



A Decision Neither Adequate nor Equitable

The Texas Supreme Court Ruling in *West Orange-Cove vs. Neeley*

by **Albert Cortez, Ph.D.**

On November 22, 2005, the Texas Supreme Court issued its long-awaited ruling in the *West Orange-Cove vs. Neeley* case, the latest in a series of legal challenges involving Texas school funding. The court reviewed the earlier state district court ruling issued by Judge John Dietz that found the Texas school funding system unconstitutional for three reasons: (1) the state's failure to provide sufficient state funding for local school districts to provide "local discretion"; (2) the state's failure to provide sufficient funding to meet state requirements; and (3) the state's failure to provide equitable access to funding required to build school facilities.

In a disappointing decision, the Texas Supreme Court fell far short of supporting either adequacy or equity in the Texas school funding system. The ruling simply upheld the lower court's ruling on the \$1.50 tax cap, agreeing that the existing tax cap limited discretion provided to school systems to supplement the level of funding provided by the state. This in turn made the \$1.50 ad valorem tax, essentially a *state property tax*, which is prohibited

by the Texas constitution. The court then ordered the legislature to modify the funding plan to address that issue and gave it until June 1, 2006, to adopt the required changes.

The challenge to the \$1.50 cap on maintenance and operations was the only portion of the lower court's ruling that was affirmed by the Texas Supreme Court, as it rejected the majority of the major legal challenges. The state contended that the state legislature had a legally exclusive right to determine what constituted an adequate education. The plaintiffs argued that: (1) the existing state funding system failed to provide an adequate level of funding, including and particularly for students with special needs; (2) growing inequity in expenditures violated legal standards established in earlier *Edgewood* court rulings; and (3) the state's system for funding school facilities was both inadequate and inequitable.

The Courts' Response to Legislative Prerogatives on School Funding

Creatively trying to make all challenges to Texas school finance

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void, the state’s initial legal position was that decisions regarding adequacy of funding were strictly political issues and not subject to judicial review. This elitist stance was summarily rejected by the Texas Supreme Court. The court noted that while it is the legislature’s role to “make suitable provisions for a general diffusion of knowledge” as required under the Texas constitution, state courts have a legitimate role in determining whether the state is meeting its constitutional obligation to do so.

Referring to its earlier ruling in *Edgewood I*, the court noted that it had “firmly rejected this view.” Dismissing the state claim that the issue of adequacy was essentially a political question not suitable for judicial review, the court stated: “This is not an area in which the constitution vests exclusive discretion to the legislature, rather the language of Article VII, Section 1 imposes on the legislature an affirmative duty to establish and provide for a system of public free schools. This duty is not

The system as a whole either is equal or it is not, and any attempt to justify a system of educational privilege for an elite few is unacceptable.

commissioned unconditionally to the legislature’s discretion, but is instead accompanied by standards... The final authority to determine adherence to the constitution resides with the judiciary. Thus, the legislature has the sole right to decide *how* to meet the standards set by the people in Article VII, Section 1, and the judiciary has the final authority to determine whether they have been met.”

The court’s stance on the “legality” of challenges to levels of state funding (i.e., the basic opportunity to challenge legislative decisions regarding funding levels) may prove to be a critical juncture for future challenges to the Texas school finance system. Adequacy challenges brought in a number of other states had been rejected on the basis that, in those states, the legislature did

have exclusive prerogatives in defining what was considered an adequate education. By ruling that, in Texas, the courts can and will intervene in such cases, it affirmed that Texas school districts can continue to turn to the courts when the legislature fails to meet its constitutional obligations.

Adequate is Called “Enough”

The Texas Supreme Court went on to overrule the lower court’s ruling that the state of Texas does not provide adequate funding to enable its public schools to meet state mandates. But data contained in the ruling reflect that the court recognized that the quality of education available to many students in

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The Intercultural Development Research Association (IDRA) is a non-profit organization with a 501(c)(3) tax exempt status. The purpose of the organization is to disseminate information concerning equality of educational opportunity.

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The Impact of Focused Educational Assistance

by **Bradley Scott, Ph.D.**

The IDRA South Central Collaborative for Equity provides technical assistance and training in many forms to serve public schools in its service region, including charter and magnet schools. The center is the equity assistance center funded by the U.S. Department of Education to serve Arkansas, Louisiana, New Mexico, Oklahoma, and Texas. This article describes one technical assistance strategy that assists school personnel to transform educational policy and practice and to create significant impact in support of student success in schools.

The *focused educational assistance* (FEA) technical assistance approach is a strategy created by the center. The FEA provides local education agencies (e.g., public schools), including magnet and charter schools, a set of extended services to address an educational problem, concern or practice to provide greater opportunity for every learner to receive high quality instruction and educational supports to be academically successful.

There are several critical steps in this assistance strategy. Some of these steps involve important commitments on the part of the school district, and others require significant commitment

on the part of the IDRA South Central Collaborative for Equity. The district must first demonstrate a willingness and desire to address an educational concern that is denying students an opportunity to receive quality instruction, receive equal education opportunity, or benefit from access to schools and all programs within those schools. The district also must identify a person to be responsible for taking leadership for the district and to allocate time and administrate the district's resources to ensure the issue is addressed. The IDRA South Central Collaborative for Equity commits 15 to 20 days of services and technical assistance to the effort at no cost to the district, including staff time, travel,

technical and clerical support, and other resources that are necessary to complete the FEA.

The district and the center work together to clearly describe the problem or educational concern being addressed. Collaboratively, they specify goals and outcomes for all of the individuals who will be impacted by the activity, including measurable achievement or academic and other outcomes for students, and changes in policy and practices for administrators and teachers or for parents when appropriate.

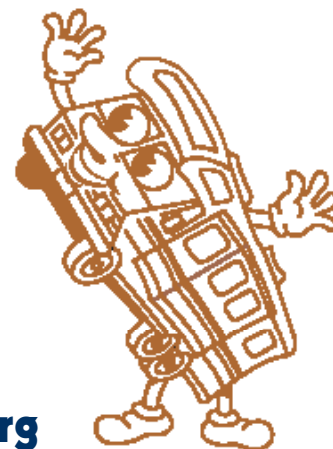
The school district and the center draft a plan of action for addressing the

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problem, and all of this information is formalized in an FEA agreement that is signed by the South Central Collaborative for Equity and the district’s superintendent or official designee. This agreement outlines the commitment for both the district and the center and converts that commitment to a dollar figure on the part of both of

the entities.

The FEA is a long-term, in-depth activity that also requires appropriate monitoring, data collection and analysis, progress reporting toward goal attainment, and course correction and modification where necessary. The formative evaluation that unfolds during the course of an FEA helps to ensure that goal accomplishment occurs

and that the summative evaluation successfully reports goal completion by the end of the activity.

The impact of the FEA results in a tangible product or set of products that remains in the district and has extended usefulness beyond the FEA itself. The FEA also embraces the IDRA South Central Collaborative for

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Sample Equity Plan for Focused Educational Assistance

Stage	Equity Assistance Center Activity or Strategy Sample: Reading FEA
Stage 1: Identify Goals or Outcomes for Students, Staff, Parents, etc.	State goal or outcome: Reduce the achievement gap in reading for minority and English language learners.
Stage 2: Assess Needs	Assist the district to determine current status in the persistent barrier or area of concern.
Stage 3: Select a Scientifically-Proven Instructional Program	Assist the district to review research to determine what works for the population in question.
Stage 4: Set a Self-Improvement Plan	Assist the district to select a researched-based program and develop an action plan for implementation to address the area of focus.
Stage 5: Determine the Self-Monitoring Plan	Assist the district to create local self-monitoring mechanism that clearly documents changes and impact in the area of concern.
Stage 6: Acquire Support	Assist the district to determine and identify resources to carry out the local plan including identifying the IDRA SCCE support through technical assistance and training as identified in the FEA agreement.
Stage 7: Implement the Plan	Assist administrators, teachers and other stakeholders to implement the local plan, including providing technical assistance, guidance and problem-solving as needed according to the FEA agreement.
Stage 8: Follow-up	Provide periodic on-site support to ensure the implementation and maintenance of newly implemented activities.
Stage 9: Conduct Evaluation	Assist the district to collect, analyze and interpret data on the equity innovation or strategy that is implemented.
Stage 10: Redefine Needs	Assist the district to redefine needs as a result of the FEA activity and establish a new level of change, including new changes in academic and other outcomes for the student population
Stage 11: Design Modification	Assist the district to determine any necessary program modifications as a result of local evaluation and other changes.
Stage 12: Implement Modification	Assist the district with the implementation of new activity as a result of the local evaluation or because of changes that have occurred, such as reductions in the persistent gap or barriers to equity.

Source: Intercultural Development Research Association.

Texas Supreme Court Misses the Point

Texas Must Provide Equity and Excellence for All Students

by María “Cuca” Robledo Montecel, Ph.D.

On November 22, 2005, the Texas Supreme Court issued its ruling in the *West Orange-Cove vs. Neeley* school funding case. The case was under appeal after Judge John Dietz’s lower court ruling that the Texas school finance system is unconstitutional because it “fails to provide an adequate, suitable education.” The Supreme Court upheld the lower court’s ruling only on the \$1.50 tax cap.

The legislature created the tax cap when it set up the current school finance system over a decade ago. The cap limits how high local property taxes can be set in order to keep districts from raising school taxes too much and to help the state keep the system more equal. But since many school districts have now reached that cap, the Supreme Court ruled the \$1.50 cap is essentially a statewide property tax and therefore is unconstitutional.

Education was and is a state responsibility. Over the last decade, the state government has reduced its share of funding for public education from 52 percent to 38 percent, causing the quality of education to suffer. This lack of state funding is the major factor that has forced local school districts to raise their property taxes to their current levels. While, the legislature will undoubtedly consider other means to respond to the court, the best solution is for the state to increase its share of education funding.

We are appalled by the Texas Supreme Court’s low standards for what constitutes an adequate

education. In ruling that the current levels of funding are adequate, the court has disregarded Texas children. We must have excellence for all students.

Further, we are deeply disappointed in the court’s silence on adequacy of funding for special populations. The preponderance of evidence, including research presented by the plaintiffs in this case and noted by the court, shows that special population funding levels are dramatically lower than what is needed to provide an excellent education to many Texas students. This is not just a problem of a handful of children. More than half of our state’s children are from low-income families. More than half a million are English language learners.

By ruling that the state is currently providing sufficient levels of funding to meet its obligation to “make suitable provisions for a general diffusion of knowledge,” the court has put its stamp of approval on low expectations such that schools where half of the students are failing state assessments are considered to be performing at acceptable levels.

It is good that the court affirmed that the current system of recapture is both constitutional and efficient. However, the court could have taken this opportunity to remedy growing inequities that have resulted from the unwillingness of the state to pick up its share of the cost and provide excellent education for all students. They missed that opportunity.

The court acknowledges that things are unequal and have become even more unequal over the last 10 years, then declares the inequality is legally acceptable. The court suggests that all children are equal and then insists that it is acceptable for some to have an adequate education and others an excellent one.

Finally, the Texas Supreme Court’s inattention to school facilities funding is shocking. While facilities conditions have improved in a handful of isolated cases, schools all over the state are crumbling. School leaders are being forced to choose between bricks and books, between tiles and teachers. This is not acceptable. We need facilities that support excellence and facilitate preparation of students for the world of work, which requires infrastructures for technology and Internet access. This is the area of our school funding system that the state has most neglected.

IDRA stands ready to work with leaders, community members, and advocates who want more – not less – equity; who want more – not less – excellence; who want more – not less – fairness in our schools. As the state’s policymakers begin to work on the meager changes to the system supported by this ruling, community engagement and insistence on quality public schools for all children must be strongly and persistently communicated, and attempts to saddle this state with mediocrity rejected. Our communities and our students deserve nothing less.

IDRA is an independent, private non-profit organization, directed by María Robledo Montecel, Ph.D., dedicated to creating schools that work for all children. As a vanguard leadership development and research team for more than three decades, IDRA has worked with people to create self-renewing schools that value and empower all children, families and communities. IDRA conducts research and development activities, creates, implements and administers innovative education programs and provides teacher, administrator, and parent training and technical assistance.

the state was severely lacking.

The Supreme Court seemed to acknowledge the trial court's assessment that the condition of education in Texas was far from adequate. It cited statistics on the number of students failing the Texas Assessment of Knowledge and Skills (TAKS); related the need for more remediation through summer school, remedial classes, curriculum specialists, reduced class sizes, and more math and science teachers; noted a worsening under-supply of teachers, aggravated by high attrition and turnover; observed that Texas was ranked last among the states in the percentages of high school graduates at least 25 years old in the population and that more than half of Hispanic ninth graders and approximately 46 percent of African American students leave the system before the 12th grade; and acknowledged that the unadjusted National Assessment of Educational Progress (NAEP) data (which the court recognized may more accurately reflect college preparation) show Texas sinking to 37th among states.

Given the above litany, one might have concluded that the Supreme Court, like the district court before it, would certainly find the system that provided such dismal outcomes is inadequate and thus unconstitutional.

Astonishingly, after citing fact after fact reflecting Texas' educational shortcomings, the Texas Supreme Court elected to ignore this evidence and chose instead to focus on a handful of other indicators as "evidence" of sufficient state support for its public schools. Grasping for straws to support its position, the high court noted, "By all admissions NAEP scores, which the district court did not mention, show that public education in Texas has improved relative to other states."

In that same segment of the decision, the court also stated, "In 2003, Texas ranked first in the nation

Tools for

Equity Means Opportunity for All Children

November 22, 2005, was not the best day for the children of Texas. As the article on Page 1 describes, in the school finance lawsuit appeal, *West Orange-Cove vs. Neeley*, the Texas Supreme Court held that capping local school property taxes at \$1.50 per \$100 valuation constitutes a statewide tax and is thereby unconstitutional. But, the court did not use this opportunity to address the underlying problem of the state's failure to fund its share of the school costs. Texas has undermined gains in both educational equity and quality by reducing public funding for public education. In the last five years alone, Texas has reduced its share of school funding from roughly 45 percent to 38 percent. But the Supreme Court merely took note of shifting conditions, stating that while it did not find the system unconstitutional, "it remains to be seen whether the system's predicted drift toward constitutional inadequacy will be avoided by legislative reaction to widespread calls for changes."

As the court's ruling now becomes a responsibility for legislators, the role of concerned educators, parents, community members and businesspeople in making sure that Texas takes on those changes could not be more important.

A Snapshot of What IDRA is Doing

Developing Leaders – IDRA is supporting the development of student literacy and leadership in school finance in partnership with community-based organizations and schools. In recent interviews with students in the Rio Grande Valley, students identified a clear connection between resources and student outcomes and are voicing their concerns through public presentations and plans for local action.

Conducting Research – In Texas and many other states, lawmakers are investigating ways to define and fund what is generally misnamed an "adequate" education. IDRA is conducting the policy research to ensure that policymakers and the public recognize the important ways that proposals for adequacy conflict with mandates for equity, as these approaches set the bar at a minimally adequate standard for many, while locally subsidized excellent schooling becomes the province of a privileged few. (See article by Al Kauffman in the March 2004 issue of the *IDRA Newsletter*, <http://www.idra.org/Newsltr/2004/Mar/Al.htm#Art3>.)

Informing Policy – In addition to providing expert testimony that informed *West Orange-Cove vs. Neeley*, IDRA has provided an analysis of the Texas Supreme Court's decision to policymakers, school districts and the public. Beyond in-person presentations and print publications, IDRA is disseminating its analyses of school finance policy to education stakeholders through podcasts, webcasts and listservs.

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Action

Engaging Communities – Through local and statewide forums, such as the recent Graduation Guaranteed/Graduación Garantizada – Statewide Summit on School Holding Power, convened by IDRA and the League of United Latin American Citizens in November 2005, IDRA is engaging local leaders and school districts in promoting school finance equity as a foundation of healthy, effective school systems with the means to ensure that all students succeed and graduate.

What You Can Do

Get informed by checking out the full opinion in *West Orange-Cove vs. Neeley*. The decision can be found at <http://www.supreme.courts.state.tx.us/Historical/2005/nov/041144.htm>. For an overview of the decision and statements from various education stakeholders see: <http://www.texans4fairfunding.org/courtruling.asp>. For additional analysis of the Supreme Court ruling and links to related resources, check out the Center for Public Policy Priorities excellent web site at <http://www.cppp.org>.

For a cross-state view of school finance equity issues, readers may want review the latest edition of The Education Trust's annual Funding Gap report posted at <http://www2.edtrust.org/NR/rdonlyres/31D276EF-72E1-458A-8C71-E3D262A4C91E/0/FundingGap2005.pdf>.

Get involved by joining the Texas Latino Education Coalition's growing action network at <http://www.texans4fairfunding.org>. You can also join and/or support TLEC partner organizations in Texas – including, among others, the Mexican American School Board Members Association, the National Council of La Raza, League of United Latin American Citizens, Texas State Office, Texas Association for Chicanos in Higher Education, and the Texas Federation of Teachers – or their national networks or chapters in other states.

Get results by becoming a local resource to your school, board, community group or other parents on how various school finance policies will impact children in your community, district and state. For an analysis of Texas House and Senate proposals, see <http://www.texans4fairfunding.org/proposed.asp>, where resources have been posted for members of the Texas Latino Education Coalition and the general public. To receive regular policy updates on 2006 developments, you can also see <http://www.texans4fairfunding.org/updates.asp>.

Nationwide, voters identify education as a top priority and are willing to pay more to support an educational system that reflects greater equity and yields better results. If you agree with these views and believe that all children must have access to an excellent – not minimally adequate – education, voice your concerns and mobilize others to join you. You will find resources at <http://www.texans4fairfunding.org/whatyoucando.asp>.

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in closing the gap between African American and White fourth graders in math, and second in the nation in closing the gap between Hispanic and White fourth graders in math and reading.” Implied in those observations is the notion that the Texas funding system can be considered “acceptable” as long it is doing better than other states. This is a rather creative side-stepping of the evidence of deplorable conditions within the state itself.

To further justify its stance, the court proposed: “*Having carefully reviewed the evidence and the district court’s findings, we cannot conclude that the legislature has acted arbitrarily in structuring and funding the public education system so that schools are not reasonably able to afford all students the access to education and the educational opportunity to accomplish a general diffusion of knowledge*” (emphasis added).

The Warning – Adequate for Now, But on the Brink

After ruling that even these dismal levels of performance were acceptable, the court then attempts to soften its position on the adequacy issue by noting, “*While the current system meets the constitutional standard for efficiency and a general diffusion of knowledge, that standard can be violated*” (emphasis added).

The high court then warned the state legislature that such a violation may soon be forthcoming, as it observed, “There is substantial evidence that the public education system has reached a point where continued improvement will not be possible absent significant change, whether that change takes the form of increased funding, improved efficiencies or better education.”

Yet the court stated, “But an impending constitutional violation is not an existing one, and it remains to be seen whether the system’s predicted

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drift toward constitutional inadequacy will be avoided by legislative action to widespread calls for change.”

It reinforced its warning, however, by including its only direct quote of all district court testimony as presented by former Senate Education Chairperson Bill Ratliff who testified, “I am convinced that, just by the knowledge of the overall situation in Texas, school districts are virtually at the end of their resources, and to continue to raise the standards... is reaching a situation where we are asking people to make bricks without straw.”

Funding for Special Student Needs – What Students?

A portion of the challenge to the current funding system included the contention that the state of Texas was not only under-funding general education

for all pupils but was particularly under-funding programs designed to provide additional academic support for students with special needs, including low-income students and students whose native language was not English. The district court had agreed with the position that the state’s level of support – particularly for students with special-needs – reflected the system’s overall lack of adequacy.

In its review of the district court record, the Texas Supreme Court stated: “Additionally, the percentage of LEP [limited-English-proficient] and ED [economically disadvantaged] students, who generally cost more to educate, has increased. The FSP [Foundation School Program] provides extrabilingual... and compensatory education allotments... but the attendance weights used to determine those allotments have not increased since 1995.”

It also noted: “In the extensive record before us, there is much evidence, which the district court credited, that...many school districts are struggling to teach an increasingly demanding curriculum, with a growing number of disadvantaged students, yet without additional funding needed to meet these challenges.” The court also stated, “There are wide gaps in performance among student groups differentiated by race, proficiency in English, and economic advantage.”

Without arguing against any of the evidence presented, the Texas Supreme Court essentially ignored the plaintiff’s claims regarding inadequate funding for special needs students, ruling neither for nor against the plaintiffs on this issue. Some legal scholars suggest that failure to issue a definitive ruling on this aspect leaves it open to further challenges.

In the interim, Texas schools are left to their own devices unless or until the state addresses this critical issue. IDRA staff and other expert witnesses presented undisputed evidence that state funding for these special population programs provides only between one fourth and one half of what it actually costs to operate such programs in Texas.

Facilities – Do Buildings Really Matter in Student Achievement?

The state district court ruling issued by Judge Dietz had concluded that the state funding mechanisms in place to help schools cover the cost of facilities was both inadequate in terms of the amount of funding provided and inequitable because over-reliance on unequal property tax bases provided unequal burdens on local school systems. The state attorneys cited evidence suggesting that facilities funding was better than it had been in the past but took a new tack by arguing that the plaintiffs needed to have proven

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Take Action!

Texas educators and communities have long fought for fairness in education funding. From the earliest major school funding lawsuits, the pressing need for equity for all students has been at the heart of it all. But over the last decade, the state government has reduced its share of funding from 52 percent to 38 percent, causing the quality of education to suffer. Thus, in 2004, the Texas school finance system was ruled unconstitutional because it fails to provide adequate, suitable education.

You can help make sure Texas stands by excellence, fairness and equity for all students.

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A Historical Perspective on Texas School Finance

The following is excerpted from the 1997 book *Texas School Finance Reform: An IDRA Perspective* by Dr. José Angel Cárdenas, IDRA founder and director emeritus. Many of the challenges that confronted the state then are persistent today.

In May 1994, I recapitulated my 25-year involvement in school finance reform in an article, “Historical Perspectives on Texas School Finance.” In this article I list the six most valuable lessons learned during this period and their importance in a new attempt to move school finance equity from its stalled and incomplete status, particularly in the continued need for an equitable system of funding school facilities.

Between now [May 1994] and September 1, 1995, Texas will find itself in the grip of a new crisis in school finance. The January 26, 1995, court order in *Edgewood vs. Meno* demands the development of an equitable system for the provisions of funds for school facilities, which parallels a past court order for equity in the maintenance and operation of the schools.

The history of school finance in Texas is replete with similar crises. George Santayana, the American philosopher, said it all when he observed that people ignorant of history were doomed to repeat the mistakes of the past.

A review of historical events in the continuing saga of school finance reform in Texas provides half a dozen lessons that could be of help in addressing the new crisis in facilities funding, as well as future efforts in the financing of our public schools. The following six lessons emerge from items from IDRA files.

1. The problem is not a new problem. The problem in the financing of Texas schools was a deficiency in the enactment of the *Gilmer-Aiken* legislation in 1949. By 1968, the Governor’s Committee on Public School

Finance (COPSE) called for immediate attention to the problem. The original *Rodríguez* decision in 1971 brought the problem to a head, but a solution was deferred with the Supreme Court reversal in 1973. Since then, school finance reform has been the highest priority and the least successful issue during each session of the Texas Legislature and the many special sessions in between.

The current crisis is not a new one. It is a new manifestation of a crisis that has been around for more than 25 consecutive years.

2. During this 25-year period the financing of Texas schools has been consistently inequitable and inadequate.
3. There has been no shortage of alternatives available to the educational and political leadership of the state.
4. The failure to resolve the problem can be attributed primarily to the failure of the legislature to bite the bullet and do what decency, justice, common sense and the best interests of the state demand that be done.

Instead, the legislature has squandered time and resources in inaction, postponement, studies, expensive Band-Aids and the enactment of emasculating “save-harmless” provisions that have perpetuated the problem.

5. Politically popular positions, such as “*No New State Taxes*,” have only succeeded in passing the buck to communities that can least afford an additional and inequitable tax burden.
6. Funds for school facilities should have been a part of the reform effort since its beginning.

Texas School Finance Reform: An IDRA Perspective by Dr. José Angel Cárdenas is available from IDRA for \$30. For more information see www.idra.org or contact IDRA at 210-444-1710 or contact@idra.org.

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that a general diffusion of knowledge requires that school districts have access to more or better facilities than what was currently available.

The Supreme Court sided with the state and overturned the district court decision regarding unconstitutional inadequacy and inequities in school facilities funding. The court said:

“The state argued that disparities in facilities are not proof of inefficiency absent evidence that districts’ needs are similar. They contend that facilities needs vary widely depending on size and location of schools, construction expenses and other variables. We agree [with the state’s position] that such evidence is necessary and lacking. The state defendants also argue that

to prove constitutional inefficiency, the intervenors must offer evidence of an inability to provide for a general diffusion of knowledge without additional facilities and that they have failed to do so. Again, we agree. *Efficiency requires only substantially equal access to revenue for facilities necessary for an adequate system”*

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(emphasis added).

Unfortunately what constitutes “an adequate system” is not clearly defined – as in other areas – but one can be sure the courts will know it when they see it.

Funding Gap – Supposedly Not as Bad as it Looks

In one of the few areas where the district court and state supreme court agreed, the Texas Supreme Court ruled that growing inequities in funding available to low wealth and high wealth districts were not so large as to be unconstitutional. Noting that, while the equity gap (the difference in the amount of money available to the state’s wealthiest and poorest school districts) had increased since the *Edgewood IV* ruling, *the gap in program funding had not grown so large as to make the system unconstitutional.*

Plaintiff experts had presented evidence demonstrating that the gap in funding between the poorest and wealthiest districts has grown from \$600 per pupil in 1993 to more than double that in 2003. The gap has grown in part because the equal return for tax effort promised in state funding plans was never provided. This means that for every penny of tax effort allowed the wealthiest school districts that resulted in significantly more spending money for them, the state did not evenly match for average wealth and low wealth districts.

These gaps were further exacerbated by *hold harmless* provisions that effectively guaranteed that wealthy districts would not be subject to reductions in state funding that would occur with the adoption of new funding formulae – giving these districts access to revenue that they no longer qualified for.

The Supreme Court contended that if the hold harmless clause that expanded the inequities had not been

While accepting the existing level of inequity, the court gave no indication of how much inequality is too much inequality, setting the stage for even greater levels of unfairness than we now see in the system.

in effect, the widening of the equity gap would not appear as great (because the gap was really larger than what was projected when the hold harmless funding was excluded from these early projections). The court however failed to note (or perhaps understand) the fact that the reform system modeled and used as the basis for measuring the growth in the equity gap, was based on what the school finance legislation mandated at the time – which provided for elimination of these privileged provisions. To argue that the gap would not appear to have grown as much because the level of inequity was really larger than originally projected, is tantamount to arguing that one can be taller if one simply stands around shorter people.

The fact is that, in the *Edgewood IV* ruling, the court had expected the funding gap to be no larger than \$600 per pupil, and no one challenged the fact that it has grown substantially since the 1995 court ruling. While accepting the existing level of inequity, the court gave no indication of how much inequality is too much inequality, setting the stage for even greater levels of unfairness than we now see in the system.

Unequalized Enrichment Re-Introduced – Inequity Supplementing Adequacy is Deemed OK

Compounding this questionable finding was the court’s re-statement of earlier Supreme Court rulings that

established that some inequalities were acceptable, as long as equitable access to an adequate (minimum) system was provided by the state’s funding plan. Stated another way, an “adequate” education should be equally available for everyone, but a “better” education may be provided for a select few.

We disagree and propose that the system as a whole either is equal or it is not, and any attempt to justify a system of educational privilege for an elite few is unacceptable.

As IDRA and its fellow advocates fought for equal opportunity for all Texas school students. We have historically insisted that all districts be included in the state system and that none be left outside. The courts had originally concurred, noting that if “all were in the same boat” there would be more mutual interest in ensuring that a quality education was the norm for all rather than the exception for a few. As state funding declined over time, it was not accidental that wealthy school systems led the push for increased funding.

As long as some school districts are allowed to operate outside the system and to generate more funding that is limited to a handful of students in wealthy areas, those communities and their leaders will not be vested in improving education for all pupils. This will return the state of Texas to the system of gross inequality that existed in the 1960s.

Two Other Key Points – Be Careful What You Wish For

A careful reading of the latest opinion suggests that the court is signaling two structural areas that if addressed can help provide a more long-term, sustained reform in Texas public school finance. *One area of concern is the state’s over-reliance on local property taxes to fund public education.* At various spots in the opinion, the Supreme Court states its

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concerns, such as the point, “While the legislature’s decision to rely so heavily on local property taxes to fund public education does not in itself violate any provision of the state constitution... in the context of a proliferation of local school districts enormously different in size and wealth, it is difficult to make the result efficient.”

This statement suggests that the structural change called for in the opinion must involve less emphasis on local property taxation and more investment of state collected revenues.

The court also states: “The large number of districts, with their redundant staffing, facilities and administration make it impossible to reduce costs through economies of scale. Bigger is not always better, but a multitude of small districts is undeniably inefficient.”

This call for consolidation of small districts (and for many of the more than 600 Texas school districts with an enrollment of less than 1,000 students) was an unexpected wake-up call. Ironically, many of the original school districts that initiated this latest challenge happen to be small wealthy school districts.

The court quoted earlier decisions and noted, “In Texas many small school districts [lots of property value but few students] had originally been set up as tax havens, that allowed some property owners to escape paying their fair share of the cost of public education in Texas and making it more difficult to achieve efficiency.”

The court then questioned the assumption that local control is not compatible with efficiency, “The justification offered for this situation [the existence of so many smaller districts] is that as a matter of public policy, public schools should be locally controlled – although it has never been clear why the legitimate benefits of local control are so entirely inconsistent with

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efficiency in funding.”

Though school district consolidation is considered a bad word in the Texas legislature, the court’s concern with inefficiencies created by a large number of small school districts (many that are small by choice rather than by necessity), extensive consolidation may well be part of any longer term solution considered in the upcoming special session. For decades, IDRA has expressed reservations that consolidation of school districts is not the silver bullet some imagine. Plus, districts that are too big can create corresponding inefficiencies. But, it may well be time to consider reducing the number of school districts in a manner that contributes to reducing property wealth disparities. (Ironically, the County Education District-based system that IDRA helped to create in earlier reforms but rejected by an earlier Texas Supreme Court, may have been

a less draconian way to address this aspect of inefficiency in the current system.) The court’s obvious call for consolidation will serve to add one more level of controversy to the proposed school funding reforms to be considered during the upcoming special session.

Summary

Rather than clarifying legal questions related to the Texas school funding system, the Texas Supreme Court decision in the *West Orange-Cove* case seems to have further compounded them. In ruling that the \$1.50 tax cap in tandem with expanding state requirements provided insufficient local discretion and further in noting that simply raising the cap would be insufficient, the court now is pressing the legislature to make significant changes to a structure that is basically sound but under-funded.

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Had the state maintained its share of total costs, provided expanded funding for equalization and fixed the facilities formula, the latest legal challenge may have never been filed.

By ruling that the state is providing adequate levels of funding to meet its obligation to “make suitable provisions for a general diffusion of knowledge,” the court has put its stamp of approval on low expectations, declaring that schools where 50 percent of students fail state assessments are considered to be performing at *acceptable* levels.

By accepting an increasing gap in the level of equity that took decades to reduce, the court seems to affirm the old detrimental notion that it is acceptable for some students to have less access to quality schooling than others. Thus, it must be OK for an excellent education to be available only to a chosen few.

By seeming to require that each school prove that the quality of facilities are important to providing the education required by state mandates, the court has put schools in the position of having to “prove” that the quality of school buildings matters. One can argue that if facilities do not provide for better quality education, why is it that high wealth communities always invest in high quality school buildings?

Texas cannot afford an excellent system for some and a minimally adequate system for the rest. IDRA remains committed to working for the creation of a truly equitable funding system that provides equitable and high quality educational opportunities for all Texas students; one that provides all our citizens with the skills required for them to be full and productive members of our society.

Albert Cortez, Ph.D., is the director of the IDRA Institute for Policy and Leadership. Comments and questions may be directed to him via e-mail at comment@idra.org.

Helpful School Finance Online Resources

Center on Budget and Policy Priorities

<http://www.cbpp.org/11-7-02sfp2.htm>

Articles and research on fiscal issues affecting low-income families. Includes a detailed article with graphics that presents an overview of education finance.

Center for Public Policy Priorities

Basic information on school finance in Texas.

Texas Kids Count, includes a section on finance, history and per pupil spending by county.

<http://www.cppp.org>

Education Commission of the States – Issue Paper

<http://www.ecs.org/clearinghouse/28/04/2804.htm>

An ECS position paper discussing the past, present and future of school finance.

Equity Center

<http://www.equitycenter.org/>

Provides updates on legislation and litigation as well as background and reference information.

Intercultural Development Research Association

<http://www.idra.org>

Dedicated to educational equity and excellence, IDRA provides articles, research and tools for advocacy. See the policy updates and topical links to information on school finance. Also, get order information for the only comprehensive book on the history of school finance in Texas.

Texans for Fair Funding

<http://www.texans4fairfunding.org>

Provides tools for learning about school finance and for taking action.

Texas Education Agency Finance Web Site

<http://www.tea.state.tx.us/school.finance>

A resource for state funding guidelines, presentations on school finance, public school health insurance, and school-finance related correspondence to school districts.

Visit www.texans4fairfunding.org for more information and resources.

Texans for Fair Funding

Principles for Fair Funding

All children deserve an excellent education, and excellence is impossible without equity. Our children are precious. The future of a child should not depend on that child's heritage, family income or neighborhood. The ongoing battle over school funding is still about a state at a crossroads – one road offering the possibility of excellent and equitable education of all of our state's children, the other focused on providing only minimum quality to meet minimum standards.

The Texas Supreme Court's decision in *West Orange-Cove vs. Neeley* will require that the Texas legislature gather for another special session dedicated to the reform of the existing school funding plan. Though taxes and who pays them will occupy much attention, it is the funding system that the courts targeted for reform. While some aspects of the current funding plan do need improvement, many Texans are deeply concerned about the oft noted promise to totally dismantle the existing public school funding

Principle 1: Funding Equity – Texas must maintain or increase the level of equity found in the existing funding system.

Principle 2: Equal Return for Equal Tax Effort – Texas must specifically provide for equal return for equal tax rates, for all school districts, at all levels of the state permitted tax effort.

Principle 3: Excellent Education – Texas must provide equitable access to excellent education (defined as equitable access to high quality curricula, teaching, support services, and facilities) for all students in all school districts, precluding the need for and thereby prohibiting any local un-equalized enrichment.

Principle 4: Access to Equalized Enrichment – Texas must ensure that, if local supplementation of a state-funded adequate system is allowed, the entire additional local tax effort provides equal yield for equal tax effort, regardless of the local property wealth of individual districts.

Principle 5: Recognizing Special Student Costs – Texas must equitably provide add-on funding based on actual costs of providing appropriate supplemental ser-

vice to students identified as limited English proficient, low-income, or requiring special education services.

system and replace it with one that would provide only an "adequate" education for our children, one that provides minimums for some and quality schools for a few. In its haste to say it has acted and thereby satisfied the court's mandates, it is possible that the legislature may propose a plan that is less fair, less progressive, less equitable, and that supports mediocrity for most and excellence for a few. Past history has proven that rejecting a bad plan can lead to adopting better options after additional reflection and coordination. Sometimes no action is better than bad action.

To help focus on the reforms that may be included in upcoming school reform plans, the Texas Latino Education Coalition uses a set of principles to help assess any proposed school funding reform plan. We welcome their adoption and dissemination by all who agree that all children are valuable, and none is expendable.

vices to students identified as limited English proficient, low-income, or requiring special education services.

Principle 6: Access to Equalized Facilities Funding – Texas must provide equitable access to funding for school facilities so that all districts have equal access to facilities revenue for equal tax effort. Facilities funding should provide support for updating and maintaining existing facilities, as well as funding for new facilities. Special facilities-related needs for fast growth districts should be recognized in any proposed funding formulae.

Principle 7: Maintaining Levels of State Support – Texas must ensure that the state will fund a minimum of 60 percent of the overall cost of education in the state.

Principle 8: Tax Burden – Texas must base any potential requirement for additional state revenue on adoption of progressive measures of taxation that are based on local school district and/or individuals' ability to pay taxes, and must not result in a shift of tax burdens from high wealth to all other districts or from more affluent to lower income taxpayers.

Declare your support for these principles!

Visit www.texans4fairfunding.org

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MALDEF Decries Latest Decision of Texas Supreme Court Ruling Abandons Low-wealth Districts and Upholds Glaring Inequities in the School Finance System

by Mexican American Legal Defense and Educational Fund

More than 16 years after declaring the school finance system unconstitutional in *Edgewood I*, the Supreme Court of Texas refused to remedy persistent inequalities in the present school funding system. As a result, millions of school children in property-poor school districts across the state face the prospect of even greater inequities in a new system that will not contain a property tax cap.

The Mexican American Legal Defense and Educational Fund (MALDEF) represented the Edgewood Districts*, a group of 22 property-poor school districts, many of which filed the original landmark school finance suit in 1984. With a trial record consisting of 655 findings of fact and 24 conclusions of law based on more than 7,000 exhibits and testimony from dozens of witnesses, the Supreme Court refused to address the issues and, instead, deferred to the legislature's discretion. Although the Supreme Court found that the state violated the Texas Constitution by forcing districts to tax at the maximum rate, the court failed to address the gross inequities in the system.

"MALDEF is very disappointed with the Supreme Court's ruling," said MALDEF president and general

"Fifty years after Brown vs. Board, our undisputed evidence at trial showed that the quality of education for certain Texas children still suffers as a direct result of which side of the tracks they live on. Despite the glaring disparities between the haves and have-nots, the court refused to confront the issues head on."

— David Hinojosa, MALDEF

counsel Ann Marie Tallman. "This case is not about money but rather about lost educational opportunities for the 2 million-plus students attending schools in property-poor districts. Unfortunately, the court's decision ill-serves the interests of those children and the future of all Texas residents."

David Hinojosa, MALDEF staff attorney and lead counsel in the case, added: "Fifty years after *Brown vs. Board*, our undisputed evidence at trial showed that the quality of education for certain Texas children still suffers as a direct result of which side of the tracks they live on. Despite the glaring disparities between the haves and have-nots, the court refused to confront the issues head on."

He continued: "The saving grace

for our districts was that the Supreme Court did not state that the recapture system needed to be eliminated. With that in mind, there is every reason for the legislature to address the inequities in the system when creating its new school finance plan."

"While the Supreme Court ruled that the financing system is constitutionally efficient, no one should believe we have a quality school system that can support the economic future of Texas. MALDEF looks forward to working with the legislature to provide a funding system that is fair and equitable for all Texas children," commented Luis Figueroa, MALDEF legislative staff attorney.

A national non-profit organization founded in 1968, MALDEF promotes and protects the rights of Latinos through advocacy, community education and outreach, leadership development, higher education scholarships and when necessary, through the legal system. MALDEF is a member of the Texas Latino Education Coalition, along with IDRA.

* The Edgewood Districts consist of the following independent school districts: Edgewood, Brownsville, Edcouch-Elsa, Harlandale, Harlingen, Jim Hogg County, Kenedy, Laredo, La Feria, La Vega, Los Fresnos, Monte Alto, Pharr-San Juan-Alamo, Raymondville, Roma, San Benito, San Elizario, Socorro, Sharyland, South San Antonio, United, and Ysleta.

The Impact – continued from Page 4

Equity's approach to equity planning, implementation and evaluation in that it follows a 12-step process to ensure that pre-determined outcomes are reached. The box on Page 4 presents an example of how the equity plan works in a sample FEA on reading.

The IDRA South Central Collaborative for Equity has conducted FEAs in all five states in its service area. The FEAs have taken many forms, including: sheltered instruction observation protocol (SIOP) implementation in Texas; community-based equity assessment in Texas; IDRA's Focusing on Language and Academic Instructional Renewal (FLAIR) program implementation in

reading in Louisiana; gender equity also in Louisiana; implementation of a multicultural framework in staff development to support student success in New Mexico; parent leadership in New Mexico; unitary status planning in Arkansas; English as a second language (ESL) classroom strategies in Arkansas; service learning in Oklahoma; and meeting civil rights requirements under the law in Oklahoma.

The FEA strategy has proven to be an excellent way to create, measure and document impact in educational areas of concern. School districts in these five states are eligible to request such assistance by contacting the IDRA South Central Collaborative for Equity and by being committed to creating

success for all learners regardless of their race, gender or national origin.

The center commits to nine FEAs each year, and they are established on a first-come first-serve basis.

School districts interested in such assistance to meet requirements under *No Child Left Behind* and under the *Civil Rights Act* or Title IX should contact IDRA to request such technical assistance.

Bradley Scott, Ph.D., is a senior education associate in the IDRA Division of Professional Development and directs the IDRA South Central Collaborative for Equity. Comments and questions may be directed to him via e-mail at comment@idra.org.

Highlights of Recent IDRA Activities

In November, IDRA worked with **3,437** teachers, administrators, parents, and higher education personnel through **61** training and technical assistance activities and **134** program sites in **11** states plus Brazil. Topics included:

- ◆ Reading with Your Children
- ◆ Facilitating Family and Community Connections
- ◆ Integrating Teachers, Parents and Students in School Participation
- ◆ Pathways to College

Participating agencies and school districts included:

- ◆ NAME Conference, Georgia
- ◆ Oklahoma City Public Schools, Oklahoma
- ◆ West Oso Independent School District, Texas
- ◆ National Dropout Prevention Network

Activity Snapshot

The Intercultural Development Research Association has been working with several schools to redesign and re-energize their reading programs to be more responsive to the characteristics of their diverse learners. In this three-year IDRA reading program, known as FLAIR (Focusing on Language and Academic Instructional Renewal), IDRA provides technical assistance that includes classroom demonstrations and observations of effective teaching strategies, coaching for success, nurturing of innovations, and guidance for finding funding options. FLAIR capitalizes on each school's strengths to increase reading scores, weave reading throughout the curriculum and recapture students' love of reading. The participants have become reinvigorated by this new instructional method that is based on three principles: active involvement, validating students and guidance.

Regularly, IDRA staff provides services to:

- ◆ public school teachers
- ◆ parents
- ◆ administrators
- ◆ other decision makers in public education

Services include:

- ◆ training and technical assistance
- ◆ evaluation
- ◆ serving as expert witnesses in policy settings and court cases
- ◆ publishing research and professional papers, books, videos and curricula

For information on IDRA services for your school district or other group, contact IDRA at 210-444-1710.



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