) equity in funding, 2) giving credence to adequacy, 3) recapturing local monies, 4) maxing out the local taxing capacity, 5) control over local governmental agencies, and 6) sources of revenue, including reduction of reliance on local property taxes. Each of the issues is viewed through the lens of adjustment to the current system. The following observations detail the view of the issues individually and consider, where possible, the areas of concern, current status and proposed actions which might be pursued.

Equity

In the state of Texas, the issue of equity in funding has been the driving force for many changes occurring in the way the state funds its schools. The recent standard tends to focus around providing substantially equal access to funds at substantially equal tax effort. This system has been very effective in closing the gap in available revenues at similar tax rates for districts in the state (Thompson, 2003, p. 6). However, the numbers would indicate that there still exist considerable differences in available revenue between property rich and property poor school districts. The system has never closed the gap to the \$600 promised in Edgewood IV. The gap has actually widened to over \$1,000 (Equity Center Positions of the West Orange-Cove Case, 2003). This difference has generally been attributed to five factors.

1. The availability of property tax revenue for those districts that are in the gap between the point of equalization and the cap and those districts that are categorized as property wealthy and subject to recapture.
2. Hold-harmless clauses that protect property rich districts to continue to raise funds above the level of equalization.
3. Financial incentives in the form of percentage discounts to Chapter 41 (property-wealthy) districts that go into partnerships with Chapter 42 (below the Equalized Wealth Level) districts, enter into programs that are on the Commissioner's list of approved projects, and early commitment to the above-mentioned partnerships (*Manual for Districts Subject to Wealth Equalization*, 2002).
4. Payment to Chapter 41 districts of the per-capita allotment that is not available to others.
5. Funds that are raised for long-term debt retirement are not subject to recapture.

The consensus of opinion within this group is that any adjustment of the current funding system that continues to allow and/or exacerbates the ability for some districts to have access to more funds at like tax rates or to have access to equivalent funds at lower tax rates will be subject to additional legal challenge.

While the above issues in equity weight heaviest in the minds of this group, there are still other issues that relate somewhat obliquely to concepts of equity.

1. Adjusting for localized differences in the cost of providing educational services. The current Cost of Education Index (CEI) is dated and is in need of revision with more accurate and appropriate statistical measures for determining local differences in costs (Taylor, 2004).
2. Accounting for individual differences in student educational need. The current system of weighted pupils is generally accepted, but perhaps needs study in regard to the validity of the assigned weights. WADA is a statistically adjustment that is not necessarily related to the number of actual weighted students and is not generally understood.

Adequacy

Defining funding at an "adequate" level has been a difficult target to hit if one is to believe current rhetoric from this group. Consensus opinion on the matter seems to focus on the construction of a system that would provide sufficient funding for every student in the state to be in a program that offered all the necessary preparation to meet previously defined standards.

In a current adequacy study in Texas (2004), researchers have, by utilizing a cost function analysis, asserted that the "average funding level per pupil of meeting state performance standards is estimated to be between \$6,172 and \$6,271". (Gronberg, T., Jansen, D., Taylor, L., & Booker, K., 2004, p. 4). This performance standard is 55% of students passing all sections of the state mandated testing program. The current average budgeted expenditure is determined to be \$6,503 per pupil. This report, given to The

Joint Select Committee on Public School Finance, provides the framework for some consideration among the interested parties. The most obvious of these issues is the assumption of the 55% passing standard as the benchmark of adequacy. Many would consider this to be a minimum rather than an adequate standard. This very well-documented study presents many facts and figures that should prove to be of value to policy-makers, but really fails to bring sufficient information to deal with the intricate problem of what constitutes adequacy.

Recapture

Since its inception, the ugly shadow of the principle of recapture (defined as the act of taking local property tax revenue from one district and distributing it to others) hangs over the recent funding system like a black cloud. Recapture has been the most emotional and divisive of the six issues regarding the Foundation School Program.

The insoluble nature of this problem seems to be obvious and is based on the fact that property-poor districts do not believe that a property-rich district should receive the benefits of a state program (public education) at a substantially lower local tax rate and/or have greater access to resources at similar rates. It is also true that property-rich districts find it unacceptable to share local revenue with the state or other districts. As of late, it seems that the courts agree. This group believes this challenge has no obvious solution which would stay within the framework of the *Edgewood* concept of equity, as long as districts use local property taxes to either fund or supplement the funding of their educational program.

Capacity

Capacity is alleged to have become a major problem for Texas School districts based on the fact that for 2002-2003, 607 districts, out of a state-wide total of 1037, had an M&O tax rate of between \$1.45 & \$1.50 and, further, that 75% of all students in the state reside in these 607 districts (Thompson, 2003, p. 13). The argument about capacity infers that districts have lost the ability to increase local operating funds because they are at the maximum taxing capacity allowed under current law. Since Tier 2 funds are a function of local tax effort, the system effectively shuts down on districts at the maximum allowable tax rate in Tier 2.

The issue of capacity is currently the subject of litigation in the court system of Texas in *West Orange-Cove Consolidated Independent School District v. Alanis* (Thompson, 2004, p. 11-12). It has been asserted that the system for funding the public schools in Texas has become a state ad valorem tax which is prohibited by the State Constitution. The suit was dismissed by the Travis County district court and affirmed by the Third Court of Appeals. However, the Supreme Court of Texas reversed the court of appeals and remanded the case for trial. The Supreme Court asserted that the system must allow districts to meet all State requirements and the constitutional requirement of "general diffusion of knowledge" and provide the districts with "meaningful discretion" in establishing tax rates. (Thompson, 2004, p. 12)

The issue of capacity has been decided, at least temporarily, by State District Judge John Deitz in his ruling of September 15, 2004, in which Judge Deitz ruled that Texas school districts had lost the capacity to increase amounts of funding by local option.

Local Control

The ability to exert some degree of control over local governmental agencies is a dearly held value of the American public (Swanson, 1997). Local control of public schools is vested in the local board of education and their influence on financial matters is based on budgeting authority and the ability to set local tax rates for the support of local schools for the purpose of providing a basic program or for enrichment. Operating under the limitation of a maxed out local M&O tax rate or a totally state supported system would be a serious infringement on local fiscal control within the public school system.

Sources for funding the Foundation School Program (FSP)

This group's approach to allievate the challenges of funding the FSP tend to focus around the following:

1. Reduction of the reliance on local property taxes
2. Expansion of the sales tax in both the percentage of the tax and the nature of those things subject to sales taxes
3. Levying of a state property tax
4. Some manner of locally assessed property tax (perhaps requiring voter approval) for enrichment
5. Other less obvious refinements to the state system of taxation.

Overall, it is believed that any approach to funding the system should focus on increasing the state's share of the cost of public education, thereby, reducing the reliance on local property taxes. This belief is based on statistics such as the seven billion dollar increase in public education costs since 1999; 3% coming from the state, and 97% coming from local state money (Thompson, 2004).

This group may very well have their chance to refocus with the latest court decision.

Those who promote Systemic Change

This approach to changing the school finance system in Texas is primarily represented by such organizations as Reform Texas, the Hoover Institution, and the Texas Public Policy Foundation and, is being developed by such respected names as Peacock, Hanushek, and Vedder. The direction this camp proposes is not so much reform of the funding system, but a reform of the entire system of delivery of instruction, accountability, and structure of the educational system. This is an all inclusive and very different view of the reformation of school finance. The primary points of connection to the funding system seem to focus on the following issues: 1) inputs related to outputs, 2) competition, and 3) funding the system, and could be compared to the several business models involving “Total Quality Management” or benchmarking procedures which allow for improvement based on the evaluation and implementation of the success of others.

Inputs Related to Outputs

The consensus of researchers promoting a more comprehensive reform of the system could be categorized as having no systematic relationship between the expenditure of resources and student academic achievement. This research is extensive and well-documented and goes even further to indicate several factors that are, indeed, related more closely to student achievement gains than the amount of per pupil expenditure (Vedder, 2004, p. 10-11). In response to the conclusion reached above, it is suggested that the allocation of resources is more important than is the amount of resources available. Vedder (2004) notes “Given the rapid rise in Texas school costs over

time, combined with what are at best modest improvements in learning, attention should be shifted away from putting more resources into the existing system and shifted toward thinking of new, potentially more efficient, ways of providing educational services.” (p. 5)

The primary by-word of this idea is “cost-effectiveness” and is illustrated as a ratio of number of students passing all segments of *Texas Assessment of Knowledge and Skills* (TAKS) and that of total expenditures. In other words, Vedder suggests that educational efficiency can be measured by dividing the budgeted expenditures per pupil by the number of pupils passing all required TAKS tests. In effect, this establishes a dollars-spent per students-passing-ratio of efficiency and effectiveness. Eventually, this segment of the argument goes to the issue of greater accountability in the funding system.

Competition

This group relates the issue of competition, basically, to the concept of free-market and suggests that a system which allows students to choose schools will foster competition and eventually result in the demise of those inefficient and ineffective schools. This leads directly back to the “input output” issue. Their premise is to fund the student and not the school. The result of this is that it would let the money follow the student. An example of this would be a voucher system that would allow a student to exercise choice in regard to some or all of his/her academic program. The assumption is that the consumer would choose schools that are effectively and efficiently producing students who excel in learning over inefficient, ineffective schools. This group suggests that it would be possible to achieve the basic portions of a legislatively-determined,

educational program and that it be delivered through the local educational system, while the more advanced portion of the program is supported by vouchers.

Within the framework of competition, it must be noted that there also appears in this body of literature noting a considerable treatment of the concept of performance incentives. The exact nature of these incentives is too complex to be dealt with in this context, however it can be noted that a wide range of ideas are covered involving teachers, groups of teachers, principals, campuses and districts when it comes to incentives and merit pay.

Funding the system

The argument in this venue tends to go in several directions, but generally this group agrees that the issue is not how to raise more money for education in Texas, but how to more efficiently and fairly produce the needed funds. Dick Lavine (2004) writing for the Center for Public Policy Priorities focuses on the regressive nature of the sales tax and posits that an income tax is a more appropriate source of revenue. Vedder (2004) in the Texas Public Policy Foundation contends that “if policymakers determine that additional revenues are needed for public education, the best approach would be a modest expansion of the sales tax base coupled with reductions in some excessive business taxes” (p.46).

A compelling point of divergence from the widely held position that local property taxes must be reduced is Vedder’s contention that there is a strong correlation between local financial support and academic achievement.

Overall, there is very little consensus among this group in regard to the best way to fund Texas schools through any kind of revamping of the state's system of taxation. It is all about systemic change from funding the school to funding the student.

Conclusions and Considerations

The most obvious conclusion that can be reached after considering all points of view is that the various perspectives are so divergent that there is no plan that can approach consensus. The wide divergence of opinions does not exist only between these two groups, but also within the groups. Therefore, the key word in attempting to deal with this problem may be compromise.

The consideration of all the issues, the complexity of each, and the number of opinions and proposed solutions dealing with each has the potential to make the whole somewhat incomprehensible. The simplification of the totality of issues in the arena of Texas Public School finance can most easily be dealt with by narrowing the focus and proposing some assumptions upon which some solutions might be considered.

Assumptions:

1. There is no solution to the maintenance of equity/elimination of recapture issue as long as local property taxes are used to fund or supplement the funding of local educational effort.
2. Public school administrators and local boards of education must develop (or do a better job of communicating that development) that they have the ability to make a difference in educational opportunity for their students through allocation of resources.

3. The methodology for accounting for individual differences in student educational need (currently a weighted pupil approach) and economic differences among districts (currently using the Cost of Education Index) must be validated and/or updated.
4. The issue of local option in regard to increasing per-pupil expenditures (capacity) must be dealt with.
5. An agreement must be reached on the nature and degree of increased accountability in regard to resource allocation, efficiency, and cost effectiveness exhibited by school districts.

Considerations based on the Assumptions:

The wide variation in per-pupil property wealth among Texas public school districts assures so long as districts depend on local property taxes, to any degree, for their funding, equity and recapture are necessary, if reluctant partners. Since local property taxes are an integral part of the history and, undoubtedly of the future, it appears that any solution(s) rest upon an agreement in regard to acceptable degrees of equity and recapture. For example, reducing the reliance on local property taxation by increasing the state's share of the cost would reduce the total amount of revenue subject to recapture.

The extensive and impressive research and the resulting data being generated by those who propose a substantive restructuring of the manner in which public schools in Texas do their business is creating a political environment where the credibility of local boards and administrators is being questioned in regard to their management philosophies, policies, and procedures. The intent

here is not to pass judgment on the relative efficiency and effectiveness of the governance structure of Texas public schools. Rather, it is to suggest that it is incumbent on the local school governance to demonstrate their ability to make a difference in the educational opportunity offered to their students through enlightened allocation of resources and meticulous tracking of those resources and the resulting academic progress. It is inappropriate to assume that school management is not currently meeting this demand in an efficient manner, but it is very obvious that if they are in fact meeting demand, it is imperative that they become better at presenting their data and verifying research if the intent is to compete with the volume of facts available from those who believe otherwise.

Historically, two of the major problems associated with creating equitable funding systems for public schools are dealing with the wide variations among the educational needs of students and the difference in cost-of-living factors among districts. The Texas Foundation School Program currently uses a weighted pupil approach for dealing with the relative difficulty in educating different types of student learners. This has been successful and well-accepted by most, but it seems that this is an opportune time to revisit this issue and validate the weights assigned to the various categories of pupils in order to be sure that these weights are appropriate for the students of today and the immediate future. Accounting for the variations in the cost-of-living among the districts is completed through the Cost of Education Index (CEI) which is a number assigned to each district by the Texas Education Agency and is used as a multiplier on the per-pupil allotment. The current CEI is outdated and is in need of updating or replacement.

A major part of the structure of Texas public schools has, historically, been the ability to exert a considerable amount of local control. This has been especially true in the area of school finance. Local boards of education have been able to raise or lower local M&O tax rates and, thereby, directly affect per-pupil expenditures. This ability has been eroded with expectations driving the majority of Texas School Districts to the limit of \$1.50/\$100 valuation for maintenance and operations (M & O). The most obvious, and unlikely, manner to deal with this issue is to remove the \$1.50 cap. Any other solution to this problem of diminished capacity is rooted in the revision of the funding system in some manner so as to increase the state's share of the cost and create some flexibility for districts in setting their tax rates. The degree of flexibility is, of course, a function of how much of the funding the state wishes to take on and where any new cap on local tax rates, if any, is set.

Any substantive change in the Texas system for funding its public schools will require some type of an agreement between those who want to see an upward adjustment in the money funneled into the system with some modifications to the system, and those who see a massive need for a major restructuring of the system. In order for a system for funding the Texas public schools to gain sufficient political support and become approved by the legislature, an agreement needs to be made in regards to the nature and degree of increased accountability as it relates to resource allocation, efficiency, and cost-effectiveness exhibited by school districts. Those in favor of the adjustment and management of the funding structure of Texas Public Schools should not expect a "free ride" to increased

funding and improved methods of disbursement. Those who propose total restructuring of the system should not expect to receive “all that they ask for” in regards to accountability, efficiency, and effectiveness in relationship to funding change. The political system demands that sufficient agreement or compromise in these two groups occur in order that a reasonable consensus be reached within the legislature over the funding issues of Texas Public Schools. Our children, schools, communities, and our state deserves a school funding system that works to make “equality and equity for all” the end results.

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