HOUSE RESEARCH ORGANIZATION
Texas House of Representatives

Interim NEWS

May 29, 2002 Number 77-8

Appeals court dismisses latest challenge

Taking Stock of School Finance Litigation

In the latest decision in the long-running series of lawsuits against Texas' system of school finance, the Third Court of Appeals in Austin on April 11 upheld a lower court decision dismissing *West Orange-Cove Consolidated ISD v. Alanis*, a suit by property-wealthy school districts alleging that the system creates an unconstitutional state-imposed ad valorem tax. A similar case is pending in a state district court in Dallas County.

The school finance system has evolved through legislative responses to three decades of legal challenges by school districts and taxpayers. (See table, pages 6-7.) Three times in 20 years, courts declared the system inequitable and unconstitutional. Finally, in 1993, the 73rd Legislature enacted SB 7 and created the current recapture system, which essentially shifts money from richer to poorer districts to equalize educational funding. In 1995, the Texas Supreme Court upheld SB 7 in *Edgewood ISD v. Meno* (*Edgewood IV*).

The Joint Interim Select Committee on School Finance is searching for new ways to revise the school finance system and will make recommendations for the 78th Legislature to consider during its 2003 regular session.

Plaintiffs in *West Orange-Cove*, filed in 2001, alleged that because they were or soon would be levying local property taxes at $1.50 per $100 of taxable value, the maximum tax rate for maintenance and operations (M&O), they had lost local discretion in setting M&O rates. They sought a declaration from the 250th District Court in Travis County that the system effectively creates a state property tax, prohibited under Texas Constitution, Art. 8, sec. 1-e.

State District Judge Scott McCown dismissed the case for "lack of ripeness," finding that fewer than half of all school districts have reached the $1.50 cap, an insufficient number for the court to consider whether the state has established a state property tax by, in effect, compelling districts to tax at that level to meet the minimum standards

(see School finance, page 2)

Legal challenges to school finance system, 1971-2001 6

Healthy Choices for School Children: Implementing the "PE Bill"

In Texas, as in the rest of the nation, many school-age children suffer from medical conditions previously seen only in adults. The rising incidence of diabetes, cardiovascular disease, and other diseases linked to obesity, poor nutrition, and inactivity has prompted a variety of responses by educators, public health officials, and lawmakers.

The 77th Legislature in 2001 enacted SB 19 by Nelson, known as the "PE bill," which requires daily physical activity for students and a coordinated health program in each school. Most Texas schools comply with federal regulations that restrict sales of certain vending-machine items (particularly high-fat items), and the Texas Education Agency (TEA) recently reminded schools of their obligation to comply.

California lawmakers are debating a "soda tax" that could discourage consumption of sweetened carbonated beverages, similar to special taxes already in place on soft drinks in Arkansas, West Virginia, and

(see Health, page 9)

(School finance, from page 1)

required for accreditation. Excluding districts that grant the optional homestead exemption, Judge McCown said, only 12 percent of districts are taxing at the $1.50 cap. School districts are allowed to exempt from taxation up to 20 percent of the market value of residence homesteads, in addition to the standard exemption of $15,000 of taxable value mandated under Art. 8, sec. 1-b. Judge McCown said it is difficult to see how a district at or near the cap has lost taxing discretion if it grants the optional homestead exemption or if it offers gifted-and-talented programs, athletics, or other programs beyond a basic accredited education.

The Third Court of Appeals agreed with Judge McCown's decision to dismiss the suit. However, the appellate court said that the threshold issue for determining whether the $1.50 cap creates a state property tax is not the number of districts at or near the cap but whether any district has no choice but to tax at the cap to meet the state-mandated minimum accreditation standard. The *West Orange-Cove* plaintiffs are expected to appeal to the Texas Supreme Court.

The Third Court of Appeals dismissed a suit alleging that the school finance system creates an unconstitutional state property tax, but a similar suit is pending in a state district court.

In a similar case, *Hopson v. Dallas ISD*, also filed in 2001, individual taxpayers sued the districts in which they live, alleging that the system imposes an unconstitutional state ad valorem tax. Defendant Irving ISD brought the state into the suit by filing a third-party petition against the education commissioner.

The *Hopson* plaintiffs further alleged that the use of weighted average daily attendance (WADA) in determining equalized wealth for the purpose of distributing state aid to schools violates the constitutional principle of equal and uniform taxation set forth in Texas Constitution, Art. 8, sec. 1(a). The state uses WADA to calculate the guaranteed yield of state revenue per penny of local tax effort under Education Code, chapter 41.

The higher a school district's WADA ratio, the more state revenue it receives per penny of tax effort. An "average student" in an "average district" is assigned a weight of 1.0, and the number increases in proportion to certain student and district characteristics. For example, the weight increases when a district has many students in special, vocational, or compensatory education, or many students in gifted-and-talented or bilingual education programs. The weight also increases at the district level according to the Cost of Education Index, district size, and sparsity (population density) in rural areas. The average WADA ratio is 1.37, but some poorer urban districts and small rural districts have ratios around 2.0.

Two of the *Hopson* defendants are wealthier districts with lower WADA ratios. For example, Highland Park ISD's ratio is less than 1.1. The plaintiffs allege that calculating the state yield on the basis of non-weighted average daily attendance would be fairer and that the weighted system gives poor districts an unfair advantage.

Hopson is pending in the 134th District Court in Dallas County. The state has filed a petition to transfer venue to the 250th District Court in Travis County, which heard the earlier *Edgewood* cases. The court will consider the petition on June 3.

Constitutional issues

Previous lawsuits challenged the school finance system on the basis of federal or state constitutional principles. Early cases sought to establish education as a fundamental right for which all students deserved equal protection under state and federal law. The *Edgewood* lawsuits beginning in 1989 confronted the issue of efficiency (equity), or how to resolve wide disparities in funding between rich and poor districts. The Texas Supreme Court's ruling in *Edgewood IV* in 1995 linked the concept of equity of funding with adequacy of education.

Equal protection. In the early 1970s, plaintiffs filed suit in federal court charging that Texas' school finance system violated the equal-protection clause of the 14th Amendment to the U.S. Constitution. Although

the federal district court agreed with the plaintiffs that the system essentially discriminated on the basis of economic status, the U.S. Supreme Court in *Rodriguez v. San Antonio ISD* (1973) reversed in a 5-4 decision, finding that the state system bore a rational relationship to furthering the state's goal of providing a minimum education while encouraging local control. The court also found that education was not a fundamental right nor wealth a "suspect classification" under the U.S. Constitution, which would have triggered stricter scrutiny for possible denial of equal protection.

In 1975, the Texas Legislature created a second tier of state financing for property-poor districts through the Foundation School Program (FSP). Lawmakers also made substantial revisions in 1984 in an attempt to improve funding equity. However, many of the poorer districts did not consider these changes substantive enough to resolve inequities in the system.

The issue of equal protection arose again in 1987 in *Edgewood ISD v. Kirby* (*Edgewood I*). State District Judge Harley Clark of Austin ruled that because education is a fundamental right under the Texas Constitution, disparities in education based primarily on differences in wealth are unconstitutional. Texas' expression of equal protection is found in Texas Constitution, Art. 1, sec. 3, which states: "All free men...have equal rights, and no man, or set of men, is entitled to exclusive separate public emoluments, or privileges, but in consideration of public services."

Equity. The basic challenge brought by property-poor districts in *Edgewood I* dealt with inequities in funding between poor and rich districts. Plaintiffs said these inequities violated the "efficiency standard" of Texas Constitution, Art. 7, sec. 1, which states: "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." Plaintiffs claimed that the FSP did not "cover even the cost of meeting the state-mandated minimum requirements," nor did it provide for facilities or debt service.

Equal Protection

Texas Constitution, Art. 1, sec. 3:
"All free men, when they form a social compact, have equal rights, and no man, or set of men, is entitled to exclusive separate public emoluments, or privileges, but in consideration of public services."

The district court agreed with the *Edgewood I* plaintiffs and declared the system unconstitutional, but Judge Clark stayed the injunction until after the 1989 legislative session to give lawmakers time to respond. Because the Third Court of Appeals reversed the decision in December 1988, lawmakers made no substantial changes during the 1989 regular session. However, on final appeal in October 1989, the Texas Supreme Court reversed again, and, in a much-quoted ruling, defined efficiency as "substantially equal access to similar revenues per pupil at similar levels of tax effort." Thus, in the context of school finance, the word "efficient" in Art. 7, sec. 1 came to be associated with "equity," also referred to as "fiscal neutrality."

Facing a deadline of May 1, 1990, to create a constitutionally valid school finance system, the 71st Legislature enacted SB 1 after four special sessions. The goal of SB 1 was to ensure fiscal neutrality (similar yield for similar tax effort) while excluding the wealthiest 5 percent of districts. The law established a monitoring system with biennial studies intended to detect gaps among districts and to identify needed funding adjustments.

In January 1991, the Texas Supreme Court once again declared the system unconstitutional in its ruling in *Edgewood II*, saying that "to be efficient, a funding system that is so dependent on local ad valorem property taxes must draw revenue from all property at a substantially similar rate." The court suggested a number of constitutionally acceptable responses, including changing district boundaries, altering state/local funding allocations, or consolidating districts or tax bases.

Later that year, the 72nd Legislature enacted SB 351, which established 188 county education districts (CEDs)

Equity

Texas Constitution, Art. 7, sec. 1:
"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."

with the sole duty to levy, collect, and distribute property taxes at rates up to 86 cents per $100. This approach overlaid a taxing structure on top of school districts, allowing for the sharing of dollars among rich and poor districts within each CED. The assumption was that consolidating districts into larger areas with substantially similar per-student property values would eliminate the need for state "recapture," or redistribution of local tax revenue from high-wealth to low-wealth districts.

Property-poor districts and their students sued the state in *Edgewood III* in 1992, asserting that the CED system constituted the imposition of a state ad valorem tax barred by the Texas Constitution. The Texas Supreme Court agreed and struck down the system, in part because CED taxes were not levied with local voter approval. Texas voters later rejected two constitutional amendments that would have upheld the CED system, then rejected two more constitutional amendments designed to aid struggling school districts. Finally, the 73rd Legislature in 1993 enacted SB 7 and created the current recapture system, upheld by the high court in *Edgewood IV*.

Adequacy. In a concurring and dissenting opinion in *Edgewood III,* Justice John Cornyn stated that the issue in the *Edgewood* cases was not only financial equity, but the relationship of equity to results. This statement linked the concept of equity for the first time to "adequacy," a word generally equated with the word "suitable" in Texas Constitution, Art. 7, sec. 1.

This issue arose again in 1995, when Justice Cornyn wrote the majority opinion in *Edgewood IV*. Some legal experts interpreted the court's opinion to mean that the court had expanded the concept of "equity" to include both a qualitative standard (general diffusion of knowledge) and a financial standard (similar access to funding for similar tax effort). However, the court acknowledged that the Legislature already had defined "general diffusion of knowledge" by enacting the state accountability system. Under SB 7, each district must have "substantially equal access to the funds necessary to provide an accredited education," the standard set by the court in *Edgewood I*. Thus, the high court does not require equity beyond providing an accredited education, as defined by the state curriculum and tested by the state accountability system.

The *Edgewood IV* decision linking the concepts of equity and adequacy mirrors a growing national trend toward linking educational performance with dollars. Many school districts say that increased accountability demands without increased funding put a strain on local resources. Poorer districts rarely have complained that they cannot afford a basic, accredited education, but rather that wealthy districts can afford much more. In a competitive environment, many districts strive to exceed the state's definition of a basic education as a matter of course. Critics of the property-wealthy plaintiff districts in *West Orange-Cove* say that those districts wish to exceed the basic education standard and gain additional state relief so as not to compromise athletic and enrichment programs or revoke voluntary homestead exemptions.

Local enrichment. At the heart of the debate over adequacy and equity lie issues related to local enrichment, or the ability of school districts to supplement their educational resources if local voters approve additional taxes for that purpose. The Texas Supreme Court has affirmed the principle of local enrichment in all four *Edgewood* opinions.

On rehearing of *Edgewood II*, the court affirmed unequalized local enrichment as constitutionally permissible so long as it did not make inequitable the general diffusion of knowledge and so long as it was based on the tax effort of the local school district. The court ruled that unequalized local supplementation is constitutionally acceptable because districts that choose to impose taxes at a rate higher than the $1.50 cap on M&O taxes are "simply supplementing an already efficient system."

In *Edgewood IV*, the court allowed school districts to raise up to $600 per student of unequalized local enrichment, often called simply "the gap." Advocates for property-poor districts claim that the gap is now closer to $800 to $1,200 with the addition of partially unequalized funding for facilities, and that the average Chapter 41 district campus has about $740,000 more than the average Tier 2 district campus. (A Chapter 41 district is subject to the recapture provisions of Education Code, chapter 41, because its property wealth exceeds $305,000 per weighted student. A Tier 2 district receives extra revenue from the state according to its tax effort and the number of students with special needs.)

The *Edgewood IV* court ruled that an efficient system does not require equality of access to revenue at all levels. Also, the state has no constitutional obligation to provide equalized funding for football or other extracurricular activities, because they are not a part of the state's definition of a general diffusion of knowledge (an accredited education). However, the court did say that the general diffusion of knowledge must reflect "changing needs and public expectations." This statement has led some to argue that because citizens expect their local schools to be competitive, all schools should be entitled to enough funding to meet public expectations.

The court has allowed the Legislature not only to define the general diffusion of knowledge but also to set accountability standards, on the grounds that these are political and not legal questions. Some say this raises a conflict of interest at the state level. They say that because the state sets the public school curriculum, designs the Texas Assessment of Academic Skills (TAAS) that tests whether schools are teaching the curriculum, and controls the TAAS passing standard needed for accreditation, nothing prevents the state from lowering the threshold for accreditation to avoid further court-imposed financial obligations. Currently, to receive accreditation as academically acceptable, a school must meet two basic standards:

- at least 55 percent of all students and of each student group must pass each subject area of the TAAS; and
- the school must have a dropout rate of less than 5.0 percent for all students and for each student group.

Taxation

Texas Constitution, Art. 8, sec. 1(a):
"Taxation shall be equal and uniform."

Art. 8, sec. 1-e(1):
"No State ad valorem taxes shall be levied upon any property within this State."

***Edgewood V* issues.** In *Alvarado ISD, et al. v. Meno, et al.* (dubbed *Edgewood V*), filed in 1998, property-poor districts not only challenged the state's calculations of the local enrichment gap but also alleged that "loopholes" in the school finance system provided special treatment for wealthy districts. For example, the plaintiffs alleged that "wealth hold-harmless" provisions enacted in 1997 were helping about 35 wealthy districts avoid recapture of their revenues by the state. They also alleged that the temporary exemption of Interest and Sinking (I&S) tax revenues from recapture had allowed wealthy districts to convert expenditures funded with M&O tax revenue into unequalized debt financing, ultimately reducing the amount of local revenues recaptured by the state. I&S taxes are levied separately from M&O taxes to support bonded debt.

The 250th District Court did not address these issues in a formal opinion. Rather, Judge McCown allowed the 76th Legislature to address these issues and told the plaintiffs that if they remained unsatisfied, they could petition the court again 60 days after the close of the session; otherwise, he would dismiss the suit. In 1999, lawmakers enacted SB 4, which, among other provisions, added the Existing Debt Allotment to Tier 3 of the school finance system, providing partially equalized state funding for local school facilities bonds. Although unhappy with the act's permanent extension of the wealth hold-harmless and debt recapture provisions, the *Edgewood V* plaintiffs dropped the case.

Property tax cap. More than 250 districts, both rich and poor, have reached the $1.50 cap on M&O tax rates.

(continued on page 8)

Legal Challenges to the Texas School Finance System, 1971-2001

	1971 *Rodriguez v. San Antonio ISD*	1973 *Rodriguez v. San Antonio ISD*	1989 *Edgewood I*	1991 *Edgewood II*
Citation and venue	*Rodriguez v. San Antonio ISD*, 337 F.Supp. 280 (W.D. Tex. 1971) Fed. district court	*Rodriguez v. San Antonio ISD*, 411 U.S. 1, 93 S.Ct. 1278 (1973) U.S. Sup. Court	*Edgewood ISD v. Kirby*, 777 S.W.2d 391 (Tex. 1989) (Mauzy, J.) Texas Sup. Court	*Edgewood ISD v. Kirby*, 804 S.W.2d 491 (Tex. 1991) (Phillips, C.J.) Texas Sup. Court
Legal basis of challenge	Property-poor districts challenged system as a violation of the equal-protection clause of the U.S. Constitution.	SAISD appealed 1971 district court ruling in favor of Rodriguez.	Property-poor districts challenged funding inequity under Tex. Const., Art. 7, sec. 1.	Same as *Edgewood I*.
Ruling	Court ruled with plaintiffs, holding that the system in essence discriminated on the basis of economic status, thus violating the equal-protection clause.	Sup. Court reversed, finding that the state system bore rational relationship to furthering state goals of providing minimum education while encouraging local control.	Court held that the system violated Art. 7, sec. 1 "efficiency" standard requiring substantially equal access to similar revenues per pupil at similar levels of tax effort.	Court ruled that under SB 1, the system was still unconstitutional (i.e., inefficient). SB 1 failed to restructure the system and did not remedy major causes of wide gaps in opportunity between rich and poor districts. Court affirmed local enrichment as long as it did not affect general diffusion of knowledge.
Legislative response	None	1975: Legislature changed name of Minimum Foundation Program to Foundation School Program and created second tier of financing to provide more state financing for property-poor districts.	1990: SB 1 enacted with goal of ensuring similar yield for similar tax effort, while excluding the wealthiest 5% of districts.	1991: SB 351 created 188 county education districts (CEDs) with sole duty to levy, collect, and distribute property taxes. New taxing structure allowed transfer of dollars from rich to poor districts.

1992 *Edgewood III*	1995 *Edgewood IV*	1998 *Edgewood V*	2001 *West Orange-Cove Cons. ISD v. Alanis*	2001 *Hopson v. Dallas ISD*
Carrollton-Farmers Branch ISD v. Edgewood ISD, 826 S.W.2d 489 (Tex. 1992) (Gonzalez, J.) Texas Sup. Court	*Edgewood ISD v. Meno*, 917 S.W.2d 717 (Tex. 1995) (Cornyn, J.) Texas Sup. Court	*Alvarado ISD, et al. v. Meno, et al.*, Cause No. 362,516, 250th District Court, Travis County	*West Orange Cove Consolidated ISD v. Alanis*, No. 03-01-00491-CV (April 11, 2002), Third Court of Appeals	*Hopson v. Dallas ISD*, Cause No. 01-2750-G, 134th District Court, Dallas County
Districts and students sued, asserting that CEDs created by SB 351 levied a state ad valorem tax in violation of Tex. Const., Art. 8, sec. 1-e.	Poor and wealthy districts sued, claiming that the system was inefficient and denied equal access to revenue.	Poor districts sued, alleging special treatment of wealthy districts through loopholes and "hold harmless" provisions in state law.	Wealthy districts sued, alleging they had lost discretion in setting M&O tax rates; they were or soon would be at $1.50 cap and sought declaration that system creates an unconstitutional state ad valorem tax.	Taxpayers sued districts in which they live, alleging: (1) system imposes unconstitutional state ad valorem tax and (2) use of WADA to determine equalized wealth level under Education Code, ch. 41 violates Tex. Const., Art. 8, sec. 1-a
Court ruled the system was unconstitutional because school district taxes were not levied with local voter approval and because CED tax represented a state property tax.	Court upheld SB 7, holding that an efficient system does not necessarily require equality of access to revenue at all levels. Unequalized local supplementation is not prohibited, as long as general diffusion of knowledge is provided.	District court postponed ruling until after 1999 legislative session, then dismissed case because of legislative changes.	Appellate court dismissed case, finding no evidence that any district must tax at the $1.50 cap to provide a minimum accredited education.	Pending. Defendant Irving ISD filed third-party petition against the education commissioner, bringing the state into the suit.
Special sessions in 1992 and 1993 led to proposals for four constitutional amendments, all defeated by voters. SB 7 (1993) created current recapture system.	Over next four sessions, Legislature increased basic allotment, guaranteed yield, and equalized wealth level, and created Tier 3 for school facilities and debt assistance.	76th Legislature added Existing Debt Allotment to Tier 3, partially equalizing funding for school district bonds and repealed Tier 2 penalty on set-asides from Comp Ed allotment.	None required to date.	None required to date.

(continued from page 5)

That figure includes districts that grant optional homestead exemptions. As more districts approach or reach the cap, the courts may question whether control of local school-tax rates effectively has passed to the state.

In *Edgewood III*, the Supreme Court said that the test for determining whether a particular ad valorem tax is a state property tax, prohibited by Art. 8, sec. 1-e, is whether the state so completely controls the levy of the tax and disbursement of the revenue, either directly or indirectly, that the local taxing authority lacks meaningful discretion in levying the tax. The court said:

> Clearly, if the State merely authorized a tax but left the decision whether to levy it entirely up to local authorities, to be approved by the voters if necessary, then the tax would not be a state tax. The local authority could freely choose whether to levy the tax or not. To the other extreme, if the State mandates the levy of a tax at a set rate and prescribes the distribution of the proceeds, the tax is a state tax, irrespective of whether the State acts in its own behalf or through an intermediary. Between these two extremes lies a spectrum of possibilities. (826 S.W.2d at 502-03)

While the court in *Edgewood IV* found that the state-imposed cap on M&O taxes did not, at that time, approach a sufficient level of state control to fall within the prohibition against a state property tax, it issued this warning:

> [I]f the cost of providing for a general diffusion of knowledge continues to rise, as it surely will, the minimum rate at which a district must tax will also rise. Eventually, some districts may be forced to tax at the maximum allowable rate just to provide a general diffusion of knowledge. If the cap on tax rates were to become in effect a floor as well as a ceiling, the conclusion that the Legislature had set a statewide ad valorem tax would appear to be unavoidable because the districts would then have lost all meaningful discretion in setting the tax rate. (917 S.W.2d at 738)

In *West Orange-Cove ISD v. Alanis*, the school district claimed that it had to tax at the $1.50 cap to "educate its students," and therefore it had "lost all meaningful discretion" in setting the local tax rate. The court of appeals ruled that this assertion was insufficient because "educate its students" is only the locally desired standard, not the minimum accredited education standard that the Supreme Court in *Edgewood IV* equated with the constitutionally required "general diffusion of knowledge." This standard is to be defined by the Legislature, not by the courts.

According to the appeals court, the threshold issue for deciding if the state cap on M&O rates creates a prohibited state property tax is whether a district can show that it must tax at the state-mandated maximum level to meet the state-mandated minimum accreditation standard. On the basis of *Edgewood IV,* in such circumstances the cap would be "in effect a floor as well as a ceiling," eliminating local taxing discretion and, therefore, amounting to a state property tax. If the Supreme Court upholds the appeals court's interpretation, those challenging the school finance system will have a higher hurdle to surmount — at least until a minimum accredited education becomes so expensive that a school district must tax at the highest allowable rate merely to raise enough to cover those costs.

— by Dana Jepson

(Health, from page 1)

Washington. A Pennsylvania school district sent letters to parents of children who are underweight, overweight, or at risk of becoming overweight, encouraging them to contact a doctor or the school nurse for nutrition and activity information.

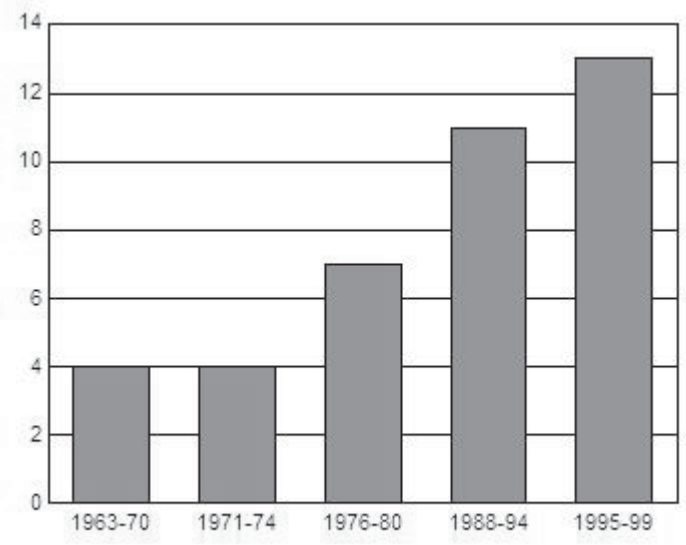
The prevalence of obesity in elementary school children has more than tripled in the past generation. According to the federal Centers for Disease Control and Prevention, Texans in all age groups are more obese than most of the rest of the nation. The average prevalence of obesity in Texas is 31.6 percent, while the U.S. average is 29.1 percent.

The Texas Health and Human Services Commission (HHSC) funded a surveillance project to determine the actual prevalence of overweight and obese school-aged children in Texas. According to the commission, the project found that the prevalence of obese and overweight children in the fourth, eighth, and 11th grades in Texas exceeds the national averages. Prevalence rates are highest among Hispanic boys in those three grades and among African-American girls in the fourth grade. The study's authors hope to publish their findings and the actual prevalence rates later this year.

Texas' approach to combating obesity and associated diseases is to get school children moving more and eating better and to get school officials working together. SB 19 authorizes the State Board of Education (SBOE) to require daily physical activity for elementary school children. The law also directs TEA to make a coordinated health program available to each school district and requires districts to implement such a program. In a March 2002 letter to school districts, TEA announced that it will determine qualified programs and will send districts a list comparing these programs. Each district then may choose a program that best fits its needs. TEA plans to send this list to schools in June.

Some stakeholders have expressed concern that TEA's plan to implement the coordinated health program is not what the Legislature intended in enacting SB 19. They say that TEA's implementation plan will doom the coordination of physical education, nutritional services, parental involvement, and students' exposure to healthy choices. Others say, however, that TEA has chosen a fair process that will produce better options for schools.

Percentage of overweight among children ages 6 to 11



Source: National Center for Health Statistics.

Coordinated health programs

The coordinated approach to health in SB 19 refers to school-wide initiatives that promote health to prevent obesity, cardiovascular disease, and Type II diabetes in elementary school students. This approach is distinct from the health programs that some schools already provide in that it specifically addresses health issues related to those three diseases, ties the school's health curriculum to its physical education (PE) and nutrition services, and involves parents.

As part of health education, many Texas schools already discuss behaviors that can prevent obesity or cardiovascular disease, such as avoiding tobacco and choosing healthy foods. Many also provide PE or opportunities for students to engage in physical activity during the day. A coordinated approach to health would teach students in the classroom about healthy eating,

offer healthy foods in the cafeteria, and guide students to healthier choices in the cafeteria. The key to tying together elements of education that prevent obesity, cardiovascular disease, and Type II diabetes is the coordination of PE teachers, food service staff, parents, and health educators.

Some Texas schools already have coordinated health programs in place. The most widely implemented program is the Coordinated Approach to Child Health (CATCH), adopted by more than 1,000 elementary schools. CATCH, developed as part of a research study by the National Heart, Lung, and Blood Institute at the National Institutes of Health, resulted in development of classroom and physical education curricula for grades three to five, homework and other tools for family involvement, and school food service materials. The initial study found that CATCH reduced the fat content of school lunches, increased activity during PE classes, and improved student eating and activity behaviors. Practices developed during the study have evolved into an integrated program that Texas schools have implemented through grants and other funding. Other health programs that schools have implemented include Bienestar, a Bexar County program for fourth grade students, and Take 10!, a classroom-based physical activity program for kindergarten to fifth grade students.

TEA's implementation plan for the coordinated health program largely shifts decision-making power from the agency to school districts.

TEA implementation plan

The coordinated health portion of SB 19 (Education Code, secs. 38.013-38.014) directs TEA to make available to each school district a health program that provides for the coordination of health education, PE and physical activity, nutrition services, and parental involvement. TEA must adopt a schedule for regional education service centers to provide necessary training. School districts must participate in training for the program by September 1, 2007, and must implement the program in each elementary school.

After the legislative session, TEA formulated an implementation plan for the coordinated health program. Because the SBOE had approved CATCH in 1999 as a coordinated health program for diabetes prevention, TEA initially based its implementation and training plans on that program. Early in 2002, however, TEA decided to change to the evaluation plan it is pursuing now. In addition to notifying school districts of the coordinated health provisions of SB 19 and TEA's plan to provide a list of qualified programs, TEA has invited health programs to submit information for the agency's evaluation.

TEA intends to evaluate programs on the basis of one primary selection criterion and several recommended program characteristics. A qualified program must show that it coordinates the four elements of coordinated health (health education, PE and physical activity, nutrition services, and parental involvement) in elementary grades. TEA also will provide schools with comparative information about the number of grades each program includes, the program's capacity to train teachers statewide, need for program supplies and materials, correlation to the Texas Essential Knowledge and Skills for health and PE, research evidence of the program's effectiveness, and the per-student cost of the program. TEA's March 2002 letter instructed school districts to coordinate training through the state's regional education service centers or by contacting the chosen program directly.

Stakeholders weigh in

TEA's implementation plan differs from the letter of SB 19. While the law directs TEA to "make available to each school district a coordinated health program" and to notify school districts of that availability, TEA plans instead to make a list of qualified programs available. Both supporters and opponents of this approach agree that it largely shifts decision-making power from TEA to school districts.

Supporters of TEA's plan say:

Schools should be able to make their own decisions about health curriculum. Texas is a large and diverse state, and a program that is appropriate for schools in one area may not be appropriate for others. By providing a list of qualified programs, TEA avoids a "one size fits all" approach and honors the principle of local control. As a result, school districts that might tend to resist implementing a coordinated health program will have no reason to do so. Allowing districts to choose which program to use does not remove their responsibility to uphold the law.

School districts should not be precluded from implementing any worthy program. If TEA had not opened up this process to multiple programs, some programs could have been locked out of Texas schools. The list of qualified programs will ensure that each district can use the best program for its students, not merely a single statewide program that TEA has decided fulfills SB 19. TEA's initial plan to use the program approved by the SBOE was inappropriate, because SB 19 designates TEA as the decision maker in this area. TEA should go through its planned evaluation process to comply with SB 19's instruction to make a program available.

TEA's plan does not undermine the prospective quality of coordinated health programs in Texas schools. The submission of information about a program to TEA does not guarantee that the agency will include this program in the list of qualified programs it will send to schools. Programs must show that they coordinate health education, PE and physical activity, nutrition services, and parental involvement in elementary grades. Programs that cannot demonstrate this will not be included in the list.

TEA's plan preserves the component of educator training by requiring school districts to arrange for training through the regional service centers or by contacting each program directly. TEA also will help schools choose from an array of programs by providing information about each program's capacities to train school districts across the state.

Opponents of TEA's plan say:

The proposed shift in decision-making power from TEA to school districts is not in the best interests of Texas school children. SB 19 was designed to ensure that all elementary school students take part in a single coordinated health program. Schools that are amenable to a coordinated health program already have such programs, and SB 19 targets schools that resist those programs. Allowing resistant schools to choose among various program options could result in those schools choosing the cheapest and least effective programs.

The program evaluation proposed by TEA is not rigorous enough to ensure that programs on the qualified list can provide an effective coordinated approach to health in schools. To qualify for the list, programs need only show that they coordinate elements of health education. The criteria that would ensure quality — such as inclusion of multiple grade levels, useful materials and supplies, and research evidence of a program's effectiveness — are only "recommended" characteristics. A program would not have to substantiate its claim to coordinate health education in schools.

Other options would have made the implementation plan consistent with the intent of SB 19. If TEA was concerned about choosing a single program for fear of creating resistance among some school districts, the agency could have allowed districts to request an exemption from the rule. Districts then could have presented proposals showing why different programs would be more appropriate, and they could have received permission to use those programs in lieu of the one made available by TEA.

TEA's implementation plan also would burden schools with arranging an additional type of training. Teachers and school administrators already must obtain training and continuing education to remain current in teaching practices and curriculum development. TEA should be responsible for scheduling training for new coordinated health programs.

— by Kelli Soika

HOUSE RESEARCH ORGANIZATION

Steering Committee:

Peggy Hamric, *Chairman*
Roberto Gutierrez, *Vice Chairman*
Dianne White Delisi
Harold Dutton
Bob Hunter
Carl Isett
Mike Krusee
Jim McReynolds
Elliott Naishtat
Joe Pickett
Robert Puente
Bob Turner
Steve Wolens

Capitol Extension
Room E2.180

P.O. Box 2910
Austin, Texas 78768-2910

(512) 463-0752
FAX (512) 463-1962

www.capitol.state.tx.us/hrofr/hrofr.htm

Staff:

Tom Whatley, *Director;* Greg Martin, *Editor;*
Rita Barr, *Office Manager/Analyst;* Kellie Dworaczyk,
Patrick K. Graves, Dana Jepson, Travis Phillips,
Kelli Soika, *Research Analysts*