



ST. MARY'S  
UNIVERSITY

Digital Commons at St. Mary's University

---

Faculty Articles

School of Law Faculty Scholarship

---

2013

## The Barriers and Route to Texas School Finance Equity

Albert H. Kauffman

*St. Mary's University School of Law*, akauffman@stmarytx.edu

Follow this and additional works at: <https://commons.stmarytx.edu/facarticles>



Part of the [Law Commons](#)

---

### Recommended Citation

Albert H. Kauffman, *The Barriers and Route to Texas School Finance Equity*, 1 Tex. Ed. R. online 27 (2013).

This Article is brought to you for free and open access by the School of Law Faculty Scholarship at Digital Commons at St. Mary's University. It has been accepted for inclusion in Faculty Articles by an authorized administrator of Digital Commons at St. Mary's University. For more information, please contact [sfowler@stmarytx.edu](mailto:sfowler@stmarytx.edu), [egoode@stmarytx.edu](mailto:egoode@stmarytx.edu).

# Texas Education Review

## **The Barriers and Route to Texas School Finance Equity**

**Albert Kauffman, JD**

*St. Mary's University, School of Law*

Volume 1, pp. 27-39 (2013)

Available online at [www.txedrev.org](http://www.txedrev.org)

## **The Barriers and Route to Texas School Finance Equity**

**Albert Kauffman, JD**

*St. Mary's University, School of Law*

### **The Standard that Any Texas School Finance System Should Meet**

Every student in Texas public schools deserves to have the same resources devoted to her public education, taking into full consideration the special needs of the child and the district in which she attends school. Alternatively, every student deserves to attend school in a school district that can offer the same resources at any tax rate as any other district in the state, taking into consideration the special needs of the district and the students attending school in the district. These are both classic equity standards. The student-focused standard is described as “student equity” and the district-focused standard is described as “taxpayer equity.” If all districts have the same or similar tax rates, the two standards are the same.

The judgment of the Texas district court in the first Edgewood case in 1987 ordered the legislature to implement a plan that met the stringent and enforceable standard that all districts have the same ability as other districts to provide resources for their students at any tax rate. In 1989, in its seminal opinion holding the Texas school finance system unconstitutional, the Texas Supreme Court weakened this standard to “substantially the same” resources.

In this essay, I argue that the “same” standard is the best for Texas’s future. I will describe the significant barriers to reaching this standard; but the barriers are not insurmountable, even within the realities of Texas budget constraints. The primary barriers are history, demography, politics, economy, and the judicial system. These are certainly not all the barriers, and there is significant overlap and causal connection among them. Yet, unpacking these barriers should help us understand the barriers and possible ways over, around, or through them. Texas also has opportunities that will allow us to reach a truly equitable school finance system. I conclude this essay on this positive note.

## **The Barriers**

### **History**

Spanish, French, Mexican, Republic of Texas, United States, and Confederate flags have flown over our state, and each has left its imprint on our constitutions, laws, and attitudes. From this confluence of causes has come a sentiment among many influential Texans that we are still “fighting” the U.S.-Mexican War of 1849 and the Civil War of 1861-65. Re-fighting the War of 1849 leads to the assumption that our Mexican origin populations are both inferior and threatening, and to an attitude that districts with Latino populations deserve fewer resources than other districts. Continuing to “fight” the Civil War leads to attitudes that any central control of resources and responsibilities is anti-American and that Texas should oppose national trends to protect African American and other minority populations by enforcing the promises of the United States Constitution Fourteenth Amendment. Texas’s long-term antipathy to bilingual education and immigrants’ rights is evidence of this history and

its impact on our attitudes. Likewise, the erroneous attitude that problems in schools are caused by minority families that just do not care as much for their children, and therefore do not deserve equal funding, can be traced to this history. Texans and those invested in the state's education system must admit and confront this history. Dr. David Montejano and Dr. Guadalupe San Miguel, Jr., among others, have thoroughly described this history (Montejano, 1987; San Miguel, 1987; Rangel & Alcala, 1972). The most comprehensive and direct history of the Texas school finance history was written by Dr. José Cardenas of IDRA (Cardenas, 1997).

## **Demography**

The Texas side of the Texas-Mexico border has been and remains heavily Mexican American, and Texas leaders have been aware of this fact since Texas became a Republic. San Antonio's west side is almost all Mexican American, and its south, east and near-north sides are increasingly Mexican American. In the late 1900's, the Mexican origin population became an increasing proportion of the population in large cities and rural areas all over the state. Houston and Dallas school districts have large Mexican American majorities. The majority of Texas students are now Latino, and super majorities of students in the lower grades are Latino. Demographers predict that the state will soon be majority minority and majority Latino not long after that.

Texas school districts can raise revenue in direct relation to their property wealth, measured by total taxable real property per student. The Texas border area and San Antonio's west and south sides have almost all low-wealth school districts which cannot possibly afford to operate public schools without significant funding from outside the districts.

Texas school population has increased an average of three percent per year for the last few decades; there were three million students in Texas public schools in the mid 1980's, and there are more than five million now. Each and every one of these students costs the system an extra \$6,000-\$9,000 dollars annually; a total of about \$600 million to \$900 million per year is needed just to maintain the same revenue per student in the state.

Beginning in the 1980's, Dr. Steve Murdock and others began to describe these demographic seismic shifts and to challenge Texas leaders with the facts that the state will only be able to compete nationally and internationally if these increasing minority communities are well educated (Hamilton, 2010; Murdock, 2003). Yet, these same facts are seen by some as a challenge to Texas's future and as a reason to adopt the political positions described next in this essay.

## **Politics**

These demographic facts, and the framing of the school finance equity issue as an issue of racial and ethnic fairness, led to bundling of the issues of racial fairness and school finance equity as the same issue. Put more bluntly, the opinion of many Texas leaders was that equity would only benefit Texas's minority populations, not the "traditional" populations of the suburban and northern and eastern parts of the state.

Distribution of political power has had an impact on Texas school finance. Political power in the state is not evenly distributed, and wealthy districts such as Highland Park in Dallas, Alamo Heights in San Antonio, and the wealthy suburbs around Houston and Dallas, have long had more than their proportionate share of state political power. Likewise, citizens in the wealthiest school districts with vast petroleum reserves, such as Iraan-

Sheffield, or other concentrations of property wealth in districts with nuclear power plants, refineries and other major utilities and commercial centers, have been able to exercise political power through their regular business lobbies to benefit their school districts and keep their taxes lower.

Party politics is also a factor. In a state as diverse as Texas, there is certainly not a complete alignment of either political party or ethnic concentration with district wealth. Austin ISD, the wealthiest of the large urban districts, has consistently been represented by Democratic legislators, and many northwest and east Texas areas of almost all low-wealth districts have been consistently represented by Republican legislators. Some low wealth districts are majority Anglo and some high wealth districts are predominantly Mexican American. In general, however, the low-wealth districts have predominately minority student populations and are represented by Democrats and the high wealth districts are majority Anglo and are represented by Republicans.

In a state that has changed from Democratic Party hegemony to Republican Party hegemony in just twenty years from 1994, it is difficult to "tease" out the effects of partisan politics from other barriers to school finance equity. However, it is noteworthy that the first Edgewood Supreme Court opinion in 1989, the strongest equity decision of the six Texas Edgewood opinions, was written by a court with a six to three Democratic majority; and the last three Texas Supreme opinions, generally regarded as much more negative for low-wealth districts, came from all Republican courts (with the exception of the one Democrat on the Edgewood IV court, who was also the only justice upholding the opinions in the first two cases). The Republican philosophies of "no new taxes" and "local control"

appear to be inconsistent with improving the equity and adequacy of the system.

Lack of equal access by minority and low income populations to the real political powers in the legislative, judicial, and executive branches in Texas does not augur well for increased equity or adequacy in school finance. The dominance of Republican Party philosophy also tends to favor wealthier districts – Texas has had Republican governors in the state since 1995, and there has not been a Democrat in a state wide office in Texas in this century.

## **Economy**

The equity of the Texas school finance system has improved the most during good economic times. It is easier to reduce the gap between poor districts and wealthy districts when there are sufficient funds to significantly raise the poor district funding and at the same time to raise the wealthy districts funding by a lesser amount. Indeed this “gentleman’s agreement” that “we will agree to raise taxes and give most of the money to poorer districts if wealthier districts get additional funds too and do not lose money,” was the pattern through the better economic times of the 1980’s and 1990’s.

But, in legislative sessions with no new taxes and increasing demands on the budget for prisons, roads, water, higher education, etc., those extra dollars are no longer present. Exacerbating these factors is the consistent pattern of increase in school costs per student caused by necessary increases in teacher salaries and development of new programs to meet ever more rigid and expensive state and national mandates. These cost increases of about two to three percent per year put great pressure on existing school budgets. The 2011 Texas legislative session



was the first in recent memory that did not-at least- maintain the same revenue per student in the system. The decrease in per student funding was between 6% and 10%. In a time of immense economic and political pressure against an increase in revenues and continued increase in number of students and revenue needed per student, the schisms are clear.

### **Supreme Court Rulings**

No student of the law could deny that the present legal standard of review of the school finance system gives the state significantly more room to design a system that meets the Texas Constitution's standards. In previous work, I have described this change of standards in great detail (See Kauffman, 2008). A simple comparison of the standard of the first Edgewood case in 1989:

There must be a direct and close correlation between a district's tax effort and the educational resources available to it; in other words, districts must have substantially equal access to similar revenues per pupil at similar levels of tax effort. 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 (*Edgewood Independent School District v. Kirby*, 1989)

to the standard in the last *Edgewood* case in 2005:

In other words, the constitutional standard of efficiency requires substantially equivalent access to revenue only up to a point, after which a local community can elect higher taxes to 'supplement' and 'enrich' its own schools. That point, of course, although we did not expressly say so in Edgewood I, is the achievement of an adequate school system as required by the [c]onstitution. Once the

[l]egislature has discharged its duty to provide an adequate school system for the [s]tate, a local district is free to provide enhanced public education opportunities if its residents vote to tax themselves at higher levels. The requirement of efficiency does not preclude local supplementation of schools (*Neeley v. West Orange-Cove Consolidated Independent School District*, 2005) is evidence enough of the significant changes. However, even the 2005 Texas Supreme Court decision, the latest as of this writing, does not require inequality; but that 2005 decision certainly does enable the political and historical forces described above to shape a system that meets the needs of the wealthier districts and the “no new taxes” advocates.

### **Opportunities to Reach Equality**

Fortunately for the students in less wealthy districts and for the entire state, some recent developments are addressing barriers described so far in this essay.

### **Studying and Believing the Statistics**

There is an increasing realization that Texas cannot compete with other states or international businesses if we educate the new majorities of our students (Latino, African American and low-income) as poorly as we have educated our poor and minority students for the last hundred years. If we continue down this path, our entire economy will self-destruct. Ross Perot argued this with passion, politics and money; and Steve Murdock, IDRA and MALDEF have argued this with statistics, studies, advocacy, and lawsuits. This concept is finally beginning to catch on in the Texas legislature, and among more

and more candidates for local and state offices. The passage of a new sales tax in San Antonio to support pre-K education, led by Mayor Julián Castro, is one example of this new understanding.

### **Listening to the Voters**

While Texas is behind the curve with regards to the increasing sensitivity of the national Republican party, many national Republican officials and political experts have stated that the Republican party must pay heed to the needs of the increasing Latino population and voters in the country, especially in key swing states. Though the Texas Republican Party is not yet completely in line with this new philosophy, it knows that the state is rapidly becoming a majority minority state and will, in the next decade or two, become a majority minority voter state. Meanwhile, Democrats have an increasing realization that they must fulfill the promises they have long made to improve equality and fairness in our education and human services programs. The passage by the U.S. Senate of a comprehensive immigration package with significant Republican support is an indicator of this increasing sensitivity by both parties.

### **Increasing Availability and Understanding of the Inequalities in School Finance**

In the 1960's, only a few people in Texas knew how much money was actually available to each school district in Texas, and the information was carefully guarded. Now multiple, publicly accessible websites give incredibly detailed information on the funding available to every district in the state and the tax rates necessary to raise those funds. The information is not always easily comprehended, but scores of organizations seek to simplify

and explain the information, and even junior high students can create spreadsheets with rich and valid data on the system.

### **Increasing Organizational Competence and Technical Expertise**

Community and political organizations from the Tea Party to Battleground Texas are increasingly adept at using media, statistical, and web-based expertise to target their messages and encourage action. Just as in the Middle East, social media is being used to focus immediate attention on developments in education finance. Organizations like the Equity Center, Center for Public Policy Priorities, IDRA and MALDEF have significant expertise and following as they analyze and describe changes in school finance.

### **The Court System's Attention to the Issues**

Though the Supreme Court has backtracked on its commitment to equity, the district court and Texas Supreme Court opinions on school finance have brought great media attention and community understanding to the school finance system. The population in general might not understand what a “weighted student” is, but they do know that their weighted students get significantly less funding for a higher tax rate than the weighted students in the rich district across town.

### **Conclusion**

I was involved in litigation challenging the state's testing system in 1999. At the trial, a top lawyer for the state told me, “Al, we have a great case of improvement in minority test scores

because of the work you did to improve the school finance system.” In fact, whatever validity there was to the story of the Texas Miracle of improved test scores was in fact caused by the significant increase of funding to school districts with majority minority students, and the increased equity in the system that enabled these poor districts better to compete for the best teachers, administrators, programs and facilities.

Long term, this progress will only increase, or at least be protected, if we have a system that truly respects every student. No doubt significantly-increased funding for all students would be a positive development. But until there is adequate funding, we must ensure that we use the funding we do have in the most efficient way possible. The only way to do that will be to harness the forces listed above to bring about the best system we can afford.

The equity standards advocated here have a clear advantage in a legal and legislative sense. They are much more easily measured and analyzed than a system striving to provide an adequate system for all. Even the most cynical among us recognize that it is fundamentally unfair to have 20 percent of the state’s students have \$10,000 per student per year spent on them while the other 80 percent only have \$8,000. As Judge McCown said in his district court opinion in 1990, “they are all our children” (Folbre, 2002, p. 148). On the other hand, though we know that adequacy in school finance is not just about money, most plans to approach adequacy in Texas would cost additional funds, and it is unlikely that the Texas Supreme Court will even indirectly order that remedy, even though it is clearly necessary for our state to progress.

A system requiring the same revenue per student, or at least the same ability of all districts to raise the same revenue per

student at the same tax rate, is a verifiable, fair standard consistent with our constitution and our moral values as a state.

---

**Al Kauffman** was the lead attorney for the Edgewood plaintiffs in the Texas school finance lawsuit from 1984 to 2002. He participated in the lawsuit as an attorney for the Mexican American Legal Defense and Educational Fund, Inc., which continues to represent the Edgewood parties. Kauffman also has written, lectured, and advocated in Texas Legislature on school finance issues from 1984 to the present.

### References

- Cardenas, J.A. (1997). Texas school finance reform: An IDRA perspective. San Antonio, TX : Intercultural Development Research Association.
- Carrollton-Farmers Branch Independent School District v. Edgewood Independent School District, 826 S.W.2d 489 (TX Sup. Ct. 1992).
- Edgewood Independent School District v. Kirby. 777 S.W.2d 391 (TX Sup. Ct. 1989).
- Edgewood Independent School District v. Kirby, 804 S.W.2d 491 (TX Sup. Ct. 1991).
- Edgewood Independent School District v. Meno. 917 S.W.2d 717 (TX Sup. Ct. 1995).
- Farr, S., & Trachtenberg, M. (1999). The Edgewood drama: An epic quest for education equity. *Yale Law & Policy Review* 17(2), 607-727.
- Folbre, N. (2002). *The Invisible Heart: Economics and Family Values*. New York: The New Press.

- Hamilton, R. (2010, March 11). Former census director talks demographic shift. *The Texas Tribune*. Retrieved from <http://www.texastribune.org>.
- Jones, R.C. and Kauffman, A. (1994). Accessibility to comprehensive higher education in Texas. *The Social Science Journal* 31(3): 262-283.
- Kauffman, A.H. (2008). The Texas school finance litigation saga: Great progress, then near death by a thousand cuts. *St. Mary's Law Journal* 40(2), 511-579.
- Montejano, D. (1987). *Anglos and Mexicans in the making of Texas, 1836-1986*. Austin, TX: University of Texas Press.
- Neeley v. West Orange-Cove Consolidated Independent School District, 176 S.W. 3d 746 (TX Sup. Ct. 2005).
- Rangel, R.C. & Alcalá, C. (1972). Project report: De jure segregation of Chicanos in Texas schools. *Harvard Civil Rights-Civil Liberties Law Review* 7(2): 307-391.
- Rebell, M.A. (2002). Educational adequacy, democracy, and the courts. In T. Ready, C.F. Edley, and C.E. Stone (Eds.), *Achieving high educational standards for all: Conference summary* (pp. 218-267). Washington, DC: National Academy Press.
- Ryan, J.E. (2008). Standards, testing, and school finance litigation. *Texas Law Review* 86(6): 1223-1262.
- San Miguel, Jr., G. (1987). *"Let all of them take heed": Mexican Americans and the campaign for educational equality in Texas, 1910-1981*. Austin, TX: University of Texas Press.
- Valencia, R.R. (2008). *Chicano students and the courts: The Mexican American legal struggle for educational equality*. New York, NY: New York University Press.
- West Orange-Cove Consolidated Independent School District v. Alanis, 107 S.W.3d 558 (TX Sup. Ct. 2003).