

**WHAT’S IN IT FOR ME?
SCHOOL PARTNERSHIPS IN TEXAS: ARE WE
BRIBING OUR KIDS TO PERFORM?**

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I. Introduction

Empowered by the Texas State Constitution in 1883, school districts in Texas have levied property taxes to supplement local school funding.¹ Notwithstanding, the Texas school finance system has been an issue of contention in Texas for decades. As far back as the late 1960s, there has been litigation challenging the

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¹ San Antonio Indep. Sch. Dist. v. Rodriguez, 411 U.S. 1, 6 (1973).

constitutionality of the Texas school finance system.² In 1969, a group of Mexican-American parents, on behalf of school children throughout the state of Texas who were members of minority groups or who were poor and resided in low property tax based school districts, initiated a class action lawsuit.³ The suit contended that Texas public school financing discriminated based on wealth in the manner in which it provided education to students, and thus violated the Equal Protection Clause.⁴ In *San Antonio Independent School District v. Rodriguez*, the United States Supreme Court addressed the disparities in school financing between the least and most affluent school districts.⁵ However, the Court opined that although disparities existed in the Texas system of school financing, such disparities were not discriminatory, and thus not unconstitutional.⁶ Nevertheless, in September 2004, Texas schools did not miss a beat when the Supreme Court of Texas declared the property tax, share-the-wealth financing system, better known as “Robin Hood,” unconstitutional.⁷ Teachers and students did not anticipate longer summer vacations. There was no discussion about any possibility of withholding teachers’ salaries. Families still planned summer vacations with little concern that the legislature would remedy the situation. In short, the school system plodded along as usual: the teachers taught, the students learned, and the citizens wondered how they could help. Meanwhile, the Texas legislature scrambled to redistribute the state’s portion of school funding.⁸ While trying to identify resources to assist with the financing of school districts, Texas contravened the federal guidelines created by the No Child Left Be-

² *Id.* at 1.

³ *Id.* at 4, 5.

⁴ *Id.* at 16.

⁵ *Id.*

⁶ *Id.* at 55.

⁷ *W. Orange-Cove Consol. Indep. Sch. Dist. v. Alanis*, 107 S.W.3d 558, 570 (Tex. 2003) (discussing the unconstitutionality of the state’s school funding system). “Robin Hood” forced school districts to tax at a statutory cap in order to provide an education to students, amounting to an unconstitutional statewide property tax. *Id.* at 570, 583.

⁸ R.G. Ratcliffe, *Perry Tax Plan Has a Chance*, HOUSTON CHRON., June 24, 2005, at B1 (discussing the special legislative session called by Governor Perry after Texas lawmakers were unable to reach an agreement on school reform financing during the regular session).

hind Act⁹ and exempted too many students from testing.¹⁰ The violation jeopardized close to \$1 billion of federal aid earmarked for Texas public schools.¹¹

The status of the financial system of Texas schools continued to unfold during the summer of 2005 special legislative sessions.¹² Once the legislature found a source for the state money, however, another important issue remained: how to best utilize unaccounted for money, i.e., private contributions, to assist with school finance reform while simultaneously not widening the academic achievement and socioeconomic gaps in those schools.

The Texas legislature's decision on school finance reform will affect citizens, taxpayers, and parents. While it appears that a new tax (or the re-allotment of old taxes) is inevitable in the reformation of school finance in Texas, identification of other available resources may prove to be beneficial. However, it is imperative that the use of any new resource not result in a widening of the gap between the high-performing, wealthy school districts and the low-performing, poorer school districts.

This paper addresses the current use of corporate funding to boost student attendance rates, identifies potential federal funding conflicts, and presents recommendations to resolve those conflicts. First, this piece highlights the existence of corporate-sponsored donations to Texas school districts.¹³ Second, this article discusses student eligibility requirements to receive corporate-sponsored donations: good attendance, absent any requirement to

⁹ No Child Left Behind Act of 2001, Pub. L. No. 107-110, 115 Stat. 1425 (codified as amended in scattered sections of 20 U.S.C.). The purpose of the No Child Left Behind Act "is to ensure that all children have a fair, equal, and significant opportunity to obtain a high-quality education and reach, at a minimum, proficiency on challenging State academic achievement standards and state academic assessments." 20 U.S.C. § 6301 (Supp. II 2002).

¹⁰ Justin Gest, *Perry Enters No Child Fray*, HOUSTON CHRON., Feb. 28, 2005, at B1 (discussing the high number of students exempted from taking the Texas Assessment of Knowledge and Skills, the regular standardized testing in Texas, resulting in noncompliance with national requirements).

¹¹ *Id.*

¹² See 79th Leg., 1st Spec. Sess. (Tex. 2005) and 79th Leg., 2d Spec. Sess. (Tex. 2005), Legislative Reference Library of Texas, <http://www.lrl.state.tx.us/legis/specialSessions/specialSessionYears.cfm> (last visited Mar. 13, 2006).

¹³ See discussion *infra* Part II.

meet minimum academic achievement standards.¹⁴ Schools use donated funds to create programs that enhance attendance figures, without requiring any academic performance criteria, in order to obtain state-generated dollars.¹⁵ These programs may be inconsistent with the requirements of The No Child Left Behind Act, which conditions federal monies on student performance.¹⁶ Third, this article recommends resolving this conflict by recognizing standards currently exercised by Texas school districts and applying these standards in the awarding of corporate-sponsored gifts in a way that not only caps, but also reduces the academic achievement gap, as well as the socioeconomic gap.¹⁷

II. *Corporate Gifts – Upping the Ante to Increase Attendance*

Open to all students: Win a PT Cruiser, Dodge Neon, Saturn Ion or a shopping spree at Cargo Kids . . . for just showing up. During the 2003 – 2004 school year, Fort Worth, Texas’ Trimble Tech High School gave away a 2001 Ford Mustang as a raffle-like incentive for students to attend class.¹⁸ It worked. Attendance jumped by 2.6% and the district was so elated, this year it expanded the program to give students in all schools a chance to win prizes donated by businesses; including cars, computers, and bedroom furniture.¹⁹ Districts with good attendance records receive additional school program funding.²⁰ Because schools receive state monies for attendance, a 2.6% increase in attendance equates to big dollars.²¹

School administrators are thrilled that this type of raffle is

¹⁴ See discussion *infra* Part II.

¹⁵ Angela K. Brown, Associated Press, *Businesses Donate Items for School Attendance Incentive Program*, TYLER MORNING TELEGRAPH, Aug. 26, 2004, at 2A.

¹⁶ 20 U.S.C. § 6511 (Supp. II 2002) (defining the purpose of Comprehensive School Reform). “The purpose . . . is to provide financial incentives for schools to develop comprehensive school reforms, based upon scientifically based research and effective practices that include an emphasis on basic academics and parental involvement so that all children can meet challenging State academic content and academic achievement standards.” *Id.*; see also discussion *infra* Parts III and IV.

¹⁷ See discussion *infra* Part V.

¹⁸ Brown, *supra* note 15.

¹⁹ *Id.*

²⁰ 19 TEX. ADMIN. CODE § 129.21 (1996) (discussing Texas public school student attendance requirements for state aid).

²¹ *Id.*; Brown, *supra* note 15.

getting a response because it will ultimately provide districts with additional money each day for each student that actually attends class.²² The big picture and the long-term effect of rewarding children for doing what they are supposed to do—attend school²³—have become blurred.

Life is not just about money or the pursuit of it. Future employers of these students are not going to reward them for merely attending their job, but instead will reward them for doing a good job and exhibiting responsibility and accountability.²⁴ Bonuses usually come from achieving expectations set by management²⁵ and producing extraordinary output. Such success comes from hard work, long hours, and a serious desire to achieve. People are motivated not only by money, but also by a sense of self-fulfillment, or knowing you did your absolute best. Stretching the inner-self is the best way to grow and doing this in school makes learning fun and a welcomed challenge. Customarily, students attend school simply because it is what they are supposed to do. The opportunity to win something other than an education never entered the picture. Notwithstanding the status of public education funding in the State of Texas,²⁶ as well as the current national movement to address inadequacies in the overall performance of our schools,²⁷ a system of free education does exist.²⁸ Though not a fundamental right,²⁹ education is needed to achieve the fulfillment

²² § 129.21; Brown, *supra* note 15.

²³ *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 29-30 (1973) (discussing the importance of education supported by the requirement of mandatory attendance).

²⁴ Dwight Ueda, *Bonuses, An Overview*, http://www.salary.com/advice/layout/scripts/advl_display.asp?tab=adv&cat=nocat&ser=Ser82&part=Par171 (last visited Mar. 13, 2006) (discussing how job performance is measured for the purpose of bonus rewards).

²⁵ Dwight Ueda, *Bonuses, How Bonuses Work*, http://www.salary.com/advice/layout/scripts/advl_display.asp?tab=adv&cat=nocat&ser=Ser82&part=Par174 (last visited Mar. 13, 2006) (discussing how and why bonuses are awarded).

²⁶ *See* *W. Orange-Cove Consol. Indep. Sch. Dist. v. Alanis*, 107 S.W.3d 558, 558 (Tex. 2003).

²⁷ *See* No Child Left Behind Act of 2001, Pub. L. No. 107-110, 115 Stat. 1425 (codified as amended in scattered sections of 20 U.S.C.).

²⁸ *See San Antonio Indep. Sch. Dist.*, 411 U.S. at 24 (discussing the Texas legislature's efforts to provide children with an adequate education "[b]y providing 12 years of free public-school education").

²⁹ *Id.* at 35 (declaring that education is not a fundamental right or liberty).

of the “the right of every American to an equal start in life.”³⁰ Thus, school officials must avoid devaluing free education with bargaining devices designed to increase student attendance.

In an arena where schools sometimes massage enrollment numbers to underreport dropouts,³¹ is the cure to poor attendance something “bright and shiny that goes fast?” Granted, no child should be left behind, and our first step must be to get that child to want to come to school; however, in an effort to avoid manipulating numbers to reflect an increase in school attendance, should we resort to “bribery?”

III. School Mission Conflicting with No Child Left Behind Act

A. Evaluating Performance

The No Child Left Behind Act addresses education, President Bush’s primary domestic concern.³² The Act’s dense rules and regulations map the criteria to measure overall school performance.³³ The Act also contains goals, standards, and funding qualifications carefully set forth by experts.³⁴ No Child Left Behind establishes minimum performance standards for different age groups.³⁵ The standards are designed to raise the level of performance of the lower-end students.³⁶ This method raises the bar for

³⁰ *Id.* at 71 (Marshall, J., dissenting).

³¹ Diana Jean Schemo, *Texas Lifts Its Probation on Schools in Houston*, N.Y. TIMES, Aug. 5, 2004, at A14 (discussing the restoration of the school district’s ranking following a probationary period due to the inaccurate reporting of high school attendance).

³² President George W. Bush, Remarks at the Thurgood Marshall Extended Elementary School (Oct. 25, 2001), <http://www.whitehouse.gov/news/releases/2001/10/20011025-2.html> (last visited Mar. 13, 2006).

³³ See No Child Left Behind Act of 2001, Pub. L. No. 107-110, 115 Stat. 1425 (codified as amended in scattered sections of 20 U.S.C.).

³⁴ *Id.*

³⁵ See 20 U.S.C. § 6311(b)(1)(C) (Supp. II 2002) (discussing challenging academic standards). “The State shall have such academic standards for all public elementary school and secondary school children . . . in subjects determined by the State, but including at least mathematics, reading or language arts, and (beginning in the 2005-2006 school year) science, which shall include the same knowledge, skills, and levels of achievement expected of all children.” *Id.*

³⁶ *Id.* § 6311(b)(1)(D) (discussing challenging academic achievement standards that measure proficient or advance achievement or the progress of achieving proficient or advance achievement).

overall achievement and eliminates the gap between the high and low achieving groups.³⁷ Currently, federal law requires mandatory reading and math testing in grades three through eight to assess whether students are meeting the minimum standards.³⁸ Most school districts, including those in Texas, execute some form of assessment that tests more grade levels in more subjects.³⁹ President Bush is currently seeking to expand standardized testing to high schools.⁴⁰ Performance on such testing identifies whether students are meeting federal improvement standards.⁴¹ No Child Left Behind also provides incentives, in the form of federal funding, for schools that close the gap between the highest and lowest performing students.⁴² Thus, government funding motivates schools with students who have not been performing to create new and innovative ways to assist these students in the achievement of minimum academic standards.⁴³

In comparison, the business world awards bonuses based on performance and accountability.⁴⁴ When properly administered, this reward system has a proven track record in successfully measuring performance.⁴⁵ It works because employees can measure their performance in dollars, choose the level they wish to achieve, and then strive for it.⁴⁶ By attaching proper incentives to their job of learning, students will find a direct correlation between self-achievement and helping classmates achieve. This concern for

³⁷ See *id.* § 6311(b)(2)(B)-(C).

³⁸ Alexis Grant & Jennifer Radcliffe, *A Bright Spot in Education*, HOUSTON CHRON., July 15, 2005, at A1 (discussing improved math and reading test scores among Hispanic and black students in grades three through eight).

³⁹ Jason Spencer, *HISD Expects Fewer Gold Stars*, HOUSTON CHRON., Sept. 30, 2004, at B1 (discussing performance ratings given to schools in Houston; some schools received unfavorable ratings because they fell short of federal standards identified in the No Child Left Behind Act).

⁴⁰ Grant & Radcliffe, *supra* note 38.

⁴¹ *Id.*

⁴² See 20 U.S.C. § 6311(b)(2)(B)-(C) (discussing school reform and schools demonstrating adequate yearly progress – AYP).

⁴³ *Id.*

⁴⁴ Ueda, *supra* note 24.

⁴⁵ Keith Fortier, *Raises and Bonuses: Will You Be Rewarded for Performance This Year?*, http://www.salary.com/advancedsearch/layoutscripts/asel_display.asp?filename=&path=/destinationsearch/advice/part_par519_body.html (last visited Mar. 13, 2006) (discussing the criteria for bonus-based reward systems).

⁴⁶ *Id.*

others will promote interaction and communication within the group and assist with the enhancement of learning skills necessary to succeed in life.

B. *An Elementary Idea: Sharing the Wealth of Knowledge*

Cage Elementary School in the Houston Independent School District is a prime example of this ideology.⁴⁷ Cage teachers instituted a “Reading Buddies” program, where older students read to younger students.⁴⁸ The program teaches children that reading is fun while allowing students to strengthen their reading and communication skills. The students also gain an appreciation for reading⁴⁹ and the program provides younger students with a private tutor. This type of program promotes interaction between students in different grade levels and different learning-levels, while fostering the development of friendships between children that would otherwise be segregated due to age and learning abilities. The reward of this type of program to both the older student and younger student is an enhanced appreciation for reading and learning.⁵⁰ It teaches an extremely valuable lesson to children: achieving together. Thus, this kind of program not only gives students a sense of pride in a job well done, but it also instills a sense of pride in the group as a whole.

C. *“Risky Business” – Federal Funding for Schools Meeting Federal Standards*

Federal monies for low-performing schools located in the most impoverished school districts⁵¹ are disbursed based upon adherence to the No Child Left Behind Act’s school performance

⁴⁷ Jo Ann Zuñiga, *How Texas Schools Rate; Tale of Two Schools*, HOUSTON CHRON., Oct. 1, 2004, at B4 (discussing the reason for the success of the elementary school and its earning of the state’s top accountability rating in comparison to the performance of another neighboring Houston school with an unfavorable rating).

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ See 20 U.S.C. § 6301(2) (Supp. II 2002) (discussing how the Act can achieve the purpose of improving academic achievement for the disadvantaged by “meeting the educational needs of low-achieving children in our Nation’s highest-poverty schools . . .”).

standards.⁵² Teachers are evaluated based upon their ability to fulfill requirements and reach goals set by these standards.⁵³ Students are tested and either promoted or retained based upon whether they achieved minimum proficiency skills identified by the standards set forth in the Act.⁵⁴ There is a common denominator among schools receiving government funding, teacher evaluations, and student testing. The common denominator is providing students with the fundamentals of learning by requiring adherence to the standards of No Child Left Behind.⁵⁵ If so, then is it not a direct contradiction to reward children for doing nothing but simply showing up for school without requiring minimum performance or progress towards minimum academic performance as set forth in the No Child Left Behind Act? Attendance is already mandatory.⁵⁶

If students, who did not attend school before the “attendance raffle,”⁵⁷ begin to attend school because of the raffle, has anything been accomplished? Even if a few of the newly motivated students do reconsider the value of an education and begin to perform better academically, in gaining this, is the overall worth of education devalued? Perhaps this type of reward system would be easier to accept if the reward was a performance-based scholarship resulting in a free education. Some may argue, however, that this concept is already in place in public schools, grades kindergarten

⁵² See *id.* § 6301(1) (discussing how the Act can serve its purpose by “ensuring that high-quality academic assessments, accountability systems, teacher preparation and training, curriculum, and instructional materials are aligned with challenging State academic standards so that students, teachers, parents, and administrators can measure progress against common expectations for student academic achievement”).

⁵³ See *id.* §§ 6613(c), 6623(a) (stating that state educational agencies should use federal funding to retain highly qualified teachers, principals, and paraprofessionals).

⁵⁴ See *id.* § 6311(b)(3)(A) (Student performance is assessed via “yearly student academic assessments that include, at a minimum, academic assessments in mathematics, reading or language arts . . .”).

⁵⁵ See *supra* notes 52-54 and accompanying text.

⁵⁶ See *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 29-30 (1973). “Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society.” *Brown v. Bd. of Educ.*, 347 U.S. 483, 493 (1954).

⁵⁷ *Brown*, *supra* note 15.

through twelve.⁵⁸

It is not enough for the child not to be left behind in school; it is also critical to provide the child with a means to move forward. It is much more important to instill in a child an appreciation for the value of an education. It is this avenue that should encourage attendance.

IV. Give Until It Hurts: The Effects of Corporate Donations

Economically disadvantaged students, commonly referred to as “at-risk” students,⁵⁹ have an overall three percent higher absentee rate.⁶⁰ This rate soars to eleven percent in some districts.⁶¹ “At-risk” schools are identified by the number of household incomes below the poverty level.⁶² “At-risk” districts are primary candidates for federal funding under the No Child Left Behind Act.⁶³ In addition, some school budgets provide more funding “to schools with higher populations of low-income students”⁶⁴ With this in mind, should schools who receive federal funding to increase

⁵⁸ See *San Antonio Indep. Sch. Dist.*, 411 U.S. at 24 (Texas asserts that through its Minimum Foundation Program an adequate education for all children in the state of Texas is afforded by providing twelve years of free public-school education).

⁵⁹ See U.S. Dep’t of Educ., Nat’l Inst. on the Educ. of At-Risk Students, <http://www.ed.gov/offices/OERI/At-Risk/index.html> (last visited Mar. 13, 2006) (defining “at-risk” students as “students at risk of educational failure because of limited English proficiency, poverty, race, geographical location or economic disadvantage”); Ctr. for Research on the Educ. of Students Placed At Risk, Johns Hopkins Univ. and Howard Univ., *Every Child Has the Capacity to Succeed in School and in Life*, <http://www.csos.jhu.edu/crespar/index.htm> (last visited Mar. 13, 2006).

⁶⁰ TEXAS EDUC. AGENCY, TEXAS A&M UNIV., TEA YEARLY STATISTICS PROVIDED BY TEXAS EDUCATIONAL EXCELLENCE PROJECT (TEEP) (2004) (on file with author) [hereinafter TEA YEARLY STATISTICS] (attendance statistics for the 2000-2001 school years; stating 93.78% overall student average daily attendance and 90.82% economically disadvantaged student average daily attendance).

⁶¹ *Id.*

⁶² Jim Vertuno, Associated Press, *Advocate Says Poor Schools Bear Brunt of Cuts*, TYLER MORNING TELEGRAPH, (Aug. 26, 2004), at B2; ETS, *Teaching in At-Risk Schools Focus of New National Partnership* (Feb 9, 2005), <http://www.ets.org> (follow “Resources for K-12 Education” hyperlink; then follow “News” hyperlink) (discussing the “national effort to address and resolve the problems that the nation’s poorest, lowest-performing at-risk schools face in recruiting and retaining well-prepared teachers”).

⁶³ See 20 U.S.C. § 6301(2) (Supp. II 2002).

⁶⁴ Jason Spencer, *The Public Education Divide; Low Performance Goes Beyond Funding*, HOUSTON CHRON., Mar. 6, 2005, at A1 (discussing the relationship between school performance and funding).

productivity, reach standard educational goals, and close gaps between high and low achievers accept lavish donations and gifts from private sponsors to entice students to attend class without requiring any level of academic performance?

A. *Who Is At Risk? – Identifying the Recipients of Corporate Gifts*

Not surprisingly, the sports car reward phenomenon does not seem to be a big issue in underachieving schools. These schools spend all of their funds, including sparse donations, on education because it simply costs more to educate their children.⁶⁵ These schools also happen to educate children whose families do not have much discretionary income.⁶⁶ Corporate sponsors not only collaborate with at-risk schools, they also fund numerous educational support programs.⁶⁷ However, it is unlikely that the nation's "at-risk" schools will be flooded with donations or other elaborate gifts, such as cars, for students to win conditioned only upon good attendance. Similar to the concept behind some marketing practices in corporate America, expensive corporate-sponsored incentives, outside of the basic edifice of educational support, are unlikely to go to schools located in impoverished areas.⁶⁸ These elaborate in-kind donations will more likely go to school districts with higher average incomes, the targeted market of many of

⁶⁵ Michelle Adam, *Court Cases, Research Point to Underfunding of ELL Programs at the State Level*, THE ELL OUTLOOK, Mar.-Apr. 2005, http://www.coursecrafters.com/ELL-Outlook/2005/mar_apr/ELLOutlookITIArticle5.htm (last visited Dec. 30, 2005) (discussing the cost to educate students with limited English proficiency).

⁶⁶ The Conference Bd., *More Americans Have Discretionary Income But It Is Concentrated in the Most Affluent Families*, (Jan. 10, 2005), http://www.conferenceboard.org/utilities/pressDetail.cfm?press_ID=2550. Although more families in America have discretionary income, it is concentrated in the most affluent families. *Id.*

⁶⁷ ALEX MOLNAR, COMMERCIALISM IN EDUC. RESEARCH UNIT, EDUC. POLICY STUDIES LAB., VIRTUALLY EVERYWHERE: MARKETING TO CHILDREN IN AMERICA'S SCHOOLS, THE SEVENTH ANNUAL REPORT ON SCHOOLHOUSE COMMERCIALISM TRENDS: 2003-2004 i (2004), available at <http://www.asu.edu/educ/eps/EPSL/CERU/Annual%20reports/EPSL-0409-103-CERU.pdf> (discussing corporate sponsors, marketing, and advertising in public schools).

⁶⁸ Ross D. Petty et al., *Regulating Target Marketing and Other Race-Based Advertising Practices*, 8 MICH. J. RACE & L. 335, 343 (2003) (discussing target marketing). "[I]t allows advertisers to reach the population most likely to buy their products and it allows advertisers to design marketing campaigns that will appeal to the population they want to reach. . . . [T]he segmentation of markets contributes to the segmentation of society." *Id.*

these corporate sponsors.⁶⁹ Even if “at-risk” schools receive sizable donations, it would be in the best interest of the students to use these funds for educational programs designed to help students meet academic standards.

When corporate sponsors give elaborate gifts without requiring some level of academic performance, nothing is accomplished towards closing the academic achievement gap. In fact, this practice runs the risk of widening not only the achievement gap, but also the gap between the economically elite and the economically challenged districts.⁷⁰ Notwithstanding the misplaced societal values that these programs illustrate, we show our children distorted ethical standards when we implement these programs. This enhances the re-segregation of our schools, only not on a racial basis, but on a socioeconomic basis.⁷¹ According to some school district financial records, underachieving schools spend more money per pupil than top-performing schools.⁷² However, schools receive larger budgets based upon larger enrollment⁷³ and enrollment and attendance are usually higher at school districts that are more affluent.⁷⁴ Thus, the outcome is the same: poorer, predominately minority schools end up with less funding.

B. *The Potential Socioeconomic Impact*

Most of us have taken the public school system for granted for so long that we forget that education is not a constitutional right.⁷⁵ In *San Antonio Independent School District v. Rodriguez*, the landmark case that led to the creation and implementation of “Robin

⁶⁹ *Id.*

⁷⁰ Sheryll D. Cashin, *Drifting Apart: How Wealth and Race Segregation Are Reshaping the American Dream*, 47 VILL. L. REV. 595, 599 (2002). “These twin forces – persistent racial segregation and rising economic segregation – are creating the new, winner-take-all system.” *Id.*

⁷¹ GARY ORFIELD & CHUNGMEI LEE, THE CIVIL RIGHTS PROJECT - HARVARD UNIV., *BROWN AT 50: KING’S DREAM OR PLESSY’S NIGHTMARE?* (2004), available at <http://www.civilrightsproject.harvard.edu/research/reseg04/brown50.pdf>.

⁷² Spencer, *supra* note 64.

⁷³ *Id.*

⁷⁴ See TEA YEARLY STATISTICS, *supra* note 60; Jason Spencer, *Many Texas Schools Fall Short of ‘No Child’ Goals*, HOUSTON CHRON., Aug. 13, 2005, at A1. According to the Texas Education Agency, “[I]ast year, 821 Texas students from 199 schools, including eight students from HISD, took advantage of the school choice option . . .” *Id.*

⁷⁵ See *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 35 (1973).

Hood,”⁷⁶ the Supreme Court held that a state’s system of public education financing is not unconstitutional simply because it may result in an unequal distribution of funding among different school districts.⁷⁷ Even if disparities in school expenditures result in poorer quality education in some districts, the Court opined that the state is better suited to create a remedy.⁷⁸ “Robin Hood” was an attempt to reduce the socioeconomic impact felt in the poorer schools by taking from the more affluent school districts and giving to the poorer school districts.⁷⁹ Unfortunately, it did not work.⁸⁰

When the U.S. Supreme Court ordered Texas to take care of its own problem regarding equality in the funding and quality of education,⁸¹ it appeared that the Court was just sidestepping the real issue of segregation.⁸² In *Brown v. Board of Education*, the

⁷⁶ Janet Elliot, *Judge Overturns ‘Robin Hood’*, HOUSTON CHRON., Sept. 16, 2004, at A1 (discussing the origin of “Robin Hood”). The program got its name “because it requires 13 percent of the state’s 1,037 districts to share a portion of their revenue with less-wealthy districts.” *Id.* In essence, “Robin Hood” advocates taking from the rich school districts and giving to the poor school districts in order to equalize funding. *Id.*

⁷⁷ See *San Antonio Indep. Sch. Dist.*, 411 U.S. at 54 (“It has simply never been within the constitutional prerogative of this Court to nullify statewide measures for financing public services merely because the burdens or benefits thereof fall unevenly depending upon the relative wealth of the political subdivisions in which citizens live.”).

⁷⁸ *Id.* at 42-43.

⁷⁹ *W. Orange-Cove Consol. Indep. Sch. Dist. v. Alanis*, 107 S.W.3d 558, 570 (Tex. 2003).

The major change that Senate Bill 7 made in the Foundation School Program was to equalize school districts’ “wealth per student” A school district with wealth per student greater than a certain amount . . . must transfer the excess, or the tax revenue generated from it, either actually or effectively, so as to provide funding for school districts with less wealth. . . . This taxable wealth equalization scheme, dubbed by some “Robin Hood”, eliminates the geographical disparities in available revenue among school districts

Id.

⁸⁰ Elliot, *supra* note 76 (discussing the state district court’s decision that the current school financing system fails to “meet the constitutional requirement of being efficient because of a ‘significant gap of more than 10 points in educational achievement’ between economically disadvantaged students and those who are not economically disadvantaged”).

⁸¹ See *San Antonio Indep. Sch. Dist.*, 411 U.S. at 42-43.

⁸² *Id.* at 72 (Marshall, J., dissenting) (discussing the discriminatory impact of the Texas school funding system on a substantial number of students attending school in Texas).

Court held that racial segregation is unconstitutional and wrong.⁸³ However, almost twenty years later, the Court ruled socioeconomic (de facto) segregation, which occurs based on material wealth, is not a federal issue, even if it isolates the poor and primarily affects minorities.⁸⁴ Socioeconomic segregation has virtually the same effect as racial segregation because it places the lower-achieving schools in lower-economic areas. “[Eighty-eight] percent of intensely segregated minority schools” are also schools in which more than half the students are poor and attendance is an issue.⁸⁵ Concentrated poverty reflects negatively on attendance and limits a child’s educational opportunities.⁸⁶ Segregation, or more accurately termed socioeconomic segregation,⁸⁷ is a persistent problem; and if it is to be designated a moral wrong, then each state must say so on its own.

V. *Recommendations*

Without a Supreme Court mandate, states and citizens must simply acknowledge the problem of socioeconomic segregation themselves and take personal responsibility. Once full awareness exists that all children want to learn and our country profits when children do learn, then maybe others will embrace the Reading Buddies⁸⁸ philosophy. Every resident must take responsibility for the condition of our schools and the capabilities, or lack thereof, of students graduating from them. Citizens must understand that in order to keep this country running successfully, a fully inte-

⁸³ *Brown v. Bd. of Educ.*, 347 U.S. 483, 493-95 (1954) (stating that racial segregation of children in public schools is unconstitutional because it deprives them of equal educational opportunities and “the equal protection of the laws guaranteed by the Fourteenth Amendment”).

⁸⁴ See *San Antonio Indep. Sch. Dist.*, 411 U.S. at 42-43; *Swann v. Charlotte-Mecklenburg Bd. of Educ.*, 402 U.S. 1, 23 (1971).

Our objective . . . is to see that school authorities exclude no pupil of a racial minority from any school, directly or indirectly, on account of race; it does not and cannot embrace all the problems of racial prejudice, even when those problems contribute to disproportionate racial concentrations in some schools.

Id.

⁸⁵ ORFIELD & LEE, *supra* note 71, at 21.

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ *Zuñiga*, *supra* note 47.

grated education is critical for all students. A socioeconomic-integrated education should include training in every aspect of life, in particular, the ethical concerns included in getting something for nothing.

Schools should use incentives to inspire and motivate attendance, but schools should also consider the overall educational effect of each initiative, both positive and negative. Rewarding a student for good attendance alone is inadequate. Academic achievement and a demonstration of meeting or making progress towards minimum educational performance standards, identified by No Child Left Behind,⁸⁹ must be a part of the eligibility criteria.

An example of this type of standard is “No Pass, No Play,”⁹⁰ a current standard applied in Texas schools for extracurricular activities participation. If students meet grade requirements, their reward is the opportunity to play sports and participate in group activities.⁹¹ If students fail to meet minimum skills performance standards, then the reward – participating in school-sponsored extracurricular activities – is not an option.⁹² Likewise, if school districts seek to reward students for good attendance, at a minimum, a student’s academic performance should be associated in some way with his or her attendance.

Along with good attendance, to participate in a corporate-sponsored raffle, students should also be required to meet performance standards. All corporate donations should promote a balancing test between advancing educational performance and retarding educational growth. If there is to be fairness in this type of program that boosts overall attendance in Texas schools, the rewarding of corporate-sponsored gifts to students should be available at the same level to all students who meet the criteria – good attendance and academic performance. In essence, “No Pass, No Attendance Raffle Eligibility.”

⁸⁹ See No Child Left Behind Act of 2001, Pub. L. No. 107-110, 115 Stat. 1425 (codified as amended in scattered sections of 20 U.S.C.).

⁹⁰ TEX. EDUC. CODE § 33.081(c) (2004) (discussing academic performance criteria for students who seek to participate in extracurricular activities, commonly referred to as “No Pass, No Play”). Students must maintain a 70 average on a scale of 100 to be eligible to participate in school-sponsored activities. *Id.*

⁹¹ *Id.*

⁹² *Id.*

VI. Conclusion

Job attendance and a commitment to one's work are of extreme importance. It is impossible to perform one's required job duties if one fails to report to work. Employers lose massive sums of money when poor attendance is prevalent.⁹³ A small increase in school attendance can translate into millions of dollars in additional funding for schools.⁹⁴ However, attendance incentives, without requiring basic academic achievement, contravene the common goal of educating our children.

In no way should independent sponsorship or generous donations from adopt-a-school partners, such as the \$10,000 used to buy the car for the attendance raffle,⁹⁵ be discouraged. These partners are invaluable to school districts, but administrators must analyze their good intentions within the scope of scholastic benefits. School officials must strive to prevent a widening of the gap between the highest and lowest achieving students. In short, corporate donors need direction on how to help. Perhaps school districts should consider other donative alternatives, such as scholarships, educational passes to local museums, matching gifts to the Texas Guaranteed Tuition Plan,⁹⁶ or books (classic, vintage, or educational). School officials should always consider the trade-offs of corporate-sponsored programs before instituting potentially character-damaging, not-so-well-thought-out promotions.

Providing a student with a monetary reward for simply attending school without requiring accountability for his learning will not only cause that student to be left behind, but it will also lead to a negative mindset. The student will reason that he may be rewarded based solely upon his attendance at school without being held responsible for meeting any learning criteria. Later on in life, this reasoning will formulate his work ethic. Schools must be careful to avoid such a horrific downward trend. What happens to

⁹³ HR.BLR.com (BLR Business & Legal Reports), *National Attendance*, <http://www.hr.blr.com/topic.cfm/topic/16/state/155/tab2/9999/sort/alpha.html> (last visited Mar. 13, 2006) (discussing attendance in the workplace and the cost paid by employers because of poor attendance).

⁹⁴ Brown, *supra* note 15.

⁹⁵ *Id.*

⁹⁶ See Texas Guaranteed Tuition Program Home Page (formerly Texas Tomorrow Funds), <http://www.texastomorrowfunds.org> (last visited Mar. 13, 2006) (college tuition plan benefit that locks in the future cost of college tuition at present rates).

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the student who wins the vehicle after graduation? Does he now negotiate with his employer to “buy” his attendance and good faith performance?

The No Child Left Behind Act requires schools to make yearly progress.⁹⁷ While it may be too early to assess the effects of the law,⁹⁸ we should support its overall goal to educate all children.⁹⁹ We should not cloud the goal of educating our children with unfair and misguided bargaining methods.

⁹⁷ 20 U.S.C. § 6311(b)(2)(B) (Supp. II 2002) (discussing the required showing of Annual Yearly Progress – AYP – by all schools).

⁹⁸ Grant & Radcliffe, *supra* note 38.

⁹⁹ *See* 20 U.S.C. § 6301.