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## **MALDEF Info Sheet on Texas School Finance for Educators and Advocates**

### **Background**

MALDEF has been leading the battle for fair school funding in Texas courts for the past four decades. In our first school finance case, *Edgewood v. Kirby*, the Texas Supreme Court declared that our Texas Constitution mandates: “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.” This mandate was re-affirmed in the most recent school finance case, *West Orange-Cove CISD v. Neeley*. It seems like a simple enough task for our Texas Legislature but all too often politics get in the way, and nothing beyond a quick fix ever seems to materialize. MALDEF firmly believes that the State has an obligation under the Texas Constitution to ensure both equitable and adequate funding for all Texas school children, so that each child may achieve his/her fullest potential. Fair, transparent funding is especially important in light of the growing state accountability requirements for all school districts and all school children.

### **The Present**

The band-aid has once again fallen off and the only hope for school districts and school children rests with the courts. Because the school finance system has not been overhauled to meet the mandates of the education clause since the last school finance case, MALDEF will again file a lawsuit challenging its constitutionality. The claims will focus on the most serious harms to school children resulting from the recent budget cuts and arbitrary changes in how public schools are funded, and will demonstrate that the system is inequitable for lower-property wealth school districts and inefficient.

### **What are the Claims MALDEF intends to bring?**

MALDEF intends to bring three primary claims that focus on the most affected school districts and school children: 1) Equity Claim; 2) Adequacy Claim on behalf of Low Income and English Language Learner (“ELL”) students; and 3) Tax Cap claim. These claims are by no means full-proof but based on our extensive research and expertise, they appear to be the strongest and the most necessary in order to help close the inexcusable achievement gaps and allow students to compete on equal footing.

#### **1. Equity Claim**

The first legal claim is a financial efficiency or “equity” claim based on Article VII, Section 1 of the Texas Constitution, which mandates that the State provide an efficient public school system. This claim will be filed on behalf of school parents and children, as well as school districts (which are typically, though not always, lower property wealth school districts). The Texas Supreme Court has interpreted this provision to mean that the State must afford all public school districts with “substantially equal access to similar revenues per pupil at similar levels of tax effort.”

In the two most recent school finance cases, the Court found that a \$600 gap in funding and a 9-cent gap in tax rates between property-wealthy and property-poor districts did not violate the efficiency clause. Today, the gaps have increased between two and three times those amounts. Many lower wealth school districts (and even some mid-wealth districts) are taxing at the maximum, \$1.17, but still cannot generate the same amount of revenue generated in higher property-wealthy districts taxing at \$1.04 or even less. This inequity occurs all across Texas, from the Valley to the Panhandle.

The equity claim will also focus on the State's arbitrary funding changes that are unrelated to public education. Since 2006, Texas has shifted funding from a formula-based system to an arbitrary measure known as "Target Revenue." This shift, compounded by budget cuts, disproportionately affects property-poor districts and forces them to tax at higher rates to fulfill the state mandates.

## **2. Adequacy Claim**

The second legal claim will challenge the State's inadequate funding of low income and ELL students. This "adequacy" claim will allege that the State's current supplemental funding for these students, combined with general funding, is arbitrarily set and does not provide the funds necessary for those students to acquire a quality education that the Texas Constitution demands.

When evaluating an adequacy claim, the Texas Supreme Court has held that courts should focus on "outputs," such as results on standardized tests. Although there has been some improvement on the TAKS test by students across Texas, achievement gaps persist for ELL and low income students. While 13% of white students *failed to pass* all TAKS tests, 31% of economically disadvantaged, and 42% of ELLs *failed to pass*. Additionally, the State is requiring all students to be college-ready and is moving to new, more rigorous tests called STAAR exams, which will include end-of-course exams and will replace the easier TAKS tests. Preliminary STAAR results are shocking: on the Algebra I test, 55% of low income students compared to 30% of non-economically disadvantaged *failed to pass* and 79% of ELL students compared to 40% non-ELL students *failed to pass*. Furthermore, only 1/3 of low income students and 1/25 ELL students are regarded as being "College Ready" under the State's definition. Budget cuts, arbitrary funding mechanisms and increasing state mandates have made it impossible for many school districts to provide these students with a general diffusion of knowledge. If successful, this claim will benefit all school districts educating low income and ELL students.

## **3. Tax Cap Claim**

The final claim will assert that the State has controlled local taxation to the point that it has become an unconstitutional statewide *ad valorem* tax. Because property-poor districts are forced to cap at or near the tax in order to attempt to provide an adequate education, local school districts have lost all meaningful discretion in setting their tax rates. Knowing that eliminating the cap altogether could destroy equity, this lawsuit will also seek a declaration that the cap remains essential insofar as the Legislature continues to rely on local property values to fund public education.

Importantly, this lawsuit will not seek to "level down" the system so that property-wealthy districts are funded at the same inadequate levels as property-poor districts. Instead, this lawsuit will allege that the system can only operate efficiently if districts at the low end of equity are "leveled up" so that all public schools provide an accredited, high quality education to their students.