

Velva L. Price
District Clerk
Travis County
D-1-GN-17-001385
Ruben Tamez

D-1-GN-17-001385

NO. _____

<p>LA FERIA ISD, JOAQUIN ISD Plaintiffs,</p> <p>v.</p> <p>MIKE MORATH, TEXAS COMMISSIONER OF EDUCATION; TEXAS EDUCATION AGENCY; and TEXAS STATE BOARD OF EDUCATION Defendants.</p>	<p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p>	<p>IN THE DISTRICT COURT OF</p> <p>TRAVIS COUNTY, TEXAS</p> <p>261ST _____ JUDICIAL DISTRICT</p>
--	--	--

PLAINTIFFS' ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES Plaintiffs La Feria ISD and Joaquin ISD and file this Original Petition for Declaratory and Injunctive Relief against Defendants Mike Morath, in his official capacity as Commissioner of the Texas Education Agency; the Texas Education Agency; and the Texas State Board of Education. Plaintiffs ask the Court to declare that Defendants' new amendment to an existing rule, announced in Defendant's Mike Morath and the Texas Education Agency's February 1, 2017 statement to all districts, was issued outside of rulemaking authority under the Texas Administrative Procedures Act and to permanently enjoin Defendants from further implementing the newly amended rule. In support, Plaintiffs would show the Court as follows:

DISCOVERY CONTROL PLAN

1. In accordance with TEX. R. CIV. P. 190.3, Plaintiffs request that Discovery Control Plan Level 3 control this matter.

JURISDICTION AND VENUE

2. Jurisdiction and venue are proper in this Court under TEX. GOV'T CODE § 2001.038.

PARTIES

3. Plaintiff La Feria ISD (hereinafter "La Feria") is a duly organized independent school district under the laws of the State of Texas.

4. Plaintiff Joaquin ISD (hereinafter "Joaquin") is a duly organized independent school district under the laws of the State of Texas.

5. Defendant Mike Morath, Texas Commissioner of Education (hereinafter "Commissioner"), is sued in his official capacity and is charged with administering the Texas school finance system under Subtitle I of the Texas Education Code and may be served with citation at 1701 North Congress Avenue, Austin, Texas 78701.

6. Defendant Texas Education Agency (the "TEA") is a governmental agency organized under the laws of the State of Texas and can be served with citation through Mike Morath, Texas Commissioner of Education, at 1701 North Congress Avenue, Austin, Texas 78701.

7. Defendant Texas State Board of Education is a governmental agency organization under the laws of the State of Texas and can be served through its Chairwoman, Donna Bahorich, at 1701 North Congress Avenue, Austin, Texas 78701.

BACKGROUND

8. The single most important factor in determining the educational funds available to a school district in Texas is the property value available for taxation in that district. In 1995, the Texas Legislature enacted Senate Bill 1, which recodified the school finance system that had been originally adopted in 1993 in Senate Bill 7. Under this

system property poor districts (“Chapter 42 districts”) were provided with additional state educational funding, while the property wealthy districts (“Chapter 41 districts”) would have to reduce local revenue by transferring some of their property to one or more property poor school districts or by purchasing attendance credits. These transactions produce funds which are then used as a source of revenue for the Foundation School Program (FSP). The FSP delivers funding to property poor school districts based on a series of formulas that, in conjunction with recapture, are designed to rectify decades of unconstitutional underfunding of student education in Chapter 42 districts.

9. Senate Bill 1 also recodified the statutory requirement that the Texas Comptroller of Public Accounts determine the total taxable value of all property in each school district in the state and report that amount to the Commissioner. This requirement, which was added to section 403.302 of the Texas Government Code, defines the taxable value as the total market value of all property in the district less a particular portion of the value of certain properties that have been exempted from taxation. The taxable property values determined by the Comptroller are used by the Commissioner to administer the FSP program, including the provisions of Chapters 41, 42, and 46 of the Texas Education Code.

10. Since 1983, section 11.13(n) of the Texas Tax Code has permitted school districts the option to grant local optional homestead exemptions (“LOHEs”) that exempt up to 20% of the value of a residential homestead from taxation. Upon information and belief, prior to the passage of Senate Bills 7 and 1 in 1995, the Comptroller reported taxable property values to the Commissioner that included the value of property that had been exempted by LOHEs. Following the passage of Senate Bills 7 and 1 in 1995, the

Comptroller continued the practice of reporting taxable property values to the Commissioner that included the value of property that had been exempted by LOHEs.

11. In 1999 the Legislature passed Senate Bill 4, which contained provisions relating to LOHEs. For the first time, the Legislature provided that the Texas Education Agency (“TEA”) could partially fund the loss of revenue for districts with LOHEs under some specific circumstances. Senate Bill 4 amended portions of Texas Government Code § 403.302¹ and added Texas Education Code §42.2522.

12. These amendments to portions of Texas Government Code § 403.302 and the addition of Texas Education Code § 42.2522 authorized TEA to recognize the LOHE-reduced property values when determining the taxable property value of school districts in the FSP computations. Recognition of the LOHE-reduced property values produces additional funding for districts that have LOHEs. Because there is a cost to the state associated with the recognition of the LOHE-reduced property values, the authority to incorporate the reduced property values is limited to these circumstances:

- a. funds are specifically appropriated for the purpose, or;
- b. there is a surplus in the Foundation School Program in the current fiscal year.

13. These provisions were part of Senate Bill 4’s comprehensive plan for providing tax relief to school districts. TEA interpreted this legislative policy as applying to all FSP computations, including those set forth in Chapters 41, 42, and 46, only when one of the two conditions set out in the bill were met. This interpretation was applied

¹ Section (d)(2) was added which affected the determination of “taxable value” by now allowing one-half of the total dollar amount of any residence homestead exemptions granted under 11.13(n), Tax Code, to be deducted from the market value of all taxable property within a district.

beginning with the first school year after Senate Bill 4 became effective and such interpretation has been in effect from 1999 through the start of the current school year.

14. The Legislative Budget Board (“LBB”) agreed with TEA’s interpretation of this legislative policy found in Senate Bill 4. In its official fiscal note provided to the legislature, the LBB stated:

The bill would allow the commissioner of education to increase state aid based on district property values that would be reduced by one-half of the local optional homestead exemption. The commissioner would not be able to authorize additional state aid unless it is determined that surplus Foundation School Program funding is available for the first and second years of a fiscal biennium. It is estimated that state aid would increase by approximately \$110 million per year, effectively reducing any balance which might be available by that amount. State aid due to this provision could increase significantly if school districts increase their local exemptions to take advantage of the opportunity for greater state funding.

15. TEA has consistently interpreted the new provisions in Senate Bill 4 as applying to all FSP computations in Chapters 41, 42, and 46, beginning with the 1999-2000 school year.

16. In 2011, the Commissioner formally adopted this interpretation in the “Manual for Districts Subject to Wealth Equalization 2010-2011 School Year,” which was TEA’s manual for Chapter 41 districts. The rule stated that: “If your district offers an optional homestead exemption as authorized by the Texas Tax Code, § 11.13(n), an adjustment to your district’s taxable value **may** be granted **if** there is an appropriation or excess FSP funds are available.” The proposed rule was published in the Texas Register on or about February 25, 2011

at 36 Texas Register 1214 and adopted by TEA on or about May 6, 2011 at 36 Texas Register 2831.

17. TEA adopted its most recent Chapter 41 manual in September 2016 for the 2016-2017 school year, and it contains the exact same language related to the effect of LOHEs on the calculation of a district's property values. *See* 19 TEX. ADMIN CODE § 62.1071. (Exhibit A attached). The proposed rule was published in the Texas Register on or about June 24, 2016 at 41 Texas Register 4579 and adopted by TEA on or about September 23, 2016 at 41 Texas Register 7481.

18. On February 1, 2017, however, the Commissioner issued a statement to school districts unilaterally changing TEA's long-standing rule. (Exhibit B attached). Through the statement the Commissioner attempts to implement an interpretation and practice that is exactly the opposite of its current rule by recognizing only the LOHEs of Chapter 41 districts' and only for the purposes of determining the amount of recapture that Chapter 41 districts with a LOHE will be required to pay even though the LOHE was not recognized for any other purpose², including the determination of the wealth status of these or any other district. The statement mandates that this interpretation and practice will occur regardless of the existence of an appropriation or a surplus in the Foundation School Program, thereby providing only Chapter 41 districts with

² LOHE were also recognized for purposes of their impact on facilities funding under Chapter 46 of the Education Code, but in a minor way compared to their impact under Chapter 41 of the Education Code.

LOHEs additional maintenance and operation (M&O) funds for educating their students.

19. On information and belief, it appears that the TEA is interpreting the Commissioner's statement regarding this newly amended rule to mean that not all Chapter 41 districts with LOHEs will receive the benefit of additional M&O funds for educating their students but *only* those Chapter 41 districts with LOHEs *that pay recapture* will receive the benefit of additional M&O funds for educating their students.

20. On information and belief, neither the Commissioner nor the TEA has ever published a rule for public comment or otherwise complied with the procedures of the Texas Administrative Procedures Act ("APA") before authorizing the rule change related to LOHEs. The Commissioner is unilaterally attempting to circumvent APA rulemaking provisions, which also require a fiscal impact estimate to be made and published. This was never done. *See* TEX. GOV'T CODE § 2001.024.

21. Through this invalid rule amendment, the Commissioner is attempting to change the statutory calculation of school funding for Chapter 41 districts that has been accepted and relied upon by the legislature since Senate Bill 4 was passed. Neither in the 1999 session nor in any subsequent legislative session has any appropriations bill or fiscal note considered that any district's LOHE-reduced taxable value would apply to any computations that would have an effect on the amount of education funds flowing under the State's school finance system absent a surplus or specific appropriation.

The invalid rule amendment will result in a de facto increase in the equalized wealth level that is set forth in statute, thereby reducing the amount of funds available to the FSP and creating a deficit in the appropriation that funds the program. As a result, the Commissioner will be required to prorate FSP state aid under the provisions of § 42.253(h), Texas Education Code.

22. Implementation of this invalid rule will directly cut the amount of state funds that Plaintiffs would otherwise receive. In the event each of the Chapter 41 districts who currently have a LOHE are reimbursed for one-half of the total dollar amount of their LOHE, which results in lower tax collections and thus less recapture being paid; La Feria will lose a minimum of two hundred twenty-eight thousand one hundred ninety dollars (\$228,190.00)³, or forty-seven dollars (\$47.00) per student in weighted average daily attendance (WADA) and one thousand four hundred thirty-five dollars (\$1,435.00) per classroom. Joaquin will lose a minimum of forty-eight thousand two hundred ninety dollars (\$48,290.00),⁴ or forty-five dollars (\$45.00) per WADA and one thousand five hundred forty-eight dollars (\$1,548.00) per classroom. These losses will directly and negatively impact the ability of La Feria and Joaquin to address the educational needs of their student populations.

23. If all Chapter 41 districts adopted a twenty (20) percent LOHE for the next biennium (FY 18-19), and maximized their “golden pennies”⁵ to offset

³ These losses would occur through proration which would be experienced in the second year of the current bienium (FY 17) and the next bienium (FY 19).

⁴ See FN 3.

⁵ “Golden Pennies” are the first six pennies, above a districts compressed tax rate, taxed by a district which are not subject to recapture.

their loss due to the decrease in their taxable property value as a result of adopting a LOHE, La Feria would lose an estimated seven hundred seventy-five thousand six hundred sixty-five dollars (\$775,665.00), or one hundred and sixty dollars (\$160.00) per WADA and four thousand eight hundred seventy-nine dollars (\$4,879.00) per classroom. Joaquin would lose one hundred sixty-four thousand one hundred forty-six dollars (\$164,146.00), or one hundred fifty-two (\$152.00) per WADA and five thousand two hundred sixty-three dollars (\$5,263.00) per classroom.

24. While the numbers in the preceding paragraphs reflect the losses of La Feria and Joaquin, those districts are representative of the losses all Chapter 42 districts in the state would experience. The estimated cost to the State of Texas in implementing this newly amended rule is overwhelming. If the state reimburses all of the Chapter 41 districts who currently have a LOHE for one-half of the total dollar amount of their LOHE, it would cost the State two hundred ninety-one million four hundred thirty-eight thousand six hundred twenty-four dollars (\$291,438,624.00) for the remainder of the current biennium and the next biennium. If all Chapter 41 districts adopted a twenty (20) percent LOHE for the next biennium (FY 18-19), the cost to the State could go as high as nine hundred sixty-six million five hundred sixty thousand four hundred twenty-two dollars (\$966,560,422.00). The State of Texas cannot afford this expense, which will only continue to rise each year with property values and additional homesteads.

25. The new amendment to an existing rule provides a strong incentive to Chapter 41 districts to adopt or increase their LOHEs; and it is reasonable to

assume that most if not all would do so. If all Chapter 41 districts were to adopt a 20% exemption, the cost to the state would be approximately \$480 million per year or \$960 million for the two-year cycle.

26. In sum, after twenty years, without proper notice, without fiscal impact consideration, and without required public input, the Commissioner, according to the LBB's analysis, is blowing a \$110 million hole in the State's education funding system for the current school year that will require cuts in M&O state funding for property poor districts while increasing M&O funds available to wealthy districts with LOHEs.

CAUSES OF ACTION

Texas Administrative Procedures Act

27. Plaintiff fully incorporates the allegations in paragraphs number 1 to 26.

28. Defendant has adopted the aforementioned newly amended rule without following the procedures set forth in the Texas Administrative Procedures Act, Tex. Gov't Code Ch. 2001, Subchapter B.

29. The Commissioner's and TEA's statement constitutes the making of a rule under the APA that amends its prior, formally-promulgated rule at 19 TEX. ADMIN. CODE 62.1071. As such, it can only be validly implemented by following the procedures provided for in the APA. *See* TEX. GOV'T CODE Ch. 2001, Subchapter B.

30. Plaintiffs challenge the validity and applicability of the new rule which benefits only certain school districts of TEA's choosing at the expense and to the detriment of all districts who will experience a cut to their M&O funding through proration in amounts estimated above.

31. Plaintiffs request relief from Defendants' actions under the APA.

Permanent Injunction

32. Plaintiff fully incorporates the allegations in paragraphs number 1 to 23.

33. Plaintiffs ask the Court to set their request for a permanent injunction for a full trial on the merits and, after the trial, issue a permanent injunction against Defendants enjoining the implementation of the newly amended rule which was issued outside of formal APA procedures.

34. Plaintiffs have joined all indispensable parties under Texas Rule of Civil Procedure 39.

Conditions Precedent

35. All conditions precedent have been performed or have occurred.

Request for Disclosure

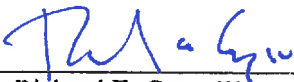
36. Under Texas Rule of Civil Procedure 194, Plaintiffs request that Defendants disclose, within 50 days of the service of this request, the information or material described in Rule 194.2


PRAYER


ACCORDINGLY, La Feria ISD and Joaquin ISD pray that this Court permanently enjoin the newly amended rule adopted by the Commissioner and TEA in the February 1, 2017 statement altering the calculation of taxable value for those districts with LOHEs as invalid and unenforceable, and grant all other relief to which Plaintiffs are so entitled

Respectfully submitted,

GRAY & BECKER, P.C.
900 West Ave.
Austin, Texas 78701
Telephone: (512) 482-0061
Fax: (512) 482-0924

By: 
Richard E. Gray, III
State Bar No. 08328300
Richard E. Gray, IV
State Bar No. 24074308

By: 
Randall B. Wood
State Bar No. 21905000
Doug W. Ray
State Bar No. 16599200
RAY & WOOD
2700 Bee Caves Road #200
Austin, Texas 78746
Telephone: (512) 328-8877
Fax: (512) 328-1156

By: 
Marisa Bono
State Bar No. 24052874
Celina Moreno
State Bar No. 24074754
MEXICAN AMERICAN LEGAL DEFENSE AND
EDUCATIONAL FUND, INC.
110 Broadway, Suite 300
San Antonio, Texas 78205
Telephone: (210) 224-5476
Fax: (210) 224-5382

Attorneys for Plaintiffs