

September 21, 2011

To the School Official Addressed,

The purpose of this letter is to inform you about potential litigation affecting school finance in Texas.

By way of background, as a member of the Texas Association of School Boards, your district has the opportunity to participate in the TASB Legal Assistance Fund. The TASB Legal Assistance Fund (TASB LAF) was created in December 1980 through a trust agreement among TASB, the Texas Association of School Administrators (TASA), and the Texas Council of School Attorneys. The purpose of the Fund is to provide support to school districts that are defending legal challenges with the potential to affect public schools statewide. Currently, almost 800 school districts are members of the Fund.

Recently, representatives from various organizations contemplating filing school finance litigation have approached TASB LAF, seeking support for their efforts. TASB LAF has not taken action to support any of these initiatives. As these initiatives move forward, however, individual school districts will want to gather information about the proposed plaintiff groups and the progress of the litigation.

A fundamental issue is whether litigation is necessary to bring about change to the state school finance system. As public entities, school districts hold their funds in trust for the students of their districts. Investing these funds in litigation efforts is not something districts do lightly. Districts have made this choice over the years because, historically, litigation has played an essential role in the formation of Texas' school finance system. Over the last 40 years, groups of school districts have initiated seven major lawsuits, and the outcome of each lawsuit has shaped the path of the Texas Legislature in designing and funding the system. For more information, see the TASB Governmental Relations Issue Page on School Finance at www.tasb.org/legislative/resources/current.aspx.

The last opportunity the Texas Supreme Court had to examine the state system was in 2005, in *West Orange-Cove Consolidated Independent School District, et al. v. Neeley*. The Court reached several important conclusions: The Court ruled that the system at that time was unconstitutional in its over-reliance on local property taxes, and districts across the state lacked meaningful discretion in setting local tax rates. In addition, the Court cautioned that funding was barely adequate to provide a general diffusion of knowledge. Significantly, the Court determined that seeking judicial review of the state's school finance system was appropriate, opening the door to future litigation of the sort now under consideration. In the Court's words, "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 [the Texas Constitution], and the Judiciary has the final authority to determine *whether* they have been met."

Many school district representatives believe the time has come to again ask the courts to decide whether constitutional standards are being met. In 2011, the Texas Legislature cut more than \$5 billion from public education funding and, for the first time since WWII, failed to provide funding to cover the costs of student growth in the next biennium. Despite these cuts, the Texas legislature proceeded with plans to raise requirements for school districts and students through more difficult

standardized tests and accountability requirements. School districts are ready to meet the challenges of higher state standards, but they expect the Legislature to adopt a funding system that provides a rational basis for support of the high standards established by that same governing body.

School districts across the state share the common view that Texas' public schools are underfunded, and, based on information presented to TASB LAF, the potential plaintiff groups will share several common goals in future litigation. All seek a ruling to compel the Legislature to adequately fund public education and make a logical connection between school funding and the high standards set by the State. The potential plaintiff groups may diverge, however, in how they present their various court claims. Given the diversity among the over 1,000 school districts in Texas, there are naturally groups of districts with particular interests in how the school funding system is altered. These districts are all members of TASB, and are all represented by the TASB LAF.

Although no litigation has yet been filed, the formation of plaintiff groups is underway. Information about each group—including goals, claims, and process for joining—is available from the groups' representatives. The representatives who have contacted TASB LAF regarding this matter are:

1. Attorneys David Thompson and Philip Fraissinet of Thompson & Horton in Houston
www.thompsonhorton.com
713.554.6767
2. Attorney Buck Wood and Dr. Wayne Pierce representing the Equity Center in Austin
www.equitycenter.org
512.478.7313
3. Attorney Kevin O'Hanlon of O'Hanlon, McCollom & Demerath in Austin
www.808west.com
512.494.9949

As always, TASB and TASB LAF hope to provide school districts helpful information about the progress of relevant litigation. More background on school finance will also be available in sessions at the TASB/TASA Convention. We hope to see you in Austin at that time.

Sincerely,



Joy Surratt Baskin
General Counsel to the TASB Legal Assistance Fund
Director of TASB Legal Services