



Fixing Recapture the Right Way

Providing useful and workable solutions to school finance problems is what the Equity Center is all about. Fifty-five school districts founded the Equity Center in 1983 for that very purpose, and we have been true to that cause for all of these 35 years. That said, how can we solve the recapture problem without dismantling the equity and efficiency required in our Constitution and state law?

The first step to solving any problem is to accurately identify and define it.

Recapture is problematic, not because it causes those districts to have fewer resources available to educate their students than non-recapture districts. To the contrary, recapture districts almost always retain more resources, even after paying recapture, than non-recaptured districts that tax at the same or greater tax rate. (Please see *Recapture's Dichotomy*, this issue, for details.)

Recapture is not a funding problem. It is a political problem and those are more difficult to solve because they are often based on emotion rather than logic. Obviously, solutions such as a statewide property tax, school district consolidation, tax base consolidation, etc., address the concern and eliminate recapture, but those all face their own political issues. So, if we are going to maintain a system like the current one that is so heavily reliant on local property taxes, how can we address recapture in a way that helps and remains fair to all Texas' children and taxpayers? After all, it is a Texas public school system—by statute and by the Texas Constitution.

Actually, the solution is quite simple. We must fix it from the bottom up!

Step 1. State leaders must maintain state funding (as opposed to local property tax collections) at least at the current levels for public education. It has been well documented on several fronts that the state has not done this for the last several years, allowing increasing taxable values/collections to continually offset the state share. This lack of new investment has created many of the funding problems facing public education today.

Step 2. State leaders must allow increased property values and the increased tax revenue that results to remain in public education. These naturally occurring consequences of a growing economy will act as drivers that increase funding for public schools, allowing schools to address the ever-expanding educational needs of our children and expectations of our citizens.

Step 3. That resulting growth in property tax collections must then be used to:

A. Raise the Copper Penny yield in Tier 2 to a higher level, preferably the same level as the Basic Allotment. This quick and effective fix is surprisingly inexpensive and would automatically eliminate 201 districts from being subject to recapture.

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Fixing Recapture the Right Way... (continued)

This new funding at the Copper Penny level would also positively impact the 417 districts that currently find themselves capped out or close to the \$1.17 maintenance and operations limit—in other words, those taxpayers currently taxed at the highest levels.

B. After that, funding efforts should focus on raising the Basic Allotment (and, of course, the Equalized Wealth Level, which is tied to the Basic Allotment) (BA/EWL). By using projected property value growth in the next biennium this way, we could raise the BA/EWL by \$250 to \$300 and remove nearly 80 more districts from recapture, while dramatically reducing recapture for those relatively few districts that would continue to be subject to recapture.

Just these simple steps, using common sense to fix the system from the bottom up by keeping increased property tax collections in public education, raising and matching the Tier 2 Copper Penny yield to the BA level, and increasing the BA/EWL will help all districts, remove many districts from being recaptured at all, and reduce recapture for the rest.

Then, if we were to add to that the changes necessary to make our funding formulas efficient by removing non-cost-based waste, we might actually produce for the children of Texas the efficient system of free public schools they deserve and have been promised, but not provided.

Why can't we all get behind that?

Thank you, EC Members!

We would like to say thank you to everyone for attending our session at TASA/TASB in September. To say there was standing room only would be an understatement! The room was cramped, the room was warm, and some of you stood or sat on the floor for the entire presentation. This is such a testament to the importance of school finance and how it impacts each and every one of your districts... and it's a testament to the commitment and dedication of school leaders like you to pursuing what is best for your students and your community. So thank you to everyone for sticking with us and for your continued commitment to equity for all Texas children and taxpayers.



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Solutions for All Schools

This is what we know: the Texas Constitution requires the state to provide an efficient system of public free schools. State law requires that in providing this efficient education system, the state shall adhere to a standard of neutrality that provides for substantially equal access to similar revenue per student at similar tax effort.

There is widespread agreement that the overall amount of funding provided to Texas' public schools is inadequate, and there's a growing sentiment that the state is not putting in an appropriate amount of effort toward its share of the overall cost. Even if both of these assumptions are true (and we believe they are), what would it mean if the state increased its share and distributed an "adequate" amount of funding through the current school finance system? If the lowest funded schools received what is considered adequate, then the highest funded schools would receive multiples of that adequate amount. This would not be efficient (equitable) as the constitution requires, and the practical reality is that the amount of tax revenue needed to achieve this level of funding simply does not exist.

So why not first work to ensure that every student in the state receives substantially equal revenue, and THEN have every district in the state pulling the same direction towards adequacy? Ultimately, there should not be Chapter 41 and Chapter 42 districts; there should be Texas school districts, all treated equally and all provided the resources they need to achieve what is required of them. That's the goal, but that's not what we have now. Current inequities among tax effort range from M&O rates of \$0.67 cents to \$1.24; while funding inequities ranges from over \$15,000 per WADA to under \$4,000 per WADA. There is no defending a system that treats taxpayers and students so differently, and we don't have to, because the causes of these inequities are clear and solutions exist!

When lawmakers attempt to reform school finance policy, it is important that they focus on the issues that make our entire public education system better equipped to achieve the daunting task they've been given. When the focus is skewed toward creating benefits for some districts (and therefore, some children) while others remain in a substandard system of distributing resources, we effectively have different classes of students and taxpayers within the same education system.

Unfortunately for us all, that is the system we have today...most districts in the state are funded based on the formulas that exist in Ch. 42 of the Texas Education Code, outdated as they may be; however, another smaller group of districts are funded largely based on what they collect locally, Ch. 41 recapture districts. However, like most things school finance-related, it isn't that simple.

Let's take a look at the group of districts labeled Ch. 41 who often times are considered to be uniform in how they are funded and relatively equally wealthy, but you will see this is not the case:

2018 near final data from TEA shows, 342 districts were classified as subject to recapture however, only 191 paid any recapture at all. This is because of the difference between Tier I EWL and Tier II EWL.

Tier I recapture districts have a wealth per WADA level above the Tier I Equalized Wealth Level (EWL) of \$514,000 – this amount is tied to the Basic Allotment of \$5,140 and floats up as the BA is increased. These districts can generate all of Tier I with local funds, whereas other districts require state assistance to generate their Tier I entitlement. Of the approximately \$2 billion in recapture funds collected statewide in 2018, more than \$1.9 billion came from these Tier I districts.

Tier II recapture districts have a wealth per WADA above the Tier II EWL of \$319,500. This amount was established in 2006 and has never been increased. Tier II recapture districts are funded like a district based on the formulas, and pay recapture only the pennies they tax above \$1.06. This is why in 2018 of the \$2 billion in statewide recapture payments, approximately \$85 million came from Tier II districts.

Further, if you were to look at the state funding every recapture district receives and subtract it from their recapture payment, only 113 districts statewide had a NET recapture payment, effectively sending more to the state than they receive in state aid.

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Solutions for All Schools (continued)

Ultimately, every single district in Texas is recaptured. Formula districts have their state funding adjusted (decreased) as their local property values rise... just as Ch.41 districts have their funding adjusted either by decreased state aid or increased recapture as their local property values rise. Taxpayers in every community and every school district contribute local tax dollars to fund statewide services (our public education system being a main one) whether through property taxes, sales tax, motor vehicle tax, franchise tax, etc.

The point of the above breakdown is to show that even among recapture districts the current school finance system does not treat schools equally or fairly. For instance, districts may have a low economically disadvantaged population and have high levels property wealth, such as Highland Park ISD, or a high economically disadvantaged population and a high wealth, such as Houston ISD and both be recaptured. The relevant measure is property wealth per students in weighted average daily attendance (WADA), and as long as the state relies on property taxes to fund a large portion of the public education system, tax revenue has to be collected where it is concentrated and sent to where the needs exist.

It is time for the Texas legislature to establish a school finance system that funds students in every district, regardless of property wealth, equitably and adequately. Every school district could be funded better, and we have policy reform recommendations that would put us on that path. We are all in this together.

Our Broken System - in Real Life

Our school finance system in Texas is so inefficient and broken that even among recaptured districts, you get the following result (these are real numbers from two recaptured districts):

DISTRICT A: has 3,428 WADA, an adopted M&O tax rate of \$1.04, a wealth per weighted student level of \$798,000 and PAID \$8,189,387 in recapture.

DISTRICT B: has 869 WADA, an adopted M&O tax rate of \$1.04, their wealth per weighted student level is \$796,000, and they PAID \$0 in recapture.

Clearly there is a problem with the system even among the way recapture is calculated, equity is questionable at best. Is one district paying too much or is one district not paying their share?

Our school finance system in Texas is undeniably broken and inefficient when tax effort and funding levels are so out of sync you get the following district profiles (these are real numbers from two real school districts, one recaptured, one not):

DISTRICT C: has an adopted M&O tax rate of \$1.17, and a student funding level per WADA of \$6,113.

DISTRICT D: has an adopted M&O tax rate of \$0.99, and a student funding level per WADA of \$13,737.

Clearly there is a problem with the system among all

students and taxpayers. Did one set of taxpayers and students get a raw deal or did one set of taxpayers and students hit the jackpot?

There are growing concerns over the lack of money available to fund the needs of 1,018 school districts serving over 4.8 million students. We must fix the inefficiencies in our school finance system to ensure that every available dollar is utilized in the best way to meet the increasing needs and growing student population.

As the Equity Center, we will always and unapologetically stand up for equity for Texas students and taxpayers. It's our goal that any increase in property value growth be put back into public education. We believe that new money in public education should be prioritized first to bringing up those students funded at the bottom. We believe all districts are in the same boat in this regard, and that once the lowest-funded have been brought up, then we can all focus on the adequacy fight together: increasing the basic allotment, increasing student weights, facilities funding and other needs facing our schools.

We cannot make strides on equity or ensuring adequacy if we do not first address the inefficiencies that caused the broken system. We've focused our efforts on this since 1982, and will continue to - and we want you to do the same.

Students Matter. Taxpayers Matter. Equity Matters.

A Closer Look at Transportation Funding

The “Simple View”

A school district’s cost of Tier I is the sum of 10 allotments: Regular Program Allotment, Special Education Allotment, Career and Technology Allotment, Compensatory Education Allotment, Bilingual Education Allotment, Public Education Grant, New Instructional Facility Allotment, Transportation Allotment, and High School Allotment.

Let’s look at hypothetical district Smalltown ISD. The sum of Smalltown’s 10 allotments is \$1000. The local taxpayer’s share is the Local Fund Assignment, which is \$500. That leaves \$500 for the state’s share. Simple enough.

Now, what if Smalltown had a Walmart located there. Their sum of the 10 allotments is still \$1000. Because of the increase in property values from Walmart, the Local Fund Assignment is \$950. That leaves \$50 for the state to pay. But, if Smalltown ISD’s High School Allotment, New Instructional Facility Allotment and Per Capita Distribution from Available School Fund together is \$100, the state gives them \$100 instead of \$50. In this case, Smalltown ISD receives the sum of their 10 allotments, including transportation, plus \$50. Not a bad deal.

Let’s say Smalltown had Walmart and a power plant. Their sum of the 10 allotments is still \$1000. There is now a much higher total property value, so the Local Fund Assignment is \$1500. That’s more than the \$1000 cost of Tier 1, so there would be no state aid, except a district gets the greater of their Tier 1 state aid (\$0) OR the sum of their High School Allotment, New Instructional Facility Allotment and Per Capita Distribution from Available School Fund (\$100). In this case, Smalltown ISD receives the sum of their 10 allotments, including transportation, plus \$100.

All three districts receive their transportation allotment. Some just get a little more. Did you also notice that Smalltown ISD with Walmart and a power plant received the New Instructional Facility Allotment and the High School Allotment twice?



School Funding Shouldn’t Resemble the Lottery



Alternatives to Robin Hood

That's right; no one has to pay recapture! There are currently 4 other options in the Education Code available to districts allowing them to opt out of sending excess tax collections to the state:

1. Consolidate with another, less-wealthy district.
2. Detach a portion of high-value territory and transfer it to a less-wealthy district. Alternatively, a wealthy district might just trade with another district for territory of less value.
3. Educate nonresident students by funding students attending another district.
4. Consolidate tax bases with another district (other districts) that has (have) lower concentrations of property wealth.

These options are rarely used. To the best of our knowledge, numbers 1 and 4 have never been used. Similarly, we recall the second option has only been used twice, both in limited circumstances.

State Property Tax

Another option could be for the State to replace that revenue with another source. From time to time, the Legislature discusses trading a local property tax for a state property tax. But this has always been met with stiff resistance, and it would require a constitutional amendment.

Every Tax (Federal, State or Local) is a Form of Recapture

But keep in mind that every tax you pay is a form of recapture. It's tax dollars taken from you and spent wherever the government determines it needs to be spent. It's your money that, once paid to the government, becomes allocated toward funding specific services and programs including healthcare, public safety, water, emergency resources, public education, and more... services that benefit the common good of all the people... including you.

The truth is that recapture is the best, most-moderate way to create an efficient funding system of all the possibilities in a funding system so heavily-dependent on local taxes. Evidently, recaptured districts agree, considering the lack of utilizing other available options.

It is not unusual for the State to take taxes from where they are collected and move them to where they are needed. Does anyone really know where their other state tax dollars end up being spent?

The problem is not recapture - as outlined above, it is a necessary and common form of collecting and allocating statewide resources toward statewide services. And, we think we can all agree that schools need more resources from the state to meet the growing student population and needs. But economically speaking, who would choose to live in a high-taxing, low revenue district when they could choose to live next door in a low-taxing, high-spending district.

Inequity hurts local economies. We seem to recall the Texas Supreme Court once labeled that a "death spiral."

But, the Constitution does require an efficient system. And, even if it didn't why would our state leaders want to create winners and losers among children?

The Real Solution

What we should all—together—be saying is, "Texas public education is under-funded. If we were to properly fund the education of our children in the manner in which we all know we should, most recapture districts wouldn't be recapture districts at all; others would pay significantly less. And, the "fix" would not come at the expense of children and taxpayers in the rest of the state."

One Texas, y'all.





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Recapture's Dichotomy - What Really Sets them Apart?

"Recapture" districts do face a dichotomy. Maybe even two.

1. What definition of recapture applies to any given district?

Is it a recapture district in name only (one whose wealth per WADA¹ is above the Tier 2 GL/EWL² and does not access the last 11 pennies of M&O³ tax rate available to a district)?

Is it a recapture district whose wealth per WADA¹ is above the EWL for Tiers 1 and/or 2 and sends money to the state, but whose state aid exceeds the amount sent to the state (amounting to nothing more than an overly complicated accounting procedure)?

Or is it what we call a "net" recapture district - a district that actually does send money to the state that exceeds the state aid it receives? These distinctions are important in determining how many and which districts are really impacted by recapture.

2. But the additional dichotomy for recapture districts is on one hand claiming how detrimental recapture is, yet in most cases, still benefiting from the current funding system at a level over and above all other districts for the same or lesser tax effort? (See chart page 11)

Of the 191 districts that send any money to the state because of recapture, 78 benefit from state aid that is greater than their recapture. There is really no reason for them to send money to the state, accounting could more simply just "net" it out. Of the 113 districts that are "net" recapture districts, 93 retain additional revenue over and above what they would have if simply a formula district. And that is **AFTER** recapture.⁴

The table on the following page reflects the advantages provided by various inefficiencies in the current system, available only to recapture districts. Depending on the district, the combination of some or all of these exceptions for recapture districts serve to reduce recapture and benefit those districts above levels available to all other formula funded districts.

In the 2017-18 school year, these inefficient funding exceptions dealt out over \$335 million - nearly \$700 million for a biennium - of additional funding to recapture districts across the state.

This brings us back to the dichotomy mentioned earlier. How does any district justify the argument that recapture is a burden that somehow makes them worse off than they would be if they were just in the formula system? The numbers tell a different story.

Methodology to get their wealth below recapture levels is available to them within current law. But, because the exceptions shown in the table work to benefit them over and above what the formula delivers all others, no recapture districts choose those options.

So what all the complaining about recapture really boils down to this: if we did not have to pay recapture, then we could keep all our wealth and advantage our district, children and taxpayers over and above other districts and communities. We could have better funding and/or lower tax rates than everyone else if we could just keep more than our share of the state's resources. But what about the rest of the state?

Pretty simple.

¹ WADA stands for the number of weighted students in average daily attendance.

² GL/EWL refers to the guaranteed funding level—the \$31.95 per penny per WADA for the last 11 Tier 2 pennies—and the equalized wealth level for those pennies of \$319,500.

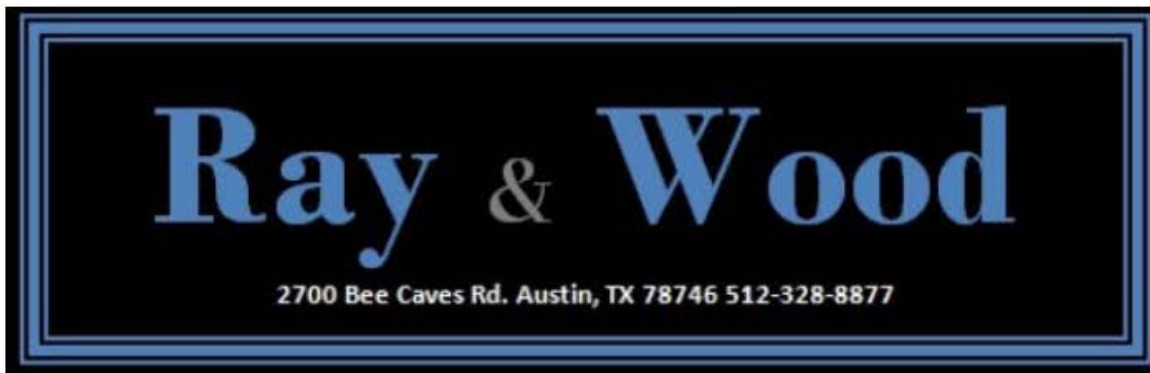
³ M&O stands for maintenance and operations—the portion of funding and tax effort that supports the day to day operations of a school district.

⁴ For the few that have less, that is a result of the impact of property value/low tax collections in any given year, not recapture. This anomaly in the system occurs because the state's funding system uses prior year values of property instead of current year tax collections to determine funding.

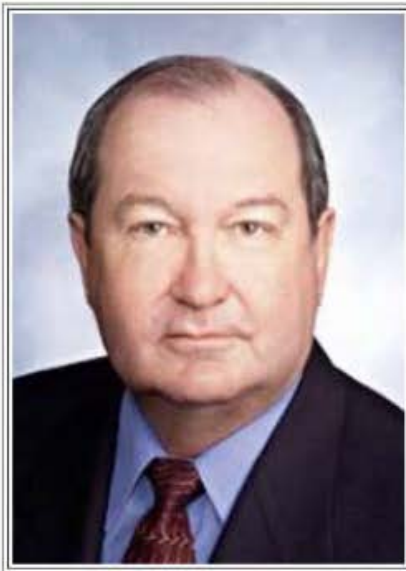
Dichotomy:
*a division
or contrast
between two
things that are
represented as
being opposed
or entirely
different*

Recapture's Dichotomy... (continued)

What Really Sets Recapture Districts Apart—FY 18 TEA Near Final Data, Sept. 2018					
Funding Exceptions	Qualifying Districts	Current Law Average Funding Level per WADA	Average Adopted M&O Tax Rate	Average Advantage per WADA Provided These Districts	Total State Resources Lost to all Other Districts Because of the Exception
1993 Wealth Hold-harmless	40	\$6,931	\$1.041	\$751	\$30,076,694
Early Agreement Credits	175	\$6,840	\$1.079	\$28	\$32,522,774
ASF Per Capita on Top	133	\$7,149	\$1.044	\$107	\$107,227,577
High School Allotment on Top	117	\$7,159	\$1.047	\$52	\$48,125,478
New Instructional Facilities Allotment (NIFA) on Top	18	\$7,127	\$1.060	\$40	\$3,310,271
Additional State Aid for Homestead Exemption (ASAHE) on Top*	154	\$6,980	\$1.078	\$18	\$20,783,450
Local Option Homestead Exemption (LOHE) 50% Credit for Chapter 41s	67	\$7,100	\$1.068	\$176	\$96,547,673
Disaster Relief for Chapter 41s	We do not have accurate numbers available yet for this category, but to the extent hurricane Harvey cost are not covered by FEMA, etc., the ability to cover these costs out of recapture could represent tens of millions of dollars of relief for recapture districts that will not be available to any non-recapture districts under current law.				
*These are the 154 districts that paid any recapture in FY 2018 and got ASAHE funding. **Additionally, these exceptions do not include proposals that may become bills that seek to allow districts to further discount their recapture by artificial caps, allowing credit against recapture for the cost of local PreK, and/or counting charter school enrollment in their wealth calculation.					



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Randall Buck Wood

Partner and Co-Founder



Doug W. Ray

Partner

Chapter 41 = A Useless Term

In 1995, being termed a Chapter 41 school district meant that district was one of a handful of the wealthiest in the state.

Today, as a result of many factors (i.e. Tier I, Tier II, Copper pennies, Golden pennies, etc) the term Chapter 41 has expanded to include districts that are not even above average in wealth per WADA.

Below, we are providing some information for our many Chapter 41 friends (and members) that will explain why being identified by TEA as a “Chapter 41” school district doesn’t carry the same meaning it did back in 1995. In fact, it currently works to falsely identify some districts as “wealthy” when nothing could be further from the truth.

Some History...

The Texas Education Agency defines any district with a wealth level in excess of \$319,500 as a Chapter 41 district because that district is subject to recapture in the second level of Tier 2 funding (i.e., the “copper” pennies level). That level has not changed since it was adopted in the 2006 special session—13 years ago, during which time relative wealth levels have changed—just like you used to be able to buy the big package of Oreos for \$1.99, which, today, is the cost of a the small package.

At that time fewer than 15% of students were in districts subject to recapture at the copper penny level. Since even property poor districts typically gain wealth over time, more and more districts have eclipsed that point of

demarcation, becoming “Chapter 41” and thinking, “Hey, we must be wealthy.” When in fact, most are not.

According to TEA’s preliminary estimates for the 2018-19 school year, the average wealth level among all 1,018 districts will be \$377,698—that’s \$58,198 above the Chapter 41 threshold. The so-called “wealthy” Chapter 41 status is below the statewide average of school districts. Ironically, nearly 100 Chapter 41 districts will have wealth levels below the state average.

We also count 371 districts that will likely be identified as Chapter 41 in 2018-19. Of those, only 221 will pay any recapture at all, but all will receive some amount of state funding.

And, only a little more than half (125) of the 221 recapture-paying districts, will pay more in recapture than the state sends to them. In other words, the “poor” districts they will send their money to is, well, themselves.

True Recaptured Districts

The only true recapture districts are those that are subject to recapture in the basic tier (i.e., districts with a wealth level above the basic allotment level).

Chapter 41?

Doesn’t mean a thing.

Mark your calendars for January 27th - Join Us for the Equity Center’s 19th Annual School Finance Workshop! www.equitycenter.org/events



What Does Our Constitution Say on School Funding?

Our Texas Constitution and the Texas Education Code outline specific requirements of the Legislature and its responsibility to funding our public education system. Let's take a closer look at what it really says.

Part 1: The Texas Constitution, Article 7 states:

Sec. 1 SUPPORT AND MAINTENANCE OF SYSTEM OF PUBLIC FREE SCHOOLS. A general diffusion of knowledge being essential to the preservation of the liberties and rights of the people, it shall be the duty of the Legislature of the State to establish and make suitable provision for the support and maintenance of an efficient system of public free schools.

To expand and provide specifics, the Texas Education Code, Section 42.001 states:

Sec. 42.001. STATE POLICY. (a) It is the policy of this state that the provision of public education is a state responsibility and that a thorough and efficient system be provided and substantially financed through state revenue sources so that each student enrolled in the public school system shall have access to programs and services that are appropriate to the student's educational needs and that are substantially equal to those available to any similar student, notwithstanding varying local economic factors.

(b) The public school finance system of this state shall adhere to a standard of neutrality that provides for substantially equal access to similar revenue per student at similar tax effort, considering all state and local tax revenues of districts after acknowledging all legitimate student and district cost differences.

So, what does that mean?

Part 1: The Legislature is responsible for funding an efficient, free public school system.

Part 2: That system should be "substantially financed through state revenue sources."

Part 3: Efficiency, as illustrated in statute, includes ensuring students are provided "substantially equal access to similar revenue at a similar tax rate,"...this means equity.

Part 4: Efficiency also includes ensuring that "all student and district cost differences" are acknowledged... this is where student and district weights come into play.

It really is straightforward. Now, are we doing that? In short...no. Do the differences in tax effort and student funding levels in districts across the state meet the

statutory requirement of substantially similar revenue at a substantially similar tax effort?

There are rumors of an effort to remove the small and mid-sized school adjustments this session and to remove the Cost of Education Index... each of these help account for the very "district cost differences" mentioned specifically in the education code. Each session, groups fight for increases to student weights that have been ignored for many years...the very "legitimate student... costs" the code refers to. In fact, we recently published a report detailing the research behind student weights and school finance *Weighing Costs & Benefits*).

Despite all this, school finance and the solution to our broken system is actually fairly simple. Whatever policies and solutions are proposed should start with answering these two questions based on statutory and constitutional requirements:

1. Does this change increase the efficiency of the system and ensure the support and maintenance of that efficient system of free public schools required by the Texas Constitution?
2. Does this change ensure substantially similar revenue per student at a substantially similar tax effort as prescribed by the Education Code?

If the answer to either of these questions is no, then the policy should not move forward. The bottom line is, any and every viable and true solution to meeting the needs of students and taxpayers in Texas must meet the two above requirements. Otherwise, not only is that policy going against what is clearly laid out as the goal for our public schools, but it is doing a disservice to students and parents in the communities that are unfortunate enough to be on the lower end of funding and the higher end of taxing.

The students and parents that would benefit from assurance that "substantially similar revenue for a substantially similar tax effort" should not continue to be ignored, while recapture is made the priority, but instead, these goals detailed in our Constitution and through code should be honored and adhered to by the Legislators elected to serve.

After all, it is to the benefit of all districts, all students, all taxpayers that these constitutional and statutory provisions are met. They are, after all, there for a reason.



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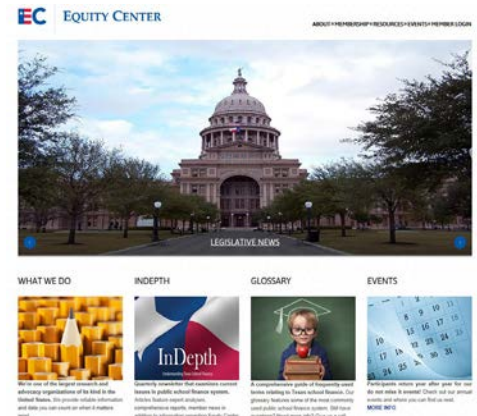


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